The 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

Thursday, July 30, 2020
10:00 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 by 9:00am on the date of the meeting 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. Assembly Bill 345 (Muratsuchi) - Natural resources: environmental justice: oil and gas: regulation of operations
   Comment: This item seeks direction on AB 345, which would establish an environmental justice program within the Natural Resources Agency. It would also require the Department of Conservation to adopt regulations to protect public health and safety near oil and gas extraction facilities that include a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics.

2. Assembly Bill 725 (Wicks) - General plans: housing element: moderate-income and above moderate-income housing: suburban and metropolitan jurisdictions
   Comment: This item seeks direction on AB 725, which would require at least 25 percent of a metropolitan jurisdiction’s share of the regional housing need for moderate-income and above moderate-income housing be allocated to sites with zoning that allows at least two units of housing, but no more than 35 units per acre of housing. By imposing additional requirements on the manner in which a city or county may satisfy its regional housing need, this bill would impose a state-mandated local program.
3. Assembly Bill 1063 (Petrie-Norris) - Planning and Zoning Law: housing elements: accessory dwelling units: adequate site substitutes

Comment: This item seeks direction on AB 1063, which would amongst many things require the Department of Housing and Community Development to allow a jurisdiction to identify sites for potential accessory dwelling units based on existing zoning standards and the demonstrated capacity to accommodate accessory dwelling units and junior accessory dwelling units as determined by the city or county.

4. Assembly Bill 1196 (Gipson) - Peace officers: use of force

Comment: On July 10, 2020, the Liaisons supported AB 1196 as it prohibited the use of a carotid restraint or choke holds by a law enforcement agency. Amendments were then published to add the prohibition of the use of techniques or transport methods that involve a substantial risk of positional asphyxia. This item requests the Liaisons consider these amendments and provide direction on AB 1196.

5. Assembly Bill 1672 (Bloom) - Solid waste: premoistened nonwoven disposable wipes

Comment: This item seeks direction on SB 1672, which would require certain premoistened nonwoven disposal wipes manufactured on or after January 1, 2022 to be labeled clearly and conspicuously to communicate that they should not be flushed.

6. Assembly Bill 1851 (Wicks) - Religious institution affiliated housing development projects: parking requirements

Comment: This item seeks direction on AB 1851, which amongst many things would prohibit a local agency from requiring the replacement of religious-use parking spaces that a developer of a religious institution affiliated housing development project proposes to eliminate as part of that housing development project.

7. Assembly Bill 2323 (Friedman) - California Environmental Quality Act: exemptions

Comment: This item seeks direction on AB 2323, which would expand the application of California Environmental Quality Act (CEQA) exemptions for housing and other specified projects by permitting community plans, as defined, to serve as the basis for exemption of residential, mixed-use and employment center projects near transit. It also eliminates the exclusion of sites within the boundaries of a state conservancy from existing exemptions for affordable agricultural housing, affordable urban housing, and urban infill housing. Because a lead agency would be required to determine the applicability of this exemption, this bill would impose a state-mandated local program.

8. Assembly Bill 2345 (Gonzalez) - Planning and zoning: density bonuses: annual report: affordable housing

Comment: This item seeks direction on AB 2345. This bill would require the annual report provided by a jurisdiction to the Department of Housing and Community Development includes specified information regarding density bonuses granted in accordance with specified law. Additionally, AB 2345 would revise Density Bonus Law to increase the maximum allowable density and the number of concessions and incentives a developer can seek from a jurisdiction.

9. Assembly Bill 3107 (Bloom) - Planning and zoning: general plan: housing development

Comment: This item seeks direction on AB 3107, which would require a housing development be an authorized use on a site designated in any element of the general plan for commercial uses if certain conditions apply. Included among these conditions is a requirement that the housing development be subject to a recorded deed restriction requiring that at least 20 percent of the units have an affordable housing cost or affordable rent for lower income households, as those terms are defined, and located on a site that satisfies specified criteria. The bill would require the city or county to apply certain height, density, and floor area ratio standards to a housing development that meets these criteria.
10. Assembly Bill 3279 (Friedman) - California Environmental Quality Act: administrative and judicial procedures

Comment: This item seeks direction on AB 3279, which would revises CEQA litigation procedures by 1) reducing the deadline for a court to commence hearings from one year to 270 days, 2) providing that a lead agency may decide whether a plaintiff prepares the administrative record, and 3) authorizing a court to issue an interlocutory remand.

11. Senate Bill 431 (McGuire) - Mobile telephony service base transceiver station towers: communications infrastructure: performance reliability standards

Comment: This item seeks direction on SB 431, which would require the Public Utilities Commission, in consultation with the Office of Emergency Services, by July 1, 2021, to develop and implement performance reliability standards, as specified, for all mobile telephony service base transceiver station towers, commonly known as “cell towers,” and for all infrastructure for providing mobile telephony service, Voice over Internet Protocol service, Internet Protocol enabled service, and cable television service that is located within a commission-designated Tier 2 or Tier 3 High Fire Threat District, or that affects those towers or that infrastructure within such a district.

12. Senate Bill 1044 (Allen) - Firefighting equipment and foam: PFAS chemicals

Comment: This item seeks direction on SB 1044, which would prohibit the use of firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) chemicals, except where federally required, and requires notification of the presence of PFAS in the protective equipment of firefighters.

13. Police Officer's Bill of Rights

Comment: This item will allow the Committee the opportunity to discuss working on the potential introduction of state law to reform the Police Officer Bill of Rights.

14. Independent Prosecution of Peace Officers

Comment: This item will allow the Committee the opportunity to discuss working on the potential introduction of a state law on requiring independent prosecution of peace officers.

15. 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

George Chavez, City Manager

Posted: July 24, 2020

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
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 345 - Natural resources: environmental justice: oil and gas: regulation of operations (AB 345) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language. However, the City Council may have an interest in this legislation in regards to oil and gas regulations of operations due to the presence of oil wells in and near the City.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 345 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 345, the Liaisons may recommend the following actions:

1) Support AB 345;
2) Support if amended AB 345;
3) Oppose AB 345;
4) Oppose unless amended AB 345;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 345, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 22, 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 345 (Muratsuchi) Natural resources: environmental justice: oil and gas: regulation of operations

Introduces and Background
Note: AB 345 (Muratsuchi) has been significantly amended between the version that appeared in print on April 29, 2019 and the current version which was amended on January 23, 2020.

The April 29th version of the bill included provisions that would have required new oil and gas development or enhanced operations, as defined, permitted by the Division of Oil, Gas, and Geothermal Resources (DOGGR), except on federal land, to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital, or health clinic.

AB 345 was amended on January 23, 2020 to delete the prior language that set distance requirements between new oil and gas developments and certain sites and inserted new language that would establish an environmental justice program within the Natural Resources Agency (NRA) to identify and address any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

The bill would also require, on or before July 1, 2022, the Department of Conservation (DOC) to adopt regulations to protect public health and safety near oil and gas extraction facilities that include a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics.

Specifically, this bill would:

- Require the NRA, contingent upon funding for this purpose, to establish a grant-based reimbursement program to enable environmental justice and community groups to meaningfully participate in the regulatory process.
- Require regulations to be based on health, scientific, and other data.
- Require DOC to consider a setback distance of 2,500 feet at schools, playgrounds, and public facilities where children are present.
- Require specified consultation during the rulemaking and at least four pre-rulemaking workshops in regions near oil and gas operations.
- Require DOC, on or before January 1, 2022, to provide an update on the status of the rulemaking process and a description of the regulations being considered to the Assembly Committee on Natural Resources, and the Senate Committee on Natural Resources and Water.
Status of Legislation
This bill is currently pending in the Senate Natural Resources and Water Committee.

Support and Opposition
Formally registered support and opposition is based on the April 29, 2019 version of the bill. Some of the arguments in support and opposition are still relevant to the current version of this bill.

The California Federation of Teachers, in support of a previous version of the bill, stated “AB 345 will protect children and communities from the health and safety hazards associated with oil and gas extraction. Nearly five and a half million Californians – mostly people of color – live within one mile of an oil or gas well. Studies link proximity to oil and gas wells to a host of human health impacts, including increased risk of asthma and other respiratory illnesses, pre-term births and high-risk pregnancies, and in some cases, cancer. Oil and gas extraction produces toxic air pollutants, including volatile organic compounds (VOCs) like benzene and formaldehyde, fine and ultra-fine particulate matter (PM), and hydrogen sulfide.”

The Western States Petroleum Association, in opposition of a previous version of the bill, stated “AB 345 will result in a significant loss of jobs, tax revenue, and an increased dependence on foreign crude oil. The oil and gas industry in California supports thousands of blue collar and union jobs, with an average annual salary of approximately $123,000. AB 345 will simply result in increased imports from foreign sources not operating under the same environmental standards and will lead to significantly higher transportation costs and an increase in greenhouse gasses and other emissions associated with brining that oil into the state.”
Attachment 2
An act to add Section 12805.4 to the Government Code, and to add Section 3203.5 to the Public Resources Code, relating to oil and gas. natural resources.

LEGISLATIVE COUNSEL’S DIGEST

AB 345, as amended, Muratsuchi. Oil and gas: operations; location restrictions. Natural resources: environmental justice; oil and gas: regulation of operations.

(1) Existing law establishes the Natural Resources Agency, composed of departments, boards, conservancies, and commissions responsible for the restoration, protection, and management of the state’s natural and cultural resources, under the supervision of an executive officer known as the secretary.

This bill would require the Secretary of the Natural Resources Agency to create an environmental justice program within the agency to identify and address any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice. The bill, contingent upon funding for this purpose, would require the secretary to establish a grant-based reimbursement program to enable
environmenal justice and community groups to meaningfully participate in rulemaking and other regulatory processes at departments and entities within the agency. The bill would define environmental justice for these purposes.

Existing

(2) Existing law authorizes the Geologic Energy Management Division of Oil, Gas, and Geothermal Resources in the Department of Conservation to regulate the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law requires the operator of a well to file a written notice of intention to commence drilling with, and prohibits any drilling until approval is given by, the State Oil and Gas Supervisor or district deputy. Existing law requires an operator proposing to perform a well stimulation treatment to apply to the supervisor or district deputy for a permit to perform the well stimulation treatment and imposes other requirements and conditions on the use of well stimulation treatments. Under existing law, a person who fails to comply with this and other requirements relating to the regulation of oil or gas operations is guilty of a misdemeanor.

This bill would require, commencing January 1, 2020, all new oil and gas development or enhancement operation, as defined, that is not on federal land, to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital, or health clinic. The bill would authorize a city or county to require by ordinance that new oil and gas development or enhancement operation be located a larger distance away from a residence, school, childcare facility, playground, hospital, or health clinic than 2,500 feet. In the event that 2 or more cities and counties with jurisdiction over the same geographic area establish different health protection zone distances, the bill would require the larger health protection zone distance to apply. require the department to, on or before July 1, 2022, adopt regulations to protect public health and safety near oil and gas extraction facilities. The bill would require those regulations to include safety requirements and the establishment of a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics based on health, scientific, and other data, and would require the department to consider a setback distance of 2,500 feet at schools, playgrounds, and public facilities where children are present, and a range of other protective measures, including, but not limited to, enhanced monitoring and maintenance requirements. Because a violation of these provisions regulations would
be a crime, the bill would impose a state-mandated local program. The bill would authorize an operator of an oil or gas well or a production facility subject to these provisions to file a written request, containing specified information, with the division for a variance to reduce the health protection zone to the maximum achievable distance, and would authorize the supervisor to grant a variance upon making a written finding that the operator has no other feasible means of accessing a legal subsurface right, that the variance provides as much distance between sensitive receptors and those oil and gas operations as achievable, and that the variance would not endanger public health and safety. The bill would require the department to comply with certain consultation and public participation requirements before adopting the regulations, as provided. The bill would require the department to, on or before January 1, 2022, provide an update on the status of the rulemaking process and a description of the regulations being considered to the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Water.

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 12805.4 is added to the Government Code, to read:

12805.4. (a) The Secretary of the Natural Resources Agency shall create an environmental justice program within the Natural Resources Agency to identify and address any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(b) Contingent upon funding for this purpose, the secretary shall establish a grant-based reimbursement program to enable environmental justice and community groups to meaningfully participate in rulemaking and other regulatory processes at departments and entities within the agency.
(c) For purposes of this section, "environmental justice" has the same meaning as in Section 65040.12.

SEC. 2. Section 3203.5 is added to the Public Resources Code, to read:

3203.5. (a) The Legislature finds and declares that it is vital that populations and residents impacted by oil and gas extraction activities have equitable access to, and can meaningfully contribute to, decisionmaking processes that address impacts related to oil and gas extraction activities.

(b) (1) On or before July 1, 2022, the department shall adopt regulations to protect public health and safety near oil and gas extraction facilities.

(2) (A) The regulations shall include safety requirements and the establishment of a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics based on health, scientific, and other data. The department shall consider a setback distance of 2,500 feet at schools, playgrounds, and public facilities where children are present.

(B) The department shall consider including in the regulations a range of other protective measures, including, but not limited to, enhanced monitoring and maintenance requirements.

(c) (1) Before adopting regulations pursuant to subdivision (b), the department shall consult with environmental, environmental justice, and public health advocates, as well as public health authorities, including the State Department of Public Health, the California Environmental Protection Agency, local air quality management districts, the state and regional water boards, and other health experts.

(2) In developing the regulations, the department shall incorporate the best available existing health and safety science and data, and community-based expertise.

(3) In developing the regulations, the department shall consult with the State Air Resources Board and incorporate expertise and data from the State Air Resources Board's ongoing monitoring program.

(d) Before adopting regulations pursuant to subdivision (b), the department shall conduct at least four prerulemaking workshops. These workshops shall occur in regions near oil and gas operations at a time and place accessible to local residents. Measures to
increase the accessibility of workshops shall include, but are not limited to, evening and weekend workshops, translation of all materials, and simultaneous interpretation of oral presentations and testimony.

(e) (1) On or before January 1, 2022, the department shall provide an update on the status of the rulemaking process and a description of the regulations being considered to the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Water.

(2) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2026, pursuant to Section 10231.5 of the Government Code.

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.

SECTION 1. Section 3203.5 is added to the Public Resources Code, to read:

3203.5. (a) The Legislature finds and declares both of the following:

(1) Proximity to oil and gas extraction, including the use of hydraulic fracturing, well acidization, and other nonconventional oil and gas extraction techniques, adversely impacts public health and safety.

(2) These adverse impacts are reduced by locating oil and gas operations away from sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics.

(b) For purposes of this section, both of the following definitions apply:

(1) “Enhancement operations” means operations intended to increase the hydrocarbon production of an oil and gas well. Those enhancement operations shall include well stimulation treatments, acid well stimulation treatments, and restoring a plugged and abandoned well or an idle well into production, and shall not include repairs or well maintenance work.
(2) “Oil and gas development” means exploration for, and drilling, production, and processing of, oil, gas, or other gaseous and liquid hydrocarbons.

(c) Except as provided in subdivisions (d) and (e), and notwithstanding any other law, commencing January 1, 2020, all new oil and gas development or enhancement operation permitted under this division, that is not on federal land, shall be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital, or health clinic.

(d) Except as provided in subdivision (c), a city or county may require by ordinance that new oil and gas development or enhancement operation be located a larger distance away from a residence, school, childcare facility, playground, hospital, or health clinic than required by subdivision (c). In the event that two or more cities and counties with jurisdiction over the same geographic area establish different health protection zone distances, the larger health protection zone distance shall apply.

(e) Notwithstanding subdivisions (c) and (d), an operator of an oil or gas well or a production facility subject to this section may file a written request with the division for a variance to reduce the health protection zone to the maximum achievable distance. The request shall include competent, substantial, and relevant evidence demonstrating that the applicable health protection zone would extend beyond the area on which the operator has a legal right to locate the oil or gas well or production facility and that the variance would be consistent with the intent of this section and protect public health and safety. The supervisor may grant a variance upon making a written finding that the operator has no other feasible means of accessing a legal subsurface right, that the variance provides as much distance between sensitive receptors and those oil and gas operations as achievable, and that the variance would not endanger public health and safety.

(f) For the duration of a permit lawfully issued pursuant to this division before January 1, 2020, this section shall not apply to oil and gas development or enhancement operations conducted pursuant to the permit and that are in compliance with all applicable requirements for the duration of the permit.

SEC. 2. 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.
Item B-2
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 725 (Wicks) - General plans: housing element: moderate-income and above moderate-income housing: suburban and metropolitan jurisdictions (AB 725) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to AB 725 include, but are not limited to:

- 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.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 725 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 725, the Liaisons may recommend the following actions:

1) Support AB 725;  
2) Support if amended AB 725;  
3) Oppose AB 725;  
4) Oppose unless amended AB 725;  
5) Remain neutral; or  
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 725, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
Introduction and Background
AB 725 (Wicks) creates a density requirement for moderate-income and above moderate-income housing for metropolitan jurisdictions.

The bill would require that, for incorporated areas within a metropolitan jurisdiction, at least 25 percent of the jurisdiction’s share of the regional housing need for both the moderate-income and above moderate-income housing categories be allocated to sites with zoning that allows at least two units of housing, but no more than 35 units of housing per acre.

The bill specifies that, for sites with this allocation:
1) A project proponent may propose, and a jurisdiction may approve, a single-family detached home;

2) This allocation cannot be the basis for a jurisdiction to deny a project that does not comply with the allocation;

3) This allocation cannot be the basis for a jurisdiction to not impose price controls, or in lieu thereof, any exactions or conditions of approval.

In its current form, AB 725 provides that no reimbursement is required under 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 services mandated by this measure. Local governments would be responsible for the costs related to this measure.

AB 725 attempts to address the growing housing crisis through closing what Assemblymember Wicks refers to as the “missing middle.” There is a severe lack of medium density housing in California, meaning that the focus of home construction has traditionally been for low-income persons and single families. A primary reason for this is current zoning laws do not allow for the construction of medium density housing. This is likely due in large part to the fact that local jurisdictions are not currently required to provide a minimum density for moderate-income and above moderate-income housing sites, which represent approximately 60 percent of the overall housing allocation.
The purpose of AB 725 is to facilitate the development of more medium density housing at moderate and above-moderate income, similar to the requirement for very low- and low-income housing. The primary methodology, stated above, would enable the production of medium density housing on these sites that typically are subject to more restrictive zoning. For a typical jurisdiction, AB 725 would increase the minimum percentage of land zoned for multi-family housing from approximately 40 percent to 55 percent.

The League of California Cities currently has a Watch position on this measure

**Status of Legislation**
As of 06/23/20 this measure was assigned to the Senate Housing Committee

**Support**
California Apartment Association
California League of Conservation Voters
California YIMBY

**Opposition**
California Chamber of Commerce
Attachment 2
An act to amend Section 65583.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST


The Planning and Zoning Law requires a city or county to adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. That law requires that the housing element include, among other things, an inventory of land suitable for residential development, to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need determined pursuant to specified law.

This bill would require that at least 25% of a metropolitan jurisdiction’s share of the regional housing need for moderate-income housing be allocated to sites with zoning that allows at least 2 4 units
of housing, but no more than 100 units per acre of housing. The bill would require that at least 25% of a metropolitan jurisdiction’s share of the regional housing need for above moderate-income housing be allocated to sites with zoning that allows at least 24 units of housing, but no more than 35 units per acre of housing. The bill would exclude unincorporated areas from this prohibition and would include related legislative findings. By imposing additional requirements on the manner in which a city or county may satisfy its regional housing need, 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:

1 SECTION 1. It is the intent of the Legislature, in enacting this measure, to do both of the following:
2   (a) Encourage multifamily and infill development, while still allowing single family home development.
3   (b) Increase housing production and contribute to overall housing stock.
4 SEC. 2. Section 65583.2 of the Government Code, as amended by Section 15.5 of Chapter 664 of the Statutes of 2019, is amended to read:
5   65583.2. (a) A city’s or county’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (9) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, “land suitable for residential development” includes all of the sites that meet the following standards set forth in subdivisions (c) and (g):
6     (1) Vacant sites zoned for residential use.
(2) Vacant sites zoned for nonresidential use that allows residential development.

(3) Residually zoned sites that are capable of being developed at a higher density, including sites owned or leased by a city, county, or city and county.

(4) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, rezone for, to permit residential use, including sites owned or leased by a city, county, or city and county.

(b) The inventory of land shall include all of the following:

(1) A listing of properties by assessor parcel number.

(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

(3) For nonvacant sites, a description of the existing use of each property. If a site subject to this paragraph is owned by the city or county, the description shall also include whether there are any plans to dispose of the property during the planning period and how the city or county will comply with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

(4) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

(5) (A) A description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.

(B) Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development. This paragraph does not impose any additional duty on the city or county to construct, finance, or otherwise provide water, sewer, or dry utilities to parcels included in the inventory.
(6) Sites identified as available for housing for above moderate-income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan, for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The inventory shall specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing. A nonvacant site identified pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing element and a vacant site that has been included in two or more consecutive planning periods that was not approved to develop a portion of the locality's housing need shall not be deemed adequate to accommodate a portion of the housing need for lower income households that must be accommodated in the current housing element planning period unless the site is zoned at residential densities consistent with paragraph (3) of this subdivision and the site is subject to a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households. An unincorporated area in a nonmetropolitan county pursuant to clause (ii) of subparagraph (B) of paragraph (3) shall not be subject to the requirements of this subdivision to allow residential use by right. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning
agency’s calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulation requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

(A) A site smaller than half an acre shall not be deemed adequate to accommodate lower income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or unless the locality provides other evidence to the department that the site is adequate to accommodate lower income housing.

(B) A site larger than 10 acres shall not be deemed adequate to accommodate lower income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or unless the locality provides other evidence to the department that the site can be developed as lower income housing. For purposes of this subparagraph, “site” means that portion of a parcel or parcels designated to accommodate lower income housing needs pursuant to this subdivision.

(C) A site may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:
(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.

(ii) For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 10 units per acre.

(iii) For a suburban jurisdiction: sites allowing at least 20 units per acre.

(iv) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

(4) (A) For a metropolitan jurisdiction:

(i) At least 25 percent of the jurisdiction’s share of the regional housing need for moderate-income housing shall be allocated to sites with zoning that allows at least 24 units of housing, but not more than 35 units per acre of housing.

(ii) At least 25 percent of the jurisdiction’s share of the regional housing need for above moderate-income housing shall be allocated to sites with zoning that allows at least 24 units of housing, but not more than 35 units per acre of housing.

(iii) A project proponent may propose, and a jurisdiction may approve, a single-family detached home on a site identified pursuant to this paragraph and zoned for at least two units.

(B) The allocation of moderate-income and above moderate-income housing to sites pursuant to this paragraph shall not be a basis for the jurisdiction to do either of the following:

(i) Deny a project that does not comply with the allocation.

(ii) Impose a price minimum, price maximum, price control, or any other exaction or condition of approval in lieu thereof. This clause does not prohibit a jurisdiction from imposing any price minimum, price maximum, price control, exaction, or condition in lieu thereof, pursuant to any other law.

(iii) The provisions of this subparagraph do not constitute a change in, but are declaratory of, existing law with regard to the allocation of sites pursuant to this section.
(C) This paragraph does not apply to an unincorporated area.

(D) For purposes of this paragraph:

(i) “Housing development project” has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(ii) “Unit of housing” does not include an accessory dwelling unit or junior accessory dwelling unit that could be approved pursuant to Section 65852.2 or Section 65852.22 or through a local ordinance or other provision implementing either of those sections.

This paragraph shall not limit the ability of a local government to count the actual production of accessory dwelling units or junior accessory dwelling units in an annual progress report submitted pursuant to Section 65400 or other progress report as determined by the department.

(iii) “Site” may mean more than one parcel that includes owner-occupied or rental housing.

(E) Nothing in this subdivision shall preclude the subdivision of a parcel, provided that the subdivision is subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land.

(F) This paragraph shall not apply to a housing element revision that is originally due on or before January 1, 2021, regardless of the date of adoption by the local agency.

(d) For purposes of this section, a metropolitan county, nonmetropolitan county, and nonmetropolitan county with a micropolitan area shall be as determined by the United States Census Bureau. A nonmetropolitan county with a micropolitan area includes the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) (1) Except as provided in paragraph (2), a jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction’s population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in
population in which case the county shall be considered metropolitan.

(2) (A) (i) Notwithstanding paragraph (1), if a county that is in the San Francisco-Oakland-Fremont California MSA has a population of less than 400,000, that county shall be considered suburban. If this county includes an incorporated city that has a population of less than 100,000, this city shall also be considered suburban. This paragraph shall apply to a housing element revision cycle, as described in subparagraph (A) of paragraph (3) of subdivision (e) of Section 65588, that is in effect from July 1, 2014, to December 31, 2028, inclusive.

(ii) A county subject to this subparagraph shall utilize the sum existing in the county’s housing trust fund as of June 30, 2013, for the development and preservation of housing affordable to low- and very low income households.

