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
4th Floor Conference Room A
Beverly Hills, CA 90210
Wednesday, May 22, 2019
2:30 PM

AGENDA

Oral Communications

Public Comment

1. Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.

A. Consent Calendar

These items are in line with City Council Policy but are not covered by the City Council adopted Legislative Platform. These items may be approved by the Liaisons. If approved, they will be presented at a future City Council meeting for approval of the Liaisons recommendation.

1. Support Assembly Bill 1110 (Friedman) – Rent Increases: Noticing
   
   Comment: This legislation would require 90 days' notice if a landlord of a residential dwelling with a month-to-month tenancy increases the rent by more than 10 percent, but less than 15 percent. 120 days' notice would be required for rent increases greater than 15 percent.

2. Request Direction on a Position on Assembly Bill Support Assembly Bill 1482 (Chiu) – Tenancy - Rent Caps
   
   Comment: This legislation would cap rent increases to 7 percent a year plus CPI with a maximum rent increase of 10 percent.

3. Support Assembly Bill 1481 (Bonta) – Tenancy Termination: Just Cause
   
   Comment: This legislation would, with certain exceptions, prohibit a lessor of residential property from terminating the lease without just cause as defined and require the lessor to assist the lessee with relocation if the lease is terminated by no-fault just cause.

4. Oppose Senate Bill 266 (Leyva) - Public Employees’ Retirement System: Disallowed Compensation: Benefit Adjustments.
   
   Comment: This legislation would require public agencies to continue to make payments to retirees on disallowed retirement benefits, resulting in a gift of public funds in violation of Section 6, Article 16 of the California Constitution.
5. Support Senate Bill 424 (Jackson) - Tobacco Products: Single-Use and Multiuse Components

Comment: This legislation would prohibit the sale of single-use tobacco products, including single-use filters, single-use plastic devices for tobacco products, and single use electronic cigarettes.

6. Support H.R. 2016 (Lieu) - To Modify the Authorized Uses of Certain Property Conveyed by the United States in Los Angeles, California

Comment: This federal legislation would allow the Los Angeles Armory to be operated year round as a homeless shelter.

7. Support Extension of the National Flood Insurance Program (NFIP)

Comment: The legislation would extend the National Flood Insurance Program (NFIP) through September 30, 2019. The NFIP is set to expire on May 31, 2019.

B. Direction

These items require direction by the Liaisons as they may not be consistent with the City Council adopted Legislative Platform. Direction provided by the Liaisons may require City Council approval.

1. Request Direction on Senate Bill 5 (Beall) – Affordable Housing and Community Development Investment Program

Comment: This legislation creates a local-state partnership to provide up to $2 billion annually to fund state-approved affordable housing, infrastructure, and economic development projects that also support state policies to reduce greenhouse gas emissions, expand transit oriented development (TOD), address poverty, and revitalize neighborhoods. This measure restores RDA-type ongoing financing for these important projects.

2. Request Direction on Assembly Bill 1356 (Ting) – Cannabis: Local Jurisdictions: Retail Commercial Cannabis Activity

Comment: This legislation requires all local jurisdictions whose voters supported Proposition 64 to issue a minimum number of local licenses for cannabis retail shops. Requires the minimum number of these local licenses issued per jurisdiction to be 25% of the number of liquor licenses. If the ratio is greater than one local retail cannabis license per 10,000 residents of the local jurisdiction, the bill instead requires the minimum number of local licenses to be determined by dividing the number of residents in the local jurisdiction by 10,000 and rounding down to the nearest whole number.

3. Request Direction on a Position on Senate Bill 58 (Wiener) – Alcoholic Beverages: Hours of Sale

Comment: This legislation would create a pilot program to extend the hours of selling, giving, or purchasing alcoholic beverages at a licensed location from 2 a.m. to 4 a.m. for the cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.
4. Request Direction on Assembly Bill 1400 (Kamlager-Dove) – Workers' Compensation – Firefighting Operations – Civilian Operations

Comment: This legislation would extend the workers' compensation presumption to other employees of a city, county, city and county, district, or other municipal corporation or political subdivision whose job duties cause them to be regularly exposed to active fires or health hazards directly resulting from firefighting operations.

5. Request Direction on a Position on Senate Bill 542 (Stern) – Worker's Compensation

Comment: This legislation extends presumption of post-traumatic stress disorder to all police and fire personnel, including some non-sworn positions. This legislation applies retroactively to January 1, 2017.

6. Request Direction on a Position on Assembly Bill 1215 (Ting) – Law Enforcement: Facial Recognition and Other Biometric Surveillance

Comment: This legislation would prohibit law enforcement agency or law enforcement official from installing, activating, or using any biometric surveillance system in connection with an officer camera or data collected by an officer camera.

7. Update on Senate Bill 50 (Wiener) Planning and Zoning: Housing Development: Incentives

Comment: This legislation was amended on April 24, 2019 to include language from Senate Bill 4 (McGuire). An update will be provided on the current status of the bill.

8. State and Federal Legislative Updates

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

C. Information

These items are in line with the City Council adopted Legislative Platform. Unless otherwise directed, staff will draft letters for the Mayor to sign these letters.

1. Oppose Senate Bill 330 (Skinner) – Housing Crisis Act of 2019

Comment: This legislation declares a statewide housing crisis for a ten-year period and prohibits a city from imposing parking requirements, adjusting impact fees, imposing impact fees on affordable housing projects, and limiting new design standards based on cost.

2. Oppose Assembly Bill 1279 (Bloom) – High Resource Areas

Comment: This legislation requires HCD to determine “high-resource areas”, areas of high opportunity and low residential density not experiencing displacement or gentrification and would allow by-right approval for up to 100 units and 55 feet.

3. Oppose Assembly Bill 1763 (Chiu) – Planning and Zoning: Density Bonuses: Affordable Housing
Comment: This legislation requires a city or county to permit additional density bonuses to a developer who agrees to construct a housing development in which 100 percent of the total units are for lower income households and provides additional density bonuses if the housing is located within ½ mile of a major transit stop or high-quality transit corridor.

4. Oppose Assembly Bill 1112 (Friedman) – Shared Mobility Devices

Comment: This bill prohibits a local authority from imposing unduly restrictive requirements on a provider of shared mobility devices.

D. Adjournment

[Signature]

Lourdes Sy-Rodriguez, Assistant City Clerk

Posted: May 20, 2019

A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW IN THE LIBRARY AND CITY CLERK’S OFFICE.

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 twenty-four (24) hours advance notice will help to ensure availability of services. City Hall, including Conference Room 4A, is wheelchair accessible.
Item A-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 1110 (Friedman) – Rent Increases: Noticing (AB 1110) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for AB 1110 to the City (Attachment 1). AB 1110 would increase the amount of time residential tenants with a month-to-month tenancy must be notified of rent increases that exceed 10% but are no more than 15% of their current rent, from 60 days to 90 days. The bill would also extend the notice requirement for rent increases of more than 15% from 60 days to 120 days (Attachment 2).

AB 1110 is considered noncontroversial. Unless otherwise directed by the Beverly Hills City Council Legislative/Lobby Committee, staff will place this item on a future City Council Agenda for a letter of support as this item is not listed in the City Council adopted Legislative Platform. The report will indicate the Liaisons approved a letter of support be moved to the City Council for review and approval.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff.
Attachment 1
April 30, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Sivia Solis Shaw, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1110 (Friedman): Rent increases: noticing.

Introduction and Overview
Assembly Member Friedman introduced AB 1110 which is sponsored by the City of Glendale. The bill would increase the amount of time residential tenants with a month-to-month tenancy must be notified of rent increases that exceed 10% but are no more than 15% of their current rent, from 60 days to 90 days. The bill would also extend the notice requirement for rent increases of more than 15% from 60 days to 120 days.

Status of the Legislation
The bill is pending on the Assembly Floor.

Support or Opposition
The sponsors of the bill point to the financial pressures on tenants caused by frequent and significant rent increases. They argue that renters should be provided with more time to respond to significant increases in their rent and that increasing the noticing requirement for such increases would help to curb the frequency of rent increases.

The California Rental Housing Association opposes the bill in its current form and has asked for the bill to be amended so that the notice period for rent increases between 10%-15% remains at 60 days with rent increases above 15% increasing to 90 days. They state that the jump from 30 days for increases below 10% to 90 days for increases between 10-15% may be confusing for landlords and would be more difficult for those who use software platforms to calculate rent and notices. They argue that 30, 60, and 90-days are a more natural progression for notice requirements and would be easier for landlords to implement.

Support
City of Glendale (sponsor)
California Catholic Conference
AIDS Healthcare Foundation

Oppose Unless Amended
Southern California Rental Housing Association
Opposition
None
Attachment 2
An act to amend Section 827 of the Civil Code, relating to rent increases.

LEGISLATIVE COUNSEL’S DIGEST

AB 1110, as amended, Friedman. Rent increases: noticing.
Existing law requires that if a landlord of a residential dwelling with a month-to-month tenancy increases the rent by 10% or less of the amount of the rent charged to a tenant annually, as specified, the landlord shall provide at least 30 days’ notice, before the effective date of the change. Existing law requires that if a landlord of a residential dwelling with a month-to-month tenancy increases the rent by more than 10% of the amount of the rent charged to a tenant annually, as specified, the landlord shall provide an additional 30 days’ notice, for a total of 60 days, before the effective date of the increase, except as specified.

This bill would require 90 days’ notice if a landlord of a residential dwelling with a month-to-month tenancy increases the rent by more than 10%, but no more than 15%, of the amount of the rent charged to a tenant annually. This bill would require 120 days’ notice if a landlord of a residential dwelling with a month-to-month tenancy increases the rent by more than 15% of the amount of the rent charged to a tenant annually.

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

SECTION 1. It is the intent of the Legislature to respond to tight rental market conditions by providing tenants with additional notice when served with rent increases of more than 10 percent and more than 15 percent in a 12-month period. The longer notice periods prescribed in this act provide tenants with additional time to respond to rent increases. These longer notice periods are not intended to constitute rent control, nor are they intended as a statement of public policy regarding acceptable or unacceptable levels of rent increases.

SEC. 2. Section 827 of the Civil Code is amended to read:

827. (a) Except as provided in subdivision (b), in all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.

The notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

(b) (1) In all leases of a residential dwelling, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:
(A) By delivering a copy to the tenant personally.
(B) By serving a copy by mail under the procedures prescribed in Section 1013 of the Code of Civil Procedure.

(2) If the proposed rent increase for that tenant is 10 percent or less of the rental amount charged to that tenant at any time during the 12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 30 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(3) If the proposed rent increase for that tenant is greater than 10 percent, but no more than 15 percent, of the rental amount charged to that tenant at any time during the 12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 90 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(4) If the proposed rent increase for that tenant is greater than 15 percent of the rental amount charged to that tenant at any time during the 12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 120 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(5) If the proposed rent increase for that tenant is caused by a change in a tenant’s income or family composition as determined by a recertification required by statute or regulation, the notice shall be delivered at least 30 days before the effective date of the increase as described in paragraph (2), and paragraphs (3) and (4) shall not apply.

(c) If a state or federal statute, state or federal regulation, recorded regulatory agreement, or contract provides for a longer period of notice regarding a rent increase than that provided in subdivision (a) or (b), the personal service or mailing of the notice shall be in accordance with the longer period.

O
Item A-2
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: May 22, 2019
SUBJECT: Request Direction on a Position on Assembly Bill Support Assembly Bill 1482 (Chiu) – Tenancy - Rent Caps
ATTACHMENTS: 1. Bill Text – AB 1482
               2. Summary Memo – AB 1482

INTRODUCTION
Assembly Bill 1482 (Chiu) – Tenancy - Rent Caps would create a limit on the potential annual rent increase a property owner can charge a tenant (Attachment 1). The limit would be five percent of the lowest rent from the previous year plus the percentage change in the cost of living, as measured by CPI. Over the past 25 years the CPI in California has averaged approximately 2.5 percent per year. This bill specifies that the annual rent increase can never exceed 10 percent, which is the standard for price gouging for housing and other goods established in 1872 by the State in Penal Code Section 396.

This item requests the Legislative/Lobby Liaisons consider taking a position on Assembly Bill 1482 (AB 1482).

DISCUSSION
Background
In February of 2019, Oregon passed the nation’s first statewide anti-rent gouging statute SB 608 (Burdick), Chapter 1. The Oregon law establishes the rent cap at CPI plus seven percent. The Oregon law also provides “just cause” eviction protection for all renters after one year of tenancy. Previous to the passage of this statute, setting maximum rent increases was illegal in Oregon.

The cost of housing in California is the highest of any state in the nation. In 1970 housing costs in California were 30 percent more expensive than the United States average. Today, housing costs are 250 percent more expensive. The median rent in California has increased by over a third in the past ten years, while the median income has remained flat, and has decreased for many low income Californians. Over half of renters in the state are rent-burdened, meaning they pay over 30 percent of their income towards rent.

Summary of AB 1482
AB 1482 would create a cap on the potential annual rent increase a property owner can charge a tenant. A few key provisions of the bill include:
- Limiting rent increases to 5 percent more than the lowest rental rate for the preceding twelve months plus the percentage change in the cost of living for the region where the property is located,
- Limiting total rental rate increases within any twelve-month period at 10 percent,
- Exempting deed-restricted affordable housing, dormitories, and properties subject to a more restrictive rent increase cap from the provisions of this bill, and
- Apply to all rent increases occurring on or after March 15, 2019.

**FISCAL IMPACT**

It is unknown at this time what the fiscal impact of this legislation would be on the City should it pass.

**RECOMMENDATION**

After discussion of Assembly Bill 1482 (Chiu) – Tenancy - Rent Caps the Liaisons may recommend the following actions:

1) Support AB 1482;
2) Support if amended AB 1482;
3) Oppose AB 1482;
4) Oppose unless amended AB 1482;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1482, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
An act to add Section 1947.12 to the Civil Code, relating to tenancy.

LEGISLATIVE COUNSEL’S DIGEST

AB 1482, as amended, Chiu. Tenancy: rent caps.

Existing law governs the hiring of residential dwelling units and requires a landlord to provide specified notice to tenants prior to an increase in rent. Existing law, the Costa-Hawkins Rental Housing Act, prescribes statewide limits on the application of local rent control with regard to certain properties. That act, among other things, authorizes an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or unit that meets specified criteria and subject to certain limitations.

This bill would prohibit an owner of residential real property from increasing the rental rate for that property in an amount that is greater than an unspecified percent (5% plus the percentage change in the cost of living, as defined) more than the lowest rental rate in effect for the immediately preceding year, 12 months, subject to specified conditions. The bill would exempt from these provisions deed-restricted affordable housing, dormitories, and housing subject to a local ordinance that imposes a more restrictive rent increase cap than these provisions. The
bill would prohibit a landlord from terminating a tenancy for the purposes of avoiding these provisions and would create a rebuttable presumption that the termination of a tenancy is for the purposes of avoiding these provisions in the absence of a written statement showing cause for the termination. The bill would require the Department of Housing and Community Development to submit a report, on or before January 1, 2033, to the Legislature regarding the effectiveness of these provisions. The bill provides that these provisions apply to all rent increases occurring on or after March 15, 2019.