(B) A jurisdiction that is classified as suburban pursuant to this paragraph shall report to the Assembly Committee on Housing and Community Development, the Senate Committee on Housing, and the Department of Housing and Community Development regarding its progress in developing low- and very low income housing consistent with the requirements of Section 65400. The report shall be provided three times: once, on or before December 31, 2019, which report shall address the initial four years of the housing element cycle, a second time, on or before December 31, 2023, which report shall address the subsequent four years of the housing element cycle, and a third time, on or before December 31, 2027, which report shall address the subsequent four years of the housing element cycle and the cycle as a whole. The reports shall be provided consistent with the requirements of Section 9795.

(f) A jurisdiction shall be considered metropolitan if the jurisdiction does not meet the requirements for “suburban area” above and is located in an MSA of 2,000,000 or greater in population, unless that jurisdiction’s population is less than 25,000 in which case it shall be considered suburban.

(g) (1) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to
additional residential development, the city’s or county’s past
experience with converting existing uses to higher density
residential development, the current market demand for the existing
use, an analysis of any existing leases or other contracts that would
perpetuate the existing use or prevent redevelopment of the site
for additional residential development, development trends, market
conditions, and regulatory or other incentives or standards to
courage additional residential development on these sites.

(2) In addition to the analysis required in paragraph (1), when
a city or county is relying on nonvacant sites described in paragraph
(3) of subdivision (b) to accommodate 50 percent or more of its
housing need for lower income households, the methodology used
to determine additional development potential shall demonstrate
that the existing use identified pursuant to paragraph (3) of
subdivision (b) does not constitute an impediment to additional
residential development during the period covered by the housing
element. An existing use shall be presumed to impede additional
residential development, absent findings based on substantial
evidence that the use is likely to be discontinued during the
planning period.

(3) Notwithstanding any other law, and in addition to the
requirements in paragraphs (1) and (2), sites that currently have
residential uses, or within the past five years have had residential
uses that have been vacated or demolished, that are or were subject
to a recorded covenant, ordinance, or law that restricts rents to
levels affordable to persons and families of low or very low
income, subject to any other form of rent or price control through
a public entity’s valid exercise of its police power, or occupied by
low- or very low income households, shall be subject to a policy
requiring the replacement of all those units affordable to the same
or lower income level as a condition of any development on the
site. Replacement requirements shall be consistent with those set
forth in paragraph (3) of subdivision (c) of Section 65915.

(h) The program required by subparagraph (A) of paragraph (1)
of subdivision (c) of Section 65583 shall accommodate 100 percent
of the need for housing for very low and low-income households
allocated pursuant to Section 65584 for which site capacity has
not been identified in the inventory of sites pursuant to paragraph
(3) of subdivision (a) on sites that shall be zoned to permit
owner-occupied and rental multifamily residential use by right for
developments in which at least 20 percent of the units are affordable to lower income households during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c), shall be at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c) and shall meet the standards set forth in subparagraph (B) of paragraph (5) of subdivision (b). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project. (i) For purposes of this section and Section 65583, the phrase “use by right” shall mean that the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5. (j) Notwithstanding any other provision of this section, within one-half mile of a Sonoma-Marin Area Rail Transit station, housing density requirements in place on June 30, 2014, shall apply. (k) For purposes of subdivisions (a) and (b), the department shall provide guidance to local governments to properly survey, detail, and account for sites listed pursuant to Section 65585. (l) This section shall remain in effect only until December 31, 2028, and as of that date is repealed.
SEC. 3. Section 65583.2 of the Government Code, as amended by Section 16.5 of Chapter 664 of the Statutes of 2019, is amended to read:

65583.2. (a) A city’s or county’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (9) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, “land suitable for residential development” includes all of the following sites that meet the standards set forth in subdivisions (c) and (g):

1. Vacant sites zoned for residential use.
2. Vacant sites zoned for nonresidential use that allows residential development.
3. Residentially zoned sites that are capable of being developed at a higher density, and sites owned or leased by a city, county, or city and county.
4. Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, to permit residential use, including sites owned or leased by a city, county, or city and county.

(b) The inventory of land shall include all of the following:
1. A listing of properties by assessor parcel number.
2. The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.
3. For nonvacant sites, a description of the existing use of each property. If a site subject to this paragraph is owned by the city or county, the description shall also include whether there are any plans to dispose of the property during the planning period and how the city or county will comply with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.
4. A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.
(5) (A) A description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.

(B) Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development. This paragraph does not impose any additional duty on the city or county to construct, finance, or otherwise provide water, sewer, or dry utilities to parcels included in the inventory.

(6) Sites identified as available for housing for above moderate-income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction’s general plan for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The inventory shall specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing. A nonvacant site identified pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing element and a vacant site that has been included in two or more consecutive planning periods that was not approved to develop a portion of the locality’s housing need shall not be deemed adequate to accommodate a portion of the housing need for lower income households that must be accommodated in the current housing element planning period unless the site is zoned at residential densities consistent with paragraph (3) of this subdivision and the site is subject to a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which
at least 20 percent of the units are affordable to lower income households. A city that is an unincorporated area in a nonmetropolitan county pursuant to clause (ii) of subparagraph (B) of paragraph (3) shall not be subject to the requirements of this subdivision to allow residential use by right. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency’s calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulation requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

(A) A site smaller than half an acre shall not be deemed adequate to accommodate lower income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or unless the locality provides other evidence to the department that the site is adequate to accommodate lower income housing.

(B) A site larger than 10 acres shall not be deemed adequate to accommodate lower income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or
unless the locality provides other evidence to the department that
the site can be developed as lower income housing. For purposes
of this subparagraph, “site” means that portion of a parcel or parcels
designated to accommodate lower income housing needs pursuant
to this subdivision.

(C) A site may be presumed to be realistic for development to
accommodate lower income housing need if, at the time of the
adoption of the housing element, a development affordable to
lower income households has been proposed and approved for
development on the site.

(3) For the number of units calculated to accommodate its share
of the regional housing need for lower income households pursuant
to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities
accommodate this need. The analysis shall include, but is not
limited to, factors such as market demand, financial feasibility, or
information based on development project experience within a
zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to
accommodate housing for lower income households:

(i) For an incorporated city within a nonmetropolitan county
and for a nonmetropolitan county that has a micropolitan area:
sites allowing at least 15 units per acre.

(ii) For an unincorporated area in a nonmetropolitan county not
included in clause (i): sites allowing at least 10 units per acre.

(iii) For a suburban jurisdiction: sites allowing at least 20 units
per acre.

(iv) For a jurisdiction in a metropolitan county: sites allowing
at least 30 units per acre.

(4) (A) For a metropolitan jurisdiction:

(i) At least 25 percent of the jurisdiction’s share of the regional
housing need for moderate-income housing shall be allocated to
sites with zoning that allows at least 4 units of housing, but not
more than 100 units per acre of housing.

(ii) At least 25 percent of the jurisdiction’s share of the regional
housing need for above moderate-income housing shall be allocated
to sites with zoning that allows at least 4 units of housing, but
not more than 35 units per acre of housing.
(iii) A project proponent may propose, and a jurisdiction may approve, a single-family detached home on a site identified pursuant to this paragraph and zoned for at least two units.

(B) The allocation of moderate-income and above moderate-income housing to sites pursuant to this paragraph shall not be a basis for the jurisdiction to do either of the following:

(i) Deny a project that does not comply with the allocation.

(ii) Impose a price minimum, price maximum, price control, or any other exaction or condition of approval in lieu thereof. This clause does not prohibit a jurisdiction from imposing any price minimum, price maximum, price control, exaction, or condition in lieu thereof, pursuant to any other law.

(iii) The provisions of this subparagraph do not constitute a change in, but are declaratory of, existing law with regard to the allocation of sites pursuant to this section.

(C) This paragraph does not apply to an unincorporated area.

(D) For purposes of this paragraph:

(i) “Housing development project” has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(ii) “Unit of housing” does not include an accessory dwelling unit or junior accessory dwelling unit that could be approved pursuant to Section 65852.2 or Section 65852.22 or through a local ordinance or other provision implementing either of those sections. This paragraph shall not limit the ability of a local government to count the actual production of accessory dwelling units or junior accessory dwelling units in an annual progress report submitted pursuant to Section 65400 or other progress report as determined by the department.

(iii) “Site” may mean more than one parcel that includes owner-occupied or rental housing.

(E) Nothing in this subdivision shall preclude the subdivision of a parcel, provided that the subdivision is subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land.

(d) For purposes of this section, a metropolitan county, nonmetropolitan county, and nonmetropolitan county with a micropolitan area shall be as determined by the United States Census Bureau. A nonmetropolitan county with a micropolitan area includes the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and other counties.
as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction’s population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in population in which case the county shall be considered metropolitan.

(f) A jurisdiction shall be considered metropolitan if the jurisdiction does not meet the requirements for “suburban area” above and is located in an MSA of 2,000,000 or greater in population, unless that jurisdiction’s population is less than 25,000 in which case it shall be considered suburban.

(g) (1) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city’s or county’s past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional
residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.

(3) Notwithstanding any other law, and in addition to the requirements in paragraphs (1) and (2), sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income, subject to any other form of rent or price control through a public entity’s valid exercise of its police power, or occupied by low- or very low income households, shall be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site. Replacement requirements shall be consistent with those set forth in paragraph (3) of subdivision (c) of Section 65915.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c), shall be at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c), and shall meet the standards set forth in subparagraph (B) of paragraph (5) of subdivision (b). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project.
(i) For purposes of this section and Section 65583, the phrase “use by right” shall mean that the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(j) For purposes of subdivisions (a) and (b), the department shall provide guidance to local governments to properly survey, detail, and account for sites listed pursuant to Section 65585.

(k) This section shall become operative on December 31, 2028.

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-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.

Assembly Bill 1063 (Petrie-Norris) - Planning and Zoning Law: housing elements: accessory dwelling units: adequate site substitutes (AB 1063) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to AB 1063 include, but are not limited to:

- 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.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1063 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1063, the Liaisons may recommend the following actions:

1) Support AB 1063;
2) Support if amended AB 1063;
3) Oppose AB 1063;
4) Oppose unless amended AB 1063;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1063, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
July 22, 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 1063 (Petrie-Norris) RHNA Compliance: Housing Element Reviews

Introduction and Background
As introduced on February 21, 2019, AB 1063 (Petrie-Norris) included provisions related to health care coverage and rules for waivers under the Affordable Care Act. The bill was amended on June 28, 2020, to delete the prior contents and insert new language that seeks to modify several elements of the state review and approval process for local housing elements. Specifically, this bill:

- Sets objective standards that the State Department of Housing and Community Development (HCD) must follow when reviewing and certifying local housing elements by providing guidance to local governments in the selection of appropriate sites, while minimizing administrative costs by local governments;

- Allows local governments to credit up to 50 percent of its RHNA numbers through either rehabilitation, conversion and/or preservation. (Current law allows up to 25 percent);

- Expands the ability for jurisdictions to count ADUs towards RHNA requirements based on demonstrated capacity and establishing an accepted assumption for estimating ADU production and affordability levels;

- Provides flexibility for jurisdictions that have local voter-approval requirements to submit a draft Housing Element to HCD. This will establish preliminary compliance, pending voter approval. If the voters do not approve the Housing Element and the issue is taken to court, the city will not be penalized during this process. This will prevent costly penalties that will drain resources from local communities; and

- Clarifies that committed assistance from a city, county, or a private entity satisfying a housing requirement, be demonstrated early enough such that the housing units would be available within six years of the planning period. The current cap of two years has left many new affordable housing units uncounted.

Discussion
Under current law, each city in California is required to adopt a comprehensive general plan, which serves as a blueprint for how the city and/or county will grow and develop. This state mandate is called the Housing Element and Regional Housing Needs Allocation (RHNA).
The California Department of Housing and Community Development (HCD) determines what type of housing qualifies for RHNA credit and reviews Housing Elements for compliance.

The author argues that in built-out cities with limited land available to build new housing units, it is critical we incentivize creating affordable housing options to those who are low- and very low-income.

Note: The League of California Cities currently has a Watch position on this bill.

**Status of Legislation**
This measure is currently pending in the Senate Housing Committee

**Support**
City of Newport Beach

**Opposition**
None identified at this point
Attachment 2
Assembly Bill No. 1063

Introduced by Assembly Member Petrie-Norris

February 21, 2019

An act to add Section 100523 to the Government Code, relating to healthcare coverage; amend Sections 65583.1 and 65583.2 of, and to add Section 65585.5 to, the Government Code, relating to housing.

Legislative Counsel’s Digest


(1) The Planning and Zoning Law requires that the housing element of a city’s or county’s general plan 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 law requires the Department of Housing and Community Development to determine the existing and projected need for housing for each region, as specified. The law also requires that the housing element include an inventory of land suitable for residential development and requires that inventory to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the city’s or county’s share of the regional housing need. Existing law requires the planning agency of a city or county to submit a draft element or draft amendment to the department prior to adoption,
as specified. Existing law requires the department to determine whether the draft element or draft amendment substantially complies with the provisions of the Planning and Zoning Law relating to housing elements.

Existing law authorizes the department, in evaluating a proposed or adopted housing element for substantial compliance with the provisions of the Planning and Zoning Law relating to housing elements, to allow a city or county to identify adequate sites by a variety of methods, as specified. Existing law authorizes the department to allow a city or county to identify sites for accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, those units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department.

This bill would, instead, require the department, in making that evaluation, to allow a city or county to identify adequate sites by a variety of methods, as specified. The bill would require the department to allow a city or county to identify sites for potential accessory dwelling units based on existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. If the combination of potential accessory dwelling units and junior accessory dwelling units constitutes greater than 50% of the units identified to meet the city’s or county’s share of the regional need for affordable housing for lower income households, the bill would require the housing element to provide supplementary policies, programs, and actions that further encourage or incentivize the development of accessory dwelling units and junior accessory dwelling units for lower income households. The bill would require the department to determine the affordability of a potential accessory dwelling unit or a junior accessory dwelling unit by taking into account relevant factors justified by the city or county, as specified. The bill would require the department to presume that very low and low-income renter households would occupy accessory units in a proportion greater than or equal to the proportion of very low and low-income renter households to all renter households in the city or county, as specified.

Existing law authorizes the department to allow a city or county to substitute the provision of units for up to 25% of the city’s or county’s obligation to identify adequate sites for any income category if the city or county includes in its housing element a program committing the
city or county to provide qualifying units in that income category within the city or county that will be made available through the provision of committed assistance, as specified. Under existing law, units qualify for inclusion in the program providing committed assistance if the units, among other requirements, are located either on foreclosed property or in a multifamily rental or ownership housing complex of 3 or more units, and have long-term affordability covenants and restrictions that require the units to be affordable to persons of low- or very low income for not less than 55 years. Under existing law, units also qualify for inclusion in the program if the units, among other requirements, have long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 years, and the city or county finds that the units are eligible, and are reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next 5 years due to specified events.

This bill, instead, would authorize the department to allow a city or county to substitute the provision of units for up to 50% of the city’s or county’s obligation to identify adequate sites for any income category if the city or county includes in its housing element a program that either commits the city or county to provide, or requires a private entity to provide, specified units in that income category within the city or county that will be made available through the provision of committed assistance, as specified. The bill would revise the qualifications for inclusion in the program for both types of units described above by reducing the minimum period of time for the affordability covenants and restrictions to 20 years unless a longer period is required by other supplementary financial assistance. The bill would also revise the qualifications for the latter type of units by extending the period of time within which the city or county is required to find the units are eligible, and are reasonably expected, to change to another use to 10 years.

Existing law requires a city or county that has included in its housing element a qualified program providing units with committed assistance to provide a progress report to the legislative body and to the department in the 3rd year of the planning period, as specified. If the city or county has not entered into an enforceable agreement of committed assistance for all units specified in those programs by July 1 of the 3rd year of the planning period, existing law requires the city or county to adopt an amended housing element identifying additional
adequate sites sufficient to accommodate the number of units for which committed assistance was not provided not later than July 1 of the 4th year of the planning period.

This bill would instead require the city or county to provide that report in the 5th year of the planning period. If the city or county has not entered into that agreement of committed assistance by July 1 of the 5th year of the planning period, the bill would require the city or county to adopt that amended housing element not later than July 1 of the 6th year of the planning period.

Under existing law, the above-described provisions governing the substitution of adequate site identification with the provision of units do not apply to a city or county that, during the current or immediately prior planning period, has not met any of its share of the regional need for affordable housing for low- and very low income households.

This bill would remove that exclusion.

(2) The Planning and Zoning Law also requires the inventory of land suitable for residential development in the housing element to include, among other things, a description of the existing use of each property on nonvacant sites. Existing law requires the city or county to specify the additional development potential for each nonvacant site within the planning period and to provide an explanation of the methodology to determine that potential. If a city or county relies on nonvacant sites to accommodate 50% or more of its housing need for lower income households, existing law requires that methodology to demonstrate that the existing use does not constitute an impediment to additional development during the period covered by the housing element. Existing law requires an existing use to be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.

This bill would deem certain conditions to be substantial evidence that an existing use is likely to be discontinued during the planning period.

(3) The Planning and Zoning Law requires a planning agency to submit its draft housing element or amendment to the housing element and, after adoption by the legislative body, a copy of the adopted housing element or amendment to the Department of Housing and Community Development for review. If the department finds that the housing element or amendment does not substantially comply with specified law, existing law requires the department to notify the city, county, or city and county, and authorizes the department to notify the
Attorney General, that the city, county, or city and county is in violation of state law. Existing law authorizes the Attorney General, in an action relating to housing element compliance pursuant to a notice or referral from the department, to request that the court issue an order or judgment directing the jurisdiction to bring its housing element in substantial compliance and authorizes the court to impose fines and order specified other remedies under certain circumstances.

This bill, for the 6th and each subsequent revision of the housing element, if an affected local government has submitted the revision of its housing element to the voters for approval before the applicable due date but the voters have not yet voted on the housing element revision, would exempt that local government from the above-described fines or other penalties for failure to adopt its housing element by the applicable due date. The bill, for the 6th and each subsequent revision of the housing element, if the affected local government has submitted the applicable revision of its housing element to the voters for approval before the applicable due date and the voters have rejected the housing element, would similarly exempt the affected local government from the above-described fines or penalties for failure to adopt its housing element by the applicable due date, but would authorize the court in an action brought by the Attorney General to order specified remedies under which the agent of the court may take all governmental actions necessary to bring the jurisdiction’s housing element into substantial compliance in order to remedy identified deficiencies. The bill would define “affected local government” for these purposes to mean a local government that is subject to a requirement that the adoption or amendment of the housing element be approved by the voters of that local government and that has submitted a draft of the applicable proposed revision of its housing element to the department.

Existing federal law, the Patient Protection and Affordable Care Act (PPACA), requires each state to establish an American Health Benefit Exchange to facilitate the purchase of qualified health benefit plans by qualified individuals and qualified small employers. PPACA authorizes a state to apply to the United States Department of Health and Human Services for a state innovation waiver of any or all PPACA requirements, if certain criteria are met, including that the state has enacted a law that provides for state actions under a waiver. Existing state law creates the California Health Benefit Exchange, also known as Covered California, to facilitate the enrollment of qualified individuals and qualified small employers in qualified health plans as required under PPACA.
This bill would require express statutory authority to request a state innovation waiver from the United States Department of Health and Human Services. The bill would also make related findings and declarations.


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

SECTION 1. Section 65583.1 of the Government Code is amended to read:
65583.1. (a) (1) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may shall allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The
(2) (A) The department may shall also allow a city or county to identify sites for potential accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. If the combination of potential accessory dwelling units and junior accessory dwelling units constitutes greater than 50 percent of the units identified to meet the city’s or county’s share of the regional need for affordable housing for lower income households, the housing element shall provide supplementary policies, programs, and actions that further encourage or incentivize the development of accessory dwelling units and junior accessory dwelling units for lower income households.
(B) For purposes of this paragraph, the department shall determine the affordability of a potential accessory dwelling unit or a junior accessory dwelling unit by taking into account the city’s or county’s need for accessory dwelling units and a junior
accessory dwelling units in the city or county, the resources or incentives available for their development, and any other relevant factors justified by the city or county. The department shall presume that very low and low-income renter households would occupy accessory units in a proportion greater than or equal to the proportion of very low and low-income renter households to all renter households in the city or county, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database.

(3) Nothing in this section subdivision reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) (1) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any

(2) Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 50 percent of the community’s city’s or county’s obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583, where the community if the city or county includes in its housing element a program committing the local government to provide units that either commits the city or county to provide, or requires a private entity to provide, units in that income category within the city or county that will be made
available through the provision of committed assistance during
the planning period covered by the element to low- and very low
income households at affordable housing costs or affordable rents,
as defined in Sections 50052.5 and 50053 of the Health and Safety
Code, and which meet the requirements of paragraph (2).
paragraph (2), (3), or (4). Except as otherwise provided in this
subdivision, the community city or county may substitute one
dwelling unit for one dwelling unit site in the applicable income
category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed
assistance and dedicate a specific portion of the funds from those
sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both
low- and very low income households and demonstrate that the
amount of dedicated funds is sufficient to develop the units at
affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of
paragraph (2), (3), or (4).

(2) Only units that comply with subparagraph (A), (B), or (C)
qualify for inclusion in the housing element program described in
paragraph (1), as follows:

(A) Units that qualify for inclusion in the housing element
program described in paragraph (1) if the units are to be
substantially rehabilitated with committed assistance from the city
or county and constitute a net increase in the community’s
stock of housing affordable to low- and very low
income households. For purposes of this subparagraph, paragraph,
a unit is not eligible to be “substantially rehabilitated” unless all
of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation,
the local government has determined that the city or county has
done all of the following:

(ii) Determined that the unit is at imminent risk of loss to the
housing stock, (H) the local government has committed
stock.

(ii) Committed to provide relocation assistance pursuant to
Chapter 16 (commencing with Section 7260) of Division 7 of Title
1 to any occupants temporarily or permanently displaced by the
rehabilitation or code enforcement activity, or the relocation is
otherwise provided prior to displacement either as a condition of
receivership, or provided by the property owner or the local
government pursuant to Article 2.5 (commencing with Section
17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
Safety Code, or as otherwise provided by local ordinance; provided
the assistance includes not less than the equivalent of four months’
rent and moving expenses and comparable replacement housing
consistent with the moving expenses and comparable replacement
housing required pursuant to Section 7260. (III) the local
government requires 7260.

(iii) Required that any displaced occupants will have the right
to reoccupy the rehabilitated units, and (IV)

(iv) At the time the unit is identified for substantial
rehabilitation, the unit has been found by the local government
city or county or a court to be unfit for human habitation due to
the existence of at least four violations of the conditions listed in
subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health
and Safety Code.

(B) The rehabilitated unit will have long-term affordability
coovenants and restrictions that require the unit to be available to,
and occupied by, persons or families of low- or very low income
at affordable housing costs for at least 20 years or the time period
required by any applicable federal or state law or regulation.

(C) Prior to initial occupancy after rehabilitation, the local code
enforcement agency shall issue a certificate of occupancy indicating
compliance with all applicable state and local building code and
health and safety code requirements.

(3) Units that qualify for inclusion in the housing element
program described in paragraph (1) if the units meet all of the
following requirements:

(A) The units are located either on foreclosed property or in a
multifamily rental or ownership housing complex of three or more
units, are units.

(B) The units are converted with committed assistance from the
city or county from nonaffordable to affordable by acquisition of
the unit or the purchase of affordability covenants and restrictions
for the unit, are not acquired by eminent domain, and constitute a
net increase in the community’s stock of housing affordable to low- and very low-income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available for rent at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government or the private entity providing the committed assistance has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months’ rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years, 20 years, unless a longer period is required by another supplementary financial assistance program.

(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.
(C) The units would constitute a net increase in the city's or county's stock of housing affordable to low- and very low income households.

(4) Units that qualify for inclusion in the housing element program described in paragraph (1) if the units will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, paragraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 years. 20 years, unless a longer period is required by another supplementary financial assistance program.

(ii) The unit is within an “assisted housing development,” as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households.
(5) A city or county shall document for any housing unit that for which a building permit has been issued and all development and permit fees have been paid or the and any housing unit that is eligible to be lawfully occupied.

(4) For purposes of this subdivision, “committed the following terms have the following meanings:

(A) “Committed assistance” means that assistance for which the city or county enters, or a private entity pursuant to the city’s or county’s inclusionary housing requirement, has entered into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement during the planning period. “Committed assistance” does not include tenant-based rental assistance.

(B) “Net increase” includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2), (3), or (4) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, “the

(C) “The time the unit is identified” means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the third fifth year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2), (3), or (4) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households,
and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third fifth year of the planning period, the city or county, or a private entity pursuant to the city’s or county’s inclusionary housing requirement, has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), (3), or (4), the city or county shall, not later than July 1 of the fourth sixth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.

SEC. 2. Section 65583.2 of the Government Code, as amended by Section 15.5 of Chapter 664 of the Statutes of 2019, is amended to read:

65583.2. (a) A city’s or county’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (9) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income
levels pursuant to Section 65584. As used in this section, “land suitable for residential development” includes all of the sites that meet the following standards set forth in subdivisions (c) and (g):

1. Vacant sites zoned for residential use.
2. Vacant sites zoned for nonresidential use that allows residential development.
3. Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a city, county, or city and county.
4. Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, rezone for, to permit residential use, including sites owned or leased by a city, county, or city and county.

(b) The inventory of land shall include all of the following:

1. A listing of properties by assessor parcel number.
2. The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.
3. For nonvacant sites, a description of the existing use of each property. If a site subject to this paragraph is owned by the city or county, the description shall also include whether there are any plans to dispose of the property during the planning period and how the city or county will comply with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

4. A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

5. (A) A description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.

(B) Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development. This paragraph does not impose
any additional duty on the city or county to construct, finance, or otherwise provide water, sewer, or dry utilities to parcels included in the inventory.

(6) Sites identified as available for housing for above moderate-income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction’s general plan, for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The inventory shall specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing. A nonvacant site identified pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing element and a vacant site that has been included in two or more consecutive planning periods that was not approved to develop a portion of the locality’s housing need shall not be deemed adequate to accommodate a portion of the housing need for lower income households that must be accommodated in the current housing element planning period unless the site is zoned at residential densities consistent with paragraph (3) of this subdivision and the site is subject to a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households. An unincorporated area in a nonmetropolitan county pursuant to clause (ii) of subparagraph (B) of paragraph (3) shall not be subject to the requirements of this subdivision to allow residential use by right. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional
housing. The city or county shall determine the number of housing
units that can be accommodated on each site as follows:
(1) If local law or regulations require the development of a site
at a minimum density, the department shall accept the planning
agency’s calculation of the total housing unit capacity on that site
based on the established minimum density. If the city or county
does not adopt a law or regulation requiring the development of a
site at a minimum density, then it shall demonstrate how the
number of units determined for that site pursuant to this subdivision
will be accommodated.
(2) The number of units calculated pursuant to paragraph (1)
shall be adjusted as necessary, based on the land use controls and
site improvements requirement identified in paragraph (5) of
subdivision (a) of Section 65583, the realistic development capacity
for the site, typical densities of existing or approved residential
developments at a similar affordability level in that jurisdiction,
and on the current or planned availability and accessibility of
sufficient water, sewer, and dry utilities.
(A) A site smaller than half an acre shall not be deemed adequate
to accommodate lower income housing need unless the locality
can demonstrate that sites of equivalent size were successfully
developed during the prior planning period for an equivalent
number of lower income housing units as projected for the site or
unless the locality provides other evidence to the department that
the site is adequate to accommodate lower income housing.
(B) A site larger than 10 acres shall not be deemed adequate to
accommodate lower income housing need unless the locality can
demonstrate that sites of equivalent size were successfully
developed during the prior planning period for an equivalent
number of lower income housing units as projected for the site or
unless the locality provides other evidence to the department that
the site can be developed as lower income housing. For purposes
of this subparagraph, “site” means that portion of a parcel or parcels
designated to accommodate lower income housing needs pursuant
to this subdivision.
(C) A site may be presumed to be realistic for development to
accommodate lower income housing need if, at the time of the
adoption of the housing element, a development affordable to
lower income households has been proposed and approved for
development on the site.
(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.

(ii) For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 10 units per acre.

(iii) For a suburban jurisdiction: sites allowing at least 20 units per acre.

(iv) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

(d) For purposes of this section, a metropolitan county, nonmetropolitan county, and nonmetropolitan county with a micropolitan area shall be as determined by the United States Census Bureau. A nonmetropolitan county with a micropolitan area includes the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) (1) Except as provided in paragraph (2), a jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction’s population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in population in which case the county shall be considered metropolitan.

(2) (A) (i) Notwithstanding paragraph (1), if a county that is in the San Francisco-Oakland-Fremont California MSA has a
population of less than 400,000, that county shall be considered
suburban. If this county includes an incorporated city that has a
population of less than 100,000, this city shall also be considered
suburban. This paragraph shall apply to a housing element revision
cycle, as described in subparagraph (A) of paragraph (3) of
subdivision (e) of Section 65588, that is in effect from July 1,
2014, to December 31, 2028, inclusive.
(ii) A county subject to this subparagraph shall utilize the sum
existing in the county’s housing trust fund as of June 30, 2013, for
the development and preservation of housing affordable to low- and
very low income households.
(B) A jurisdiction that is classified as suburban pursuant to this
paragraph shall report to the Assembly Committee on Housing
and Community Development, the Senate Committee on Housing,
and the Department of Housing and Community Development
regarding its progress in developing low- and very low income
housing consistent with the requirements of Section 65400. The
report shall be provided three times: once, on or before December
31, 2019, which report shall address the initial four years of the
housing element cycle, a second time, on or before December 31,
2023, which report shall address the subsequent four years of the
housing element cycle, and a third time, on or before December
31, 2027, which report shall address the subsequent four years of
the housing element cycle and the cycle as a whole. The reports
shall be provided consistent with the requirements of Section 9795.
(f) A jurisdiction shall be considered metropolitan if the
jurisdiction does not meet the requirements for “suburban area”
above and is located in an MSA of 2,000,000 or greater in
population, unless that jurisdiction’s population is less than 25,000
in which case it shall be considered suburban.
(g) (1) For sites described in paragraph (3) of subdivision (b),
the city or county shall specify the additional development potential
for each site within the planning period and shall provide an
explanation of the methodology used to determine the development
potential. The methodology shall consider factors including the
extent to which existing uses may constitute an impediment to
additional residential development, the city’s or county’s past
experience with converting existing uses to higher density
residential development, the current market demand for the existing
use, an analysis of any existing leases or other contracts that would
perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. Any of the following conditions shall be deemed to be substantial evidence that an existing use is likely to be discontinued during the planning period:

(A) The existing improvement-to-land-value ratio is less than 1.0 for commercial and multifamily properties or less than 0.5 for single-family properties according to the most recent available property assessment roll.

(B) The site is designated a Moderate Resource area, High Resource area, or Highest Resource area in the most recent Tax Credit Allocation Committee Opportunity Map.

(C) Zoning for the site allows residential development by-right that meets both of the following requirements:

(i) Have at least 100 percent more floor area than existing structures on the site.

(ii) At least 20 percent of the units are affordable to lower income households.

(D) The use of nonvacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

(3) Notwithstanding any other law, and in addition to the requirements in paragraphs (1) and (2), sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.
income, subject to any other form of rent or price control through a public entity’s valid exercise of its police power, or occupied by low or very low income households, shall be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site. Replacement requirements shall be consistent with those set forth in paragraph (3) of subdivision (c) of Section 65915.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c), shall be at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c) and shall meet the standards set forth in subparagraph (B) of paragraph (5) of subdivision (b). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed uses if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project.

(i) For purposes of this section and Section 65583, the phrase “use by right” shall mean that the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision
Map Act. A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(j) Notwithstanding any other provision of this section, within one-half mile of a Sonoma-Marin Area Rail Transit station, housing density requirements in place on June 30, 2014, shall apply.

(k) For purposes of subdivisions (a) and (b), the department shall provide guidance to local governments to properly survey, detail, and account for sites listed pursuant to Section 65585.

(l) This section shall remain in effect only until December 31, 2028, and as of that date is repealed.

SEC. 3. Section 65583.2 of the Government Code, as amended by Section 16.5 of Chapter 664 of the Statutes of 2019, is amended to read:

65583.2. (a) A city’s or county’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (9) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, “land suitable for residential development” includes all of the following sites that meet the standards set forth in subdivisions (c) and (g):

1. Vacant sites zoned for residential use.
2. Vacant sites zoned for nonresidential use that allows residential development.
3. Residentially zoned sites that are capable of being developed at a higher density, and sites owned or leased by a city, county, or city and county.
4. Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, to permit residential use, including sites owned or leased by a city, county, or city and county.

(b) The inventory of land shall include all of the following:

1. A listing of properties by assessor parcel number.
(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

(3) For nonvacant sites, a description of the existing use of each property. If a site subject to this paragraph is owned by the city or county, the description shall also include whether there are any plans to dispose of the property during the planning period and how the city or county will comply with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

(4) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

(5) (A) A description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.

(B) Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development. This paragraph does not impose any additional duty on the city or county to construct, finance, or otherwise provide water, sewer, or dry utilities to parcels included in the inventory.

(6) Sites identified as available for housing for above moderate-income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction’s general plan for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The inventory shall specify for each site the number of units that can realistically be
accommodated on that site and whether the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing. A nonvacant site identified pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing element and a vacant site that has been included in two or more consecutive planning periods that was not approved to develop a portion of the locality’s housing need shall not be deemed adequate to accommodate a portion of the housing need for lower income households that must be accommodated in the current housing element planning period unless the site is zoned at residential densities consistent with paragraph (3) of this subdivision and the site is subject to a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households. A city that is an unincorporated area in a nonmetropolitan county pursuant to clause (ii) of subparagraph (B) of paragraph (3) shall not be subject to the requirements of this subdivision to allow residential use by right. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency’s calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulation requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction,
and on the current or planned availability and accessibility of
sufficient water, sewer, and dry utilities.

(A) A site smaller than half an acre shall not be deemed adequate
to accommodate lower income housing need unless the locality
can demonstrate that sites of equivalent size were successfully
developed during the prior planning period for an equivalent
number of lower income housing units as projected for the site or
unless the locality provides other evidence to the department that
the site is adequate to accommodate lower income housing.

(B) A site larger than 10 acres shall not be deemed adequate to
accommodate lower income housing need unless the locality can
demonstrate that sites of equivalent size were successfully
developed during the prior planning period for an equivalent
number of lower income housing units as projected for the site or
unless the locality provides other evidence to the department that
the site can be developed as lower income housing. For purposes
of this subparagraph, “site” means that portion of a parcel or parcels
designated to accommodate lower income housing needs pursuant
to this subdivision.

(C) A site may be presumed to be realistic for development to
accommodate lower income housing need if, at the time of the
adoption of the housing element, a development affordable to
lower income households has been proposed and approved for
development on the site.

(3) For the number of units calculated to accommodate its share
of the regional housing need for lower income households pursuant
to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities
accommodate this need. The analysis shall include, but is not
limited to, factors such as market demand, financial feasibility, or
information based on development project experience within a
zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to
accommodate housing for lower income households:

(i) For an incorporated city within a nonmetropolitan county
and for a nonmetropolitan county that has a micropolitan area:
sites allowing at least 15 units per acre.

(ii) For an unincorporated area in a nonmetropolitan county not
included in clause (i): sites allowing at least 10 units per acre.
(iii) For a suburban jurisdiction: sites allowing at least 20 units per acre.

(iv) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

(d) For purposes of this section, a metropolitan county, nonmetropolitan county, and nonmetropolitan county with a micropolitan area shall be as determined by the United States Census Bureau. A nonmetropolitan county with a micropolitan area includes the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction’s population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in population in which case the county shall be considered metropolitan.

(f) A jurisdiction shall be considered metropolitan if the jurisdiction does not meet the requirements for “suburban area” above and is located in an MSA of 2,000,000 or greater in population, unless that jurisdiction’s population is less than 25,000 in which case it shall be considered suburban.

(g) (1) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city’s or county’s past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market
conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. Any of the following conditions shall be deemed to be substantial evidence that an existing use is likely to be discontinued during the planning period:

(A) The existing improvement-to-land-value ratio is less than 1.0 for commercial and multifamily properties or less than 0.5 for single-family properties according to the most recent available property assessment roll.

(B) The site is designated a Moderate Resource area, High Resource area, or Highest Resource area in the most recent Tax Credit Allocation Committee Opportunity Map.

(C) Zoning for the site allows residential development by-right that meets both of the following requirements:

(i) Have at least 100 percent more floor area than existing structures on the site.

(ii) At least 20 percent of the units are affordable to lower income households.

(D) The use of nonvacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

(3) Notwithstanding any other law, and in addition to the requirements in paragraphs (1) and (2), sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income, subject to any other form of rent or price control through a public entity’s valid exercise of its police power, or occupied by
low or very low income households, shall be subject to a policy
requiring the replacement of all those units affordable to the same
or lower income level as a condition of any development on the
site. Replacement requirements shall be consistent with those set
forth in paragraph (3) of subdivision (c) of Section 65915.

(h) The program required by subparagraph (A) of paragraph (1)
of subdivision (c) of Section 65583 shall accommodate 100 percent
of the need for housing for very low and low-income households
allocated pursuant to Section 65584 for which site capacity has
not been identified in the inventory of sites pursuant to paragraph
(3) of subdivision (a) on sites that shall be zoned to permit
owner-occupied and rental multifamily residential use by right for
developments in which at least 20 percent of the units are
affordable to lower income households during the planning period.

These sites shall be zoned with minimum density and development
standards that permit at least 16 units per site at a density of at
least 16 units per acre in jurisdictions described in clause (i) of
subparagraph (B) of paragraph (3) of subdivision (c), shall be at
least 20 units per acre in jurisdictions described in clauses (iii) and
(iv) of subparagraph (B) of paragraph (3) of subdivision (c), and
shall meet the standards set forth in subparagraph (B) of paragraph
(5) of subdivision (b). At least 50 percent of the very low and
low-income housing need shall be accommodated on sites
designated for residential use and for which nonresidential uses
or mixed uses are not permitted, except that a city or county may
accommodate all of the very low and low-income housing need
on sites designated for mixed uses if those sites allow 100 percent
residential use and require that residential use occupy 50 percent
of the total floor area of a mixed-use project.

(i) For purposes of this section and Section 65583, the phrase
“use by right” shall mean that the local government’s review of
the owner-occupied or multifamily residential use may not require
a conditional use permit, planned unit development permit, or other
discretionary local government review or approval that would
constitute a “project” for purposes of Division 13 (commencing
with Section 21000) of the Public Resources Code. Any subdivision
of the sites shall be subject to all laws, including, but not limited
to, the local government ordinance implementing the Subdivision
Map Act. A local ordinance may provide that “use by right” does
not exempt the use from design review. However, that design
review shall not constitute a “project” for purposes of Division 13
(commencing with Section 21000) of the Public Resources Code.
Use by right for all rental multifamily residential housing shall be
provided in accordance with subdivision (f) of Section 65589.5.
(j) For purposes of subdivisions (a) and (b), the department shall
provide guidance to local governments to properly survey, detail,
and account for sites listed pursuant to Section 65585.
(k) This section shall become operative on December 31, 2028.
SEC. 4. Section 65585.5 is added to the Government Code, to
read:
65585.5. (a) For purposes of this section, “affected local
government” means a local government for which both of the
following apply:
(1) The local government is subject to a requirement that the
adoption or amendment of its housing element be approved by the
voters of the local government, including, but not limited to, a
requirement imposed by a charter adopted pursuant to Section 3
of Article XI of the California Constitution.
(2) The planning agency of the local government has submitted
a draft of the proposed revision of its housing element for the
applicable planning period to the department pursuant to Section
65585.
(b) Notwithstanding any other law, for the sixth and each
subsequent revision of the housing element, both of the following
shall apply:
(1) If an affected local government has submitted the applicable
revision of its housing element to the voters for approval before
the due date for its housing element pursuant to Section 65588,
but the voters have not yet voted on the housing element revision,
the affected local government shall not be subject to any fines or
other penalties pursuant to Section 65585 for failure to adopt its
housing element by the applicable due date pursuant to Section
65588. This paragraph shall only apply to an affected local
government until the date of the election at which the housing
element is submitted to the voters of the affected local government.
(2) If an affected local government has submitted the applicable
revision of its housing element to the voters for approval before
the due date for its housing element pursuant to Section 65588
and the voters have rejected the housing element, the affected local
government shall not be subject to any fines or other penalties
pursuant to Section 65585 for failure to adopt its housing element by the applicable date pursuant to Section 65588. However, in an action brought by the Attorney General pursuant to Section 65585 against an affected local government described in this paragraph, the court may order remedies available pursuant to Section 564 of the Code of Civil Procedure, under which the agent of the court may take all governmental actions necessary to bring the jurisdiction's housing element into substantial compliance pursuant to this article in order to remedy identified deficiencies.

SECTION 1. Section 100523 is added to the Government Code, to read:

100523. (a) The Legislature finds and declares that the goal of the state innovation waiver of Section 1332 of the federal act is to enable states to pursue alternative coverage approaches in the individual and small group markets that are consistent with the federal act.

(b) The Legislature also finds and declares that if the state proposes an innovative strategy to offer coverage in the individual and small group markets, that strategy shall provide coverage that would be as accessible, comprehensive, and affordable as coverage available pursuant to the federal act, that would cover a number of state residents comparable to the number who would have been covered under the federal act with coverage that is equally or more comprehensive and equally or more affordable, and that would not increase the federal deficit.

(c) A waiver shall not be requested from the United States Department of Health and Human Services pursuant to Section 1332 of the federal act without express statutory authority.
Item B-4
TO: City Council Liaison/Legislative/Lobby Committee  
FROM: Cynthia Owens, Policy and Management Analyst  
DATE: July 30, 2020  
SUBJECT: AB 1196 (Gipson) – Peace Officers: Use of Force  
ATTACHMENTS: 1. Summary Memo – AB 1196  
2. Bill Text – AB 1196

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 1196 – Peace Officers: Use of Force (AB 1196) was originally recommended by the Legislative/Lobby Committee (Committee) for the City to support; however, significant amendments were introduced, which now requires the bill to go back to the Committee for approval.

As presented on July 10, 2020, AB 1196 would have prohibited a law enforcement agency from authorizing the use of a carotid restraint or a choke hold. AB 1196 was then amended to add a prohibition on techniques or transport methods that involve a substantial risk of positional asphyxia. Some organizations who previously supported the bill are calling this amendment open-ended and vague. This has caused several of them to pull their support while they evaluate the impacts of the amendment. As such, this item is referred back to the Committee for consideration of a positions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1196 and its recent amendment to the City (Attachment 1). The state lobbyist will provide a verbal update to the Committee.

After discussion of AB 1196, the Committee may recommend the following actions:

1) Support AB 1196;
2) Support if amended AB 1196;
3) Oppose AB 1196;
4) Oppose unless amended AB 1196;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1196, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 23, 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 1196 (Gipson) Peace officers: use of force.

Introduced Version
As introduced on February 21, 2020, this measure was authored by Assemblyman Mike Gipson. The introduced version included provisions related to the topic of community schools.

July 9, 2020, Amendments
AB 1196 (Gipson) was amended on July 9, 2020, to prohibit restraint techniques or transport methods that involve a substantial risk of positional asphyxia as well as prohibiting the use of a carotid restraint or a choke hold, by law enforcement officers. The bill amended to include a definition of “positional asphyxia” as well. Speaker Rendon was also added as a co-author. These amendments resulted in the California Police Chiefs Association pulling their support for the bill stating that the amendments were “open-ended and also vague in many respects.”

Specifically, this bill would:

- Define “Carotid restraint” as a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck for the purpose of restricting blood flow to render the person unconscious or otherwise subdue or control the person.

- Define “Choke hold” as any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

- Define “Law enforcement agency” as any agency, department, or other entity of the state or any political subdivision thereof, that employs any peace officer described in Section 830 of the California Penal Code et seq.

- Define “Positional asphyxia” as situating a person in a manner that compresses an individual’s airway and reduces the likelihood that an individual will be able to breathe. This includes but is not limited to techniques or positioning that restrain a subject’s hands and legs together, leave a subject in control restraints lying on their back or stomach, put weight on the subject’s back or neck for a prolonged period, or keep a subject waiting for transportation in a restrained position without proper monitoring for signs of asphyxia.

- Prohibit a law enforcement agency from authorizing the use of a carotid restraint or a choke hold.
• Declare that it is to take effect immediately as an urgency statute.

Current law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. An arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law also authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

AB 1196 was introduced by Assembly Member Gipson and is sponsored by the Alliance of Boys and Men of Color, National Action Network, and PolicyLink. The bill would eliminate the use of chokeholds and carotid artery restraints statewide by law enforcement.

This bill is one of six criminal justice reform bills introduced by the Legislative Black Caucus following the death and George Floyd and the subsequent protests against systemic racism and the use of excessive force by law enforcement officers.

A carotid artery hold is the most widely used type of stranglehold. To perform this hold, an officer bends his or her arm around a subject's neck, applying pressure on either side of the windpipe—but not on the windpipe itself—to slow or stop the flow of blood to the brain via the carotid arteries. It can almost immediately render someone unconscious and has the potential to cause serious injury or death if the flow of blood to the brain is restricted for too long.

Police Departments in several major cities, including San Diego and San Francisco, have already taken steps to prohibit their use; however, statewide policies regarding neck restraints can vary greatly between both departments and agencies.

Note: The League of California Cities currently has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is set to be heard in the Senate Public Safety Committee on July 28.

**Support (based on fact sheet provide by the author)**
- Alliance of Boys and Men of Color (Sponsor)
- National Action Network (Sponsor)
- PolicyLink (Sponsor)
- Alpha Kappa Alpha Sorority –Eta Lambda
- Omega
- AFSCME 3299
- Anti-Recidivism Coalition
- Association of CA Cities Allied with Public Safety
- CA State Conference- NAACP
- CA Association of Black School Educators
- CA Family Justice Center Network
- CA Federation of Teachers
- CA Natural Gas Vehicle Coalition
- Charles R. Drew University
- City of Los Angeles, Mayor Eric Garcetti
- City of Los Angeles Human Relations Commission
- City of Oakland
- City of San Diego
- City of Refuge Church
- Compton Unified School District
- County of Los Angeles, Board of Supervisors
- Everytown for Gun Safety
- LA Regional Re-entry Partnership
- Moms Demand Action- CA Chapter
- Organize Win Legislate Sacramento
- Racial Justice Coalition of San Diego
- SURJ- Sacramento
- Turo
- University of CA Student Association
- VCH Prosperity Consulting
Opposition
There is no formally registered opposition at this time.
Attachment 2
ASSEMBLY BILL No. 1196

Introduced by Assembly Members Gipson, Carrillo, Chiu, Grayson, Santiago, and Weber
(Principal coauthor: Assembly Member Rendon)
(Principal coauthors: Senators Durazo and Wiener)
(Coauthors: Assembly Members Bloom, Bonta, Burke, Cervantes, Eggman, Gabriel, Eduardo Garcia, Gloria, Gonzalez, Holden, Jones-Sawyer, Kalra, Levine, Low, McCarty, Nazarian, Reyes, Robert Rivas, Salas, Ting, and Waldron)
(Coauthors: Senators Allen, Caballero, Chang, Dodd, Lena Gonzalez, Mitchell, Stern, and Umberg)

February 21, 2019

An act to add Section 7286.5 to the Government Code, relating to peace officers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer. Existing law
authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

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.

This bill would prohibit a law enforcement agency from authorizing the use of a carotid restraint or a choke hold, as defined, and techniques or transport methods that involve a substantial risk of positional asphyxia, as defined.

By requiring local agencies to amend use of force policies, 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, 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.

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 7286.5 is added to the Government Code, to read:

7286.5. (a) A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.

(b) A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia.

(c) As used in this section, the following terms are defined as follows:

(1) “Carotid restraint” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure
is applied to the sides of a person’s neck for the purpose that
involves a substantial risk of restricting blood flow to and may
render the person unconscious or otherwise in order to subdue or
control the person.
(2) “Choke hold” means any defensive tactic or force option in
which direct pressure is applied to a person’s trachea or windpipe.
(3) “Law enforcement agency” means any agency, department,
or other entity of the state or any political subdivision thereof, that
employs any peace officer described in Chapter 4.5 (commencing
with Section 830) of Title 3 of Part 2 of the Penal Code.
(4) “Positional asphyxia” means situating a person in a manner
that compresses an individual’s airway and reduces the likelihood
that an individual will be able to breathe. This includes but is not
limited to techniques or positioning that restrain a subject’s hands
and legs together, leave a subject in control restraints lying on
their back or stomach, put weight on the subject’s back or neck
for a prolonged period, or keep a subject waiting for transportation
in a restrained position, as described in this paragraph, without
proper monitoring for signs of asphyxia.
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.
SEC. 3. 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 promote public safety by ensuring the abolition of
law enforcement tactics that may result in unintentional deaths, it
is necessary that this act take effect immediately.
Item B-5
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 1672 - Solid waste: premoistened nonwoven disposable wipes (AB 1672) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language. However, the City Council did establish a primary legislative focus for supporting sustainability in the community and this item is related to that particular focus.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1672 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1672, the Liaisons may recommend the following actions:

1) Support AB 1672;
2) Support if amended AB 1672;
3) Oppose AB 1672;
4) Oppose unless amended AB 1672;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1672, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 22, 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 1672 (Bloom) Solid waste: premoistened nonwoven disposable wipes

Introduced and Background
AB 1672 was introduced by Assembly Member Richard Bloom and would establish standardized labeling practices for single-use wet wipes to provide clear and consistent consumer information about what products are not safe to flush.

Specifically, AB 1672 would require certain single use wet wipes to be clearly labeled with “DO NOT FLUSH” labeling and a related symbol. The bill would also establish the California Consumer Education and Outreach Program to ensure the public understands they should not flush wipes as well as requiring manufactures to participate in a collection study conduction in collaboration with wastewater agencies to gain an understanding of consumer behavior on premoistened nonwoven disposable wipes.