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

SECTION 1. Section 1947.12 is added to the Civil Code, to read:

1947.12. (a) (1) An owner of residential real property in the state shall not increase the rental rate for that property in an amount that is greater than _____ 5 percent more than the lowest rental rate in effect for the immediately preceding rental term. The _____ percent maximum increase shall only include the following: 12 months plus the percentage change in the cost of living.

(1) Up to _____ percent to reflect increases in the rental market.

(2) The percentage change in the cost of living.

(2) The total rental rate increase authorized by this subdivision shall not exceed 10 percent within any 12-month period.

(b) (1) Subdivision (a) shall apply to partial changes in tenancy of a residential rental property where one or more of the tenants remains an occupant in lawful possession of the property.

(2) Subdivision (a) shall not apply to new tenancies where no tenants from the prior lease remain an occupant in lawful possession of the property.

(c) This section shall not apply to the following residential rental properties:

(1) Deed-restricted affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.
(3) Housing subject to a local ordinance that imposes a maximum rental rate increase that is more restrictive than that provided in subdivision (a).

(d) An owner shall provide notice of any increase in the rental rate, pursuant to subdivision (a), to each tenant in accordance with Section 827.

(e) A landlord shall not terminate a tenancy for the purposes of increasing the rent in an amount greater than that authorized by this section. There is a rebuttable presumption that, in the absence of a written statement from the landlord to the tenant showing cause for the termination of a tenancy, the termination is for the purposes of avoiding this section.

(f) (1) On or before January 1, 2033, the department shall report to the Legislature regarding the effectiveness of this program. The report shall include, but not be limited to, the impact of the rental rate cap pursuant to subdivision (a) on the housing market within the state.

(2) The report required by paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(g) For the purposes of this section, the following definitions shall apply:

(1) “Department” means the Department of Housing and Community Development.

(2) “Owner” means any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner.

(3) “Percentage change in the cost of living” means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.

(4) “Residential real property” means any dwelling or unit that is intended for human habitation.

(5) “Tenancy” means the lawful occupation of property and includes a lease or sublease.
(h) This section shall apply to all rent increases occurring on or after March 15, 2019. This section shall become operative January 1, 2020.
Attachment 2
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1482 (Chiu): Tenancy: rent caps.

Introduction and Overview
Assembly Member Chiu introduced AB 1482 which is sponsored by the Alliance for Community Empowerment (ACCE), California Rural Legal Assistance Foundation, PICO CA, Public Advocates, and the Western Center on Law and Poverty. The bill would cap the amount that a residential real property owner could increase the rental rate for a property.

Specifically, this bill would:
- Cap rent increases at 5% more than the lowest rental rate for the preceding twelve months plus the percentage change in the cost of living for the region where the property is located,
- Cap total rental rate increases within any twelve-month period at 10%,
- Base cost of living increases on the United States Bureau of Labor Statistics Consumer Price Index,
- Exempt from its provisions deed-restricted affordable housing, dormitories, and properties subject to a more restrictive rent increase cap,
- Prohibit a landlord from terminating a tenancy in order to avoid the provisions of the bill,
- Create a rebuttable presumption that the termination of a tenancy is for the purpose of avoiding the provisions of the bill barring the presence of a written statement showing just cause for the tenancy’s termination,
- Require the Department of housing and Community Development to submit a report to the Legislature by 2033 on the effectiveness of the bill’s provisions,
- Apply to all rent increases occurring on or after March 15, 2019.

Status of the Legislation
The bill is pending on the Assembly Floor.

Support or Opposition
The author argues that the bill would protect renters from displacement by creating price stability and certainty, while enabling renters to plan for their future without having to worry about large and unexpected rent increases. The author also asserts that the cap on rent increases is at a level that will enable property owners to see a return on their investment similar to other business investments.

Tel: 916.446.4656
Fax: 916.446.4318
1415 L Street, Suite 200
Sacramento, CA 95814
The bill is opposed by the rental housing industry and other business interests. Opponents argue that the bill would disincentivize developers from building more rental housing in the state and exacerbate the state’s housing crisis. They state that the bill would also make financing rental property more difficult and result in rental property owner’s taking rental units off the market.

**Support**

- Alliance of Californians for Community Empowerment (co-sponsor)
- California Rural Legal assistance Foundation (co-sponsor)
- PICO California (co-sponsor)
- Public Advocates (co-sponsor)
- Western Center on Law and Poverty (co-sponsor)
- Abundant Housing LA
- AFSCME Local 3299
- Alliance for Community Transit - Los Angeles
- American Civil Liberties Union of California
- Asian Americans Advancing Justice - California
- Asian Americans and Pacific Islanders for Civic Empowerment Education Fund
- Asian Pacific Environmental Network
- Bay Area Legal Aid
- Bend the Arc: Jewish Action Southern California
- California Alliance for Retired Americans
- California Calls
- California Conference Board of the
- Amalgamated Transit Union
- California Conference of Machinists
- California Labor Federation
- California Renters Legal Advocacy and Education Fund
- California Rural Legal Assistance Foundation
- California Teamsters Public Affairs council
- California YIMBY
- Central Coast Alliance United for a Sustainable Economy
- Central Valley Empowerment Alliance
- Chan Zuckerberg Initiative
- Coalition for Humane Immigrant Rights
- Congregations Organized for Prophetic Engagement
- Corporation for Supportive Housing
- Courage Campaign
- Drug Policy Alliance
- EAH Housing
- East Bay for Every One
- East Bay Housing Organization
- Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO
- Enterprise Community Partners
- Esperanza Community Housing Corporation
- Faith in Action Bay Area
- Faith in the Valley, Stanislaus
- Gamaliel of California
- Hamilton Families
- Hillcrest Indivisible
- House Sacramento
- Housing California
- Hunger Action Los Angeles
- Indivisible SF
- Indivisible: San Diego Central
- Inlandboatmen's Union of the Pacific
- KIWA
- Korean Resource Center
- LA Forward
- LA Voice
- Latino Coalition for a Healthy California
- Latinos United for a New America
- Law Foundation of Silicon Valley
- Leadership Counsel for Justice and Accountability
- Legal Services for Prisoners with Children
- Mayor Eric Garcetti
- Mission Neighborhood Centers
- Monument Impact
- National Association of Social Workers, California Chapter
- National Union of Healthcare Workers
- Non-Profit Housing Association of Northern California
- Oakland Tenants Union
- Orange County Civic Engagement Table
- Orange County Congregation Community Organization
- Planning and Conservation League
- PolicyLink
- POWER
- Power California
- Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Public Counsel
Public Law Center
Sacramento Filipinx LGBTQIA
Sacred Heart Community Service
San Francisco Foundation
SEIU California
SOMOS Mayfair
Southern California Association of Non Profit Housing
State Building and Construction Trades Council
Strategic Actions for a Just Economy
TechEquity
Tenderloin Neighborhood Development
Thai Community Development Center
The Kennedy Commission
The Public Interest Law Project
Transform
UAW Local 2865
UC Davis Bulosan Center for Filipino Studies
UNITE HERE, Local 19
United Food and Commercial Workers, Western States Council
United Teachers Los Angeles
Unite-Here, AFL-CIO
Utility Workers of America
Venice Community Housing Corporation
Viet Vote SD

Working Partnerships USA
YIMBY Action

Support If Amended

Bay Area Council
Building Industry Association of the Bay Area
Community Legal Services in East Palo Alto
Housing for All Burlingame
Oakland Chamber of Commerce
One San Mateo
Related California
SPUR
Youth United For Community Action

Opposition
AMVETS
California Apartment Association
California Association of Realtors
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Council for Affordable Housing
California Mortgage Bankers association
California Rental Housing Association
Prometheus
Southern California Rental Housing Association
Item A-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 1481 (Bonta) – Tenancy Termination: Just Cause (AB 1481) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for AB 1481 to the City (Attachment 1). AB 1481 would prohibit a landlord from terminating a lease or rental agreement without specifying just cause in the written notice provided to the tenant. The bill would also require a landlord to assist a lessee in relocating for a no-fault just cause termination by providing them with a direct payment regardless of their income. (Attachment 2).

AB 1481 is in line with City Council policy and is considered noncontroversial. Unless otherwise directed by the Beverly Hills City Council Legislative/Lobby Committee, staff will place this item on a future City Council Agenda for a letter of support as this item is not listed in the City Council adopted Legislative Platform. The report will indicate the Liaisons approved a letter of support be moved to the City Council for review and approval.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff.
Attachment 1
May 18, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1481 (Bonta) Tenancy termination: just cause.

Introduction and Background
AB 1481 was introduced by Assembly Member Rob Bonta and would prohibit a landlord from terminating a lease or rental agreement without specifying just cause in the written notice provided to the tenant. The bill would also require a landlord to assist a lessee in relocating for a no-fault just cause termination by providing them with a direct payment regardless of their income.

Specifically, this bill would:
- Define just cause as either at-fault just cause or no-fault just cause;
- Define at-fault just cause as any of the following:
  - Failure to pay rent,
  - Substantial violation of the terms of a rental agreement including but not limited to being issued a written notice to stop the violation,
  - Refusal by the tenant to sign a new lease that is identical to the previous lease after it has expired,
  - Illegal activity that is related to the residential property or uses the residential property for criminal activity.
- Define no-fault just cause as any of the following:
  - The owner intends to occupy the property if allowed by a lease provision or upon written agreement of tenant,
  - Withdrawal of the property from the rental market,
  - If the property is determined to be unsafe by a government agency that has issued an order to vacate,
  - The owner intends to demolish or substantially remodel the property.
- Require a landlord to provide written notice and an opportunity to cure a curable violation;
- Require a landlord for a no-fault just cause termination to notify a tenant of their rights to a relocation assistance payment to be determined based upon the number of bedrooms in the rental property;
- Not override or prohibit any local just-cause eviction ordinance that provides a higher level of tenant protections.

Status of Legislation
The bill is pending on the Assembly Floor.
Support and Opposition
The author of the bill argues that just-cause eviction protections for tenants are necessary to help address California’s housing crisis. The author also argues that these protections will safeguard tenants from discriminatory, arbitrary, and retaliatory evictions. Supporters note that tenants are already provided just cause eviction protections in Beverly Hills and 16 other California cities. Supporters argue that these protections are critical to protecting tenants from inappropriate and abusive practices by landlords.

The bill is opposed by rental and apartment owner’s associations who argue that the bill would make evicting nuisance tenants or those who pose a danger to other more time consuming and difficult. Opponents also argue that providing a nuisance tenant with a detailed description of behaviors that precipitated their eviction would also provide the nuisance tenant with information that may allow them to identify which neighboring resident filed a complaint with management regarding their behavior. They argue that this can create hostility between residents and raises safety concerns.

Support
American Civil Liberties Union
California Alliance for Retired Americans
California Conference of Machinists
California Labor Federation
California Rural Legal Assistance Foundation
California Rural Legal Assistance Foundation
California Teamsters Public Affairs Council
Legal Aid Foundation of Los Angeles
Legal Services for Prisoners with Children (LSPC)
PICO California
Planning and Conservation League
Public Advocates, Inc.
Public Counsel
Western Center on Law and Poverty
California Conference Board of the Amalgamated Transit Union
Hunger Action Los Angeles
United Teachers Los Angeles
California Reinvestment Coalition
Koreatown Immigrant Workers Alliance
Housing California
Professional & Technical Engineers, Local 21
East Bay Community Law Center
Law Foundation of Silicon Valley
National Union of Healthcare Workers
Transform
SEIU California
PolicyLink
Korean Resource Center
Bay Area Legal Aid
Los Angeles Homeless Services Authority
Los Angeles Alliance for New Economy (LAANE)
Community Legal Services in East Palo Alto (CLSEPA)
Public Interest Law Project
Courage Campaign
Asian Pacific Environmental Network
Tenderloin Neighborhood Development Corporation
Central Coast Alliance United for a Sustainable Economy
LA Voice
Thai Community Development Center
Strategic Actions for a Just Economy
National Association of Social Workers, California Chapter (NASW-CA)
San Francisco Foundation
Southern California Association of Non-Profit Housing
Utility Workers Union of America
Congregations Organized for Prophetic Engagement (COPE)
East Bay Housing Organizations (EBHO)
Related California
UNITE HERE!
State Building and Construction Trades Council of California
Engineers and Scientists of California, IFPTE Local 20
American Federation of State, County and Municipal Employees, Local 3299
Sacred Heart Community Service
Building Industry Association of the Bay Area
Leadership Counsel for Justice & Accountability
Esperanza Community Housing Corporation
Eric Garcetti, Mayor, City of Los Angeles
The Kennedy Commission
Asian Americans Advancing Justice-California
Faith in Action Bay Area
SEIU Local 1021
ACCE Action
California Renters Legal Advocacy and Education Fund
Coalition for Humane Immigrant Rights
Faith in the Valley
Monument Impact
San Francisco Bay Area Planning and Urban Research Association
LA Forward
ACT-LA
Hamilton Families
Fair Rents for Redwood City
Indivisible SF
Indivisible San Diego Central
TechEquity Collaborative
Asian Americans and Pacific Islanders for Civic Empowerment Education Fund
Housing for All Burlingame
East Bay for Everyone
Chan Zuckerberg Initiative
South Bay Progressive Alliance
Progressive Asian Network for Action
Central Valley Empowerment Alliance
Just Cities/Dellums Institute
Power California
Unite Here, Local 19
Enterprise Northern California
Inlandboatmens Union of the Pacific
Nonprofit Housing Alliance of Northern California
The Orange County Civic Engagement Table
Sacramento Filipinx LGBTQIA
University of California, Davis Bulosan Center for Filipino Studies
Viet Vote

**Opposition**
California Apartment Association
California Association of Realtors
Apartment Association of Orange County

Apartment Association California Southern Cities
East Bay Rental Housing Association
California Rental Housing Association
Southern California Apartment Association
Attachment 2
An act to add Section 1946.2 to the Civil Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 1481, as amended, Bonta. Tenancy termination: just cause.
Existing law specifies that a hiring of residential real property, for a term not specified by the parties, is deemed to be renewed at the end of the term implied by law unless one of the parties gives written notice to the other of that party’s intention to terminate. Existing law requires an owner of a residential dwelling to give notice at least 60 days prior to the proposed date of termination, or at least 30 days prior to the proposed date of termination if any tenant or resident has resided in the dwelling for less than one year, as specified. Existing law requires any notice given by an owner to be given in a prescribed manner, to contain certain information, and to be formatted, as specified.

This bill would, with certain exceptions, prohibit a lessor of residential property for a term not specified by the parties, from terminating the lease without just cause, as defined, stated in the written notice to terminate.

This bill would require, for curable violations, that the lessor give a notice of violation and an opportunity to cure the violation prior to issuing the notice of termination, unless the notice to terminate states
just cause that is related to specific illegal conduct that creates the potential for harm to other tenants. termination.