There are currently no state or federal statutory requirements that govern how non-woven single-use wipes products are labeled or requiring information about intended disposal methods. This year, Washington State enacted the first-in-the-nation labeling requirements for non-flushable products.

The State and Regional Water Resources Control Boards (Water Boards) authorizes local public agencies to discharge wastewater in compliance with U.S. Clean Water Act and Porter-Cologne Water Quality Control Act. The State Water Board has a zero-tolerance policy for any unauthorized discharge of sewage for any reason, including accidental overflows. Violations of this policy can result in fines and penalties for the responsible agency. The Water Board also requires all sewer overflows to be reported to the Board in a specified time period and requires the report to include information about the main cause of the overflow. Data about spills caused by wipes debris is maintained by the Water Board and can be accessed by the public.

On March 17, 2020, the California Water Boards sent out a notice advising Californians that wet wipes and paper towels can clog sewer systems and shouldn’t be flushed. The notice was prompted by the Centers for Disease Control recommendations to clean surfaces with disinfecting wipes to reduce the spread of COVID-19. In the public notification, the Board mentions that wastewater treatment facilities around the state were reporting issues with their sewer management collection systems due to wipes being flushed. In order to prevent sewer spills, especially during the COVID-19 emergency, they are urging Californians to not flush disinfectant wipes or paper towels down the toilet.
According to the author’s office, “wipes have been one of the leading causes of residential and public sewer systems backups and equipment problems, costing California wastewater operators at least $50 million a year. Following the onset of the statewide Stay-At-Home order, agencies that have never experienced wipes related sewer overflows have now reported their first wipes related clog and sewer spills. Several agencies have reported total equipment failures when their pump systems are overwhelmed with wipes, costing them $60K per pump. Agencies are reporting increases in maintenance intervals to unclog heavy equipment like pumps and lift stations, and to clear sewer lines with high powered jets. Wastewater collection and treatment is an essential public service. During a global pandemic, the field operators are risking their health through exposure to raw sewage more frequently to manage wipes related repairs and maintenance.”

**Status of Legislation**
This bill is currently pending in the Senate Environmental Quality Committee.

**Support**
- California Association of Sanitation Agencies (CASA) (Co-Sponsor)
- National Stewardship Action Council (Co-Sponsor)
- INDA – Association of the Nonwoven Fabric Industry (Co-Sponsor)
- 7th Generation Advisors
- Association of California Water Agencies
- Bay Area Pollution Prevention Group
- Californians Against Waste
- CA Product Stewardship Council
- CA Resource Recovery Association
- CA Special Districts Association
- Calaveras County
- Camarillo Sanitary District
- The Center for Oceanic Awareness, Research, and Education
- Central Contra Costa Sanitary District
- Central Marin Sanitation Agency
- City of Bellflower
- City of Camarillo
- City of Maywood
- City of Oxnard
- City of Pico Rivera
- City of Roseville
- City of Thousand Oaks
- Delta Diablo Sanitary District
- Dublin San Ramon Services District
- East Bay Municipal Utility District
- Eastern Municipal Water District
- Goleta Sanitary District
- Goleta West Sanitary District
- Ironhouse Sanitary District
- Inland Empire Utilities Agencies
- LA County Sanitation Districts
- Leucadia Wastewater District
- League of California Cities
- Las Virgenes Municipal Water District
- Monterey One Water
- National Assoc. of Clean Water Agencies
- Orange County Sanitation District
- Oro Loma Sanitary District
- Placer County
- Plastic Pollution Coalition
- Procter & Gamble Company
- Rethink Waste
- Rincon Del Diablo Water District
- Sacramento Area Sewer District
- Sacramento Regional Sanitation District
- San Francisco Public Utilities Commission
- Sierra Club of CA
- Solid Waste Association of North America
- Sonoma Water
- Stege Sanitary District
- Union Sanitary District
- VEOLIA
- Victor Valley Water Reclamation Authority

**Opposition**
None listed.
Attachment 2
An act to add Part 9 (commencing with Section 49650) to Division 30 of, and to repeal Section 49652 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL’S DIGEST

AB 1672, as amended, Bloom. Solid waste: premoistened nonwoven disposable wipes.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste.

This bill would require, except as provided, certain premoistened nonwoven disposable wipes manufactured on or after January 1, 2022, to be labeled clearly and conspicuously with the phrase “Do Not Flush” and a related symbol, as specified. The bill would prohibit a covered
entity, as defined, from making a representation about the flushable attributes, benefits, performance, or efficacy of those premoistened nonwoven disposable wipes, as provided. The bill would establish enforcement provisions, including authorizing a civil penalty not to exceed $2,500 per day, up to a maximum of $100,000 per violation, to be imposed on a person covered entity who violates those provisions.

The bill would establish, until January 1, 2026, the California Consumer Education and Outreach Program, under which covered entities would be required, among other things, to participate in a collection study conducted in collaboration with wastewater agencies for the purpose of gaining understanding of consumer behavior regarding the flushing of premoistened nonwoven disposable wipes and to conduct a comprehensive multimedia education and outreach program in the state. The bill would require covered entities to annually report to the Legislature specified legislative committees and the State Water Resources Control Board on their activities under the program and would require the Legislature state board to post the reports online, as provided. on its internet website.

State-mandated local program: no.

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

SECTION 1. It is the intent of the Legislature in enacting this act to create labeling requirements for premoistened nonwoven disposable wipes that will enable consumers to easily identify which premoistened nonwoven disposable wipes are composed of petrochemical-derived fibers and therefore are not safe to dispose of using sanitary sewer systems, in order to protect public health, the environment, water quality, and public infrastructure used for the collection, transport, and treatment of wastewater.

SEC. 2. Part 9 (commencing with Section 49650) is added to Division 30 of the Public Resources Code, to read:

PART 9. PREMOISTENED NONWOVEN DISPOSABLE WIPES

49650. For purposes of this part, the following definitions shall apply:
(a) “Covered entity” means the manufacturer of a covered product that is sold in the state or offered for sale in the state. “Covered entity” includes a wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a covered product.

(b) “Covered product” means a consumer product sold in the state or offered for sale in the state that is either of the following:

(1) A premoistened nonwoven disposable wipe marketed as a baby wipe or diapering wipe.

(2) A premoistened nonwoven disposable wipe that is both of the following:

(A) Composed entirely of or in part of petrochemical-derived fibers.

(B) Likely to be used in a bathroom and has significant potential to be flushed, including baby wipes, bathroom cleaning wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting wipes, hand sanitizing wipes, antibacterial wipes, facial and makeup removal wipes, general purpose cleaning wipes, personal care wipes for use on the body, feminine hygiene wipes, adult incontinence wipes, adult hygiene wipes, and body cleansing wipes.

(c) “High contrast” means satisfying both of the following conditions:

(1) Is provided by either a light symbol on a solid dark background or a dark symbol on a solid light background.

(2) Has at least 70 percent contrast between the symbol artwork and background using the following formula:

\[(A) \frac{(B1 - B2)}{B1} \times 100 = \text{contrast percentage.}\]
\[(B) B1 = \text{the light reflectance value of the lighter area and B2} \]
\[= \text{the light reflectance value of the darker area.}\]

(d) (1) “Label notice” means the phrase “Do Not Flush” and the size of the label notice shall be equal to at least 2 percent of the surface area of the principal display panel in size.

(2) For covered products regulated pursuant to the Federal Hazardous Substances Act (15 U.S.C. Sec. 1261 et seq.) by the United States Consumer Product Safety Commission under Section 1500.121 of Title 16 of the Code of Federal Regulations, if the label notice requirements in paragraph (1) would result in a type size larger than first aid instructions pursuant to the Federal Hazardous Substances Act, then the type size for the label notice shall, to the extent permitted by federal law, be equal to or greater than the type size required for the first aid instructions.
(3) For covered products required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), if the label notice requirements in paragraph (1) would result in a type size on the principal display panel larger than a warning pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, then the type size for the label notice shall, to the extent permitted by federal law, be equal to or greater than the type size required for the “keep out of reach of children” statement under the Federal Insecticide, Fungicide, and Rodenticide Act.

(e) (1) “Principal display panel” means the side of the product package that is most likely to be displayed, presented, or shown under customary conditions of display for retail sale.

(2) In the case of a cylindrical or nearly cylindrical package, the surface area of the principal display panel constitutes 40 percent of the product package as measured by multiplying the height of the container by the circumference.

(3) In the case of a flexible film package in which a rectangular prism or nearly rectangular prism stack of wipes is housed within the film, the surface area of the principal display panel is measured by multiplying the length by the width of the side of the package when the flexible packaging film is pressed flat against the stack of wipes on all sides of the stack.

(f) “Symbol” means the “Do Not Flush” symbol, or a gender equivalent thereof, as depicted in the INDA/EDANA Code of Practice Second Edition and published within “Guidelines for Assessing the Flushability of Disposable Nonwoven Products,” Edition 4, May 2018. The symbol shall be sized equal to at least 2 percent of the surface area of the principal display panel, except as specified in clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 49651.

49651. (a) Except as provided in subdivisions (b), (c), (d), and (f), a covered product manufactured on or after January 1, 2022, shall be labeled clearly and conspicuously in adherence with the following labeling requirements:

(1) In the case of cylindrical or near cylindrical packaging intended to dispense individual wipes, a covered entity shall comply with one of the following options:
(A) Place the symbol and label notice on the principal display panel in a location reasonably viewable each time a wipe is dispensed.

(B) Place the symbol on the principal display panel, and either the symbol or label notice, or the symbol and label notice in combination, on the flip lid, subject to the following:

(i) If the label notice does not appear on the flip lid, the label notice shall be placed on the principal display panel.

(ii) The symbol or label notice, or the symbol and label notice in combination, on the flip lid may be embossed, and in that case are not required to comply with paragraph (6).

(iii) The symbol or label notice, or the symbol and label notice in combination, on the flip lid shall cover a minimum of 8 percent of the surface area of the flip lid.

(2) In the case of flexible film packaging intended to dispense individual wipes, a covered entity shall place the symbol on the principal display panel and dispensing side panel and place the label notice on either the principal display panel or dispensing side panel in a prominent location reasonably visible to the user each time a wipe is dispensed. If the principal display panel is on the dispensing side of the package, two symbols are not required.

(3) In the case of refillable tubs or other rigid packaging intended to dispense individual wipes and be reused by the consumer for that purpose, a covered entity shall place the symbol and label notice on the principal display panel in a prominent location reasonably visible to the user each time a wipe is dispensed.

(4) In the case of packaging not intended to dispense individual wipes, a covered entity shall place the symbol and label notice on the principal display panel in a prominent and reasonably visible location.

(5) A covered entity shall ensure the packaging seams, folds, or other package design elements do not obscure the symbol or the label notice.

(6) A covered entity shall ensure the symbol and label notice have sufficiently high contrast with the immediate background of the packaging to render it likely to be seen and read by the ordinary individual under customary conditions of purchase and use.

(b) For covered products sold in bulk at retail, both the outer package visible at retail and the individual packages contained within shall comply with the labeling requirements in subdivision
(a) applicable to the particular packaging types, except the following:

(1) Individual packages contained within the outer package that are not intended to dispense individual wipes and contain no retail labeling.

(2) Outer packages that do not obscure the symbol and label notice on individual packages contained within.

(c) If a covered product is provided within the same packaging as another consumer product for use in combination with the other product, the outside retail packaging of the other consumer product does not need to comply with the labeling requirements of subdivision (a).

(d) If a covered product is provided within the same package as another consumer product for use in combination with the other product and is in a package smaller than three inches by three inches, the covered entity may comply with the requirements of subdivision (a) by placing the symbol and label notice in a prominent location reasonably visible to the user of the covered product.

(e) A covered entity, directly or through a corporation, partnership, subsidiary, division, trade name, or association in connection to the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of a covered product, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about the flushable attributes, flushable benefits, flushable performance, or flushable efficacy of a covered product.

(f) (1) If a covered product is required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) and the Department of Pesticide Regulation under Division 6 (commencing with Section 11401) of the Food and Agricultural Code, then the covered entity shall submit a label compliant with the labeling requirements of subdivision (a) no later than January 1, 2022, to the United States Environmental Protection Agency, and upon its approval, to the Department of Pesticide Regulation.

(2) If the United States Environmental Protection Agency or the Department of Pesticide Regulation does not approve a product label that otherwise complies with the labeling requirements of
subdivision (a), the covered entity shall use a label with as many
of the requirements of this section as the relevant agency has
approved.
(3) Covered products manufactured six months or more after a
particular label has been approved by the Department of Pesticide
Regulation shall implement the approved label to comply with
subdivision (a).
(g) A covered entity may include on a covered product words
or phrases in addition to those required for the label notice if the
words or phrases are consistent with the purposes of this part.
49652. (a) The California Consumer Education and Outreach
Program is hereby established. As part of the program, covered
entities, in collaboration with other covered entities, shall do all
of the following:
(1) Participate in a collection study conducted in collaboration
with wastewater agencies for the purpose of gaining understanding
of consumer behavior regarding the flushing of covered products
as a key input into the design of a consumer education and outreach
program. The collection study shall be jointly coordinated by the
California Association of Sanitation Agencies and a group of
covered entities.
(2) Conduct a consumer opinion survey to identify baseline
consumer behavior and awareness regarding the flushing or other
disposal of covered products.
(3) Measure effectiveness of the consumer education program
on consumer awareness of the symbol and label notice and
consumer attitudes about disposal of covered products by
conducting a subsequent consumer awareness survey comparing
the baseline data provided by the 2021 survey with survey data
from subsequent years. The surveys to determine the effectiveness
and ongoing success of the consumer education program shall take
place annually until December 31, 2025.
(b) Covered entities, either independently or in collaboration
with other covered entities or other organizations, shall conduct a
comprehensive multimedia education and outreach program in the
state. At a minimum, the education and outreach program shall do
both of the following:
(1) Promote consumer awareness and understanding of and
compliance with the symbol and label notice requirements. Covered
entities shall provide wastewater agencies with the consumer
education messaging for the symbol and the label notice. The wastewater agencies may include the messaging as part of their routine communications with customers within their service area.

(2) Provide education and outreach in Spanish and English.

(c) Covered entities shall take reasonable steps to ensure that they do not promote products outside of the scope of this part as part of the education and outreach program.

(d) Covered entities shall take reasonable steps to ensure that their education and outreach program does not conflict with the programs of other covered entities or groups of covered entities.

(e) Covered entities, either independently or in collaboration with other covered entities, shall report to the Legislature in compliance with Section 9795 of the Government Code Senate Committee on Environmental Quality, the Assembly Committee on Environmental Safety and Toxic Materials, and the State Water Resources Control Board on their activities under this section on an annual basis. The Legislature State Water Resources Control Board shall post the reports on the Assembly and Senate its internet websites: website.

(f) The California Consumer Education and Outreach Program shall conclude on December 31, 2025.

(g) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

49653. (a) A person who violates Section 49651 may be enjoined in any court of competent jurisdiction.

(b) (1) A person covered entity who violates Section 49651 may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day, up to a maximum of one hundred thousand dollars ($100,000) for each violation. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of Section 49651, the court shall consider all of the following:

(A) The nature, circumstances, extent, and gravity of the violation.

(B) The violator’s past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment.

(C) The violator’s ability to pay the proposed penalty.
(D) The effect that the proposed penalty would have on the violator and the community as a whole.

(E) Whether the violator took good faith measures to comply with this part and when these measures were taken.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Actions may be brought pursuant to this section by the Attorney General in the name of the people of the state, by a district attorney, by a city attorney, by a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

(d) (1) Civil penalties collected pursuant to this section shall be paid to the office of the city attorney, county counsel, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

(2) Moneys collected by the Attorney General pursuant to this subdivision shall be deposited into the Unfair Competition Law Fund established pursuant to Section 17206 of the Business and Professions Code.

49654. (a) The provisions of this part are severable. If any provision of this part 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.

(b) The Legislature finds and declares that this part addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this part applies to all cities, including charter cities. This part supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the labeling of covered products.
Item B-6
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 30, 2020
SUBJECT: Assembly Bill 1851 (Wicks) - Religious institution affiliated housing development projects: parking requirements
ATTACHMENTS: 1. Summary Memo – AB 1851
               2. Bill Text – AB 1851

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 1851 - Religious institution affiliated housing development projects: parking requirements (AB 1851) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to AB 1851 include, but are not limited to:

- 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.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1851 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1851, the Liaisons may recommend the following actions:

1) Support AB 1851;
2) Support if amended AB 1851;
3) Oppose AB 1851;
4) Oppose unless amended AB 1851;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1851, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
July 22, 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 1851 (Wicks) Religious institution affiliated housing development projects: parking requirements.

Introduced and Background
AB 1851 was introduced by Assembly Member Buffy Wicks and would allow a religious institution to develop an affordable housing project at a place of worship owned by the religious institution even if the development requires the religious institution to reduce the number of religious-use parking spaces available at the place of worship.

Specifically, this bill would:
- Define "religious institution affiliated housing development project" as a housing development project that is:
  - Located on one or more contiguous parcels that are owned entirely by a religious institution;
  - Located near religious-use parking defined as parking located on one or more parcels that collectively contain religious-use parking, located adjacent to a parcel owned by the religious institution that contains religious-use parking, located on one or more parcels separated by no more than 0.1 miles from a parcel owned by the religious institution that contains religious-use parking.
  - Eligible for a density bonus as a result of including units affordable to households with low, very-low, or moderate income
- Prohibit a city or county from requiring a religious institution to replace religious-use parking spaces that a religious institution proposes to eliminate as a part of a religious institution affiliated housing development project.
- Prohibit a city or county from requiring a religious institution to cure a preexisting deficit of the number of religious-use parking spaces as a condition of approval of a religious institution affiliated housing development project.
- Prohibit a city or county from denying a religious institution affiliated housing development project solely on the basis that the project will reduce the total number of parking spaces
- Limit the number of religious-use parking spaces that a religious institution can reduce as part of a religious institution affiliated housing development project to 50 percent of the number of existing religious-use parking spaces.

Status of Legislation
This bill is currently pending in the Senate Governance and Finance Committee.
Support and Opposition
Habitat for Humanity California states, "Reducing the costs associated with affordable housing development is a necessary step in stimulating the development of housing. This legislation would make building affordable housing easier, faster, and less expensive for faith-based institutions in a broad range of communities across California. Many of these institutions are already community anchors, and this will help them build stable, safe, affordable housing for local residents and families."

American Atheists is opposed unless amended and call for th bill to be amended "to create an exemption for secular and religious nonprofits alike to provide housing for homeless people in California." They argue "The current exemption is underinclusive, misaligned, and likely unconstitutional."

Support
California Apartment Association
Oakland City Council
Non-Profit Housing Association of Northern California
City of Berkeley
TMG Partners
East Bay Housing Organizations (EBHO)
Habitat for Humanity California
LeadingAge California
California Community Builders
California YIMBY

TechEquity Collaborative
Silicon Valley At Home (Sv@Home)
New Way Homes
Alameda County Supervisor Keith Carson-District 5
Astron Development Corp
Greater Cooper AME Zion Church, Oakland
Gunkel Architecture
Peace United Church of Christ, Santa Cruz

Opposition
American Atheists (Oppose Unless Amended)
AMENDED IN ASSEMBLY MAY 5, 2020
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL No. 1851

Introduced by Assembly Member Wicks
(Coauthor: Assembly Member Robert Rivas)

January 6, 2020

An act to add Section 65913.6 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 1851, as amended, Wicks. Faith-based organization—Religious institution affiliated housing development projects: parking requirements.

Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing, including the Density Bonus Law, which requires, when an applicant proposes a housing development within the jurisdiction of a local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or for the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

This bill would upon the request of a developer of a housing development project, require a local agency to ministerially approve a request to that local agency to reduce or eliminate any parking requirements that would otherwise be imposed by that local agency on the development if the housing development project qualifies as a faith-based organization affiliated housing development project, as
This bill would prohibit a local agency from requiring the replacement of religious-use parking spaces proposed to be eliminated by a faith-based organization spaces that a developer of a religious institution affiliated housing development project pursuant to a request made and ministerially approved pursuant to the bill, or project proposes to eliminate as part of that housing development project. The bill would prohibit the number of religious-use parking spaces requested to be eliminated from exceeding 50% of the number that are available at the time the request is made. The bill would prohibit a local agency from requiring the curing of any preexisting deficit of the number of religious-use parking spaces as a condition of approval of a faith-based organization religious institution affiliated housing development project. The bill would require a local agency to allow the number of religious-use parking spaces that will be available after completion of a religious institution affiliated housing development project to count toward the number of parking spaces otherwise required for approval. The bill would prohibit a local agency from denying a housing development project proposed by a religious institution, or a developer working with a religious institution, solely on the basis that the project will reduce the total number of parking spaces available at the place of worship provided that the total reduction does not exceed 50% of existing parking spaces. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

By adding to 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 65913.6 is added to the Government Code, to read:
65913.6. (a) For purposes of this section, all of the following definitions shall apply:

(1) “Faith-based organization” means a nonprofit corporation organized and registered for religious purposes.

(2) “Faith-based organization affiliated housing development project” means a housing development project that meets all of the following criteria:

(A) The housing development project is located on one or more contiguous parcels that are each owned entirely, whether directly or through a wholly owned company or corporation, by a faith-based organization.

(B) The housing development project qualifies as being near colocated religious-use parking by being any of the following:

- (i) Located on one or more parcels that collectively contain religious-use parking;
- (ii) Located adjacent to a parcel owned by the faith-based organization that contains religious-use parking;
- (iii) Located on one or more parcels separated by no more than 0.1 miles from a parcel owned by the faith-based organization that contains religious-use parking;

(C) The housing development project qualifies for a density bonus under Section 65915.

(3)

(1) “Housing development project” means a housing development project as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(4)

(2) “Local agency” means any county, city, or city and county, including any charter county, city, or city and county.

(3) "Place of worship" means a property owned or operated by a religious institution, that is used for the purpose of regular assembly by members of the institution.

(4) "Religious institution" means an institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization composed of multidenominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code.
(5) “Religious institution affiliated housing development project” means a housing development project that meets all of the following criteria:
   (A) The housing development project is located on one or more contiguous parcels that are each owned entirely, whether directly or through a wholly owned company or corporation, by a religious institution.
   (B) The housing development project qualifies as being near colocated religious-use parking by being any of the following:
      (i) Located on one or more parcels that collectively contain religious-use parking.
      (ii) Located adjacent to a parcel owned by the religious institution that contains religious-use parking.
      (iii) Located on one or more parcels separated by no more than 0.1 miles from a parcel owned by the religious institution that contains religious-use parking.
   (C) The housing development project qualifies for a density bonus under Section 65915.

(6) “Religious-use parking: parking spaces” means existing parking spaces that are required under the local agency’s parking requirements for places of worship.
(b) Notwithstanding any other law or ordinance, a local agency, upon the request of a developer of a housing development project, shall ministerially approve a request to that local agency to reduce or eliminate any parking requirements that would otherwise be imposed by that local agency on the development if the housing development project qualifies as a faith-based organization affiliated housing development project.
(c) (1) Notwithstanding any other law or ordinance, a local agency shall not require the replacement of religious-use parking spaces proposed to be eliminated by a faith-based organization that a developer of a religious institution affiliated housing development project pursuant to a request made and ministerially approved proposes to eliminate as part of that housing development project pursuant to this section.
(2) The number of religious-use parking spaces requested to be eliminated by a developer of a religious institution affiliated housing development project pursuant to this section shall not
exceed 50 percent of the number of religious-use parking spaces at the time the request is made.

(3) The elimination of religious-use parking spaces pursuant to a religious institution affiliated housing development project that has been approved by a local agency does not constitute a concession pursuant to Section 65915.

(d) Notwithstanding any other law or ordinance, a local agency shall not require the curing of any preexisting deficit of the number of religious-use parking spaces as a condition of approval of a faith-based organization affiliated housing development project.

(c) Notwithstanding any other law or ordinance, a local agency shall not require the curing of any preexisting deficit of the number of religious-use parking spaces as a condition of approval of a faith-based organization affiliated housing development project.

(e) Notwithstanding any other law or ordinance, a local agency shall allow the number of religious-use parking spaces that will be available after completion of a religious institution affiliated housing development project to count toward the number of parking spaces otherwise required for approval of the housing development project under any other law or ordinance.

(f) The Legislature finds and declares that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, and therefore this section applies to all cities, including charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
REVISIONS:

Heading—Line 2.
Item B-7
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 2323 - California Environmental Quality Act: exemptions (AB 2323) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for AB 2323 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 2323, the Liaisons may recommend the following actions:

1) Support AB 2323;
2) Support if amended AB 2323;
3) Oppose AB 2323;
4) Oppose unless amended AB 2323;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 2323, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 22, 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 2323 (Friedman) California Environmental Quality Act: Exemptions

Introduced and Background
AB 2323 was introduced by Assembly Member Laura Friedman and would expand the application of California Environmental Quality Act (CEQA) exemptions for housing and other specified projects by permitting community plans, as defined, to serve as the basis for exemption of residential, mixed-use and employment center projects that is located in a transit priority area and eliminating the exclusion of sites within the boundaries of a state conservancy from existing exemptions for affordable agricultural housing, affordable urban housing, and urban infill housing.

Specifically, this bill would:
- Add “very low vehicle travel zones” as an alternative to a site being within ½ mile of a major transit stop for exemptions that require proximity to transit. This expands the potential sites eligible for exemptions in urban areas, as well as the downtown areas of smaller cities that may not have a major transit stop.
- Define a “very low vehicle travel area” as either of the following:
  - For projects that are at least two-thirds residential uses by square footage, an area that is surrounded by or adjacent to existing residential development that generates vehicle miles traveled per capita that is under 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.
  - For projects that are at least two-thirds office uses by square footage, an area that is surrounded by or adjacent to existing office development that attracts vehicle miles traveled per employee below 85 percent of the existing vehicle miles traveled per employee for the region.
- Replace subjective and inconsistent environmental conditions with more objective and consistent conditions, in keeping with the bill’s intent to make existing exemptions easier to use.
- Exempt sites located within a very high fire hazard severity zone, a delineated earthquake fault zone, among others.

Status of Legislation
This bill is currently pending in the Senate Environmental Quality Committee.

Support and Opposition
Housing advocates, environmental groups, local governments, planners, and environmental professionals support the bill because it makes existing CEQA streamlining for housing projects more practical, usable, and consistent with both housing and climate goals. For example, according
to the Association of Environmental Professionals (AEP), “California law provides numerous opportunities for streamlining or exempting infill housing projects from review under the California Environmental Quality Act (CEQA). However, these many options are often vague, overly complicated, and inconsistent, limiting their usage by lead agencies. AB 2323 seeks to clarify and align several of these measures to help lead agencies understand and determine when and how they can be applied.”

The State Building and Construction Trades Council (SBCTC) and other affiliated labor unions objected to the bill's prior provision, which was removed by the June 4th amendments permitting some exemptions for housing projects on sites included on the Department of Toxic Substances Control (DTSC) “Cortese List,” if the site had been cleaned up and cleared for residential use. With the removal of those provisions, and an additional clarifying amendment, SBCTC indicates to the author they will adopt a "support if amended" position.

*Formally registered support and opposition is based on the May 4, 2020 version of the bill. The bill has since been amended significantly.*

**Support**
- California Building Industry Association
- California League of Conservation Voters
- Bay Area Council
- American Planning Association, California Chapter
- Association of Environmental Professionals
- Los Angeles Business Council, Planning and Conservation League
- San Francisco Housing Action Coalition
- Rural County Representatives of California (RCRC)
- Mayor Eric Garcetti, City of Los Angeles
- Council of Infill Builders
- YIMBY Action
- California YIMBY
- Associated Builders and Contractors Northern California Chapter
- San Francisco Bay Area Planning and Urban Research Association (SPUR)
- Bay Area Housing Advocacy Coalition
- Silicon Valley Leadership

**Opposition**
- State Building and Construction Trades Council of California
Attachment 2
ASSEMBLY BILL
No. 2323

Introduced by Assembly Members Friedman and Chiu
(Coauthors: Assembly Members Carrillo and Mathis)
February 14, 2020

An act to amend Sections 21155.1, 21155.4, 21159.21, and 21159.24 of, and to add Section 21075 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL’S DIGEST
AB 2323, as amended, Friedman. California Environmental Quality Act: exemptions.
(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts from its requirements certain residential, employment center, and mixed-use development projects meeting specified criteria,
including that the project is located in a transit priority area and that the project is undertaken and is consistent with a specific plan for which an environmental impact report has been certified.

This bill would additionally exempt those projects located in a very low vehicle travel area, as defined. The bill would require that the project is undertaken and is consistent with either a specific plan prepared pursuant to specific provisions of law or a community plan, as defined, in order to be exempt. Because a lead agency would be required to determine the applicability of this exemption, this bill would impose a state-mandated local program.

(2) CEQA exempts from its requirements agricultural employee housing projects, affordable housing projects, and housing projects on infill sites that meet certain requirements, including, among others, the site is not located within the boundaries of a state conservancy. CEQA prohibits those exempt projects from being located in certain areas.

This bill would allow the location of agricultural employee housing projects, affordable housing projects, and housing projects on infill sites to be located within the boundaries of a state conservancy in order to be exempt. The bill would revise and recast the areas in which those exempt projects cannot be located, as provided.

(3) CEQA exempts from its requirements residential projects on infill sites that meet certain requirements, including, among others, that the location of the residential project on an infill site is no more than 4 acres and that the project is located within 1/2 mile of a major transit stop.

This bill instead would require that the location of a residential project on an infill site be no more than 5 acres. The bill would additionally exempt those residential projects located in a very low vehicle travel area, as defined.

(4) CEQA exempts from its requirements a transit priority project meeting certain requirements and that is declared by a legislative body to be a sustainable communities project. CEQA prohibits a transit priority project declared to be a sustainable communities project from being located in certain areas and requires the project to be within 1/2 mile of a rail transit station or a ferry terminal included in a regional transportation plan or within 1/4 mile of a high-quality transit corridor included in a regional transportation plan.

This bill would revise and recast the areas in which the transit priority project declared to be a sustainable communities project cannot be located, as provided. The bill would additionally authorize the transit
priority project declared to be a sustainable community project if the project is located within a very low vehicle travel area, as defined.

(4) 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 21075 is added to the Public Resources Code, to read:

21075. (a) “Very low vehicle travel area” means either of the following:

(1) For projects that are at least two-thirds residential uses by square footage, an area that is surrounded by or adjacent to existing residential development that generates vehicle miles traveled per capita that is under 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.

(2) For projects that are at least two-thirds office uses by square footage, an area that is surrounded by or adjacent to existing office development that attracts vehicle miles traveled per employee below 85 percent of the existing vehicle miles traveled per employee for the region.

(b) The Office of Planning and Research shall create maps depicting these areas by July 1, 2021. The Office of Planning and Research shall update the maps as necessary or at least once every four years.

SEC. 2. Section 21155.1 of the Public Resources Code is amended to read:

21155.1. If the legislative body finds, after conducting a public hearing, that a transit priority project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the transit priority project is declared to be a sustainable communities project and shall be exempt from this division.
(a) The transit priority project complies with all of the following environmental criteria:

1. The transit priority project and other projects approved prior to the approval of the transit priority project but not yet built can be adequately served by existing utilities, and the transit priority project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

2. (A) The site of the transit priority project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the transit priority project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete:

(B) For the purposes of this paragraph, “wetlands” has the same meaning as in the United States Fish and Wildlife Service Manual: Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) “Riparian areas” means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) “Wildlife habitat” means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of “significant value” includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.
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); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the transit priority project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the transit priority project is subject to a preliminary endangerment assessment prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The transit priority project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The transit priority project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or
a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The transit priority project site is not located on developed open space:

(A) For the purposes of this paragraph, “developed open space” means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, “developed open space” includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(5) The transit priority project is not located on a site that is any of the following:

(A) 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.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, 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 this code. This subparagraph does not apply to sites excluded from the specified hazard severity zones by a local agency, pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the project 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 of the Government Code.

(E) 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. A project 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.

(F) 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 project has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(G) 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.

(H) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(I) Lands under conservation easement.

(8) The buildings in the transit priority project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.

(b) The transit priority project meets all of the following land use criteria:

(1) The site of the transit priority project is not more than eight acres in total area.

(2) The transit priority project does not contain more than 200 residential units.

(3) The transit priority project does not result in any net loss in the number of affordable housing units within the project area.

(4) The transit priority project does not include any single level building that exceeds 75,000 square feet.

(5) Any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project.

(6) The transit priority project is determined not to conflict with nearby operating industrial uses.

(7) The transit priority project is located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan, or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan, or within a very low vehicle travel area.

(c) The transit priority project meets at least one of the following three criteria:
(1) The transit priority project meets both of the following:
   (A) At least 20 percent of the housing will be sold to families
       of moderate income, or not less than 10 percent of the housing
       will be rented to families of low income, or not less than 5 percent
       of the housing is rented to families of very low income.
   (B) The transit priority project developer provides sufficient
       legal commitments to the appropriate local agency to ensure the
       continued availability and use of the housing units for very low,
       low-, and moderate-income households at monthly housing costs
       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.
       Rental units shall be affordable for at least 55 years. Ownership
       units shall be subject to resale restrictions or equity sharing
       requirements for at least 30 years.
(2) The transit priority project developer has paid or will pay
    in-lieu fees pursuant to a local ordinance in an amount sufficient
    to result in the development of an equivalent number of units that
    would otherwise be required pursuant to paragraph (1).
(3) The transit priority project provides public open space equal
    to or greater than five acres per 1,000 residents of the project.

SECTION 1.
SEC. 3. Section 21155.4 of the Public Resources Code is
amended to read:
21155.4. (a) Except as provided in subdivision (b), a residential
project; employment center project, as defined in subdivision (a)
of Section 21099; or mixed-use development project, including
any subdivision, or any zoning, change that meets all of the
following criteria is exempt from the requirements of this division:
(1) The project is proposed within a transit priority area, as
defined in subdivision (a) of Section 21099, or within a
very low vehicle travel area.
(2) The project is undertaken to implement, and is consistent
with, a specific plan adopted pursuant to Article 8 (commencing
with Section 65450) of Chapter 3 of Division 1 of Title 7 of the
Government Code or a community plan, as defined in Section
65458 of the Government Code, for which an environmental impact
report has been certified.
(3) The project is consistent with the general use designation,
density, building intensity, and applicable policies specified for
the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets.

(b) Further environmental review shall be conducted only if any of the events specified in Section 21166 have occurred.

SEC. 2.
SEC. 4. Section 21159.21 of the Public Resources Code is amended to read:

21159.21. A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with an applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with an applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved before the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species
Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For purposes of this subdivision, “wetlands” has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and “wildlife habitat” means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(e) The site of the project is not included on a list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) (1) The site of the project is subject to a preliminary endangerment assessment prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(2) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(3) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(h) The project site is not subject to any of the following:

(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.
(3) Risk of a public health exposure at a level that would exceed the standards established by a state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, floodway, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(i) (1) The project site is not located on developed open space.

(2) For purposes of this subdivision, “developed open space” means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.
(B) Is generally open to, and available for use by, the public.
(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For purposes of this subdivision, “developed open space” includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(g) The project is not located on a site that is any of the following:

(1) 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.


(3) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, 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 this code. This paragraph does not apply to sites excluded
from the specified hazard severity zones by a local agency,
pursuant to subdivision (b) of Section 51179 of the Government
Code, or sites that have adopted fire hazard mitigation measures
pursuant to existing building standards or state fire mitigation
measures applicable to the development.

(4) Within a delineated earthquake fault zone as determined by
the State Geologist in any official maps published by the State
Geologist, unless the project 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 of the Government Code.

(5) 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.
A project may be located on a site described in this paragraph if
either of the following are met:

(A) The site has been subject to a Letter of Map Revision
prepared by the Federal Emergency Management Agency and
issued to the local jurisdiction.

(B) 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 1 of Title 44 of the Code
of Federal Regulations.

(6) 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 project
has received a no-rise certification in accordance with Section
60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(7) Lands identified for conservation in an adopted natural
community conservation plan pursuant to the Natural Community
Conservation Planning Act (Chapter 10 (commencing with Section
(8) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(9) Lands under conservation easement.

SEC. 2.

SEC. 5. Section 21159.24 of the Public Resources Code is amended to read:

21159.24. (a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

1. The project is a residential project on an infill site.
2. The project is located within an urbanized area.
3. The project satisfies the criteria of Section 21159.21.
4. Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.
5. The site of the project is not more than five acres in total area.
6. The project does not contain more than 100 residential units.
7. Either of the following criteria are met:
   (A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.
   (ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low income, low-income, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.
(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop or within a very low vehicle travel area.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing.

A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since the community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that which was not known, and could not have been known, at the time that the community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as a result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For purposes of this section, “residential” means a use consisting of either of the following:

(1) Residential units only.
(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total building square footage of the project.

SEC. 4.
SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB 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-8
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: July 30, 2020

SUBJECT: Assembly Bill 2345 (Gonzalez) - Planning and zoning: density bonuses: annual report: affordable housing

ATTACHMENTS: 1. Summary Memo – AB 2345
                2. Bill Text – AB 2345

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 2345 - Planning and zoning: density bonuses: annual report: affordable housing (AB 2345) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 2345 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 2345, the Liaisons may recommend the following actions:

1) Support AB 2345;
2) Support if amended AB 2345;
3) Oppose AB 2345;
4) Oppose unless amended AB 2345;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 2345, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 22, 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 2345 (Gonzalez) Density bonuses: annual report: affordable housing

Introduction and Background
AB 2345 would revise Density Bonus Law to increase the maximum allowable density and the number of concessions and incentives a developer can seek. In return for inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

Density bonus law was originally enacted in 1979, to help address the affordable housing shortage and to encourage development of more low- and moderate-income housing units. Over 40 years later, the state faces the same affordable housing challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100 percent affordable developments as well.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the jurisdiction’s zoned density in exchange for including extremely low, very low, and moderate-income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law. Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain a percentage of affordable housing. As part of the density bonus application, a developer may also request incentives, concessions and parking ratio reductions. The number of incentives and concessions, and the parking ratio reduction, vary depending on the percentage and type of affordable housing included in a project.

AB 2345 is based on the San Diego Affordable Homes Bonus Program, which allows a developer to seek up to five concessions and incentives. San Diego found developers only requested, at most, three concessions and incentives. It is important to note developers are not required to take a density bonus to receive concessions and incentives, provided they include the required affordable housing units. Density bonus law is a balancing act between providing enough benefits for the developer to offset the inclusion of affordable housing units. In addition, density bonus law already requires a local government to provide waivers in development standards to accommodate the additional density allowed under density bonus law.

In 2016, the voters of the City of Los Angeles approved the Transit Oriented Communities (TOC) Affordable Housing Incentive Program to added provisions to the municipal code to require
developers requesting certain entitlements for residential projects to either provide affordable units or pay an in-lieu fee. Measure JJJ also required the Department of City Planning to create a program to further incentivize affordable housing near transit. Accordingly, the Transit Oriented Communities (TOC) Affordable Housing Incentive Program became effective on September 22, 2017. The program encourages affordable housing within a half mile of major transit stops by providing additional density, reduced parking, and other incentives for projects that include covenanted affordable units. JJJ provides a developer a 50 percent density bonus if 17 percent of the units in the development are reserved for very low-income households.

AB 2345 draws from elements of the LA and San Diego programs.

**Status of Legislation**
As of 07/01/20 this measure is assigned to the Senate Housing Committee.

### Support
- CA Apartment Association
- CA Association of Realtors
- CA Building Industry Association
- CA Chamber of Commerce
- National Association of Social Workers, California Chapter
- Silicon Valley Community Foundation
- Non-Profit Housing Association of Northern California
- CA Housing Consortium
- City of San Diego
- Bay Area Council
- California Housing Partnership Corporation
- Working Partnerships USA
- Los Angeles Business Council, Planning and Conservation League
- Facebook
- 9 individuals
- United Way of Greater Los Angeles
- San Diego Housing Federation
- San Francisco Housing Action Coalition
- TMG Partners
- San Francisco Foundation
- San Diego Housing Commission
- SPUR
- Circulate San Diego
- SV@Home
- Oakland Chamber of Commerce
- YIMBY Action
- California Community Builders
- California YIMBY
- Holland Partner Group
- LISC San Diego
- Up for Growth California
- TechEquity Collaborative
- People for Housing Orange County
- East Bay for Everyone
- Chan Zuckerberg Initiative
- Bay Area Housing Advocacy Coalition
- Align Finance Partners
- AMLI Residential
- Circulate San Diego Climate Action Campaign
- CREA LLC
- Hitzke Development
- Malick Infill Development
- Monarch Group
- Moran & Company
- Mountain View YIMBY
- Pelosi Law Group
- Peninsula for Everyone
- San Francisco YIMBY
- San Luis Obispo YIMBY
- The Chicago Federation
- Urban Environmentalists
- Vitus
- YIMBY Neoliberal

### Opposition
- AIDS Healthcare Foundation
- California State Association of Counties
- 4 individuals
- American Planning Association, California Chapter
Attachment 2
An act to amend Sections 65400 and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST


(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires the planning agency of a city or county to provide by April 1 of each year an annual report to, among other entities, the Department of Housing and Community Development that includes, among other specified information, the number of net new units of housing that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, as provided.

This bill would require that the annual report include specified information regarding density bonuses granted in accordance with specified law, as described below.

(2) Existing law, known as the Density Bonus Law, requires a city, county, or city and county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city, county,
or city and county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements.

Among other things, existing law requires a city, county, or city and county to provide a density bonus under these provisions if the developer agrees to construct a housing development in which 100% of the total units, exclusive of managers’ units, are for lower income households, as defined, but authorizes a housing development that qualifies under these provisions to include up to 20% of the total units for moderate-income households, as defined. For purposes of determining the qualifying amount of units in a development for purposes of awarding a density bonus, existing law specifies that “total units” does not include units added by a density bonus.

This bill would revise the requirements for a housing development that includes 100% of units for lower income households to instead require that the development include 100% of all units in the development, including both total units, defined as described above, and density bonus units, but exclusive of managers’ units, are for lower income households, as defined, except that the development may include up to 20% of those units for moderate-income households.

(3) Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions. Existing law specifies the number of incentives or concessions that an applicant can receive. Existing law requires that an applicant receive 3 incentives or concessions for projects that include at least 30% of the total units for lower income households, at least 15% for very low income households, or at least 30% for persons or families of moderate income in a common interest development. Existing law requires that an applicant receive 4 incentives or concessions for projects in which 100% of the total units are for lower income households, as specified.

This bill, instead, would authorize an applicant to receive 3 incentives or concessions for projects that include at least 30% of the total units for lower income households, at least 12% of the total units for very low income households, or at least 30% for persons or families of moderate income in a common interest development. The bill would also authorize an applicant to receive 4 and 5 incentives or concessions,
as applicable, for projects in which greater percentages of the total units are for lower income households, very low income households, or for persons or families of moderate income in a common interest development, as specified. The bill would also authorize an applicant to receive 6 incentives or concessions for projects in which 100% of the total units are for lower income households, as specified.

Existing

(4) Existing law provides that a housing development that receives a waiver from any maximum controls on density, as specified, is not eligible for, and prohibits such a development from receiving, a waiver or reduction of development standards.

This bill, instead, would provide that a housing development that receives a waiver from any maximum controls on density, is only eligible for a specified waiver or reduction of development standards, unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

Existing

(5) Existing law specifies that the density bonus, or the amount of the density increase over the otherwise allowable gross residential density, to which an applicant is entitled varies according to the amount by which the percentage of affordable housing units in a development exceeds a specified base percentage for units for lower income households, very low income households, senior citizens, persons and families of moderate income, transitional foster youth, or lower income students, as specified. Existing law authorizes a maximum density bonus of 35% for a housing development in which 20% or more of the total units are for lower income households. Existing law authorizes a maximum density bonus of 35% for a housing development in which 11% or more of the total units are for very low income households. Existing law authorizes a maximum density bonus of 35% for housing developments in which 40% or more of the total units are for persons and families of moderate income.

This bill would include a maximum density bonus for a housing development in which 16% of the total units are for lower income households and would increase the maximum density bonus, to up to 50%, for construction of a housing development in which a greater percentage than that described above of total units are for lower income households, very low income households, and persons and families of moderate income, as specified.
By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

(3) Existing law, for projects in which 100% of the units are for lower income households, as described above, prohibits a city, county, or city and county from imposing any maximum controls on density, and in addition to the above-described incentives or concessions, requires that the applicant receive a specified height increase, if the project is located within ½ mile of a major transit stop, as defined. Existing law also requires, among other criteria for a project to be eligible for various vehicular parking ratios under the Density Bonus Law, as described below, that the project be located within ½ mile of a major transit stop, as defined.

This bill, for purposes of determining whether a project is located within ½ mile of a major transit stop under the Density Bonus Law, would require that the measurement of the distance of a development from a transit stop be measured from any point on the property of the proposed development to any point on the property where the transit stop is located. The bill would also make technical changes with respect to the definition of “major transit stop” under the Density Bonus Law.

(7) Existing law prohibits, except as provided, upon the request of a developer, a city, county, or city and county from requiring a vehicular parking ratio for a development that qualifies for a density bonus that exceeds specified amounts of onsite parking per bedroom. Existing law also specifies the parking ratios applicable to a development that include a maximum percentage of low-income or very low income units, that is located within ½ mile of a transit stop, and that provides unobstructed access to the transit stop from the development.

This bill would decrease the maximum ratio of vehicular parking for developments with 2 to 3 bedrooms, as specified. This bill would define the term “natural or constructed impediments” for purposes of determining whether a development has unobstructed access to a transit stop. The bill would require that the measurement of the distance of a development from a transit stop be measured from any point on the property of the proposed development to any point on the property where the transit stop is located. The bill would authorize a developer to request that a city, county, or city and county not impose vehicular parking standards if the development meets specified affordability requirements and either (A) provides unobstructed access to a major
(B) is a for-rent housing development for individuals who are 62 years of age or older that will have either paratransit service or unobstructed access to a fixed bus route, as specified.

(4) Existing law requires a city, county, or city and county to adopt an ordinance that specifies how it will implement the Density Bonus Law, but provides that failure to adopt an ordinance does not relieve a city, county, or city and county from complying with that law. Existing law also authorizes a city, county, or city and county, if permitted by local ordinance, to grant a density bonus greater than what is described in the Density Bonus Law or to grant a proportionately lower density bonus than what is required by the Density Bonus Law for developments that do not meet the requirements of that law.

This bill, notwithstanding any other law, would provide that a city, county, or city and county that has adopted an ordinance pursuant to the Density Bonus Law that, as of the date immediately prior to the effective date of bill, provides for density bonuses that exceed the density bonuses required by the Density Bonus Law is not required to amend or otherwise update its ordinance to comply with the amendments made by this bill.

(5) By adding to the duties of local planning officials with respect to preparing and submitting the above-described annual report to the Department of Housing and Community Development and awarding density bonuses, 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 65400 of the Government Code is amended to read:

1
2
65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

The report may include the number of units that have been substantially rehabilitated, converted from nonaffordable to affordable by acquisition, and preserved consistent with the standards set forth in paragraph (2) of subdivision (c) of Section
The report shall document how the units meet the standards set forth in that subdivision.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned 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 required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65862.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor's parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (b) of Section 65913.4, the total number of building permits issued pursuant to subdivision (b) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (b) of Section 65913.4.
(J) If the city or county has received funding pursuant to the Local Government Planning Support Grants Program (Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code), the information required pursuant to subdivision (a) of Section 50515.04 of the Health and Safety Code.

(K) The following information with respect to density bonuses granted in accordance with Section 65915:

(i) The number of density bonus applications received by the city or county.

(ii) The number of density bonus applications approved by the city or county.

(iii) Data from a sample of projects, selected by the planning agency, approved to receive a density bonus from the city or county, including, but not limited to, the percentage of density bonus received, the percentage of affordable units in the project, the number of other incentives or concessions granted to the project, and any waiver or reduction of parking standards for the project.

(L) The Department of Housing and Community Development shall post a report submitted pursuant to this paragraph on its internet website within a reasonable time of receiving the report.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court’s order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant
to paragraph (2) of subdivision (a), but no sooner than six months following that adoption:

SECTION 1. Section 65400 of the Government Code, is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

1. Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

2. Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) (i) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(ii) The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government’s compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.
(iii) The report may include the number of units that have been completed pursuant to subdivision (c) of Section 65583.1. For purposes of this paragraph, committed assistance may be executed throughout the planning period, and the program under paragraph (1) of subdivision (c) of Section 65583.1 shall not be required. The report shall document how the units meet the standards set forth in that subdivision.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned 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 required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor’s parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision (a) of Section 65913.4, the location and the total number of developments approved pursuant to subdivision (b) of Section
65913.4, the total number of building permits issued pursuant to subdivision (b) of Section 65913.4, the total number of units including both rental housing and for-sale housing by area median income category constructed using the process provided for in subdivision (b) of Section 65913.4.

(J) If the city or county has received funding pursuant to the Local Government Planning Support Grants Program (Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code), the information required pursuant to subdivision (a) of Section 50515.04 of the Health and Safety Code.

(K) The following information with respect to density bonuses granted in accordance with Section 65915:

(i) The number of density bonus applications received by the city or county.

(ii) The number of density bonus applications approved by the city or county.

(iii) Data from a sample of projects, selected by the planning agency, approved to receive a density bonus from the city or county, including, but not limited to, the percentage of density bonus received, the percentage of affordable units in the project, the number of other incentives or concessions granted to the project, and any waiver or reduction of parking standards for the project.

(L) The Department of Housing and Community Development shall post a report submitted pursuant to this paragraph on its internet website within a reasonable time of receiving the report.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court’s order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the
court may issue further orders as provided by law to ensure that
the purposes and policies of this section are fulfilled. This
subdivision applies to proceedings initiated on or after the first
day of October following the adoption of forms and definitions by
the Department of Housing and Community Development pursuant
to paragraph (2) of subdivision (a), but no sooner than six months
following that adoption.