This bill would require, unless the owner intends to occupy the residential property, require, for no-fault just cause terminations, as specified, that the lessor assist the lessee, lessee to relocate, regardless of the lessee's income, to relocate by providing a direct payment to the lessee.

This bill would require a lessor of residential property to provide notice to a lessee of the lessee’s rights under these provisions at the beginning of the tenancy by providing an addendum to the lease to be signed by the lessee when the lease agreement is signed.

This bill would not prevent local rules or ordinances that provide a higher level of tenant protection as specified.

State-mandated local program: no.

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

SECTION 1. Section 1946.2 is added to the Civil Code, to read:

1946.2. (a) Notwithstanding any other law, no lessor of residential property for a term not specified by the parties, which property, that the tenant has occupied with or without a written lease agreement, shall terminate the lease without just cause, which shall be stated in the written notice to terminate tenancy set forth in Section 1946.1.

(b) For purposes of this section, “just cause” includes either of the following:

(1) At-fault just cause, which includes, but is not limited to,
includes any of the following:

(A) Failure to pay rent.

(B) Substantial breach of a material term of the rental agreement, including, but not limited to, violation of a provision of the lease after being issued a written notice to stop the violation.

(C) Nuisance, including, but not limited to, disturbing other tenants or neighbors after being issued a written notice to stop the disturbance.

(C) Nuisance.

(D) Waste.
(E) Refusal, by the tenant to sign a new lease that is identical to the previous lease, after the previous lease expired.

(F) Illegal conduct, including, but not limited to, using the residential property for criminal activity. However, a charge or conviction for a crime that is unrelated to the tenancy is not at-fault just cause for termination of the hiring.

(2) No-fault just cause, including, but not limited to, which includes any of the following:

(A) (i) Owner intent to occupy the residential property.
(ii) Clause (i) shall apply only if the tenant agrees, in writing, to the termination, or if a provision of the lease agreement allows the owner to terminate the lease if the owner unilaterally decides to occupy the residential property.
(iii) Clause (i) shall not apply if the tenant is 60 years of age or older, disabled, or catastrophically ill.

(B) Withdrawal of the residential property from the rental market.

(C) Unsafe habitation. habitation, as determined by a government agency that has issued an order to vacate, order to comply, or other order that necessitates vacating the residential property.

(D) Intent to demolish or to substantially remodel.

(c) Before a lessor of residential property issues a lessee a notice to terminate tenancy for just cause that is a curable lease violation, the lessor shall first give notice of the violation to the lessee with an opportunity to cure the violation. If the notice to terminate tenancy states just cause related to specific illegal conduct that creates the potential for harm to occur to other tenants, no notice of the violation or opportunity to cure the violation is required before the notice to terminate tenancy is issued.

(d) Except as provided in subparagraph (A) of paragraph (2) of subdivision (b), if a lessor of residential property issues a notice to terminate tenancy for no-fault just cause, the lessor shall assist the lessee, regardless of the lessee’s income, to relocate by providing a direct payment to the lessee. The amount of this payment shall be determined based upon the number of bedrooms contained on the residential property. If a lessor issues a notice to terminate tenancy for no-fault just cause, the lessor shall notify the lessee of the lessee’s right to relocation assistance pursuant to this section.
(e) This section shall not apply to the following types of residential properties or residential circumstances:

1. Government-owned and government-subsidized housing units or housing with existing government regulatory assessments that govern rent increases in subsidized rental units.

2. (1) Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940.

3. (2) Housing accommodations in a nonprofit hospital, religious facility, or extended care facility.

4. (3) Dormitories owned and operated by an institution of higher education or a kindergarten through grade 12 school.

5. (4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential property.

6. (5) Single owner-occupied residences, including a residence in which the owner-occupant rents or leases two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

(f) A lessor of residential property shall provide notice to a lessee of the lessee’s rights under this section at the beginning of the tenancy by providing an addendum to the lease which shall be signed by the lessee when the lease agreement is signed.

(g) This section does not prevent the enforcement of an existing local rule or ordinance, or the adoption of a local rule or ordinance, that requires just cause for termination of a residential tenancy that, when reviewed by the governing body of the city, city and county, county, or other municipality, further limits or specifies the allowable reasons for eviction, requires longer notice or additional procedures for evicting tenants, provides for higher relocation assistance amounts, or is determined to provide a higher level of tenant protections than this section.
Item A-4
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy and Management Analyst
DATE: May 22, 2019
SUBJECT: Oppose Senate Bill 266 (Leyva) - Public Employees’ Retirement System: Disallowed Compensation: Benefit Adjustments
ATTACHMENTS: 1. Summary Memo – Senate Bill 266
2. Bill Text – Senate Bill 266

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 266 (Leyva) - Public Employees’ Retirement System: Disallowed Compensation (SB 266) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for SB 266 to the City (Attachment 1). SB 266 would establish new procedures for employees covered by the California Public Employees Retirement System (CalPERS) in cases where their pensionable benefits are erroneously calculated and reported to CalPERS by their employer. (Attachment 2)

SB 266 outlines a policy whereby public agencies would be required to continue to make payments to retirees that have had their pensions reduced by CalPERS when CalPERS realizes the pensionable benefits was erroneously calculated. Continued payment of a disallowed benefit to a retiree would constitute a gift of public funds, in violation of Section 6, Article 16 of the California Constitution.

SB 266 was further amended on May 17, 2019; however, the requirement for the employing agency to pay retirees the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance without the disallowed compensation still remains present in the bill (Section 20164.5 (B) (i) and Section 20164.5 (B) (ii)).

Unless otherwise directed by the Beverly Hills City Council Legislative/Lobby Committee, staff will place this item on a future City Council Agenda for a letter of opposition as this item is not listed in the City Council adopted Legislative Platform. The report will indicate the Liaisons approved a letter of opposition be moved to the City Council for review and approval.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff.
Attachment 1
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
      Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
      Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: SB 266 (Leyva) Public Employees’ Retirement System: disallowed compensation: benefit adjustments.

Introduction and Background

SB 266 would establish new procedures for employees covered by the California Public Employees Retirement System (CalPERS) in cases where their pensionable benefits are erroneously calculated and reported to CalPERS by their employer.

Under current law, once a benefit is determined to be disallowed, both the employer and the employee cease making future payments on that benefit, past contributions from the employee are returned to the employee, while past contributions from the employer are applied towards future payment. In the case of a retiree that received the disallowed benefit, the pension system must recoup the overpaid benefit from the retiree. The pension system must recoup that overpayment from the retiree because it is unlawful to pay out a benefit that is not legally allowable or earned.

Specifically, this bill would

1) Establishes a process for submitting an additional compensation item proposed for inclusion in a memorandum of understanding after January 1, 2020, that is intended to form the basis of a pension benefit calculation for determination of compliance with PEPRA and other laws, as specified, and would require PERS to respond within 90 days.

2) The bill would require PERS to publish notices identifying items of allowable compensation derived from language submitted to the system for review.

3) Establish new procedures for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation current pension law.

4) Apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies.
5) Require the applicable employer to discontinue the reporting of the disallowed compensation, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed.

6) Require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that employer to return to the member any contributions paid by the member or on the member’s behalf.

7) Require PERS to adjust the benefit to reflect the exclusion of the disallowed compensation, and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer that reported the disallowed compensation.

8) Require the employing entity to refund overpayment costs to the system and to pay members, survivors, and beneficiaries whose benefits have been reduced a lump sum or an annuity reflecting the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided.

Proponents argue that under current practice, when a CalPERS member is within one year of their expected retirement date, they may request up to two official CalPERS-generated retirement estimates in a 12-month period. Official estimates use a member’s current account information to project retirement benefits as of the estimated retirement date.

In 2012, a firefighter employed by the City of Davis retired after serving the public for nearly 30 years. Prior to retiring, the firefighter twice requested an official retirement estimate from CalPERS, which provided a projection of retirement benefits as of the firefighter’s estimated retirement date. Based on the information provided by CalPERS in their official retirement estimate, the firefighter made the decision to retire.

In 2017 – five years after the Davis firefighter retired -- CalPERS notified the retired firefighter that the City of Davis had reported certain compensation that CalPERS believed was not pensionable. Consequently, CalPERS sought to collect reimbursement for the overpayment -- not from the City of Davis that had bargained in good faith over that pensionable compensation, but instead sought collection from the retired firefighter. The reimbursement sought by CalPERS included a lump sum amount of $42,000 and a sizeable, future reduction in the retired firefighter’s monthly retirement allowance.

Opponents, including the League of California Cities argue that public agencies cannot continue to make payments to retirees as proposed by SB 266 for the same legal basis that requires pension systems to recoup their disallowed retirement benefit payments to retirees.

Continued payment of a disallowed benefit to a retiree would constitute a gift of public funds, in violation of Section 6, Article 16 of the California Constitution. It is unfortunate that after an agency and their bargaining unit came to an agreement on benefits and those benefits had been paid for any
amount of time for the benefit to be taken from the retiree. Public agencies simply cannot continue to make payments directly to a retiree for an unlawful benefit.

**Status of Legislation**

This bill is pending on the Senate Floor

**Support and Opposition**

**SUPPORT**
California Professional Firefighters, AFL-CIO (Co-Sponsor)
Peace Officers’ Research Association of California (Co-Sponsor)
California School Employees Association, AFL-CIO
Riverside Sheriffs Association

**OPPOSITION**
California Special Districts Association
California State Association of Counties
League of California Cities
Attachment 2
An act to add Section 20164.5 to the Government Code, relating to public employees’ retirement.

LEGISLATIVE COUNSEL’S DIGEST


Existing law, the Public Employees’ Retirement Law (PERL), establishes the Public Employees’ Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL authorizes a public agency to contract to make its employees members of PERS and prescribes a process for this. PERS is administered by its board of administration, which is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures.

The California Public Employees’ Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

This bill would establish new procedures under PERL for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with...
PEPRA and other specified laws and thus impermissible under PERL. The bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation. The bill would require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that the state, school employer, or contracting agency return to the member any contributions paid by the member or on the member’s behalf.

With respect to retired members, survivors, or beneficiaries whose benefits are based on disallowed final compensation, the bill would require PERS to adjust the benefit to reflect the exclusion of the disallowed compensation, and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer entity that reported the disallowed compensation. Additionally, if specified conditions are met, the bill would require the employing entity to refund overpayment costs to the system and to pay members, survivors, and beneficiaries whose benefits have been reduced a lump sum or an annuity reflecting the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided. The bill would require the system to provide certain notices in this regard.

The bill would require authorize the state, a school employer, or a contracting agency, as applicable, to submit to the system an additional compensation proposal item proposed for inclusion in a memorandum of understanding after January 1, 2020, that is intended to form the basis of a pension benefit calculation for determination of compliance with PEPRA and other laws, as specified, and would require PERS to respond within 60 days. If the system determines that the proposal is in compliance with PEPRA and other laws, then the payment obligations, as described above, would be imposed on PERS, if compensation was subsequently disallowed. 90 days, as specified. The bill would grant authority for require PERS to publish notices
identifying items of allowable compensation. compensation derived from language submitted to the system for review. The bill would make related legislative findings and declarations.


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

SECTION 1. (a) The California Public Employees’ Retirement System (CalPERS) is the largest public pension fund in the United States, administering defined benefit retirement plans for California’s public employees, including state and local government firefighters, law enforcement personnel, and school employees.

(b) Of the numerous positions maintained by the state, schools, and local governments, each is unique and each is vital to ensuring quality public services that help keep our state strong, a critical component to promoting our state’s continued economic recovery and future growth.

(c) Fire service, law enforcement, school personnel, and other public employees exhibit varying demographic features and career patterns. Each requires a different skill set and knowledge base, as well as unique requirements for recruitment, training, retention, and compensation.

(d) Generations of hard-working members of California’s middle class have dedicated their careers to public service, often earning less over the course of their careers when compared to their private industry counterparts, to earn and pay for the promise of a secure retirement.

(e) A public employee’s pension is based on collectively bargained compensation that takes the form of base pay and special compensation for additional skills, extraordinary assignments, or education.

(f) For CalPERS, it is the employer’s responsibility to ensure that employee information is reported to CalPERS accurately and on a timely basis in order to correctly calculate an employee’s service credit and final compensation for retirement purposes.

(g) In 2012, after serving the public for nearly 30 years, a firefighter employed by a CalPERS contracting agency, which provided an official projection of retirement benefits based on the
firefighter’s estimated retirement date, made the decision to retire based on that projection.

(h) In 2017, five years after officially retiring, CalPERS notified the firefighter retiree that the retiree’s former employer had erroneously reported and remitted contributions on certain compensation, which CalPERS later determined in an audit was not pensionable compensation. CalPERS sought repayment of the purported overpayment directly from the retired firefighter totaling thousands of dollars, as well as imposed a substantial future reduction to the retiree’s monthly allowance. Unfortunately, this scenario is not isolated to just this one retiree. A handful of other firefighter, law enforcement, and school retirees have reported similar stories across multiple CalPERS employers.

(i) For over eight decades, CalPERS has proven its ability to fairly administer the retirement system to uphold the promises made by its employers for those members who invest their life’s work in public service. However, this kind of clawback has the potential to take a major toll on the finances of retirees, including firefighters and law enforcement officers who, unlike private sector employees, do not receive social security benefits and instead rely on their fixed monthly pension as their sole source of retirement income.

(j) In enacting this bill, it is the intent of the Legislature to ensure that a retired CalPERS member is protected when alleged misapplication or calculation of compensation occurs as a result of an employer’s error, and that this protection be provided to retirees whose appeal of CalPERS’ determination, and subsequent reduction of the retiree’s allowance, is not final. It is further the intent of the Legislature that errors made on the part of the employer, with respect to a promise to a retiree, be borne by the employer rather than through a retroactive clawback and permanent reduction in the retired member’s pension.

SEC. 2. Section 20164.5 is added to the Government Code, to read:

20164.5. (a) For purposes of this section, “disallowed compensation” means compensation reported for a member by the state, school employer, or a contracting agency that the system subsequently determines is not in compliance with the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of
Title 1), Section 20636 or 20636.1, or the administrative regulations of the system.

(b) If the system determines that the compensation reported for a member by the state, school employer, or a contracting agency conflicts with the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636, or the administrative regulations of the system, is disallowed compensation, the system shall require the state, school employer, or contracting agency to discontinue reporting the disallowed compensation. This section shall also apply to determinations made on or after January 1, 2017, if an appeal has been filed and the member, survivor, or beneficiary has not exhausted their administrative or legal remedies.

(1) In the case of an active member, all contributions made on the disallowed compensation shall be credited against future contributions to the benefit of the state, school employer, or contracting agency that reported the disallowed compensation, and any contribution paid by, or on behalf of, the member, including contributions under Section 20691, shall be returned to the member by the state, school employer, or contracting agency that reported the disallowed compensation.

(2) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation, the contributions made on the disallowed compensation shall be credited against future contributions, to the benefit of the state, school employer, or contracting agency that reported the disallowed compensation and the system shall permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.