SEC. 2. Section 65915 of the Government Code is amended
to read:

65915. (a) (1) When an applicant seeks a density bonus for
a housing development within, or for the donation of land for
housing within, the jurisdiction of a city, county, or city and county,
that local government shall comply with this section. A city,
county, or city and county shall adopt an ordinance that specifies
how compliance with this section will be implemented. Except as
otherwise provided in subdivision (s), failure to adopt an ordinance
shall not relieve a city, county, or city and county from complying
with this section.

(2) A local government shall not condition the submission,
review, or approval of an application pursuant to this chapter on
the preparation of an additional report or study that is not otherwise
required by state law, including this section. This subdivision does
not prohibit a local government from requiring an applicant to
provide reasonable documentation to establish eligibility for a
requested density bonus, incentives or concessions, as described
in subdivision (d), waivers or reductions of development standards,
as described in subdivision (e), and parking ratios, as described in
subdivision (p).

(3) In order to provide for the expeditious processing of a density
bonus application, the local government shall do all of the
following:

(A) Adopt procedures and timelines for processing a density
bonus application.

(B) Provide a list of all documents and information required to
be submitted with the density bonus application in order for the
density bonus application to be deemed complete. This list shall
be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the
application is complete in a manner consistent with the timelines
specified in Section 65943.
(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:
   (I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.
   (II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.
   (III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.
   (ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.
(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:
   (A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.
   (B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.
   (C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a
student under this clause shall be verified by an affidavit, award
letter, or letter of eligibility provided by the institution of higher
education that the student is enrolled in, as described in subclause
(I), or by the California Student Aid Commission that the student
receives or is eligible for financial aid, including an institutional
grant or fee waiver, from the college or university, the California
Student Aid Commission, or the federal government shall be
sufficient to satisfy this subclause.
(III) The rent provided in the applicable units of the development
for lower income students shall be calculated at 30 percent of 65
percent of the area median income for a single-room occupancy
unit type.
(IV) The development will provide priority for the applicable
affordable units for lower income students experiencing
homelessness. A homeless service provider, as defined in paragraph
(3) of subdivision (e) of Section 103577 of the Health and Safety
Code, or institution of higher education that has knowledge of a
person’s homeless status may verify a person’s status as homeless
for purposes of this subclause.
(ii) For purposes of calculating a density bonus granted pursuant
to this subparagraph, the term “unit” as used in this section means
one rental bed and its pro rata share of associated common area
facilities. The units described in this subparagraph shall be subject
to a recorded affordability restriction of 55 years.
(G) One hundred percent of the total units, all units in the
development, including total units and density bonus units, but
exclusive of a manager’s unit or units, are for lower income
households, as defined by Section 50079.5 of the Health and Safety
Code, except that up to 20 percent of the total units in the
development, including total units and density bonus
units, may be for moderate-income households, as defined in
Section 50053 of the Health and Safety Code.
(2) For purposes of calculating the amount of the density bonus
pursuant to subdivision (f), an applicant who requests a density
bonus pursuant to this subdivision shall elect whether the bonus
shall be awarded on the basis of subparagraph (A), (B), (C), (D),
(E), (F), or (G) of paragraph (1).
(3) For the purposes of this section, “total units,” “total dwelling
units,” or “total rental beds” does not include units added by a
density bonus awarded pursuant to this section or any local law
granting a greater density bonus.

(c) (1) (A) An applicant shall agree to, and the city, county,
or city and county shall ensure, the continued affordability of all
very low and low-income rental units that qualified the applicant
for the award of the density bonus for 55 years or a longer period
of time if required by the construction or mortgage financing
assistance program, mortgage insurance program, or rental subsidy
program.

(B) (i) Except as otherwise provided in clause (ii), rents for the
lower income density bonus units shall be set at an affordable rent,
as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of
subparagraph (G) of paragraph (1) of subdivision (b), rents for all
units in the development, including both base density and density
bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the
development shall be set at an affordable rent, as defined in Section

(II) The rent for the remaining units in the development shall
be set at an amount consistent with the maximum rent levels for
a housing development that receives an allocation of state or federal
low-income housing tax credits from the California Tax Credit
Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and
county shall ensure that, the initial occupant of all for-sale units
that qualified the applicant for the award of the density bonus are
persons and families of very low, low, or moderate income, as
required, and that the units are offered at an affordable housing
cost, as that cost is defined in Section 50052.5 of the Health and
Safety Code. The local government shall enforce an equity sharing
agreement, unless it is in conflict with the requirements of another
public funding source or law. The following apply to the equity
sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of
any improvements, the downpayment, and the seller’s proportionate
share of appreciation. The local government shall recapture any
initial subsidy, as defined in subparagraph (B), and its proportionate
share of appreciation, as defined in subparagraph (C), which
amount shall be used within five years for any of the purposes
described in subdivision (e) of Section 33334.2 of the Health and
Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government’s
initial subsidy shall be equal to the fair market value of the home
at the time of initial sale minus the initial sale price to the
moderate-income household, plus the amount of any downpayment
assistance or mortgage assistance. If upon resale the market value
is lower than the initial market value, then the value at the time of
the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government’s
proportionate share of appreciation shall be equal to the ratio of
the local government’s initial subsidy to the fair market value of
the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or
any other incentives or concessions under this section if the housing
development is proposed on any property that includes a parcel or
parcels on which rental dwelling units are or, if the dwelling units
have been vacated or demolished in the five-year period preceding
the application, have been subject to a recorded covenant,
ordinance, or law that restricts rents to levels affordable to persons
and families of lower or very low income; subject to any other
form of rent or price control through a public entity’s valid exercise
of its police power; or occupied by lower or very low income
households, unless the proposed housing development replaces
those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units
replaced pursuant to this paragraph, contains affordable units at
the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager’s unit
or units, is affordable to, and occupied by, either a lower or very
low income household.

(B) For the purposes of this paragraph, “replace” shall mean
either of the following:

(i) If any dwelling units described in subparagraph (A) are
occupied on the date of application, the proposed housing
development shall provide at least the same number of units of
equivalent size to be made available at affordable rent or affordable
housing cost to, and occupied by, persons and families in the same
or lower income category as those households in occupancy. If
the income category of the household in occupancy is not known,
it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of
Housing and Urban Development’s Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government’s valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction’s rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction’s rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, “equivalent size” means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant’s application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant.
unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 12 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects that include at least 31 percent of the total units for lower income households, at least 13 percent for very low income households, or at least 31 percent for persons and families of moderate income in a common interest development.
(E) Five incentives or concessions for projects that include at least 33 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 33 percent for persons and families of moderate income in a common interest development.

(F) Six incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney’s fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities
or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county.

If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney’s fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (F) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).
(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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<thead>
<tr>
<th>Percentage Low-Income Units</th>
<th>Percentage Density Bonus</th>
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(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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<tr>
<th>Percentage Very Low Income Units</th>
<th>Percentage Density Bonus</th>
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<tr>
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(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.
For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

<table>
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<tr>
<th>Percentage Moderate-Income Units</th>
<th>Percentage Density Bonus</th>
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(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

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<th>Percentage Very Low Income</th>
<th>Percentage Density Bonus</th>
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(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the
next whole number. Nothing in this subdivision shall be construed
to enlarge or diminish the authority of a city, county, or city and
county to require a developer to donate land as a condition of
development. An applicant shall be eligible for the increased
density bonus described in this subdivision if all of the following
conditions are met:
(A) The applicant donates and transfers the land no later than
the date of approval of the final subdivision map, parcel map, or
residential development application.
(B) The developable acreage and zoning classification of the
land being transferred are sufficient to permit construction of units
affordable to very low income households in an amount not less
than 10 percent of the number of residential units of the proposed
development.
(C) The transferred land is at least one acre in size or of
sufficient size to permit development of at least 40 units, has the
appropriate general plan designation, is appropriately zoned with
appropriate development standards for development at the density
described in paragraph (3) of subdivision (c) of Section 65583.2.
and is or will be served by adequate public facilities and
infrastructure.
(D) The transferred land shall have all of the permits and
approvals, other than building permits, necessary for the
development of the very low income housing units on the
transferred land, not later than the date of approval of the final
subdivision map, parcel map, or residential development
application, except that the local government may subject the
proposed development to subsequent design review to the extent
authorized by subdivision (i) of Section 65583.2 if the design is
not reviewed by the local government before the time of transfer.
(E) The transferred land and the affordable units shall be subject
to a deed restriction ensuring continued affordability of the units
consistent with paragraphs (1) and (2) of subdivision (c), which
shall be recorded on the property at the time of the transfer.
(F) The land is transferred to the local agency or to a housing
developer approved by the local agency. The local agency may
require the applicant to identify and transfer the land to the
developer.
(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.
(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, “study” does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that
results in identifiable and actual cost reductions, to provide for
affordable housing costs, as defined in Section 50052.5 of the
Health and Safety Code, or for rents for the targeted units to be
set as specified in subdivision (c).
(2) Approval of mixed-use zoning in conjunction with the
housing project if commercial, office, industrial, or other land uses
will reduce the cost of the housing development and if the
commercial, office, industrial, or other land uses are compatible
with the housing project and the existing or planned development
in the area where the proposed housing project will be located.
(3) Other regulatory incentives or concessions proposed by the
developer or the city, county, or city and county that result in
identifiable and actual cost reductions to provide for affordable
housing costs, as defined in Section 50052.5 of the Health and
Safety Code, or for rents for the targeted units to be set as specified
in subdivision (c).
(l) Subdivision (k) does not limit or require the provision of
direct financial incentives for the housing development, including
the provision of publicly owned land, by the city, county, or city
and county, or the waiver of fees or dedication requirements.
(m) This section does not supersede or in any way alter or lessen
the effect or application of the California Coastal Act of 1976
(Division 20 (commencing with Section 30000) of the Public
Resources Code). Any density bonus, concessions, incentives,
waivers or reductions of development standards, and parking ratios
to which the applicant is entitled under this section shall be
permitted in a manner that is consistent with this section and
Division 20 (commencing with Section 30000) of the Public
Resources Code.
(n) If permitted by local ordinance, nothing in this section shall
be construed to prohibit a city, county, or city and county from
granting a density bonus greater than what is described in this
section for a development that meets the requirements of this
section or from granting a proportionately lower density bonus
than what is required by this section for developments that do not
meet the requirements of this section.
(o) For purposes of this section, the following definitions shall
apply:
(1) “Development standard” includes a site or construction
condition, including, but not limited to, a height limitation, a
setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Located within one-half mile of a major transit stop” means that any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.

(3) “Major transit stop” has the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(2)

(4) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low income units for housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b) or at least 11 percent very low income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section
21155 of the Public Resources Code, and there is unobstructed
access to the major transit stop from the development, then, upon
the request of the developer, a city, county, or city and county shall
not impose a vehicular parking ratio, inclusive of handicapped and
guest parking, that exceeds 0.5 spaces per unit.

(B) For purposes of this subdivision, a development shall have
unobstructed access to a major transit stop if a resident is able to
access the major transit stop without encountering natural or
constructed impediments. For purposes of this subparagraph,
“natural or constructed impediments” includes, but is not limited
to, freeways, rivers, mountains, and bodies of water, but does not
include residential structures, shopping centers, parking lots, or
rails used for transit.

(C) The distance of a development described in subparagraph
(A) from a major transit stop shall be measured from any point
located on the property of the proposed development to any point
on the property on which the major transit stop is located, including
any parking lot owned by the transit authority or other local agency
operating the major transit stop.

(3) Notwithstanding paragraph (1), if a development consists
solely of rental units, exclusive of a manager’s unit or units, with
an affordable housing cost to lower income families, as provided
in Section 50052.5 of the Health and Safety Code, then, upon the
request of the developer, a city, county, or city and county shall
not impose vehicular parking standards if the development meets
either of the following criteria:

(A) The development is located within one-half mile of a major
transit stop, as defined in subdivision (b) of Section 21155 of the
Public Resources Code, and there is unobstructed access to
the major transit stop from the development.

(B) The development is a for-rent housing development for
individuals who are 62 years of age or older that complies with
Sections 51.2 and 51.3 of the Civil Code and the development has
either paratransit service or unobstructed access, within one-half
mile, to fixed bus route service that operates at least eight times
per day.

(4) Notwithstanding paragraphs (1) and (8), if a development
consists solely of rental units, exclusive of a manager’s unit or
units, with an affordable housing cost to lower income families,
as provided in Section 50052.5 of the Health and Safety Code, and
the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.
(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) Notwithstanding any other law, if a city, county, or city and county has adopted an ordinance pursuant to this section that, as of the date immediately prior to the effective date of the act adding this subdivision, provides for density bonuses that exceed the density bonuses required by this section, that city, county, or city and county is not required to amend or otherwise update its ordinance to comply with the amendments made to this section by the act adding this subdivision.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
Item B-9
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 30, 2020
SUBJECT: Assembly Bill 3107 (Bloom) - Planning and zoning: general plan: housing development

ATTACHMENTS: 1. Summary Memo – AB 3107
2. Bill Text – AB 3107

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 3107 - Planning and zoning: general plan: housing development (AB 3107) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to AB 3107 include, but are not limited to:

- 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.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwiw Schmelzer & Lange, provided a summary memo for AB 3107 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 3107, the Liaisons may recommend the following actions:
1) Support AB 3107;
2) Support if amended AB 3107;
3) Oppose AB 3107;
4) Oppose unless amended AB 3107;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 3107, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
July 21, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schemlzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 3107 (Bloom) Planning and zoning: general plan: housing development

Introduction and Background
Assemblymember Bloom introduced AB 3107 in February 2020. This measure would make housing an authorized use on commercially-zoned land.

Specifically, this measure would:
- Make a housing development an authorized use on a site designated in any element of the general plan for commercial uses, notwithstanding any inconsistent provision of a city’s or county’s general plan, specific plan, zoning ordinance, or regulation, if the following apply:
  - At least 20 percent of the units are subject to a deed restriction requiring them to be affordable to lower income households;
  - The site is not adjacent to any site that is an industrial use, including, but not limited to, utilities, manufacturing, wholesale trade, transportation, and warehousing; and
  - At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.
- The restrictions provided in this measure are only applicable until the jurisdiction has completed the rezone required by the 6th revision of its housing element.
- This measure includes a sunset of January 1, 2030.
- Within the text, this measure finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, and therefore this provision would apply to all cities, including charter cities.
- Finally, this measure provides that no reimbursement is required by the 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 act.

The cost of housing in California is twice the national average, and higher than any state excluding Hawai‘i. Only 28 percent of households can buy the median priced home. Over half of renters and 80 percent of low-income renters are rent-burdened, meaning they pay over 30 percent of their income towards rent. According to a 2016 McKinsey Global Institute, every year Californians pay $50 billion more for housing than they are able to afford.

According to Up for Growth’s 2018 analysis, housing underproduction is rampant throughout the United States, but California’s underproduction is greater than the other 49 states combined. According to the 2016 McKinsey study, California’s housing deficit is over two million units, and
that it would require production of 500,000 units a year (3.5 million units total) over a seven-year period to normalize the state’s housing prices. According to HCD, there needs to be 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years. According to the Legislative Analyst Office, “a collection of factors drive California’s high cost of housing. First and foremost, far less housing has been built in California’s coastal areas than people demand. As a result, households bid up the cost of housing in coastal regions. In addition, some of the unmet demand to live in coastal areas spill over into inland California, driving up prices there too.

A major reason for insufficient units being built is that they are not allowed under local zoning. A 2019 Terner Center survey of California cities and counties revealed only 7 percent of cities and counties zoned over half their land for multi-family housing and only 35 percent zoned even 25 percent of their land for multi-family housing.

Housing element law requires local jurisdictions to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. The amount of housing required to be planned for is established by the Regional Housing Needs Allocation (RHNA) process. For all but the state’s most rural areas, this process occurs on an eight-year cycle, during which the state determines the anticipated population growth and then assigns a growth target to the state’s regions, which then assign them to the jurisdictions therein.

Upon receiving its RHNA, each jurisdiction must then demonstrate through its housing element that the development capacity exists to accommodate, at a minimum, the allocation for each of the housing in four income categories. The housing elements in the state’s major metropolitan areas are all due for completion in 2021 or 2022 as part of the “6th revision” of housing elements. Each jurisdiction then has three years to complete any rezoning necessary to accommodate the units identified in their housing element and the site inventory then identifies where potential development would occur.

In the period between the 5th and 6th revisions of the housing element, changes were made to the RHNA process to ensure that housing needs reflected not just current demand, but unmet demand as well. As such, throughout the state, many cities and counties have been required to plan for substantially more growth than before. Upon completion of this cycle of housing element revisions, the state is expected to have sufficiently zoned land to accommodate the housing deficit discussed above.

This measure intends to help facilitate the production of more housing by increasing the sites available to be developed for residential uses to include those currently zoned or otherwise designated in a city or county’s general plan only for commercial uses. Any development resulting from this measure will result in a substantial public benefit by requiring that 20 percent of units are affordable to low-income households.

This measure includes parameters for residential building and development standards that might otherwise be absent on a site not zoned for housing, including limits on buildings height, overall mass, and density of dwelling units. The city or county may apply any other design standard as long as they do not reduce the development capacity of density established by this measure.

This measure would only be applicable to a city or county until it has completed the rezoning required for the 6th revision of its housing element. As discussed above, upon completion of this revision and accompanying rezonings, cities and counties are expected to have provided zoning to accommodate their share of the housing to address the state’s backlog of units.
The League of California Cities currently has a Watch position on this bill.

**Status of Legislation**
This bill is currently pending in the Senate Housing Committee.

**Support**
California Housing Consortium (Co-Sponsor)
Southern California Association of Nonprofit Housing (Co-Sponsor)
All Home
California Apartment Association
California Community Builders
California Housing Partnership Corporation
California YIMBY
Chan Zuckerberg Initiative
East Bay for Everyone
East Bay Housing Organization
Facebook
Los Angeles Business Council
Non-Profit Housing Association of Northern California
Orange County Business Council
PATH
San Francisco Foundation
SV@HOME
Silicon Valley Community Foundation
TODCO Group
8 Individuals

**Opposition**
New Livable California Dba Livable California
Attachment 2
An act to add and repeal Section 65583.7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 3107, as amended, Bloom. Planning and zoning: general plan: commercial zoning: housing development.

The Planning and Zoning Law requires that the legislative body of each county and each city adopt a comprehensive, long-term general plan for the physical development of the county and city, and specified land outside its boundaries, that includes, among other mandatory elements, a housing element. That law requires that the housing element include, among other things, an inventory of land suitable and available for residential development, as provided. If that inventory does not identify adequate sites to accommodate the need for groups of all household income levels, as specified, existing law requires the city or county to zone those sites within specified periods. That law also authorizes the legislative body of any county or city, pursuant to specified procedures, to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, open space, and other purposes.
This bill, notwithstanding any inconsistent provision of a city’s or county’s general plan, specific plan, zoning ordinance, or regulation, would require that a housing development be an authorized use on a site designated in any element of the general plan local agency’s zoning code for commercial uses if certain conditions apply. Among these conditions, the bill would require that the housing development be subject to a recorded deed restriction requiring that at least 20% of the units have an affordable housing cost or affordable rent for lower income households, as those terms are defined, and located on a site that satisfies specified criteria. The bill would require the city or county to apply certain height, density, and floor area ratio standards to a housing development that meets these criteria. The bill would deem a housing development consistent, compliant, and in conformity with local development standards, zoning codes, and general plan if it meets the requirements of the bill. The bill would require a jurisdiction to comply with these requirements only until it has completed the rezoning, required as described above, for the 6th revision of its housing element. The bill would repeal these provisions as of January 1, 2030.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

By adding to the duties of local planning officials, the 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 65583.7 is added to the Government Code, to read:

65583.7. (a) Notwithstanding any inconsistent provision of a city’s or county’s general plan, specific plan, zoning ordinance, or regulation, and subject to subdivision (c), a housing development shall be an authorized use on a site designated in any element of
the general plan local agency's zoning code for commercial uses if all of the following apply:

(1) The housing development is subject to a recorded deed restriction requiring that at least 20 percent of the units have an affordable housing cost or affordable rent for lower income households.

(2) The site of the housing development satisfies both of the following:

(A) The site of the housing development is not adjacent to any site that is an industrial use.

(B) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For purposes of this subparagraph, parcels that are only separated by a street or highway shall be considered to be adjoined.

(b) (1) A city or county shall apply the following development standards to a housing development that meets the criteria in subdivision (a), unless existing applicable zoning standards of the city or county are less restrictive:

(A) The height limit applicable to the housing development shall be the greatest of the following:

(i) The highest allowed height for the site of the housing development.

(ii) The highest allowed height for a commercial or residential use within one-half mile of the site of the housing development.

(iii) Thirty-six feet.

(B) The maximum allowable floor area ratio of the housing development shall be not less than 0.6 times the number of stories that complies with the height limit under clause (i) of subdivision (A).

(C) The density limit applicable to the housing development shall be the greater of the following:

(i) The greatest allowed density for a mixed use or residential use within one-half mile of the site of the housing development.

(ii) The applicable density deemed appropriate to accommodate housing for lower income households identified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(2) In addition, the housing development shall comply with any applicable design standards of the city or county to the extent that those design standards do not prohibit the maximum height limit, density, or floor area ratio allowed under this section.
(3) Notwithstanding any other provision of this section, a developer of a housing development allowed in accordance with this section may apply for a density bonus pursuant to Section 65915.

(4) A housing development shall be deemed consistent, compliant, and in conformity with local development standards, zoning codes, and the general plan if it meets the requirements of this section.

(c) For purposes of this section:

(1) “Affordable housing cost” has the same meaning as defined in Section 50052.5 of the Health and Safety Code.

(2) “Affordable rent” has the same meaning as defined in Section 50053 of the Health and Safety Code.

(3) “Greatest allowed density” means the maximum allowable gross residential density, including any density that requires conditional approval, allowable under local zoning, including the zoning ordinances and any specific plan adopted by the applicable city or county that apply to the site of the housing development.

(4) “Highest allowable height” means the tallest height, including any height that requires conditional approval, allowable under local zoning, including the zoning ordinances and any specific plan adopted by the applicable city or county that apply to the site of the housing development.

(5) “Industrial use” includes, but is not limited to, utilities, manufacturing, wholesale trade, transportation, and warehousing.

(6) “Lower income households” has the same meaning as defined in Section 50079.5 of the Health and Safety Code.

(d) A jurisdiction shall only be subject to this section until it has completed the rezoning required by Section 65583 for the 6th revision of its housing element pursuant to this article.

(e) The Legislature finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

(f) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service
charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
Item B-10
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 30, 2020
SUBJECT: Assembly Bill 3279 (Friedman) - California Environmental Quality Act: administrative and judicial procedures

ATTACHMENTS: 1. Summary Memo – AB 3279
2. Bill Text – AB 3279

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 3279 - California Environmental Quality Act: administrative and judicial procedures (AB 3279) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 3279 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 3279, the Liaisons may recommend the following actions:

1) Support AB 3279;
2) Support if amended AB 3279;
3) Oppose AB 3279;
4) Oppose unless amended AB 3279;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 3279, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 23, 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 3279 (Friedman) California Environmental Quality Act: administrative and judicial procedures

Introduced and Background
AB 3279 was introduced by Assembly Member Laura Friedman and would revise California Environmental Quality Act (CEQA) litigation procedures.

Specifically, this bill would:
- Reduce the deadline for a court to commence hearings from one year to 270 days.
- Authorizes a court to issue an interlocutory remand, if certain findings are made.
- Require a public agency to prepare the record of proceedings concurrently with the administrative process, as specified;
  - If the record proceeding is not prepared concurrently with the administrative process, the bill would authorize the public agency to deny the request of the plaintiff or petitioner to prepare the record of the proceedings, as provided, in which case the bill would require the public agency or the real party in interest to bear the costs of preparation and certification of the record of proceedings and would prohibit the recovery of those costs from the plaintiff or petitioner.
  - If the record of proceedings is not prepared concurrently with the administrative process, the bill would require the court to schedule a case management conference within 30 days of the filing of an action to review the scope, timing, and cost of the record of proceedings.

According to the author, AB 3279 addresses common delays in litigation over CEQA actions to promote swifter and more efficient resolution of lawsuits regarding all projects.

Status of Legislation
This bill is currently pending in the Senate Environmental Quality Committee.

Support and Opposition
Supporters argue that this bill would make incremental improvements to the CEQA process that will allow more housing and other land use projects to be built with less unnecessary delays. Specifically, the bill would authorize courts to hear CEQA appeals sooner, reduce the time parties take to file petitions, expedite the preparation of the administrative record, and authorize courts to issue interlocutory remand orders instead of setting aside project approvals and forcing applicants to start the process all over again.
Labor, environmental, and environmental justice advocates, typically aligned with CEQA petitioners, believe the bill unnecessarily expedites an already expedited judicial review process for CEQA cases, restricting petitioners' rights to seek judicial review. They also state that the current 90-day briefing schedule is already demanding for petitioners and 60 days is too short. Lastly, they state that interlocutory remand may prevent petitioners from obtaining a final judgment necessary to then file an appeal, and is unnecessary because CEQA already requires a writ to include only those mandates that are necessary to achieve compliance with CEQA.