(3) (A) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation as described in paragraph (2), the repayment and notice requirements described in this paragraph and paragraph (4) shall apply only if all of the following conditions are met:

(i) The compensation was reported to the system and contributions were made on that compensation while the member was actively employed.
(ii) The compensation was provided for in a memorandum of understanding as compensation for pension purposes.

(iii) The determination by the system that compensation was disallowed was made after the date of retirement.

(iv) The member was not aware that the compensation was disallowed at the time it was reported.

(v) For any disallowed compensation subject to a memorandum of understanding entered into on or after January 1, 2020, the state, school employer, or contracting agency failed to secure an affirmative determination of the compensation proposal as described in subdivision (b).

(B) If the conditions of subparagraph (A) are met, the state, school employer, or contracting agency that reported contributions on the disallowed compensation shall do both of the following:

(i) Pay to the system, as a direct payment, the full cost of any overpayment of the prior paid benefit made to an effected retired member, survivor, or beneficiary resulting from the disallowed compensation.

(ii) Pay to the retired member, survivor, or beneficiary, as a lump sum or as an annuity based on that amount, the actuarial equivalent present value representing the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated pursuant to paragraph (2) for the duration that allowance is projected to be paid by the system to the retired member, survivor, or beneficiary. The payment, or payments, shall be made by the state, school employer, or contracting agency that reported contributions on the disallowed compensation in the option selected by the retired member, survivor, or beneficiary pursuant to a settlement or agreement between the parties.

(4) The system shall provide a notice to the state, school employer, or contracting agency that reported contributions on the disallowed compensation and to the effected retired member, survivor, or beneficiary, including, at a minimum, all of the following:

(A) The amount of the overpayment to be paid by the state, school employer, or contracting agency to the system as described in subparagraph (B) of paragraph (3).
(B) The actuarial equivalent present value owed to the retired member, survivor, or beneficiary as described in subparagraph (B) of paragraph (3), if applicable.

(C) Written disclosure of the state, school employer, or contracting agency’s obligations to the retired member pursuant to this section.

(b)

(c) (1) The state, a school employer, or a contracting agency, as applicable, shall submit to the system for review any additional compensation proposal item that is proposed for inclusion in a memorandum of understanding, on and after January 1, 2020, that is intended to form the basis of a pension benefit calculation, in order for the system to determine compliance with the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636, and the administrative regulations of the system. The system shall respond to the submission within 60 days.

(c) If the system determines the compensation proposal is in compliance with the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636, and the administrative regulations of the system, then the obligations described in subparagraph (B) of paragraph (3) of subdivision (a) belong to the system rather than the state, school employer, or contracting agency, and that duty is owed by the system to the retired member, survivor, or beneficiary.

(d) For ease of administration, if the system determines a compensation proposal is allowable under the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636, and the administrative regulations of the system, the system may periodically publish a notice identifying items of compensation that are allowable and are to be reported to the system when they are contained in a written labor policy or agreement.

(2) A submission to the system for review under paragraph (1) shall include only the proposed compensation item language and a description of how it meets the criteria listed in subdivision (a) of Section 571 or subdivision (b) of Section 571.1 of Title 2 of the California Code of Regulations, along with any other supporting
documents or requirements the system deems necessary to evaluate compliance with the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636 or 20636.1, and the administrative regulations of the system.

(3) The system shall respond to the submission within 90 days of the receipt of all information required to make a determination.

(d) The system shall periodically publish a notice of the proposed compensation language submitted to the system pursuant to paragraph (c) for review and the system’s determination of compliance.

(e) This section does not alter or abrogate any responsibility of the state, a school employer, or a contracting agency to meet and confer in good faith with the employee organization regarding the impact of the disallowed compensation or the effect of any disallowed compensation on the rights of the employees and the obligations of the employer to its employees, including any employees who, due to the passage of time and promotion, may have become exempt from inclusion in a bargaining unit, but whose benefit was the product of collective bargaining.
Item A-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.

Senate Bill 424 (Jackson) - Tobacco Products: Single-Use and Multiuse Components (SB 424) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for SB 424 to the City (Attachment 1). SB 424 would prohibit a person from selling, giving, or furnishing a single-use cigarette product, as specified, to another person. It would require manufacturers of tobacco products with a reusable component to use recyclable materials to make any reusable component of the tobacco product, or to collect the reusable components through a take-back or mail-back program either individually or through a stewardship program, as specified.

SB 424 was amended on May 17, 2019 to exclude “e-hookah” from the bill’s proposed definition of an electronic cigarette.

SB 424 is consistent with recent City Council actions regarding the sale of tobacco products; however, as it is not specifically outlined in the ordinance introduced on May 21, 2019, it does require action by the City Council to send a letter of support.

Unless otherwise directed by the Beverly Hills City Council Legislative/Lobby Committee, staff will place this item on a future City Council Agenda for a letter of support as this item is not listed in the City Council adopted Legislative Platform. The report will indicate the Liaisons approved a letter of support be moved to the City Council for review and approval.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff.
Attachment 1
May 19, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: SB 424 (Jackson) Tobacco products: single-use and multiuse components

Introduction and Background

SB 424 address tobacco product waste by banning the sale of single-use plastic tobacco products and establishes an Extended Producer Responsibility (EPR) program for managing waste from tobacco products.

Cigarette waste is a significant environmental pollution problem. Cigarette filters, composed of a type of plastic called cellulose acetate, will degrade with sun exposure but not bio-degrade. As a result, cigarette butts accumulate in the environment. The impact of a single cigarette butt may be small, but 267 billion cigarettes are smoked in the United States each year. Many littered butts are carried as runoff from streets to drains, to rivers, and ultimately to beach and the ocean.

The non-profit Ocean Conservancy reports that during their 2018 coastal cleanup, more than 2.4 million cigarette butts were picked up worldwide, topping food wrappers and plastic beverage bottles. The same event picked up 842,837 cigarette butts and related litter from coastlines in the United States with 198,814 from California, more than from any other state.

Specifically, SB 424 bill would:

- Prohibit a person or entity, directly or indirectly from selling, giving, or in any way furnishing to another person of any age in the state any of the following:
  - A cigarette utilizing a single-use filter made of any material, including cellulose acetate, any other fibrous plastic material, or any organic or biodegradable material;
  - An attachable and single-use plastic device meant to facilitate manual manipulation or filtration of a tobacco product; and,
  - A single-use electronic cigarette and single-use vaporizer device.

- Requires a manufacturer of a reusable component to collect those components through:
  - Take-back collection bins that the manufacturer makes available to the public at every location that sells its tobacco products; or,
  - A mail-back program that uses safe-for-handling containers that the manufacturer makes available to the public at every location that sells its tobacco products.
  - Collect or reimburse household hazardous waste (HHW) collection facilities for the costs of collecting and recycling the reusable components designated as HHW.
Status of Legislation
SB 424 passed out of the Senate Appropriations Committee on May 16, 2019 and is now on the Senate floor for consideration.

Support and Opposition
The author and supporters argue that tobacco product waste has caused long-term damage to our ecosystem and our communities. “Municipalities spend millions on the clean-up of tobacco product waste, and, increasingly, millions more when waterways are rendered out of compliance with water quality laws because of tobacco waste pollution. Without a comprehensive program to bring manufacturer responsibility and recyclability standards into the equation, the public taxpayer will continue to pay for improper disposal of these products.

The bill currently has no opposition.

Support
Alameda County, County Supervisor, District 4
California Association Environmental Health Administrators
California Product Stewardship Council
Californians Against Waste
Center for Oceanic Awareness, Research, and Education
Colorado Medical Waste, Inc.
Full Circle Environmental
Heal the Bay
Napa County, Public Works
National Stewardship Action Council (sponsor)
Plastic Pollution Coalition
RethinkWaste
Save Our Shores
Sea Hugger

Seventh Generation Advisors
Sierra Club, California
Steve Devine, Program Manager, Public Works, County of Napa
StopWaste
Supervisor Nate Miley, Alameda County
Surfrider Foundation
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education (COARE)
The Story of Stuff Project
UPSTREAM
Wishtoyo Chumash Foundation
Zero Waste USA

Opposition
None on file.
Attachment 2
SB 424, as amended, Jackson. Tobacco products: single-use and multiuse components.

(1) Under existing law, the Stop Tobacco Access to Kids Enforcement Act, an enforcing agency, as defined, may assess civil penalties against any person, firm, or corporation that sells, gives, or furnishes specified tobacco and cigarette related items, including cigarette papers, to a person who is under 21 years of age, except as specified. The existing civil penalties range from $400 to $600 for a first violation, up to $5,000 to $6,000 for a 5th violation within a 5-year period.

Existing law prohibits the sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 21 years of age through the United States Postal Service or other public or private postal or package delivery service. Under existing law, a district attorney, city attorney, or the Attorney General may assess civil penalties against a violator of not less than $1,000 or more than $2,000 for the
first violation and up to $10,000 for a 5th or subsequent violation within a 5-year period.

Under existing law, every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or furnishes a cigarette, among other specified items, to another person who is under 21 years of age is, except as specified, subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of $200 for the first offense, $500 for the 2nd offense, and $1,000 for the 3rd offense.

This bill would prohibit a person or entity from selling, giving, or furnishing to another person of any age in this state a cigarette utilizing a single-use filter made of any material, an attachable and single-use plastic device meant to facilitate manual manipulation or filtration of a tobacco product, and a single-use electronic cigarette or vaporizer device. The bill would prohibit that selling, giving, or furnishing, whether conducted directly or indirectly through an in-person transaction, or by means of any public or private method of shipment or delivery to an address in this state.

This bill would authorize a city attorney, county counsel, or district attorney to assess a $500 civil fine against each person determined to have violated those prohibitions in a proceeding conducted pursuant to the procedures of the enforcing agency, as specified.

(2) 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, including, among other solid waste, single-use carryout bags and single-use plastic straws.

This bill would require the manufacturer of a tobacco product to use materials eligible for recycling under state or local recycling programs, including electronic waste recycling programs, in existence as of January 1, 2020, to make any reusable component of the tobacco product, or, alternatively, if certain conditions are met, to collect reusable components that are not eligible for recycling through a take-back or mail-back program, as provided. The bill would define “reusable component” to mean a multiuse cigarette filter or a multiuse electronic cigarette that is designed to work for at least one year with daily use.

The bill would require a manufacturer to collect reusable components that are household hazardous waste, as defined, and send those components to the appropriate recycler, or to reimburse household
hazardous waste collection facilities, as defined, for the costs of collecting and recycling those reusable components. The bill would authorize the department to impose an administrative penalty, as provided, on a manufacturer that is in violation of these provisions.

The bill would authorize the department to collect a fee that does not exceed the reasonable regulatory costs of enforcing and administering these provisions from the manufacturer of a tobacco product with a reusable component, and to adopt regulations to implement these provisions.


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

SECTION 1. Division 8.55 (commencing with Section 22965) is added to the Business and Professions Code, to read:

DIVISION 8.55. PROHIBITION ON CIGARETTES UTILIZING SINGLE-USE FILTERS AND SINGLE-USE ELECTRONIC CIGARETTES OR VAPORIZER DEVICES

22965. (a) A person or entity shall not sell, give, or in any way furnish to another person, of any age, in this state, any of the following:

(1) A cigarette utilizing a single-use filter made of any material, including cellulose acetate, any other fibrous plastic material, or any organic or biodegradable material.

(2) An attachable and single-use plastic device meant to facilitate manual manipulation or filtration of a tobacco product.

(3) A single-use electronic cigarette.

(4) A single-use vaporizer device.

(b) The prohibition under subdivision (a) applies to any direct or indirect transaction, whether made in person in this state or by means of any public or private method of shipment or delivery to an address in this state.

(c) The sale, gift, or other furnishing of one to 20 items specified in paragraphs (1) to (4), inclusive, of subdivision (a) constitutes a single violation of this section.

22966. (a) (1) A city attorney, county counsel, or district attorney may assess a civil fine of five hundred dollars ($500) for
each violation of Section 22965. Only a city attorney, county
counsel, or district attorney may assess the civil fine against each
person determined to be in violation of Section 22965.
(2) Proceedings under this section shall be conducted pursuant
to the procedures of the enforcing agency that are consistent with
Section 131071 of the Health and Safety Code and in accordance
with Article 6 (commencing with Section 11425.10) of Chapter
4.5 of Part 1 of Division 3 of Title 2 of the Government Code.
(b) Fine moneys assessed pursuant to this section shall be
deposited in the treasury of the city or county, respectively, of the
city attorney, county counsel, or district attorney who assessed the
fine.
22967. A city attorney, county counsel, or district attorney
acting as an enforcing agency, as defined in subdivision (b) of
Section 22950.5, is encouraged, but not required, to develop
guidelines for its agency to conduct tobacco control investigations
of violations of subdivision (a) of Section 22965 concurrent with
investigations of violations of Section 308 of the Penal Code or
Division 8.5 (commencing with Section 22950), conducted in
accordance with Section 22952, or concurrent with investigations
of violations of any tobacco control provisions created by local
ordinance in its jurisdiction.
SEC. 2. Chapter 20.5 (commencing with Section 42984) is
added to Part 3 of Division 30 of the Public Resources Code, to
read:

Chapter 20.5. Tobacco Products

42984. For purposes of this chapter, the following definitions
apply:
(a) “Electronic cigarette” means an electronic device that
delivers nicotine or other vaporized liquids to the person inhaling
from the device. “Electronic cigarette” includes, but is not limited
to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
(b) “Mail-back program” has the same meaning specified in
subdivision (m) of Section 42030.
(c) “Reusable component” means a multiuse cigarette filter or
a multiuse electronic cigarette that is designed to work for at least
one year with daily use.
42984.2. (a) Except as provided in subdivision (b), the manufacturer of a tobacco product shall use materials eligible for recycling under state or local recycling programs, including electronic waste recycling programs, in existence as of January 1, 2020, to make any reusable component of the tobacco product.

(b) If it is not possible to make the reusable component out of a material eligible for recycling as described in subdivision (a), or if the use of tobacco in or through the reusable component renders the component no longer eligible for recycling, the manufacturer of a tobacco product with a reusable component shall collect those reusable components through either of the following:

(1) Take-back collection bins that the manufacturer makes available to the public at every location that sells that manufacturer’s tobacco product.

(2) A mail-back program that uses safe-for-handling containers that the manufacturer makes available to the public at every location that sells that manufacturer’s tobacco product.

(c) If a reusable component would be designated as household hazardous waste, as defined in Section 25218.1 of the Health and Safety Code, at the end-of-life of that component, the manufacturer of the tobacco product with that reusable component shall collect that reusable component and send the component to the appropriate recycler, or shall reimburse household hazardous waste collection facilities, as defined in Section 25218.1 of the Health and Safety Code, for the costs of collecting and recycling the reusable component.

(d) The manufacturer of a tobacco product with a reusable component may fund and join a stewardship organization with other manufacturers to meet the requirement specified in subdivision (b). A stewardship organization shall submit to the department for approval a stewardship plan describing the take-back or mail-back program and a list of the manufacturers that are members of the stewardship organization.

(e) The costs of administering a take-back or mail-back program pursuant to paragraph (1) or (2) of subdivision (b) shall not be passed on to the consumer through a visible fee.

(f) A manufacturer of a tobacco product with a reusable component, individually or through membership in a stewardship organization, shall provide an annual report to the department that describes the manufacturer’s compliance with this section.
42984.4. (a) The department may adopt regulations to implement this chapter.

(b) The department may collect a fee that does not exceed the reasonable regulatory costs of enforcing and administering this chapter from the manufacturer of a tobacco product with a reusable component.

(c) (1) The department may impose an administrative penalty on a manufacturer that is in violation of this chapter.

(2) The amount of the administrative penalty imposed pursuant to this subdivision shall not exceed ten thousand dollars ($10,000) per day unless the violation is intentional, knowing, or reckless, in which case the administrative penalty shall not exceed fifty thousand dollars ($50,000) per day.

(3) The department shall deposit all penalties collected pursuant to this subdivision in the Tobacco Product Stewardship Account, hereby created.
Attachment 3
Senate Bill 424
Tobacco Product Recyclability and Producer Responsibility Act
Senator Jackson

SUMMARY

Senate Bill 424 addresses the pervasive problem of tobacco product waste by establishing a framework of standards and extended producer responsibility to ensure tobacco products are either safely recycled or collected by manufacturers for safe disposal.

BACKGROUND

The improper disposal of tobacco products has significant impact on the environment and to local collection agencies. Tobacco product waste includes cellulose filters from cigarette butts, plastic tips for manipulation of cigarillo-type products, single-use electronic cigarettes, cartridges for reusable electronic cigarettes, and the reusable devices themselves.

Tobacco product waste ranks atop categories of waste found at coastal and beach cleanups, park cleanups, and other outdoor collections (including street sweepings). Cigarette butts are the foremost litter item found on beaches and roadsides, amounting to over a third of total waste found during coastal cleanup events.

Exposure impacts from tobacco product waste are several. Tobacco and tobacco-laden components leech toxic chemicals—including arsenic, lead, and nicotine—into the environment when improperly disposed. These compounds are especially pernicious in waterways, where small amounts can result in wildlife impairment and mortality. These compounds are also hazardous to children and pets when ingested or handled.

Tobacco product waste are a major constituent of the global plastic waste scourge. Like other plastic waste, cellulose filters (cigarette butts) persist in the environment for decades, and break down into microplastics that accumulate environmentally and biologically. In addition to the toxins from tobacco components, plastic waste from tobacco products also pollute plastic-related hazardous chemicals, with their own significant impacts to wildlife and the environment.

The cost borne by local and state agencies from dealing with tobacco product waste is sizeable, with annual estimates in the tens of millions per large municipality. In 2009, San Francisco spent nearly $10 million on cigarette butt cleanup alone. Municipalities out-of-compliance with water quality laws due to tobacco litter also pay millions for violations and costs to clean.

SOLUTION - SB 424

SB 424 addresses tobacco product waste with a two-fold strategy. First, this bill bans sale of single-use tobacco products, including single-use filters, single-use plastic devices needed for manipulation of tobacco products, and single use electronic cigarettes. Single use products are highly likely to be improperly disposed—particularly plastic filters and holders—and they remain costly and difficult to handle by local waste agencies even when disposed. The most effective way to reduce single-use waste is to prevent its usage in the first place.

Violations of the sales ban can result in civil penalties of $500 per violation, and enforcement actions can be brought by local prosecutorial authorities only.

Second, this bill allows sale of multi-use tobacco products, so long as those products are ordinarily recyclable, or are collected for take-back by manufacturers of the product. Product manufacturers may form a stewardship organization to administer the take-back of non-recyclable multi-use components.

Electronic components must be collected by manufacturers under state electronic waste laws. If a component is determined to be hazardous waste, manufacturers may either institute take-back collection of that waste, or may reimburse local agencies for costs resulting from handling of that waste.

STATUS

SB 424 will be next heard in Senate Environmental Quality Committee on April 24, 2019.

CONTACT

Siddharth Nag, Principal Consultant,
Office of Senator Jackson, Room 2032
916-651-4019 | siddharth.nag@sen.ca.gov
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy and Management Analyst
DATE: May 22, 2019
SUBJECT: Support H.R. 2016 (Lieu) - To Modify the Authorized Uses of Certain Property Conveyed by the United States in Los Angeles, California

ATTACHMENT: 1. Summary Memo – H.R. 2016 (Lieu)

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

H.R. 2016 (Lieu) - To Modify the Authorized Uses of Certain Property Conveyed by the United States in Los Angeles, California (H.R. 2016) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 2016 to the City (Attachment 1). As H.R. 2016 is noncontroversial, and provides assistance with the homelessness crisis in Los Angeles County, staff will place the item on a future City Council Agenda for a letter of support as this item is not listed in the City Council adopted Legislative Platform.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff.
Attachment 1
Representative Ted Lieu introduced H.R. 2016, a bill allowing a portion of the West Los Angeles National Guard Armory to be utilized as a year-round homeless shelter. The bill was introduced on April 1, 2019 and has been referred to the House Armed Services Committee and the Financial Services Committee. Senator Dianne Feinstein and Senator Kamala Harris have sponsored a companion (identical) bill, S.974, in the Senate.

Senators Feinstein and Harris and Representative Lieu signed a joint letter to the respective chairmen and ranking members of the House and Senate Armed Services Committee requesting the bill language be adopted in the upcoming National Defense Authorization Act for Fiscal Year 2020. Congress traditionally enacts the defense authorization act, which provides policy and program directives to the Department of Defense, in the fall of each year.

In drafting the legislative language, Feinstein, Harris and Lieu worked with the General Services Administration (GSA), the Department of Health and Human Services (HHS), the State of California and Los Angeles County. The provision allows the GSA to modify the Armory’s 1957 deed so that it can be used as a year-round homeless shelter. According to the sponsors of the bill, utilizing a portion of the Armory for a shelter will not interfere with its function as a National Guard training facility.

**BACKGROUND**

Los Angeles County is facing a homeless crisis that is compounded by a shortage of year-round homeless shelters. According to LA County, there are nearly 53,000 persons experiencing homelessness in the County on any given night, with over 31,000 who have no other option but to sleep on the streets. While the current use of the Armory during the winter months provides refuge from inclement weather, the ability to use the Armory year-round would help the County to better address this crisis.

The West L.A. National Guard Armory was conveyed by the federal government to the State of California in 1957 for military purposes. In addition to its use as a National Guard Armory, the State has allowed it to be used as a temporary shelter for homeless persons, solely during the winter season, for more than 10 years.
Item A-7
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy and Management Analyst
DATE: May 22, 2019
SUBJECT: Support Extension of the National Flood Insurance Program (NFIP)
ATTACHMENT: 1. Summary Memo – Short-Term Extension of the NFIP

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

H.R. 2578, the National Flood Insurance Program Extension Act of 2019 (H.R. 2578) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 2578 to the City (Attachment 1). H.R. 2578 is noncontroversial, and will extend the authorization of the NFIP through September 30, 2019.

Unless otherwise directed by the Beverly Hills City Council Legislative/Lobby Committee, staff will place this item on a future City Council Agenda for a letter of support as this item is not listed in the City Council adopted Legislative Platform. The report will indicate the Liaisons approved a letter of support be moved to the City Council for review and approval.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff.
Attachment 1
TO: Cindy Owens, Policy and Management Analyst  
     City of Beverly Hills

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

DATE: May 17, 2019

RE: Short-Term Extension of the National Flood Insurance Program

On May 14th, the House of Representatives passed by voice vote H.R. 2578, the National Flood Insurance Program Extension Act of 2019. The bipartisan bill, sponsored by Representative Maxine Waters (D-CA) and Representative Patrick McHenry (R-NC), the chairwoman and the ranking member of the Financial Services Committee, respectively, extends the authorization of the NFIP through September 30, 2019. The program’s authorization is set to expire at the end of this month. The short-term extension of the insurance program is designed to provide Chairwoman Waters and Ranking Member McHenry enough time to hammer out a compromise, long-term reauthorization bill. The Senate is scheduled to consider and adopt the bill next week.

As Chairwoman Waters emphasized in her floor speech on behalf of her bill, the NFIP is more than just a flood insurance program, it plays a vital role in disaster preparedness and resiliency by providing flood maps, settling standards for floodplain management, and investing in mitigation for homes, businesses and infrastructure. Waters wants to strengthen the NFIP by enacting the following reforms: 1) Congress must address the unaffordable premium costs for low-income households and address the program’s debt burden; 2) NFIP needs to invest more heavily in mapping, floodplain management, and mitigation, which, according to Waters, will save taxpayer dollars in the long run by helping to reduce the damage from flooding; and 3) to fight fraud and abuse in the program, Congress must impose safeguards and mechanisms for greater accountability and oversight to ensure that claims are handled fairly and efficiently.

The NFIP is the primary source of flood insurance coverage for residential properties in the United States. The NFIP has over 5.1 million flood insurance policies providing over $1.3 trillion in coverage, with approximately 23,000 communities in 56 states and jurisdictions participating. The program collects about $3.6 billion in annual premium revenue.

According to the Congressional Research Service, unless NFIP is reauthorized by Congress: 1) the authority to provide new flood insurance contracts will expire – flood insurance contracts entered into before the program’s expiration would continue until the end of their policy term of one year; and 2) the authority for NFIP to borrow funds from the Treasury will be reduced from $30.4 billion to $1 billion. In addition, the Federal Emergency Management Agency (FEMA) would continue to adjust and pay claims as premium dollars come into the National Flood Insurance Fund (NFIF) and reserve fund. If the funds available to pay claims were to be depleted, claims would have to wait until sufficient premiums were received to pay them unless Congress were to appropriate supplemental funds to the NFIP to pay claims or increase the borrowing limit.
Item B-1
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: May 22, 2019
SUBJECT: Request Direction on Senate Bill 5 (Beall) – Affordable Housing and Community Development Investment Program

ATTACHMENTS: 1. Bill Text – SB 5
2. Summary Memo – SB 5
3. League of California Cities Letter of Support

INTRODUCTION
Senate Bill 5 (Beall) – Affordable Housing and Community Development Investment Program establishes the Affordable Housing and Community Development Investment Program to provide local entities with funding for development projects such as affordable housing, transit-oriented development, infill development, housing-related infrastructure, neighborhood revitalization, and infrastructure to protect communities from sea level rise (Attachment 1).

This item requests the Legislative/Lobby Liaisons consider taking a position on Senate Bill 5.

DISCUSSION

Background
From the early 1950s until they were dissolved in 2011 by Governor Brown, California redevelopment agencies (RDAs) used property tax increment financing to pay for economic development projects in blighted areas. Generally, property tax increment financing involved a city or county forming a tax increment-financing district to issue bonds and use the bond proceeds to pay project costs within the boundaries of a specified project area. To repay the bonds, the district captured increased property tax revenues that are generated when projects that were financed by the bonds increase assessed property values within the project area.

The dissolution of RDAs deprived many local agencies of the primary tool they used to eliminate physical and economic blight, finance new construction, improve public infrastructure, rehabilitate existing buildings, and increase the supply of affordable housing. Until their dissolution, state law required RDAs to set-aside 20% of funding generated in a project area to increase the supply of low- and moderate-income housing. At the time RDAs were dissolved, the Controller estimated that statewide RDAs were obligated to spend $1 billion on affordable housing.

Since the dissolution of RDAs, legislators have enacted several measures creating new tax increment financing tools to pay for local economic development. In 2014, the Legislature authorized the creation of Enhanced Infrastructure Financing Districts (EIFDs) (SB 628, Beall), followed by Community Revitalization and Investment Authorities (CRIAs) in 2015 (AB 2, Alejo).
Summary of SB 5

Senate Bill 5 (SB 5) creates the Affordable Housing and Community Development Investment Program. SB 5 establishes an application process, eligible uses for the funds made available by the bill, a process for distributing funds, project requirements, and accountability measures.

SB 5 would create a local-state partnership to provide up to $2 billion annually to fund state approved affordable housing, infrastructure, and economic development projects that will reduce greenhouse emissions, expand transit oriented development, address poverty, and revitalize neighbors.

SB 5 identifies eligible applicants as cities, counties, joint powers authorities, enhanced infrastructure financing districts, affordable housing authorities, community revitalization and investment authorities, and transit village development districts.

This bill was amended on May 16, 2019 to make public facilities eligible projects and to make annual allocations subject to appropriation. The amendments to SB 5 were not available in print at the time this memo was printed.

SB 5 passed out of the Senate Appropriations Committee on May 16, 2019 and is now on the Senate floor.

FISCAL IMPACT

It is unknown at this time what the fiscal impact of this legislation would be on the City should it pass.

RECOMMENDATION

After discussion of Senate Bill 5 (Beall) – Affordable Housing and Community Development Investment Program may recommend the following actions:

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

Should the Liaisons recommend the City take a position on SB 5, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
An act to add Section 41202.6 to the Education Code, to add Part 4 (commencing with Section 55900) to Division 2 of Title 5 of, and to add Division 6 (commencing with Section 62300) to Title 6 of, the Government Code, and to add Section 97.68.1 to the Revenue and Taxation Code, relating to local government finance.

LEGISLATIVE COUNSEL’S DIGEST

SB 5, as amended, Beall. Affordable Housing and Community Development Investment Program.

Existing property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, subject to certain modifications. Existing law requires an annual reallocation of property tax revenue from local agencies in each county to the Educational Revenue Augmentation Fund (ERAF) in that county for allocation to specified educational entities.

Existing law authorizes certain local agencies to form an enhanced infrastructure financing district, affordable housing authority, transit village development district, or community revitalization and investment
authority for purposes of, among other things, infrastructure, affordable housing, and economic revitalization.

This bill would establish in state government the Affordable Housing and Community Development Investment Program, which would be administered by the Affordable Housing and Community Development Investment Committee. The bill would authorize a city, county, city and county, joint powers agency, enhanced infrastructure financing district, affordable housing authority, community revitalization and investment authority, transit village development district, or a combination of those entities, to apply to the Affordable Housing and Community Development Investment Committee to participate in the program and would authorize the committee to approve or deny plans for projects meeting specific criteria. The bill would also authorize certain local agencies to establish an affordable housing and community development investment agency and authorize an agency to apply for funding under the program and issue bonds, as provided, to carry out a project under the program.

The bill would require the Affordable Housing and Community Development Investment Committee to adopt guidelines for plans and approve no more than $200,000,000 per year from July 1, 2020, to June 30, 2025, and $250,000,000 per year from July 1, 2025, to June 30, 2029, in reductions in annual ERAF contributions transfers from a county’s ERAF for applicants for plans approved pursuant to this program. This bill would provide that eligible projects include, among other things, the predevelopment, development, acquisition, rehabilitation, and preservation of workforce and affordable housing, certain transit-oriented development, and projects promoting strong neighborhoods.

The bill would require the Affordable Housing and Community Development Investment Committee, upon approval of a plan, to issue an order directing the county auditor to reduce the total amount of transfer ad valorem property tax revenue otherwise required to be contributed to from the county’s ERAF from the applicant by the annual reduction amount approved. The bill would require a county auditor to deposit the total annual reduction amount approved within a county into the Affordable Housing and Community Development Investment Fund, which is created by this bill in the treasury of each county, and allocate moneys in that fund as directed by the committee, as specified.