Formally registered support and opposition is based on the May 11, 2020 version of the bill. The bill has since been amended; however, some of the arguments in support and opposition are still relevant to the bill currently in print.

**Support**

Auto Care Association  
Bay Area Council  
Bay Area Housing Advocacy Coalition  
Building Owners and Managers Association of California  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce  
California Community Builders  
California Port Authority  
California Yimby  
CAWA - Representing the Automotive Parts Industry  
City of Los Angeles, Mayor Eric Garcetti  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce

**Opposition**

California Environmental Justice Alliance  
Center on Race, Poverty & the Environment  
Communities for a Better Environment  
Leadership Counsel for Justice & Accountability  
Physicians for Social Responsibility - Los Angeles  
Sierra Club California  
State Building and Construction Trades Council of California
Attachment 2
Introduction by Assembly Member Friedman

February 21, 2020

An act to amend Sections 21167, 21167.1, 21167.4, 21167.6, 21167.8, and 21168.9 of, and to repeal Sections 21168.6.5, 21168.7, 21168.6.6, 21170, and 21171 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 3279, as amended, Friedman. California Environmental Quality Act: administrative and judicial procedures.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

Among other changes, this bill would repeal certain obsolete and duplicative provisions from CEQA and make nonsubstantive changes to certain other provisions.
(2) CEQA requires that all courts in which specified CEQA actions or proceedings are pending give those actions or proceedings preference over all other civil actions, including regulating the briefing schedule so that, to the extent feasible, a court commences hearings on an appeal within one year of the date of the filing of the appeal.

This bill would instead require that a court, to the extent feasible, commence hearings on an appeal within 270 days of the date of the filing of the appeal.

(3) CEQA requires in any action or proceeding alleging noncompliance with its provisions that the petitioner request a hearing within 90 days from the date of filing the petition, or the action or proceeding will be subject to dismissal, as specified. CEQA also requires that upon the filing of the request by the petitioner for a hearing and upon application by any party that the court establish a briefing schedule and a hearing date so that briefing is generally completed within 90 days from the date that the request for a hearing is filed, with certain exceptions.

This bill would reduce the general period in which briefing should be completed from 90 to 60 days from the date that the request for a hearing is filed.

(4) CEQA provides that in certain specified actions or proceedings, the plaintiff or petitioner may elect to prepare the record of proceedings, subject to certification of its accuracy by the public agency.

This bill would require the public agency, to the extent feasible, to prepare the record of proceedings concurrently with the administrative process, as specified. If the record of proceedings is not prepared concurrently with the administrative process, the bill would authorize a plaintiff or petitioner to prepare the record of proceedings only when requested to do so by the public agency. The public agency to deny the request of the plaintiff or petitioner to prepare the record of proceedings, as provided, in which case the bill would require the public agency or the real party in interest to bear the costs of preparation and certification of the record of proceedings and would prohibit the recovery of those costs from the plaintiff or petitioner. If the record of proceedings is not prepared concurrently with the administrative process, the bill would require the court to schedule a case management conference within 30 days of the filing of an action to review the scope, timing, and cost of the record of proceedings.

(5) CEQA establishes specified administrative and judicial review procedures for the administrative and judicial review of the EIR and
approvals granted for a project related to the development of a specified football stadium and the modernization of the downtown convention center in the City of Los Angeles. For a project related to an entertainment and sports center in the City of Sacramento. CEQA requires the lead agency and applicant to implement specified measures, as a condition of approval of those projects.

This bill would repeal those provisions.

(6) CEQA requires a court to make specified remedial orders if it finds that any determination, finding, or decision of a public agency has been made without compliance with CEQA.

This bill would authorize a court to issue an interlocutory remand order if the court finds both that the order would promote judicial efficiency and expedition, and the public agency’s reconsideration on remand comports with due process and is not likely to result in a post hoc rationalization of the public agency’s actions. The bill would specify that these provisions do not prevent a court from entering a final judgment, affect the right of the parties to appeal that judgment, or affect the appropriate determination of attorney’s fees pursuant to a specified statute.


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

SECTION 1. Section 21167 of the Public Resources Code is amended to read:

21167. An action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency’s decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(b) An action or proceeding alleging that a public agency has improperly determined whether a project may have a significant
effect on the environment shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) An action or proceeding alleging that an environmental impact report does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) An action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency’s decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(e) An action or proceeding alleging that another act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 before the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency’s action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid. The date upon which this notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and (e).

SEC. 2. Section 21167.1 of the Public Resources Code is amended to read:

21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give
the action or proceeding preference over all other civil actions, in
the matter of setting the action or proceeding for hearing or trial,
and in hearing or trying the action or proceeding, so that the action
or proceeding shall be quickly heard and determined. The court
shall regulate the briefing schedule so that, to the extent feasible,
the court shall commence hearings on an appeal within 270 days
of the date of the filing of the appeal.

(b) To ensure that actions or proceedings brought pursuant to
Sections 21167, 21168, and 21168.5 may be quickly heard and
determined in the lower courts, the superior courts in all counties
with a population of more than 200,000 shall designate one or
more judges to develop expertise in this division and related land
use and environmental laws, so that those judges will be available
to hear, and quickly resolve, actions or proceedings brought
pursuant to Sections 21167, 21168, and 21168.5.

(c) In an action or proceeding filed pursuant to this chapter that
is joined with any other cause of action, the court, upon a motion
by any party, may grant severance of the actions. In determining
whether to grant severance, the court shall consider such matters
as judicial economy, administrative economy, and prejudice to
any party.

SEC. 3. Section 21167.4 of the Public Resources Code is
amended to read:

21167.4. (a) In any action or proceeding alleging
noncompliance with this division, the petitioner shall request a
hearing within 90 days from the date of filing the petition or shall
be subject to dismissal on the court's own motion or on the motion
of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing
on all parties at the time that the petitioner files the request for a
hearing.

(c) Upon the filing of a request by the petitioner for a hearing
and upon application by any party, the court shall establish a
briefing schedule and a hearing date. In the absence of good cause,
briefing shall be completed within 60 days from the date that the
request for a hearing is filed, and the hearing, to the extent feasible,
shall be held within 30 days thereafter. Good cause may include,
but shall not be limited to, the conduct of discovery, determination
of the completeness of the record of proceedings, the complexity
of the issues, and the length of the record of proceedings and the
timeliness of its production. The parties may stipulate to a briefing
schedule or hearing date that differs from the schedule set forth in
this subdivision if the stipulation is approved by the court.

SEC. 4. Section 21167.6 of the Public Resources Code is
amended to read:

21167.6. Notwithstanding any other law, in all actions or
proceedings brought pursuant to Section 21167, except as provided
in Section 21167.6.2 or those involving the Public Utilities
Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff
or petitioner shall file a request that the respondent public agency
prepare the record of proceedings relating to the subject of the
action or proceeding. The request, together with the complaint or
petition, shall be served personally upon the public agency not
later than 10 business days from the date that the action or
proceeding was filed.

(b) (1) (A) The public agency shall prepare and certify the
record of proceedings not later than 60 days from the date that the
request specified in subdivision (a) was served upon the public
agency. To the extent feasible, the public agency shall prepare
and certify the record of proceedings concurrently with the
administrative process in a manner consistent with subparagraphs
(B) to (G), inclusive, of paragraph (1) of subdivision (a) of Section
21167.6.2. Upon certification, the public agency shall lodge a
electronic copy of the record of proceedings with the court and
shall serve on the parties notice that the record of proceedings has
been certified and lodged with the court. The parties shall pay any
reasonable costs or fees imposed for the preparation of the record
of proceedings in conformance with any law or rule of court.

(B) If the record of proceedings is not prepared concurrently
with the administrative process, the court shall schedule a case
management conference within 30 days of the filing of the
complaint or petition pursuant to this division to review the scope,
timing, and cost of the record of proceedings. The parties may
stipulate to a partial record of proceedings that does not contain
all the documents listed in subdivision (e) if approved by the court.

(2) Upon request of the public agency, if the record of
proceedings is not prepared concurrently with the administrative
process, the plaintiff or petitioner may elect to prepare the record
of proceedings by providing a notice of the election to the public
agency.

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agency, or the parties may agree to an alternative method of
preparation of the record of proceedings, subject to certification
of its accuracy by the public agency, within the 60-day time limit
specified in this subdivision.

(3) Notwithstanding paragraph (2), the public agency, within
time of the notice specified in paragraph
(2), may deny the request of the plaintiff or petitioner to prepare
the record of proceedings, in which case the public agency or the
real party in interest shall bear the costs of preparation and
certification of the record of proceedings, and those costs shall
not be recoverable from the plaintiff or petitioner.

(c) The time limit established by subdivision (b) may be
extended only upon the stipulation of all parties who have been
properly served in the action or proceeding or upon order of the
court. Extensions shall be liberally granted by the court when the
size of the record of proceedings renders infeasible compliance
with that time limit. There is no limit on the number of extensions
that may be granted by the court, but no single extension shall
exceed 60 days unless the court determines that a longer extension
is in the public interest.

(d) If the public agency fails to prepare and certify the record
of proceedings within the time limit established in paragraph (1)
of subdivision (b), or any continuances of that time limit, the
plaintiff or petitioner may move for sanctions, and the court may,
upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited
to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the
respondent public agency with respect to its compliance with the
substantive and procedural requirements of this division and with
respect to the action on the project.

(3) All staff reports and related documents prepared by the
respondent public agency and written testimony or documents
submitted by any person relevant to any findings or statement of
overriding considerations adopted by the respondent agency
pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the
decisionmaking body of the respondent public agency heard
testimony on, or considered any environmental document on, the
project, and any transcript or minutes of proceedings before any
advisory body to the respondent public agency that were presented
to the decisionmaking body before action on the environmental
documents or on the project.

(5) All notices issued by the respondent public agency to comply
with this division or with any other law governing the processing
and approval of the project.

(6) All written comments received in response to, or in
connection with, environmental documents prepared for the project,
including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or
transferred from, the respondent public agency with respect to
compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the
decisionmaking body of the respondent public agency by its staff,
or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision,
including the final environmental impact report, mitigated negative
declaration, or negative declaration, and all documents, in addition
to those referenced in paragraph (3), cited or relied on in the
findings or in a statement of overriding considerations adopted
pursuant to this division.

(10) Any other written materials relevant to the respondent
public agency’s compliance with this division or to its decision on
the merits of the project, including the initial study, any drafts of
any environmental document, or portions thereof, that have been
released for public review, and copies of studies or other documents
relied upon in any environmental document prepared for the project
and either made available to the public during the public review
period or included in the respondent public agency’s files on the
project, and all internal agency communications, including staff
notes and memoranda related to the project or to compliance with
this division.

(11) The full written record before any inferior administrative
decisionmaking body whose decision was appealed to a superior
administrative decisionmaking body before the filing of litigation.

(f) In preparing the record of proceedings, the party preparing
the record of proceedings shall strive to do so at reasonable cost
in light of the scope of the record of proceedings.
(g) The clerk of the superior court shall prepare and certify the clerk’s transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk’s transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk’s transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 8.124 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 5. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute that forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in
nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues that the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

SEC. 6. Section 21168.6.5 of the Public Resources Code is repealed.

SEC. 7. Section 21168.7 of the Public Resources Code is repealed.

SEC. 7. Section 21168.6.6 of the Public Resources Code is repealed.

21168.6.6. (a) For the purposes of this section, the following definitions shall have the following meanings:

(1) “Applicant” means a private entity or its affiliates that proposes the project and its successors, heirs, and assignees.

(2) “City” means the City of Sacramento.
(3) “Downtown arena” means the following components of the entertainment and sports center project from demolition and site preparation through operation:

(A) An arena facility that will become the new home to the City of Sacramento’s National Basketball Association (NBA) team that does both of the following:

(i) Receives Leadership in Energy and Environmental Design (LEED) gold certification for new construction within one year of completion of the first NBA season.

(ii) Minimizes operational traffic congestion and air quality impacts through either or both project design and the implementation of feasible mitigation measures that will do all of the following:

(I) Achieve and maintain carbon neutrality or better by reducing to at least zero the net emissions of greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code, from private automobile trips to the downtown arena as compared to the baseline as verified by the Sacramento Metropolitan Air Quality Management District.

(II) Achieve a per–attendee–reduction in greenhouse–gas emissions from automobiles and light trucks compared to per attendee greenhouse gas emissions associated with the existing arena during the 2012–13 NBA season that will exceed the carbon reduction targets for 2020 and 2035 achieved in the sustainable communities strategy prepared by the Sacramento Area Council of Governments for the Sacramento region pursuant to Chapter 728 of the Statutes of 2008.

(III) Achieve and maintain vehicle miles traveled per attendee for NBA events at the downtown arena that is no more than 85 percent of the baseline.

(B) Associated public spaces.

(C) Facilities and infrastructure for ingress, egress, and use of the arena facility.

(4) “Entertainment and sports center project” or “project” means a project that substantially conforms to the project description for the entertainment and sports center project set forth in the notice of preparation released by the City of Sacramento on April 12, 2013.

(b) (1) The city may prosecute an eminent domain action for 545 and 600 K Street, Sacramento, California, and surrounding
publicly accessible areas and rights-of-way within 200 feet of 600 K Street, Sacramento, California, through order of possession pursuant to the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure) prior to completing the environmental review under this division.

(2) Paragraph (1) shall not apply to any other eminent domain actions prosecuted by the City of Sacramento or to eminent domain actions based on a finding of blight.

(e) Notwithstanding any other law, the procedures established pursuant to subdivision (d) shall apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any project approvals.

(d) On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings pursuant to subdivision (f).

(e) (1) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:

THIS EIR IS SUBJECT TO SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE. A COPY OF SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

(2) The draft environmental impact report and final environmental impact report shall contain, as an appendix, the full text of this section.
(3) Within 10 days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

(4) Within 10 days before the close of the public comment period, the lead agency shall hold a public hearing to receive testimony on the draft environmental impact report. A transcript of the hearing shall be included as an appendix to the final environmental impact report.

(5) (A) Within five days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation. The lead agency and applicant shall participate in nonbinding mediation with all commenters who submitted timely comments on the draft environmental impact report and who requested the mediation. Mediation conducted pursuant to this paragraph shall end no later than 35 days after the close of the public comment period.

(B) A request for mediation shall identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

(C) The lead agency shall select one or more mediators who shall be retired judges or recognized experts with at least five years experience in land use and environmental law or science, or experience in land use and environmental law or science or mediation. The applicant shall bear the costs of mediation.

(D) A mediation session shall be conducted on each area of dispute with the parties requesting mediation on that area of dispute.

(E) The lead agency shall adopt, as a condition of approval, any measures agreed upon by the lead agency, the applicant, and any commenter who requested mediation. A commenter who agrees to a measure pursuant to this subparagraph shall not raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency’s decision to certify the environmental impact report or to grant one or more initial project approvals.

(6) The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

(A) New issues raised in the response to comments by the lead agency.
(B) New information released by the public agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.

(C) Changes made to the project after the close of the public comment period.

(D) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting and monitoring program required by paragraph (1) of subdivision (a) of Section 24081.6, where the lead agency releases those documents subsequent to the release of the draft environmental impact report.

(E) New information that was not reasonably known and could not have been reasonably known during the public comment period.

(7) The lead agency shall file the notice required by subdivision (a) of Section 21152 within five days after the last initial project approval.

(f)(1) The lead agency shall prepare and certify the record of the proceedings in accordance with this subdivision and in accordance with Rule 3.1365 of the California Rules of Court. The applicant shall pay the lead agency for all costs of preparing and certifying the record of proceedings.

(2) No later than three business days following the date of the release of the draft environmental impact report, the lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to or relied on by the lead agency in the preparation of the draft environmental impact report. A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is prepared or received by the lead agency.

(3) Notwithstanding paragraph (2), documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date
of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(4) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format; and shall make any such comment available to the public in a readily accessible electronic format within five days of its receipt.

(5) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(6) The lead agency shall indicate in the record of the proceedings comments received that were not considered by the lead agency pursuant to paragraph (6) of subdivision (e) and need not include the content of the comments as a part of the record.

(7) Within five days after the filing of the notice required by subdivision (a) of Section 21152, the lead agency shall certify the record of the proceedings for the approval or determination and shall provide an electronic copy of the record to a party that has submitted a written request for a copy. The lead agency may charge and collect a reasonable fee from a party requesting a copy of the record for the electronic copy, which shall not exceed the reasonable cost of reproducing that copy.

(8) Within 10 days after being served with a complaint or a petition for a writ of mandate, the lead agency shall lodge a copy of the certified record of proceedings with the superior court.

(9) Any dispute over the content of the record of the proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(10) The contents of the record of proceedings shall be as set forth in subdivision (c) of Section 21167.6.

(g) (1) As a condition of approval of the project subject to this section, the lead agency shall require the applicant, with respect to any measures specific to the operation of the downtown arena, to implement those measures that will meet the requirements of
this division by the end of the first NBA regular season or June of the first NBA regular season, whichever is later, during which an NBA team has played at the downtown arena.

(2) To maximize public health, environmental, and employment benefits, the lead agency shall place the highest priority on feasible measures that will reduce greenhouse gas emissions on the downtown arena site and in the neighboring communities of the downtown arena. Mitigation measures that shall be considered and implemented, if feasible and necessary, to achieve the standards set forth in subclauses (I) to (III), inclusive, of clause (ii) of subparagraph (A) of paragraph (3) of subdivision (a), including, but not limited to:

(A) Temporarily expanding the capacity of a public transit line, as needed, to serve downtown arena events.

(B) Providing private charter buses or other similar services, as needed, to serve downtown arena events.

(C) Paying its fair share of the cost of measures that expand the capacity of a public fixed or light rail station that is used by spectators attending downtown arena events.

(3) Offset credits shall be employed by the applicant only after feasible local emission reduction measures have been implemented. The applicant shall, to the extent feasible, place the highest priority on the purchase of offset credits that produce emission reductions within the city or the boundaries of the Sacramento Metropolitan Air Quality Management District.

(h) (1) (A) In granting relief in an action or proceeding brought pursuant to this section, the court shall not stay or enjoin the construction or operation of the downtown arena unless the court finds either of the following:

(i) The continued construction or operation of the downtown arena presents an imminent threat to the public health and safety.

(ii) The downtown arena site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the downtown arena unless the court stays or enjoins the construction or operation of the downtown arena.

(B) If the court finds that clause (i) or (ii) is satisfied, the court shall only enjoin those specific activities associated with the downtown arena that present an imminent threat to public health
and safety or that materially, permanently, and adversely affect
unforeseen important Native American artifacts or unforeseen
important historical, archaeological, or ecological values.

(2) An action or proceeding to attack, set aside, void, or annul
a determination, finding, or decision of the lead agency granting
a subsequent project approval shall be subject to the requirements
of Chapter 6 (commencing with Section 21165).

(3) Where an action or proceeding brought pursuant to this
section challenges aspects of the project other than the downtown
arena and those portions or specific project activities are severable
from the downtown arena, the court may enter an order as to
aspects of the project other than the downtown arena that includes
one or more of the remedies set forth in Section 21168.9.

(i) The provisions of this section are severable. If any provision
of this section 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.

(j) (1) This section does not apply to the project and shall
become inoperative on the date of the release of the draft
environmental impact report and is repealed on January 1 of the
following year if the applicant fails to notify the lead agency prior
to the release of the draft environmental impact report for public
comment that the applicant is electing to proceed pursuant to this
section.

(2) The lead agency shall notify the Secretary of State if the
applicant fails to notify the lead agency of its election to proceed
pursuant to this section.

SEC. 8. Section 21168.9 of the Public Resources Code is
amended to read:

21168.9. (a) If a court finds, as a result of a trial, hearing, or
remand from an appellate court, that any determination, finding,
or decision of a public agency has been made without compliance
with this division, the court shall enter an order that includes one
or more of the following:

(1) A mandate that the determination, finding, or decision be
voided by the public agency, in whole or in part.

(2) If the court finds that a specific project activity or activities
will prejudice the consideration or implementation of particular
mitigation measures or alternatives to the project, a mandate that
the public agency and any real parties in interest suspend any or
all specific project activity or activities, pursuant to the
determination, finding, or decision, that could result in an adverse
change or alteration to the physical environment, until the public
agency has taken any actions that may be necessary to bring the
determination, finding, or decision into compliance with this
division.

(3) A mandate that the public agency take specific action as
may be necessary to bring the determination, finding, or decision
into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only
those mandates that are necessary to achieve compliance with this
division and only those specific project activities in noncompliance
with this division. The order shall be made by the issuance of a
peremptory writ of mandate specifying what action by the public
agency is necessary to comply with this division. However, the
order shall be limited to that portion of a determination, finding,
or decision or the specific project activity or activities found to be
in noncompliance only if a court finds that (1) the portion or
specific project activity or activities are severable, (2) severance
will not prejudice complete and full compliance with this division,
and (3) the court has not found the remainder of the project to be
in noncompliance with this division. The trial court shall retain
jurisdiction over the public agency’s proceedings by way of a
return to the peremptory writ until the court has determined that
the public agency has complied with this division.

(c) (1) A court may issue an interlocutory remand order if the
court finds both of the following:

(A) The order would promote judicial efficiency and expedition.

(B) The public agency’s reconsideration on remand comports
with due process and is not likely to result in a post hoc
rationalization of the public agency’s actions.

(2) This subdivision shall not prevent a court from entering a
final judgment, affect the right of parties to appeal that judgment,
or affect the appropriate determination of attorney’s fees pursuant
to Section 1021.5 of the Code of Civil Procedure.

(d) Nothing in this section authorizes a court to direct any public
agency to exercise its discretion in any particular way. Except as
expressly provided in this section, nothing in this section is
intended to limit the equitable powers of the court.
SEC. 9. Section 21170 of the Public Resources Code is repealed.
SEC. 10. Section 21171 of the Public Resources Code is repealed.
Item B-11
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 30, 2020
SUBJECT: Senate Bill 431 (McGuire) - Mobile telephony service base transceiver station towers: communications infrastructure: performance reliability standards
ATTACHMENTS: 1. Summary Memo – SB 431
2. Bill Text – SB 431

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 431 - Mobile telephony service base transceiver station towers: communications infrastructure: performance reliability standards (SB 431) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language. The City Council has expressed an interest in maintaining communications during a disaster, as such, this item is being brought to the Legislative/Lobby Committee for direction.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 431 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 431, the Liaisons may recommend the following actions:

1) Support SB 431;
2) Support if amended SB 431;
3) Oppose SB 431;
4) Oppose unless amended SB 431;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 431, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 22, 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 431 (McGuire) Telecommunications service: backup electrical supply rules

Introduced and Background
SB 431 was introduced by Senator McGuire and would require the Public Utilities Commission (PUC), in consultation with the Office of Emergency Services and the telecommunications industry, to develop and implement backup electrical supply rules for telecommunications service that is provided within a commission-designated Tier 2 or Tier 3 High Fire Threat District by July 1, 2021.

Specifically, this bill would:

- Require the backup power rules do the following;
  - For mobile telephony service, require the provision of backup power where feasible to maintain minimum service for at least 72 hours, which may be achieved using best practices;
  - For telecommunications service, other than mobile telephony service, require the provision of backup power where feasible to maintain minimum service for at least 72 hours for each of the following customers:
    - An emergency communication dispatch center,
    - An emergency operations center,
    - A federally-qualified health center,
    - A fire station,
    - A general acute care hospital,
    - A police station, California Highway Patrol office, or sheriff’s office,
    - A rural health clinic, and
    - A utility.

- Upon notification from an electric utility of a deenergization event, require a mobile telephony service provider and a Voice over Internet Protocol provider to notify its customers that access to 911 emergency services and emergency notifications may be impacted.
- Provide the PUC with the ability to waive or delay implementation if it is determined that a mobile telephony service provider or provider of Voice over Internet Protocol meets certain conditions.

Status of Legislation
This bill is set to be heard in the Assembly Communications and Conveyance Committee on July 28.

Support and Opposition
There is no formally registered support or opposition to the bill.
Attachment 2
An act to add Section 776.2 to the Public Utilities Code, relating to communications.

**LEGISLATIVE COUNSEL’S DIGEST**


Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop and implement performance reliability standards for backup power systems installed on the property of residential and small commercial customers by a facilities-based provider of telephony services upon determining that the benefits of the standards exceed the costs.

This bill would require the commission, in consultation with the Office of Emergency Services, Services and the telecommunications
industry, by July 1, 2021, to develop and implement performance reliability standards, backup electrical supply rules, as specified, for all mobile telephony service base transceiver station towers, commonly known as “cell towers,” and for all infrastructure for providing mobile telephony service, Voice over Internet Protocol service, Internet Protocol enabled service, and cable television service that is located telecommunications service, as defined, that is provided within a commission-designated Tier 2 or Tier 3 High Fire Threat District, or that affects those towers or that infrastructure within such a district.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing the bill’s requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

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.

State-mandated local program: yes.