The bill would require the auditor, if the applicant is an enhanced infrastructure financing district, affordable housing authority, affordable
housing and community development investment agency, transit village development district, or community revitalization investment authority, to transfer to the city or county that created the authority or district an amount of property tax revenue equal to the reduction amount approved by the Affordable Housing and Community Development Investment Committee for that authority or district. The bill would require the city or county that created the district to, upon receipt, transfer those funds to the authority or district in an amount equal to the affordable housing and community development investment amount for that authority or district. By imposing additional duties on local officials, the bill would impose a state-mandated local program. The bill would authorize applicants to use approved amounts to incur debt or issue bonds or other financing to support an approved project.

The bill also would require each applicant that has received funding to submit annual reports, as specified, and would require the Affordable Housing and Community Development Investment Committee to provide a report to the Joint Legislative Budget Committee that includes certain project information.

Section 8 of Article XVI of the California Constitution sets forth a formula for computing the minimum amount of revenues that the state is required to appropriate for the support of school districts and community college districts for each fiscal year.

This bill would require the Director of Finance to adjust the percentage of General Fund revenues appropriated for school districts and community college districts for these purposes in a manner that ensures that the reductions in contributions to transfers from a county’s ERAF pursuant to the Affordable Housing and Community Development Investment Program have no net fiscal impact upon the total amount of the General Fund revenue and local property tax revenue allocated to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In recent years the Legislature has created several new opportunities to use tax increment financing, which include the formation of enhanced infrastructure financing districts, affordable housing authorities, and community revitalization investment authorities. While these new tools can be useful to local agencies, they are widely viewed as lacking sufficient financial capacity compared to what existed under the former tax increment financing tool utilized by community redevelopment agencies.

(1) Under redevelopment, all of the growth in property tax (tax increment) within a project area over a base year, net of mandatory pass-through payments, that would otherwise be allocated to cities, counties, special districts and school districts was dedicated to redevelopment purposes. Under the new tax increment tools, however, property tax increment from affected taxing agencies other than the initiating city or county can only be dedicated with the approval of the affected local agencies.

(2) While potential local partnerships between cities, counties, and special districts involving new economic development tools continue to be explored by the state and local governments, a reality is that the state and local governments often have other policy and budget priorities, and lack incentives to participate.

(3) The language in the new tax increment laws currently prohibit school districts from participating, largely reflecting state concerns over potential backfill requirements for school funding under the requirements of Proposition 98 of 1988.

(b) The state shares many policy priorities with local governments, including affordable housing and economic development, that can be advanced by creating a new infrastructure financing tool that would focus on the following:

(1) Increasing the production of affordable housing available to very low, low-, and moderate-income families.

(2) Expanding transit-oriented development at higher densities.

(3) Reducing jobs-housing imbalances in areas with high job growth.
(4) Increasing the availability of high-quality jobs through the rehabilitation, construction, and maintenance of housing and infrastructure.

(5) Improving the quality of life in neighborhoods and disadvantaged communities.

(6) Incentivizing growth in urban areas, thereby reducing sprawl and ensuring that open space is preserved throughout the state.

(7) Reducing poverty and caseloads of state and county safety net support programs by incentivizing the training and hiring of affected individuals to jobs where they can be self-supporting.

(8) Protecting communities dealing with the effects of sea level rise, which is one of the most significant threats of climate change.

(c) The Legislature has declared that the policy priorities listed in subdivision (b) are matters of statewide concern. It is therefore appropriate that the state and local governments contribute financially to the realization of these priorities.

(d) By allowing local agencies to reduce their contributions to their county’s Educational Revenue Augmentation Fund (ERAF) to fund affordable housing projects and related infrastructure, the state can advance its policy priorities while also protecting funding for schools and limiting effects on the state budget. The state’s interests can be ensured and protected in the following manner:

(1) Requiring approval of the newly created Affordable Housing and Community Development Investment Committee, to ensure that the investment of property taxes otherwise allocated to schools through a county’s educational revenue augmentation fund ERAF are used only for projects that maximize state policy benefits while ensuring that an economic analysis projects increased property tax revenues for schools in the affected territory upon project completion.

(2) Offering additional incentives to participating counties and special districts.

(3) Establishing an annual cap on the total affordable housing and community development investment amount that may be approved to be allocated by the Affordable Housing and Community Development Investment Committee, as follows:

(A) Not to exceed two hundred million dollars ($200,000,000) annually between July 1, 2020, and June 30, 2025.

(B) Not to exceed two hundred fifty million dollars ($250,000,000) annually between July 1, 2025, and June 30, 2029.
(4) Requiring annual reports to the Legislature on the status of all projects funded through this program.

(e) It is the intent of the Legislature that schools and community colleges receive no less total funding from General Fund and local property tax revenue as a result of the bill.

(f) It is the intent of the Legislature to have the state provide increased funding in an amount that equals reductions in local ERAF funds to the point necessary for schools to meet their minimum funding guarantee pursuant to existing law.

(g) It is the intent of the Legislature that local agencies receive the same amount of excess ERAF as they would have if the program established by this bill were not in effect.

SEC. 2. Section 41202.6 is added to the Education Code, to read:

41202.6. (a) It is the intent of the Legislature to ensure that the program authorized by the Affordable Housing and Community Development Investment Program established by Part 4 (commencing with Section 55900) of Division 2 of Title 5 of the Government Code does not affect the amount of funding required to be applied for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

(b) The Director of Finance shall adjust “the percentage of General Fund revenues appropriated for school districts and community college districts” for the purpose of applying paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution in a manner that ensures that reductions in contributions to transfers from a county’s Educational Revenue Augmentation Fund authorized by Section 97.68.1 of the Revenue and Taxation Code shall have no net fiscal impact upon the total amount of General Fund revenue and local property tax revenue allocated to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution. The Director of Finance shall make this adjustment effective with the 2020–21 fiscal year, consistent with the start of the grant program pursuant to paragraph (1) of subdivision (a) of Section 55906 of the Government Code. The Director of Finance shall update the adjustment for subsequent increases or decreases in the amount of reductions to transfers authorized by the Affordable Housing and Community Development Investment Program.
SEC. 3. Part 4 (commencing with Section 55900) is added to Division 2 of Title 5 of the Government Code, to read:

PART 4. AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT INVESTMENT PROGRAM

55900. This part is known and may be cited as the Affordable Housing and Community Development Investment Program.

55901. The Affordable Housing and Community Development Investment Program is hereby established to create a local-state partnership to reduce poverty and advance other state priorities financed, in part, by property tax increment.

55902. As used in this part, the following terms have the following meanings:

(a) “Affordable housing and community development investment amount” is the amount of property tax revenue allocated pursuant to Section 97.68.1 of the Revenue and Taxation Code.

(b) “Applicant” means any entity identified in paragraph subdivision (a) of Section 55905 that has submitted a plan to the committee pursuant to that section.

(c) “Committee” means the Affordable Housing and Community Development Investment Committee established by Section 55904.

(d) “Plan” means an application for one or more projects that is submitted to the committee.

(e) “Program” means the Affordable Housing and Community Development Investment Program established by this part.

(f) “Project” shall include:

1. A project undertaken by a city, county, city or county, joint powers authority, enhanced infrastructure financing district, affordable housing authority, community revitalization and investment authority, affordable housing and community development investment agency, or a transit village development district.

2. A transit priority project that meets the requirements of subdivision (d) of Section 65470.

(g) “Skilled and trained workforce” has the same meaning as set forth in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(h) “Transit Priority Project Program” has the same meaning as contained in Section 65470.
Funding allocated to the program shall be used to support a plan that includes affordable housing. Subject to paragraph (2), eligible uses of this funding include:

(A) Predevelopment, development, acquisition, rehabilitation, and preservation of affordable housing, as provided in subdivision (b). For purposes of this section, the term “affordable housing” means housing affordable to households earning under 120 percent of area median income.

(B) Transit-oriented development for the purpose of developing or facilitating the development of higher density uses within close proximity to transit stations that will increase public transit ridership and contribute to the reduction of vehicle miles traveled and greenhouse gas emissions. Fiscal incentives shall be offered to offset local community impacts associated with greater densities.

(C) Infill development to assist in the new construction and rehabilitation of infrastructure that supports high-density, affordable, and mixed-income housing in locations designated as infill, including, but not limited to, any of the following:
   (i) Park creation, development, or rehabilitation to encourage infill development.
   (ii) Water, sewer, or other public infrastructure costs associated with infill development.
   (iii) Transportation improvements related to infill development projects.
   (iv) Traffic mitigation.

(D) Promoting strong neighborhoods through support of local community planning and engagement efforts to revitalize and restore neighborhoods, including repairing infrastructure and parks, rehabilitating and building housing, promoting public-private partnerships, supporting small businesses and job growth for affected residents.

(E) Protecting communities dealing with the effects of sea level rise, which is one of the most significant threats of climate change, including the construction, repair, replacement, and maintenance of infrastructure related to protecting communities from sea level rise.

(F) The acquisition, construction, or rehabilitation of land or property pursuant to eligible uses of funding specified in subparagraphs (A) to (E), inclusive.
Eligible uses allocated to an applicant under the program shall be limited to those uses described in subparagraphs (A) to (C), inclusive, of paragraph (1) if the applicant has taken any action, whether by the legislative body of the applicant or the electorate exercising its local initiative or referendum power, that has any of the following effects:

(A) Established or implemented any provision that:
   (i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the applicant.
   (ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.
   (iii) Limits the population of the applicant.

(B) Imposes a moratorium or enforces an existing moratorium on housing development, including mixed-use development, within all or a portion of the jurisdiction of the applicant, except pursuant to a zoning ordinance that complies with the requirements of Section 65858.

(C) Requires voter approval of any updates to the applicant’s housing element to comply with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7, or any rezoning of sites or general plan amendment to comply with an updated housing element or Section 65863.

(D) Changes the zoning of a parcel or parcels of property to a less intensive use or reduces the intensity of land use within an existing zoning district below what was allowed under the general plan land use designation and zoning ordinances of the applicant in effect on January 1, 2018. For purposes of this subparagraph, “less intensive use” includes, but is not limited to, reductions to height, density, floor area ratio, or new or increased open space or lot size requirements, for property zoned for residential use in the applicant’s general plan or other planning document.

(b) At least 50 percent of the funding provided pursuant to the program and at least 50 percent of the funding of each project included in the plan shall be allocated according to subparagraph (A) of paragraph (1) of subdivision (a), to be used as follows:

(1) At least 80 percent of the funds subject to this subdivision shall be used to provide rental and owner-occupied housing for low-income households with an annual income equal to or less
than 80 percent of the area median income, subject to the
following:
(A) Funds used for rental housing shall have average
property-level affordability at or below the maximum level
established by the California Tax Credit Allocation Committee to
be eligible for low-income housing tax credits at the percentage
prescribed in accordance with Section 42(b)(1)(B)(ii) of the Title
26 of the United States Code, relating to method of prescribing
percentages.
(B) Funds used for owner-occupied housing shall not exceed
20 percent of the funds used for purposes of this paragraph.
(2) No more than 20 percent of the funds subject to this
subdivision may be used for the production of moderate-income
housing for households with an annual income greater than 80
percent, but no more than 120 percent, of the area median income.
(3) The rent or sales price of any housing assisted with funds
subject to this subdivision shall be in the following amounts:
(A) For housing for low-income households with an annual
income equal to or less than 80 percent of the area median income,
an amount that is at least 10 percent below the prevailing rent or
sales price for the region.
(B) For housing for moderate-income households with greater
than 80 percent, but no more than 120 percent, of the area median
income, an amount that is at least 20 percent below the prevailing
rent or sales price for the region.
(4) (A) Except as otherwise provided in subparagraph (B),
housing assisted with funds subject to this subdivision shall be
subject to a recorded affordability restriction for the following
time periods:
(i) For rental housing, at least 55 years, except as otherwise
provided
(ii) For owner-occupied housing, at least 45 years.
(B) Notwithstanding subparagraph (A), self-help housing
assisted with funds subject to this subdivision shall be subject to
a recorded affordability restriction for at least 15 years.
(c) (1) Except as provided in paragraph (2), any plan approved
pursuant to the program shall be subject to a recorded affordability
restriction that requires the project or projects to include a
minimum of 30 percent of the total number of housing units to be
available at an affordable rent or affordable housing cost to, and
occupied by, households earning below 120 percent of the area
median income for at least 55 years.

(2) If the local agency has adopted a local ordinance that requires
that greater than 30 percent of the units in a project be dedicated
to housing affordable to households making below 120 percent of
the area median income, that ordinance shall apply.

(d) The affordable housing and community development
investment amount shall not be used to subsidize the construction
of market rate units. It is the intent of the Legislature to preserve
the incentives for affordable housing provided by existing density
bonus law.

(e) (1) At least 12 percent of the overall funding for the program
shall be set aside for counties with populations of less than 200,000.
Of this amount, 2 percent shall be set aside to provide technical
assistance for counties with populations of less than 200,000, which
shall not be considered administrative costs for purposes of a plan.
(2) Notwithstanding subdivision (a) of Section 55906, to the
extent that all funds set aside in one year for counties with
populations of less than 200,000 are not dedicated to plans
approved by the committee, the amount of funds not dedicated
shall be available to counties with populations of less than 200,000
residents in the following year pursuant to this program.

(f) All projects approved pursuant to the program shall be
considered public work for purposes of Chapter 1 (commencing
with Section 1720) of Part 7 of Division 2 of the Labor Code.

55904. (a) The Affordable Housing and Community
Development Investment Committee is hereby established and
shall be comprised of the following:

(1) The Chair of the Strategic Growth Council, or the chair’s
designee.
(2) The Chair of the California Infrastructure and Economic
Development Bank, or the chair’s designee.
(3) The Chair of California Workforce Investment Board, or
the chair’s designee.
(4) The Director of Housing and Community Development, or
the director’s designee.
(5) Two people appointed by the Speaker of the Assembly.
(6) Two people appointed by the Senate Committee on Rules.
(7) One public member appointed by the Joint Legislative
Budget Committee who has expertise in education finance.
The committee shall review and approve or deny plans received pursuant to Section 55905.

(c) The Department of Housing and Community Development shall provide the technical assistance and administrative support necessary for the committee to consider plans.

55905. (a) A plan for the affordable housing and community development investment amount may be submitted by any of the following:

(1) A city, county, or city and county.

(2) A joint powers authority formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 that is composed of entities that may submit a plan pursuant to this subdivision.

(3) An enhanced infrastructure financing district established pursuant to Chapter 2.99 (commencing with Section 53398.50) of Part 1 of Division 2 of Title 5.

(4) An affordable housing authority established pursuant to Division 5 (commencing with Section 62250) of Title 6.

(5) A community revitalization and investment authority established pursuant to Division 4 (commencing with Section 62000) of Title 6.

(6) An affordable housing and community development investment agency established pursuant to Division 6 (commencing with Section 62300) of Title 6.

(7) A transit village development district established pursuant to Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7.

(b) A plan to participate in the program may be submitted to the committee and shall include all of the following information:

(1) A description of the proposed project or projects to be completed by the applicant pursuant to the plan and the funding amount necessary for each year the applicant requests funding pursuant to the program. The applicant may request funding for no more than 30 years for each project included in the plan.

(2) Information necessary to demonstrate that each project proposed by the plan complies with all of the statutory requirements of any statutory authorization pursuant to which the project is proposed.
(3) Certification that any low- and moderate-income housing or other projects or portions of other projects that receive funding from the program will comply with paragraph (8) of subdivision (a) of Section 65913.4.

(4) A strategy for outreach to, and retention of, women, minority, disadvantaged youth, formerly incarcerated, and other underrepresented subgroups in coordination with the California Workforce Investment Board and local boards, to increase their representation and employment opportunities in the building and construction trades.

(5) For each project identified in the plan, a requirement that no eviction has been made on any project site within the last 10 years, and protections to avoid displacement of individuals affected by the project.

(6) A requirement that any project included in the plan would not require the demolition of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(C) Housing that has been occupied by tenants within the past 10 years.

(7) A requirement that the site was not previously used for housing that was occupied by tenants that was demolished within 10 years before the applicant submits a plan pursuant to this section.

(8) A requirement that the development of the project or projects included in the plan would not require the demolition of a historic structure that was placed on a national, state, or local historic register.

(9) A requirement that the project or projects included in the plan would not contain present or former tenant-occupied housing units that will be subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(10) An economic and fiscal analysis, paid for by the applicant and prepared by the applicant or an individual or entity approved by the committee that includes the following information as it pertains to the plan:
(A) The estimated cost of providing services or facilities for each project included in the plan.

(B) The estimated revenue available to provide services or facilities by each project included in the plan.

(C) Identification of the taxing entities that are participating in the financing of each project included in the plan through the pledge of an amount equal to the entity’s incremental share of the property tax or other means.

(D) Identification of the property tax, sales tax, and other public funding available to invest in each project included in the plan or the services or facilities needed by each project included in the plan, as proposed, including, but not limited to, information from the county auditor describing how the county or counties where the applicant is from has historically distributed its educational revenue augmentation fund revenue to schools and local agencies.

(E) Identification of the funding and financing methods that will be used by each project included in the plan, including whether the applicant intends to issue bonds that will be repaid from property tax increment.

(F) The affordable housing and community development investment amount requested by the applicant to complete each project included in the plan or the services or facilities needed by each project included in the plan, as proposed, and the proposed date on which the annual allocation of the affordable housing and community development investment amount will terminate.

(G) The amount of administrative costs associated with the plan. The plan may set aside not more than 5 percent of the total affordable housing and community development investment amount requested in the plan for administrative costs.

(c) (1) The applicant shall certify that a skilled and trained workforce will be used to complete the project if the plan is approved.

(2) If the applicant has certified that a skilled and trained workforce will be used to complete the project or projects and the plan is approved, the following shall apply:

(A) The applicant shall require every contractor and subcontractor at every tier performing work on the project to provide the applicant with an enforceable commitment that the contractor or subcontractor will individually use a skilled and trained workforce to complete the project.
(B) Every contractor and subcontractor shall individually use a skilled and trained workforce to complete the project.

(C) The applicant shall be considered an awarding body for purposes of Section 2602 of the Public Contract Code.

(3) This subdivision shall not apply to projects that meet the following criteria _____.

(d) (1) Within 30 days of receipt of a plan pursuant to this section, the committee shall provide the applicant with a written statement identifying any questions about the plan.

(2) If the committee denies approval of the plan, the committee shall, not more than 30 days following the date the committee has issued a decision, provide the applicant with a written statement explaining the reasons why the plan was denied.

(3) Subject to subdivision (e), the committee shall develop a rubric to determine which plan to approve. The rubric shall give priority to plans based on, but not limited to, the following factors:

(A) The number of housing units created.

(B) The share of housing units to be constructed that are available to individuals with an area median income below 120 percent.

(C) The share of housing units to be constructed that are available to individuals with an area median income below 80 percent.

(D) The share of housing units to be constructed that are available to individuals with an area median income below 50 percent.

(E) The level of local, state, and federal funds that will be dedicated toward the projects included in the plan, including but not limited to, tax credits, in-kind transfers, personnel costs and services, and land.

(F) Whether the applicant adopts plans that streamline development, including the following:

(i) Plans adopted through a Workforce Housing Opportunity Zone workforce housing opportunity zone (Article 10.10 (commencing with Section 65620) of Chapter 3 of Division 1 of Title 7) or a Housing Sustainability District housing sustainability district (Chapter 11 (commencing with Section 66200) of Division 1 of Title 7).
(ii) Plans to streamline development funded by the Building Homes and Jobs Act (Chapter 2.5 (commencing with Section 50470) of Part 2 of Division 31 of the Health and Safety Code).

(iii) Other local measures adopted to reduce development costs, including, but not limited to, accelerating housing approvals, reducing the average time for issuing a conditional use or other development permit to less than one year, reducing fees imposed in connection with the approval of accessory dwelling units, and increasing density near transit.

(e) Notwithstanding any other provision of this part, the committee may approve a plan submitted to it pursuant to this section only if it finds all of the following:

(1) (A) Except as otherwise provided in subparagraph (B), the applicant will provide matching resources, including, but not limited to, financial, in-kind land dedication, or public-private funds, for the state investment in the program.

(B) This paragraph shall not apply in the case of an applicant located in a rural area of the state.

(2) (A) If applicable, the applicant has a housing element that the Department of Housing and Community Development has determined to be in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7, pursuant to Section 65585.

(B) An applicant subject to this paragraph shall annually submit its housing element to the Department of Housing and Community Development for review to ensure that its housing element remains in substantial compliance with state law. The Department of Housing and Community Development shall certify to the committee whether the housing element is in substantial compliance and whether any rezoning of sites required by law, including, but not limited to, Sections 65583, 65583.2, and 65863, have been completed.

(3) If applicable, the applicant has not been found to have violated the Housing Accountability Act (Section 65589.5) or the Density Bonus Law (Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7) within the following time periods:

(A) Until January 1, 2023, the applicant has not been found to have violated the provisions specified in this paragraph on or after January 1, 2018.
On and after January 1, 2023, the applicant has not been found to have violated the provisions specified in this paragraph within the five years preceding the date of the submission of the applicant’s plan pursuant to this section.

(a) The committee shall adopt annual priorities consistent with the objectives set forth in Section 55903 and shall adhere to the following funding schedule:

(1) For the five-year period commencing July 1, 2020, and ending June 30, 2025, the committee may approve no more than two hundred million dollars ($200,000,000) in funding in any year for plans approved pursuant to the program.

(2) For the four-year period commencing July 1, 2025, and ending June 30, 2029, the committee may approve no more than two hundred fifty million dollars ($250,000,000) in funding in any year for plans approved pursuant to the program.

(3) The Legislature may direct the committee to suspend consideration of plans submitted pursuant to Section 55903 in any fiscal year in which the Legislature passes a bill described in Section 22 of Article XVI of the California Constitution. Nothing in this paragraph shall affect or have any financial impact upon previously approved funding pursuant to this program.

(4) The Legislature may direct the committee to suspend consideration of plans submitted pursuant to Section 55903 in any fiscal year in which the Legislature passes a bill described in Section 8 of Article XVI of the California Constitution. Nothing in this paragraph shall affect or have any financial impact upon previously approved funding pursuant to this program.

(b) The annual amounts dedicated to individual approved projects shall be allocated based on the schedule of funding included in the plan that includes the project, unless the committee decides to allocate a different level of funding or change the number of years that the project is to receive funding pursuant to the program in accordance with the plan approved pursuant to subdivision (d).

(c) The committee shall adopt guidelines to explain how geographic equity will be maintained in the approval of plans pursuant to this program.

(d) (1) The committee shall approve or deny a plan submitted pursuant to Section 55905 upon both of the following:
(A) Receipt of the information required to be submitted pursuant to paragraphs (1) through (4) of subdivision (b) of Section 55905.

(B) A determination that the affordable housing and community development investment amount requested is consistent with the guidelines adopted pursuant to subdivision (b).

(2) The approval shall state the amount of the affordable housing and community development investment amount approved and the date upon which the affordable housing and community development investment amount terminates.

(e) The committee may require the applicant to reimburse it for the reasonable cost incurred to review the plan to participate in the program.

(f) The committee shall review, and may approve or deny, any changes to a plan submitted by the applicant.

55907. (a) Upon approval of a plan pursuant to subdivision (d) of Section 55906, the committee shall issue an order directing the county auditor to reduce the transfer an amount of ad valorem property tax revenue pursuant to Section 97.68.1 of the Revenue and Taxation Code by in an amount equal to the annual affordable housing and community development investment amount approved by the committee.

(b) The revenues allocated to an applicant pursuant to Section 97.68.1 of the Revenue and Taxation Code may be used for the purposes set forth in Section 55903.

(c) The applicant may use the additional revenue received pursuant to Section 97.68.1 of the Revenue and Taxation Code to incur debt or issue bonds or other financing to support the project or projects included in the plan.

55908. (a) On or before July 1, 2021, and annually thereafter, each applicant that has received financing pursuant to the program for any fiscal year shall provide a report to the committee that includes all of the following information for the previous fiscal year:

(1) The affordable housing and community development investment amount that the county auditor reallocated to the applicant pursuant to Section 97.68.1 of the Revenue and Taxation Code.

(2) The purposes for which that reallocated money was used, including the number of housing units constructed and at which income level.
(3) The actions taken during the prior fiscal year to implement the project.
(4) The total amount of funds expended for planning and general administrative costs.
(b) Notwithstanding Section 10231.5, on or before March 1, 2020, and annually thereafter, the committee shall provide a report to the Joint Legislative Budget Committee that includes all of the following information for the preceding fiscal year:
(1) The name, location, and general description, including the number of housing units constructed and at which income level, of each project that received an affordable housing and community development investment amount pursuant to this program.
(2) The total amount of funds reallocated from affordable housing and community development investment funds pursuant to the program in the previous fiscal year.
(3) An evaluation of the value of the state’s investment through the funding provided by this program as measured by a net revenue increase to the General Fund and progress towards achieving the purposes and intent of the program.
(c) The committee shall develop a corrective action plan for noncompliance with the requirement of this part.
55909. (a) If, based on annual reports submitted to the committee pursuant to Section 55908, the committee determines that any of the following has occurred, the committee shall direct the applicant to develop a corrective action plan based on recommendations made by the committee:
(1) The applicant is not on track to produce the number of housing units included in the plan.
(2) The applicant is not on track to spend at least 50 percent of plan funds on affordable housing, as required by subdivision (b) of Section 55903.
(3) The applicant is on track to exceed 5 percent of the administrative limit.
(4) The applicant is found to have used funding provided by the program for purposes not authorized by the act.
(5) The applicant is found to have used funds to subsidize market rate housing.
(6) The applicant has violated antidisplacement provisions pursuant to paragraph (6), (7), (8), or (9) of subdivision (a) of Section 55905.
(7) The applicant is not on track to complete all of the projects included in the plan according to the timeline included in the plan.

(b) The applicant shall have one year from the date that the committee directed the applicant to develop a corrective action plan.

(c) The committee shall issue a finding that the applicant is out of compliance with the program if the committee finds either of the following apply:

1. The applicant has not provided an adequate corrective action plan to the committee within one year of the date the committee directed the applicant to develop a corrective action plan.

2. The annual report provided to the committee pursuant to Section 55908 does not demonstrate that the applicant has taken adequate steps to implement the corrective action plan that was provided to the committee within one year of the date the committee directed the applicant to develop a corrective action plan.

(d) If the committee finds that the applicant is out of compliance with the program, the committee shall direct the auditor to stop reducing ERAF contributions approved transferring moneys from the county’s ERAF pursuant to the program under Section 97.68.1 of the Revenue and Taxation Code, and prohibit the applicant from applying for additional funds for this program for a period of five years.

(e) If an applicant is found to be out of compliance with the program, the applicant shall be ineligible to apply for other state grant programs for a period of five years.

SEC. 4. Division 6 (commencing with Section 62300) is added to Title 6 of the Government Code, to read:

DIVISION 6. AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT INVESTMENT AGENCIES

62300. As used in this division:

(a) “Agency” means an affordable housing and community development investment agency created pursuant to this division.

(b) “Affordable housing and community development investment amount” means the amount approved by the Affordable Housing and Community Development Investment Committee pursuant to Part 4 (commencing with Section 55900) of Division 2 of Title 5
and allocated to an agency pursuant to Section 97.68.1 of the Revenue and Taxation Code.

(c) “Program” means the Affordable Housing and Community Development Investment Program established pursuant to Part 4 (commencing with Section 55900) of Division 2 of Title 5.

(d) “Project” has the same meaning as defined in Section 55902.

(e) “Plan area” means the area that includes the territory described in any plan submitted by an agency pursuant to subdivision (b) of Section 55905.

62302. (a) An affordable housing and community development investment agency created pursuant to this division shall be a public body, corporate and politic, with jurisdiction to carry out one or more projects within a project area. The agency shall have only those powers and duties specifically set forth in Section 62304.

(b) (1) Subject to paragraphs (2) and (3), an agency may be created in any one of the following ways:

(A) A city, county, or city and county may adopt a resolution creating an agency. The composition of the governing board shall be comprised as set forth in subdivision (c).

(B) Any of the following entities may create an authority by entering into a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1:

(i) A city.

(ii) A county.

(iii) A city and county.

(iv) A special district, as that term is defined in subdivision (m) of Section 95 of the Revenue and Taxation Code.

(v) Any combination of entities described in clauses (i) through (iv), inclusive.

(2) (A) A school entity, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, shall not participate in an agency created pursuant to this division.

(B) A successor agency, as defined in subdivision (j) of Section 34171 of the Health and Safety Code, shall not participate in an agency created pursuant to this division, and an agency created pursuant to this division shall not receive any portion of the property tax revenues or other moneys distributed pursuant to Section 34188 of the Health and Safety Code.

(3) An agency created by a city or county that created a redevelopment agency that was dissolved pursuant to Part 1.85
(commencing with Section 34170) of Division 24 of the Health and Safety Code shall not become effective until the successor agency or designated local authority for the former redevelopment agency has adopted findings of fact stating all of the following:

(A) The successor agency has received a finding of completion from the Department of Finance pursuant to Section 34179.7 of the Health and Safety Code.

(B) Former redevelopment agency assets that are the subject of litigation against the state, where the city or county or its successor agency or designated local authority are a named plaintiff, have not been or will not be used to benefit any efforts of an agency created under this division unless the litigation has been resolved by entry of a final judgment by any court of competent jurisdiction and any appeals have been exhausted.

(C) The successor agency has complied with all orders of the Controller pursuant to Section 34167.5 of the Health and Safety Code.