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

SECTION 1. Section 776.2 is added to the Public Utilities Code, to read:

776.2. (a) For purposes of this section, the following definitions apply:
(1) “Access emergency information” means mobile data service sufficient to access emergency notices and access basic internet browsing for emergency notices for their customers.
(2) “Electric utility” has the same meaning as defined in Section 2868.
(3) “Minimum service” means service sufficient to access 911 emergency services, access emergency information, and to use voice communication and text messaging services.
(4) “Telecommunications service” has the same meaning as defined in Section 2892.1, but does not include voice communication provided by a provider of satellite telephone services.

(a) By

(b) On or before July 1, 2021, the commission, in consultation with the Office of Emergency—Services and the telecommunications industry, shall develop and implement performance reliability standards for all mobile telephony service base transceiver station towers and other infrastructure for providing mobile telephony service. Voice over Internet Protocol service, Internet Protocol enabled service, and cable television backup power rules for telecommunications service that is located provided within a commission-designated Tier 2 or Tier 3 High Fire Threat-District, or that is located outside such a district, but that affects those towers or that infrastructure within such a district. Those standards shall do both of the following: District.

(c) The backup power rules developed and implemented pursuant to subdivision (b) shall do all of the following:

(1) For mobile telephony service, require the provision of backup power where feasible to maintain minimum service for at least 72 hours, which may be achieved using best practices.

(2) For telecommunications service, other than mobile telephony service, require the provision of backup power where feasible to maintain minimum service for at least 72 hours for each of the following customers:

(A) An emergency communication dispatch center.

(B) An emergency operations center.

(C) A federally-qualified health center, as defined by Section 1396d(l)(2) of Title 42 of the United States Code.

(D) A fire station.

(E) A general acute care hospital, as defined by Section 1250 of the Health and Safety Code.

(F) A police station, California Highway Patrol office, or sheriff’s office.

(G) A rural health clinic, as defined by Section 1396d(l)(1) of Title 42 of the United States Code.

(H) A utility, including all of the following:

(i) An electrical corporation.

(ii) A local publicly owned electric utility.
(iii) An operator of a sewer system, whether operated by a sewer system corporation or a publicly owned entity.
(iv) An operator of a water system, whether operated by a water corporation or a publicly owned entity.
(I) A mobile telephony services provider to whom backhaul services are provided.
(3) Upon notification from an electric utility of a deenergization event, require a mobile telephony service provider to notify its customers that access to 911 emergency services and emergency notifications may be impacted.
(4) Require a provider of Voice over Internet Protocol to notify its customers that access to 911 emergency services and emergency notifications may be impacted by a deenergization event. This notification shall be affixed to a customer’s Voice over Internet Protocol device and be provided annually by the provider.
(d) In developing and implementing the backup power rules pursuant to subdivision (b), the commission shall establish a process whereby a telecommunications service provider can identify facilities within its network for which it is unable to comply with the 72-hour backup power requirement described in paragraph (1) or (2) of subdivision (c) because of inaccessibility, lack of permitting, infeasibility, or significant risk to life or health, or of incurring damage.
(e) The commission may waive or delay implementation of any portion of this section if the commission determines that a mobile telephony service provider or provider of Voice over Internet Protocol meets any of the following conditions:
(1) The provider’s facilities do not require 72-hour backup power to maintain overall coverage and minimum service.
(2) The provider is unable to comply with the 72-hour backup power requirement because of significant risk to life or health, or doing so would violate a specific federal, state, tribal, or local law.
(3) It is objectively impossible or infeasible for the provider to provide 72-hour backup power to a specific facility.
(4) The provider makes a good faith effort, but is unable to obtain the necessary access, permits, or other relevant approval to meet the requirements of this section.
(1) Establish a minimum operating life for backup power systems of no less than 72 hours, unless the commission determines
that the mobile telephony service base transceiver station tower
or communications infrastructure is incapable of a minimum
operating life of not less than 72 hours of backup, in which case,
the commission shall determine and require a minimum operating
life pursuant to subdivision (b).

(2) Establish means to warn a customer when the backup power
system is low and the customer’s access can no longer be supported
by the backup power system.

(b) In developing and implementing any standards backup power
rules pursuant to subdivision (a), (b), the commission shall consider
current best practices and technical the feasibility for establishing
backup power system requirements of the rules.

c) The commission shall collect data necessary to identify the
mobile telephony service base transceiver station infrastructure
and infrastructure for providing mobile telephony service, Voice
over Internet Protocol service, Internet Protocol enabled service,
and cable television service that shall be subject to the performance
reliability standards adopted pursuant to subdivision (a).

d) The commission may require a mobile telephony services
provider to collect and forward to the commission any relevant
information that may be useful to the commission’s development
or implementation of performance reliability standards pursuant
to this section.

SEC. 2. 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.
Item B-12
TO: City Council Liaison/Legislative/Lobby Committee  
FROM: Cynthia Owens, Policy and Management Analyst  
DATE: July 30, 2020  
SUBJECT: Senate Bill 1044 (Allen) - Firefighting equipment and foam: PFAS chemicals  
ATTACHMENTS: 1. Summary Memo – SB 1044  
2. Bill Text – SB 1044

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 1044 (Allen) - Firefighting equipment and foam: PFAS chemicals (SB 1044) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for SB 1044 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1044, the Liaisons may recommend the following actions:

1) Support SB 1044;  
2) Support if amended SB 1044;  
3) Oppose SB 1044;  
4) Oppose unless amended SB 1044;  
5) Remain neutral; or  
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1044, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 22, 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 1044 (Allen) Firefighting equipment and foam: PFAS chemicals

**Introduced and Background**

SB 1044 was introduced by Senator Ben Allen and would prohibit the use of firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) chemicals, except where federally required, and requires notification of the presence of PFAS in the protective equipment of firefighters.

**Public Health Impacts**

The Agency for Toxic Substances and Disease Registry (ATSDR) and the U.S. Environmental Protection Agency developed the toxicologic profile of 14 PFAS chemicals. Based on a number of factors, the available epidemiology studies suggest associations between perfluoroalkyl exposure and several adverse health effects, including: pregnancy-induced hypertension/pre-eclampsia; liver damage; increases in serum lipids, particularly total cholesterol and low-density lipoprotein (LDL) cholesterol; increased risk of thyroid disease; decreased antibody response to vaccines; increased risk of asthma diagnosis; increased risk of decreased fertility; and small decreases in birth weight.

**PFAS in Firefighting Foam and Available Alternatives**

Class B firefighting foam (not to be confused with fire retardant used to stop the spread of wildfires) is used to extinguish flammable liquid fires, primarily at airports, refineries, and chemical plants. These foams help extinguish those fires by forming a film around the burning liquid, preventing airflow and evaporation. PFAS is present in many of these foams.

According to an International Pollutants Elimination Network (IPEN) expert panel report from 2018, fluorine-free (PFAS) foams are “available, certified and effective for all firefighting applications.” Furthermore, in 2019, an IPEN expert panel evaluated available alternatives and concluded that all PFAS-based firefighting foam should be phased out and that non-PFAS foams are viable and cost-saving. London’s Heathrow Airport, one of the largest in the world, and other airports around the world, including all 27 major Australian airports, have already transitioned to PFAS-free firefighting foam.

**Firefighter Health Impacts**

Elevated levels of PFAS chemicals have been documented in the bodies of firefighters. One biomonitoring study of firefighters in California showed blood concentrations for firefighters were three times higher than in National Health and Nutrition Examination Survey (NHANES) adult males, revealing that firefighters may have sources of occupational exposure to PFAS chemicals.
**Status of Legislation**
This bill is set to be heard in the Assembly Environmental Safety and Toxic Materials Committee on July 27.

**Support and Opposition**
According to the California Professional Firefighters, “Firefighters who use Class B firefighting foams that contain PFAS face an unacceptable level of additional health risks in a profession that already brings with it an elevated risk of cancer along with other job-related conditions. There is no reason to continue permitting the usage of fluorinated firefighting foams when there are non-fluorinated options available that function with the same level of efficiency. The IPEN white paper also determined that the film formed by AFFF does not actually provide a noticeable advantage in combatting three-dimensional liquid fires, and that additionally the development of fluorine-free foams has made the usage of AFFF unnecessary. Several departments and facilities in both the United States and internationally have already transitioned to fluorine free foam, including “high-risk” facilities such as oil refineries, chemical plants and airports. Phasing out this dangerous chemical in favor of a safer, cheaper, and equally effective alternative will benefit the health of not only the firefighters who use it but the entirety of California.”

Opponents to SB 1044 argue, “While ‘fluorine-free foams’ are available and can provide an alternative to fluorinated foams in some applications such as spill fires and smaller tank fires, they do not uniformly meet necessary performance requirements for a significant fire event that may occur at an oil refinery or a large tank farm, given the different flammable liquids being managed. The chemistries within AFFF provide fuel repellency and heat stability, allow for rapid extinguishment, burn back resistance, and protection against vapor release, which help to prevent re-ignition and protect firefighters working in the area as part of the rescue and recovery operations.”

**Support**
Breast Cancer Prevention Partners (co-sponsor)  
California Professional Firefighters (co-sponsor)  
Clean Water Action (co-sponsor)  
Environmental Working Group (co-sponsor)  
Natural Resources Defense Council (co-sponsor)  
5 Gyres Institute, the  
7th Generation Advisors  
Association of California Water Agencies  
Breast Cancer Action  
California Coastkeeper Alliance  
California Fire Chiefs Association  
California Healthy Nail Salon Collaborative  
California Indian Environmental Alliance  
California Labor Federation  
California League of Conservation Voters  
California Municipal Utilities Association  
California Product Stewardship Council  
California Public Interest Research Group  
California Public Interest Research Group Education Fund  
California Special Districts Association  
California State Building and Construction Trades Council  
California State Firefighters' Association  
California Water Service  
Center for Environmental Health  
Center for Oceanic Awareness, Research, and Education  
Center for Public Environmental Oversight  
Citizens for Choice  
Community Water Center  
Defenders of Wildlife  
East Bay Municipal District Association  
Friends Committee on Legislation of California  
Green Science Policy Institute  
Leadership Council for Justice and Accountability  
Los Angeles County  
Metropolitan Water District of Southern California  
National Stewardship Action Council  
Oregon Environmental Council
Physicians for Social Responsibility - San Francisco Bay Area Chapter  
Plastic Pollution Coalition  
Safer States  
San Francisco Baykeeper  
Sanitation Districts of Los Angeles County  
Santa Clara Valley Water District  
Save Our Shores  
Seventh Generation Advisors  
Sierra Club California  
Wholly H2o  
Women's Voices for The Earth

**Opposition**
American Chemistry Council  
California Chamber of Commerce  
California Manufacturers & Technology Association  
Chemical Industry Council of California  
Fire Fighting Foam Coalition  
Industrial Environmental Association  
Western Independent Refiners Association  
Western States Petroleum Association
Attachment 2
An act to add Sections 13029, 13061, and 13062 to the Health and Safety Code, relating to fire protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1044, as amended, Allen. Firefighting equipment and foam: PFAS chemicals.

Existing law authorizes the State Fire Marshal to make such changes as may be necessary to standardize all existing fire protective equipment throughout the state and requires the State Fire Marshal to notify industrial establishments and property owners having equipment for fire protective purposes of the changes necessary to bring their equipment into conformity with standard requirements.

This bill, commencing January 1, 2022, would require any person, including a manufacturer, as defined, that sells firefighter personal protective equipment to any person or public entity, to provide a written notice to the purchaser at the time of sale if the firefighter personal protective equipment contains perfluoroalkyl and polyfluoroalkyl substances (PFAS), and would provide that a violation of this requirement is punishable by a specified civil penalty. The bill would require the seller and the purchaser to retain the notice on file for at least 3 years and to furnish the notice and associated sales documentation to the State Fire Marshal within 60 days upon request, as provided. The bill would authorize the State Fire Marshal to request from a manufacturer, and the bill would require the manufacturer to
provide, a certificate of compliance that certifies that the manufacturer is in compliance with these provisions. The bill would provide that a violation of this requirement by a manufacturer would be punishable by a specified civil penalty.

The bill, commencing January 1, 2022, would prohibit, except as provided, a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use in this state, and would prohibit a person from using in this state, class B firefighting foam to which PFAS chemicals have been intentionally added. The bill would require a manufacturer to provide a specified notice to persons that sell the manufacturer’s products in the state and to recall prohibited products, as provided. The bill would provide that a violation of these provisions is punishable by a specified civil penalty. The bill would require the State Fire Marshal to inform public entities that provide firefighting services of the above prohibition. The bill, commencing January 1, 2022, would prohibit a person, including a public entity, as defined, from discharging or otherwise using for training purposes class B firefighting foam that contains intentionally added PFAS chemicals, and would provide that a violation of this prohibition is punishable by a specified civil penalty.

This bill would state that its provisions are severable.


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

SECTION 1. Section 13029 is added to the Health and Safety Code, to read:

13029. (a) For purposes of this section, the following definitions apply:

(1) “Firefighter personal protective equipment” means personal protective equipment covered by the general industry safety orders in Sections 3403 to 3411, inclusive, of Title 8 of the California Code of Regulations.

(2) “Manufacturer” means a person, firm, association, partnership, corporation, organization, or joint venture person that manufactures, imports, or distributes domestically firefighter personal protective equipment.
(3) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(4) “Person” has the same meaning as defined in Section 19, and includes a public entity.

(5) “Public entity” has the same meaning specified in Section 13050.1.

(b) (1) Commencing January 1, 2022, any person, including a manufacturer, that sells firefighter personal protective equipment to any person or public entity shall provide a written notice to the purchaser at the time of sale if the firefighter personal protective equipment contains PFAS chemicals. The written notice shall include a statement that the firefighter personal protective equipment contains PFAS chemicals and the reason that PFAS chemicals are added to the equipment.

(2) The person selling firefighter personal protective equipment and the purchaser of the equipment shall retain the written notice on file for at least three years from the date of the transaction. Within 60 days of a request by the State Fire Marshal, the seller or purchaser of firefighter personal protective equipment shall furnish to the State Fire Marshal the written notice, or a copy of the written notice, and associated sales documentation.

(c) The State Fire Marshal may request from a manufacturer, and a manufacturer shall provide, a certificate of compliance that certifies that the manufacturer is in compliance with subdivisions (a) and (b) for that manufacturer’s firefighter personal protective equipment.

(d) (1) Except as provided in paragraph (2), a person, including a manufacturer, person that violates subdivision (b) or (c) shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for a first violation, and not to exceed ten thousand dollars ($10,000) for each subsequent violation.

(2) An individual firefighter shall not be personally liable for payment of the civil penalty imposed pursuant to paragraph (1).

SEC. 2. Section 13061 is added to the Health and Safety Code, to read:

13061. (a) For purposes of this section, the following definitions apply:
(1) “Class B firefighting foam” means foam designed to prevent or extinguish a fire in flammable liquids, combustible liquids, petroleum greases, tars, oils, oil-based paints, solvents, lacquers, alcohols, and flammable gases.

(2) “Large atmospheric storage tank” means an open top floating roof storage tank for flammable liquids that is greater than 40 meters in diameter with a surface area greater than 500 square meters.

(3) “Manufacturer” means a person, firm, association, partnership, corporation, organization, or joint venture person that manufactures, imports, or distributes class B firefighting foam.

(4) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(5) “Person” has the same meaning as defined in Section 19 and includes a public entity.

(6) “Public entity” has the same meaning specified in Section 13050.1.

(7) “Terminal” means a fuel storage and distribution facility that has been assigned a terminal control number by the United States Internal Revenue Service.

(b) (1) Except as provided in paragraphs (2) and (3), commencing January 1, 2022, a manufacturer of class B firefighting foam shall not manufacture, or knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, and no person shall use in this state, class B firefighting foam to which PFAS chemicals have been intentionally added.

(2) Paragraph (1) does not apply until January 1, 2024, to any manufacture, sale, or distribution of class B firefighting foam to, or to use by, a person exclusively for use on a large atmospheric storage tank at a terminal operated by the person, a chemical plant operated by the person, or an oil refinery operated by the person.

(3) This subdivision does not apply to any manufacture, sale, or distribution of class B firefighting foam for which the inclusion of PFAS chemicals is required by federal law, including, but not limited to, Section 139.317 of Title 14 of the Code of Federal Regulations.
(c) No later than July 1, 2021, a manufacturer of class B firefighting foam shall notify, in writing, persons that sell the manufacturer’s products in the state about the provisions of this section.

(d) A manufacturer that manufactures, sells, or distributes a class B firefighting foam prohibited pursuant to subdivision (b) after January 1, 2021, shall recall the product by January 1, 2022, pursuant to if it is covered by paragraph (1) of subdivision (b), and or January 1, 2024, pursuant to if it is covered by paragraph (2) of subdivision (b), and shall reimburse the retailer or any other purchaser for the product. A recall of the product shall include safe transport and storage and documentation of the amount and storage location of the PFAS-containing firefighting foam, unless and until the California Environmental Protection Agency formally identifies a safe disposal technology. The manufacturer shall provide this documentation to the State Fire Marshal upon request.

(e) Prior to January 1, 2022, On or before July 1, 2021, the State Fire Marshal shall inform public entities that provide firefighting services of the prohibitions of this section.

(f) The State Fire Marshal may request from a manufacturer, and a manufacturer shall provide, a certificate of compliance that certifies that the manufacturer is in compliance with this section for that manufacturer’s class B firefighting foam.

(g) (1) Except as provided in paragraph (2), a person, including a manufacturer person that violates subdivision (b), (c), (d), or (f) shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for a first violation, and not to exceed ten thousand dollars ($10,000) for each subsequent violation.

(2) An individual firefighter shall not be personally liable for payment of the civil penalty imposed pursuant to paragraph (1).

SEC. 3. Section 13062 is added to the Health and Safety Code, to read:

13062. (a) Commencing January 1, 2022, a person, including a public entity; person shall not discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added PFAS chemicals.

(b) (1) Except as provided in paragraph (2), a person, including a public entity, person that violates subdivision (a) shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for
a first violation, and not to exceed ten thousand dollars ($10,000)
for each subsequent violation.

(2) An individual firefighter shall not be personally liable for
payment of the civil penalty imposed pursuant to paragraph (1).

(c) For purposes of this section, “person” has the same meaning
specified in Section 19 and includes a public entity.

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-13
Councilmember John Mirisch has requested the Legislative/Lobby Committee review and discuss the Police Officer’s Bill of Rights, commonly referred to as POBOR.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for POBOR (Attachment 1) and will provide a brief verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of POBOR, the Liaisons may recommend any course of action on POBOR ranging from no further action desired to requesting staff to pursue legislation amending POBOR.

Should the Committee request amendments, then staff can work with the Committee to develop the language for the specific amendments. Once a consensus is reached, staff will then seek City Council concurrence prior to working with state legislatures to introduce a bill to amend POBOR.
July 30, 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: Peace Officer’s Bill of Rights (California Government Code Sections 3300-3313)

Background
The Peace Officer’s Bill of Rights (POBOR) was enacted in 1976 with the intent of maintaining stable employer-employee relations between public safety employees and their employers. The law lays out a list of procedures and safeguards when any public safety officer is under investigation and subject to interrogation by their commanding officer or any other member of the employing department that could lead to punitive action.

Specifically, the Act:

1) Defines "public safety officer," for the purposes of POBOR, as numerous state and local peace officer classifications including, but not limited to, city police, deputy sheriffs, court marshals, district attorney investigators, the California Highway Patrol, university police, state regulatory investigators, park rangers, game wardens, housing authority police, community college and school district police, port and transit officers, public utility officers, and parole and state correctional officers.

2) Secures to public safety officers the right to engage in political activity, when off duty and out of uniform, and to seek election to or serve as a member of the governing board of a school district;

3) Prescribes certain protections which must be afforded officers during interrogations which could lead to punitive action;

4) Gives the right to review and respond in writing to adverse comments entered in an officer’s personnel file;

5) Provides that officers may not be compelled to submit to polygraph examinations;

6) Prohibits searches of officers’ personal storage spaces or lockers except under specified circumstances;

7) Gives officers the right to administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit; and

8) Protects officers against retaliation for the exercise of any right conferred by the Act.

Among other things, POBOR guarantees public safety officers the right to view any adverse comment placed in their personnel files and to file, within 30 days, a written response, which will be attached to the adverse comment.
Proponents of the Act, including the Peace Officer’s Research Association of California (PORAC), argue that these provisions reflect the public’s interest in good relations between peace officers and their employers, including protecting peace officers from unfair attacks on their character.

Law enforcement agencies must take these citizen complaints seriously but at the same time ensure fairness to their peace officer employees. The intent of POBOR is to give officers a chance to respond to allegations of wrongdoing.

Critics of this law, including UC Berkeley Law School Dean Erwin Chemerinsky argue that the California Peace Officers’ Bill of Rights makes it difficult for the public to access information about an officer’s disciplinary history. He argues further that the U.S. Supreme Court has made it very difficult to hold officers and police departments accountable.

Professor Chemerinsky argues that the Supreme Court has greatly limited the ability to sue an officer who violates the law. For example, the Supreme Court has held that officers have “absolute immunity” and cannot be held liable for money damages for testimony they given in court, even if it is perjury and even if it leads to the conviction of an innocent person. The court has said that police officers cannot be held liable for the use of excessive force because they did not engage in behavior that “every” reasonable officer would believe to be unconstitutional.
Item B-14
Councilmember John Mirisch has requested the Legislative/Lobby Committee review and discuss the independent prosecution of Peace Officers.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for current law regarding prosecution of peace officers (Attachment 1) and will provide a brief verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of this subject, the Liaisons may recommend any course of action on the information presented from no further action desired to requesting staff to pursue legislation regarding an independent prosecutor. Depending on the direction given, staff may return to the Liaisons for concurrence on any developed language for legislation, which would then require approval of the City Council.
Attachment 1
July 22, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwi, Partner, Shaw Yoder Antwi Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwi Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwi Schmelzer & Lange

Re: Independent Prosecutors for Police Excessive Use of Force Cases

Local prosecutors (district, county or state's attorneys) may prosecute police officers who engage in behavior, on- or off-duty, that violates the law. When officers are prosecuted, it is usually under state law for crimes such as murder, manslaughter, assault, battery, or rape. Comprehensive statistics on prosecution efforts, reasons for prosecutorial decisions, or prosecutorial success rates are generally not available to the public.

Many advocacy groups like Human Rights Watch, Campaign Zero and others argue local prosecutions of police officers on charges relating to the excessive use of force are rare. Without information about the number of cases prosecuted against police officers, which does not appear to be maintained routinely by district attorney’s offices or their clerks, it is impossible to know with certainty whether cases are being appropriately handled by local attorneys (and, consequently, whether federal prosecutors need to initiate their own investigation).

Some have called for special prosecutors to investigate cases of alleged law enforcement criminality, believing the appointment of a special prosecutor would remove this potential bias, and perhaps more importantly, improve the appearance of impartiality in the eyes of an increasingly concerned public.

A special prosecutor—or sometimes referred to as “independent counsel” or “special counsel”—is an attorney who generally supersedes the local prosecuting attorney in particular criminal cases. Historically, special prosecutors have been appointed to try criminal cases in two instances: first, when the case poses a conflict of interest or some other disqualification for the prosecuting attorney (such as when he himself is a criminal defendant), and, two, to handle political or controversial prosecutions that government officials fear will not be prosecuted absent a special counsel.

The process for appointing special prosecutors varies widely from state to state. One reason for this divergence is the constitutional status of each state’s prosecuting attorneys.

Depending on the state, the attorney general, the district attorney, or both, are allocated prosecuting authority in their state constitutions. In California, the grand jury itself may call for a special prosecutor who is chosen by the Attorney General.
Existing Law

• Existing law states that whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violation of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office. (Cal. Const., Art. 5, § 13.)

• Existing law specifies that the Attorney General has direct supervision over the district attorneys of the several counties of the State and may require of them written reports as to the condition of public business entrusted to their charge. (Gov. Code, § 12550.)

• Existing law provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, he shall assist any district attorney in the discharge of their duties, and may, where deemed necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect, the Attorney General has all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process. (Gov. Code, § 12550.)

• Existing law states that if a district attorney is disqualified to conduct any criminal prosecution within the county, the Attorney General may employ special counsel to conduct the prosecution. The attorney's fee in such case is a legal charge against the state. (Gov. Code, § 12550.)

• Existing law states that if a district attorney is disqualified to conduct any criminal prosecution within the county, the Attorney General may employ special counsel to conduct the prosecution. The attorney's fee in such case is a legal charge against the State. (Gov. Code, § 12553.)

• Existing law states that when requested to do so by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury. (Pen. Code, § 936.)

• Existing law provides that when a grand jury request special counsel, services of such special counsel and special investigators shall be a count charge of such county. (Pen. Code, § 936.)

• Existing law specifies that the district attorney is the public prosecutor, except as otherwise provided by law. (Gov. Code, § 25600.)

• Existing law requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a)(1).)
Item B-15
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: July 30, 2020
SUBJECT: State and Federal Legislative Updates
ATTACHMENTS: None

A verbal update on federal legislative issues will be given by Jamie Jones of David Turch & Associates.

A verbal update on state legislative issues will be given by Andrew Antwih with Shaw/Yoder/Antwih, Inc.