(c) (1) The governing board of an agency created pursuant to subparagraph (A) of paragraph (1) of subdivision (b) shall be appointed by the legislative body of the city, county, or city and county that created the agency and shall include three members of the legislative body of the city, county, or city and county that created the agency and two public members. The appointment of the two public members shall be subject to Section 54974. The two public members shall live or work within the plan area.

(2) The governing body of an agency created pursuant to subparagraph (B) of paragraph (1) of subdivision (b) shall be comprised of a majority of members from the legislative bodies of the public agencies that created the agency and a minimum of two public members who live or work within the plan area. The majority of the board shall appoint the public members to the governing body. The appointment of the public members shall be subject to Section 54974.

62304. An agency may do all of the following in order to carry out a project:

(a) Apply for funding to carry out the project pursuant to the program.

(b) Accept an allocation of property tax revenues, in the form of an affordable housing and community development investment
amount allocated under the program pursuant to Section 97.68.1 of the Revenue and Taxation Code.

(c) Issue bonds in accordance with Article 4.5 (commencing with Section 53506) and Article 5 (commencing with Section 53510) of Chapter 3 of Part 1 of Division 2 of Title 5.

(d) Borrow money, receive grants, or accept financial or other assistance or investment from the state or the federal government or any other public agency or private lending institution for any project within its area of operation. The agency may comply with any conditions of a loan or grant received pursuant to this subdivision.

(e) Receive funds allocated to it pursuant to a resolution adopted by a city, county, or special district to transfer these funds from a source described in subdivision (d), (e), or (f) of Section 53398.75, subject to any requirements upon, or imposed by, the city, county, or special district as to the use of these funds.

(f) Acquire and transfer real property.

(g) Any other act that is necessary to carry out a project in accordance with the requirements of the program and the agency’s plan submitted pursuant to subdivision (b) of Section 55905.

SEC. 4.
SEC. 5. Section 97.68.1 is added to the Revenue and Taxation Code, to read:

97.68.1. Notwithstanding any other provision of law, for each fiscal year for which funding for a plan for the county is approved under Part 4 (commencing with Section 55900) of Division 2 of Title 5 of the Government Code, in allocating ad valorem property tax revenue, all of the following shall apply:

(a) The auditor shall reduce the total amount of ad valorem property tax revenue otherwise required to be allocated to a county’s Educational Revenue Augmentation Fund by the countywide affordable housing and community development investment amount.

(b) The county auditor shall transfer an amount, equal to the countywide affordable housing and community development investment amount, from the county’s Educational Revenue Augmentation Fund to the county’s Affordable Housing and Community Development Investment Fund established pursuant to subdivision (b).
(b) (1) The county auditor shall, except as provided in paragraph (2), deposit the countywide affordable housing and community development investment amount into the Affordable Housing and Community Development Investment Fund, which shall be established in the treasury of each county. Moneys in the Affordable Housing and Community Development Investment Fund shall only be used for plans approved pursuant to Part 4 (commencing with Section 55900) of Division 2 of Title 5 of the Government Code, and shall be allocated to the applicant as directed by the committee.

(2) In the case of an applicant that is an enhanced infrastructure financing district, affordable housing authority, community revitalization investment authority, affordable housing and community development investment agency, or transit village development district, the auditor shall allocate an amount from the county’s Educational Revenue Augmentation Fund equal to the enhanced infrastructure financing district’s, affordable housing authority’s, community revitalization investment authority’s, affordable housing and community development investment agency’s, or transit village development district’s affordable housing and community development investment amount to the city or county that created the enhanced infrastructure financing district, affordable housing authority, community revitalization investment authority, affordable housing and community development investment agency, or transit village development district. The city or county shall, upon receipt, transfer those funds to that enhanced infrastructure financing district, affordable housing authority, community revitalization investment authority, affordable housing and community development investment agency, or transit village development district.

(3) The county auditor shall allocate one-half of an amount specified in paragraph (1) or (2) on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.

(c) For purposes of this section, all of the following shall apply:
(1) “Affordable housing and community development investment amount” for a particular city, county, or city and county means the amount approved by the Affordable Housing and Community Development Committee pursuant to Part 4 (commencing with Section 55900) of Division 2 of Title 5 of the Government Code.

(2) “Countywide affordable housing and community development investment amount” means, for any fiscal year, the total sum of the amounts described in paragraph (1) for a county or a city and county, and each city and county.

(d) This section shall not be construed to do any of the following:

(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to county superintendents of schools, cities, counties, and cities and counties pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Sections 97.2 and 97.3 or 97.3, Section 97.70, and Article 4 (commencing with Section 98) had this section not been enacted. The allocations required by this section shall be adjusted to comply with this paragraph.

(2) Require an increased ad valorem property tax revenue allocation or increased tax increment allocation to a community redevelopment agency.

(3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is otherwise determined or allocated in a county.

(4) Reduce ad valorem property tax revenue allocations required under Article 4 (commencing with Section 98).

(e) If, for the fiscal year, after complying with Section 97.68, subparagraph (B) of paragraph (1) of subdivision (a) of Section 97.70, there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county Educational Revenue Augmentation Fund for the county auditor to complete the allocation reduction transfer required by subdivision (a), the county auditor shall additionally reduce the total amount of ad valorem property tax revenue that is otherwise required to be allocated to all school districts and community college districts in the county for that fiscal year by an amount equal to the difference between the countywide affordable housing and community development investment amount and the amount of ad valorem property tax.
revenue that is otherwise required to be allocated to the county Educational Revenue Augmentation Fund for that fiscal year. This reduction for each school district and community college district in the county shall be the percentage share of the total reduction that is equal to the proportion that the total amount of ad valorem property tax revenue that is otherwise required to be allocated to the school district or community college district bears to the total amount of ad valorem property tax revenue that is otherwise required to be allocated to all school districts and community college districts in a county. For purposes of this subdivision, “school districts” and “community college districts” do not include any districts that are excess tax school entities, as defined in Section 95.

(f) Any reduction in the amount transfer of ad valorem property tax revenues deposited in the county’s Educational Revenue Augmentation Fund as a result of subparagraph (A) subdivision (a) shall be applied exclusively to reduce the amounts that are allocated from that fund to school districts and county offices of education, and shall not be applied to reduce the amounts of ad valorem property tax revenues that are otherwise required to be allocated from that fund to community college districts.

(g) (1) A property tax revenue allocation reduction or property tax revenue or transfer made pursuant to subdivision (a) or (b) shall not be considered for purposes of determining under Section 96.1 the amount of property tax revenue allocated to a jurisdiction in the prior fiscal year.

(2) The auditor may include the cost of workload related to calculating reductions pursuant to subdivision (a) for the purposes of Section 95.3.

(2) The county auditor may deduct its administrative costs related to this section from the affordable housing and community development investment amount before depositing that amount into the county’s Affordable Housing and Community Development Investment Fund pursuant to subdivision (a).

SEC. 5. SEC. 6. 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. 6.

SEC. 7. Each provision of this act is a material and integral part of the act, and the provisions of this act are not severable. If any provision of this act or its application is held invalid, the entire act shall be null and void.
Attachment 2
May 20, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: SB 5 (Beall) Affordable Housing and Community Development Investment Program.

Introduction and Background
Senators Beall and McGuire introduced SB 5 on the first day of the 2019-2020 Legislative Session December 3, 2018. The bill would establish the Affordable Housing and Community Development Investment Program (Program), administered by the Affordable Housing and Community Development Investment Committee (Committee), to provide local entities with funding for development projects such as affordable housing, transit-oriented development, infill development, housing-related infrastructure, neighborhood revitalization, and infrastructure to protect communities from sea level rise. The funding for these projects would be made available to local entities through allocations of Educational Revenue Augmentation Fund (ERAF) property tax revenues. The bill would require that the state provide from the General Fund backfills to school entities for the associated loss of property tax revenue.

This bill was amended in the Senate Appropriations Committee to add co-authors, make public facilities eligible projects, and to make annual allocations subject to an appropriation, among others. These amendments are not yet in print and therefore are not reflected in this analysis.

SB 5 would allow various local agencies to apply for the Program, either individually or jointly. Eligible applicants including cities, counties, joint powers authorities, enhanced infrastructure financing districts, affordable housing authorities, community revitalization and investment authorities, and transit village development districts. The bill also authorizes the creation of a new public entity that would be eligible as a project applicant. Specifically, SB 5 authorizes a city, county, or special district to establish an Affordable Housing and Community Development Investment Agency, as specified. An Agency would be authorized to do any of the following in order to carry out a project: apply for Program funding; accept an allocation of property taxes pursuant to the Program; issue bonds; borrow money, receive grants, or accept state, federal, or private assistance for any project; receive an allocation of fund, as specified; and acquire or transfer property.

To apply for funding an eligible entity would submit an application to the Committee and would include specified information. Upon receipt of an application the Committee can submit questions regarding the application, approve, modify, or deny an application. The bill would require the Committee to establish a methodology for scoring and prioritizing applications based on: the number of housing units created; the share of those units that are dedicated to low- and moderate-income housing; the level of local, state, and federal funds leveraged for the project; and whether the applicant adopts plans to streamline development.
The bill would require that at least 50% of the overall Program funding and 50% of each plan’s funding is used for the construction of affordable housing. At least 80% of this set-aside must be used to provide rental and owner-occupied housing for low-income households with an annual income of up to 80% of the area median income, as specified. The remaining funds may be used for the production of moderate-income housing (households with an annual income between 80% and 120% of the area median income), as specified. Rental and sales prices for housing assisted with this set-aside would be subject to specified caps, and all housing assisted would be subject to the following recorded affordability restrictions: 55 years for rental housing; 45 years for owner-occupied housing; and at least 15 years for self-help housing. SB 5 prohibits funds from subsidizing market rate units but allows funding for infrastructure of developments that include market rate units. Each plan must dedicate at least 30 percent of housing units to affordable housing and keep those units affordable for at least 55 years.

SB 5 reserves at least 12 percent of overall Program funding for counties with 200,000 residents or less, and two percent for technical assistance to such counties to make sure they have the technical capacity to apply for the program. If these counties do not spend all of these funds in any year, SB 5 reserves that funding for these counties in subsequent years.

SB 5 allows the Committee to approve $200 million in plans in the first year, increasing in $200 million increments each year for five years until reaching $1 billion after five years. Over the subsequent four years, the annual increase in funding the committee can approve increases by $250 million each year until it reaches $2 billion after nine years. The bill allows the Legislature to direct the Committee to suspend the program if the state taps into its Rainy Day account or suspends the Proposition 98 guarantee. These suspensions would not have an impact on previously approved funding pursuant to the Program. The annual amounts dedicated to individual approved projects would be allocated based on the schedule of funding included in the plan that includes the project, unless the Committee decides to allocate a different level of funding or change the number of years that the project is to receive funding.

When the Committee approves a plan, it directs the county auditor to transfer an amount of property tax revenue that is equal to the amount approved by the Committee for that applicant from the ERAF to a specified county Fund established by the bill. The county auditor would then allocate the funds to the applicants (or to the city or county that created the entity for distribution to that entity). The bill specifies that these transfers can only come from ERAF amounts that were going to be used for K-12 schools, which ensures that the General Fund backfills the lower property tax revenue to schools. The bill gives the Department of Finance the ability to recalculate, or “rebench,” the Proposition 98 guarantee so that schools receive the same amount of funding they would have absent this program.

**Status of Legislation**
The bill passed out of the Senate Appropriations Committee on May 16, 2019 on a 4-2 vote and is pending in the Senate.

**Support and opposition to this bill is based off of a prior version of the bill.**

**Support and Opposition**
The author argues that the state needs to take urgent action to address the shortage of affordable housing units and that this bill will provide local entities with an effective financing tool that they have not had since the dissolution of redevelopment agencies. There is no registered opposition to the bill.
Support
American Planning Association, California Chapter
Bay Area Council
Brentwood; City Of Burbank; City Of
California Association For Local Economic Development
Concord; City Of
Cotati; City of
Covina; City Of
Crescent City; City Of
Fort Bragg; City Of
Fountain Valley; City Of
International Union Of Operating Engineers, Cal-Nevada Conference
Kosmont Companies
Laguna Beach; City Of
Laguna Niguel; City Of
Lakeport; City Of

Lakewood; City Of
League Of California Cities
Mayor of San Jose Sam Liccardo
Moorpark; City Of
Napa; City Of
Novato; City Of
Pasadena; City Of
Pinole; City Of
Placentia; City Of
Rohnert Park; City Of
Rosemead; City Of
Salinas; City Of
San Rafael; City Of
Sand City; City Of
South Pasadena; City Of
Town Of Danville
Vallejo; City Of
Working Partnerships USA

Opposition
None.
Attachment 3
March 8, 2019

The Honorable Jim Beall  
California State Senate  
State Capitol Building, Room 2082  
Sacramento, CA 95814

The Honorable Mike McGuire  
California State Senate  
State Capitol Building, Room 5061  
Sacramento, CA 95814

RE:  
SB 5 (Beall/McGuire) Local-State Sustainable Investment Incentive Program  
Notice of SUPPORT (As Introduced 12/03/2018)

Dear Senator Beall and Senator McGuire:

The League of California Cities is pleased to support your SB 5 (Beall/McGuire), the Local-State Sustainable Investment Incentive Program.

This measure would incentivize cities throughout California to identify innovative solutions to address the housing crisis while also supporting other State policy objectives. The League commends you for recognizing the diversity of California cities and acknowledging the flexibility cities need to spur housing construction and revitalize communities.

Since the elimination of redevelopment agencies in 2011, the Legislature has created several new tools that use tax increment financing, which include the formation of enhanced infrastructure financing districts (EIFD), affordable housing authorities, and community revitalization investment authorities (CRIA). While these new tools can be useful to local agencies, they are widely viewed as lacking sufficient financial capacity compared to what existed under former redevelopment agencies. The limited funding has resulted in few cities taking advantage of these new tools.

SB 5 would create a local-State partnership to provide up to $2 billion annually to fund State approved affordable housing, infrastructure, and economic development projects that also support State policies to reduce greenhouse gas emissions, expand transit oriented development (TOD), address poverty, and revitalize neighborhoods.

With a projected multi-billion State budget surplus for the 2019/2020 fiscal year, the League believes the time is right for the State to restore more robust financing mechanisms that support local efforts to build more affordable housing, provide essential infrastructure, and create opportunities in underserved communities. The League applauds your leadership in this effort and we look forward to working together on this important issue.

Sincerely,

Jason Rhine  
Assistant Legislative Director

cc.  The Honorable Richard Roth, Principal Coauthor  
Members, Senate Governance and Finance Committee  
Anton Favorini-Csorba, Consultant, Senate Governance and Finance Committee  
Ryan Eisberg, Policy Consultant, Senate Republican Caucus
Item B-2
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: May 22, 2019
SUBJECT: Request Direction on Assembly Bill 1356 (Ting) – Cannabis: Local Jurisdictions: Retail Commercial Cannabis Activity
ATTACHMENTS: 1. Bill Text – AB 1356
               2. Summary Memo – AB 1356
               3. Letter of Opposition – League of California Cities

INTRODUCTION
Assembly Bill 1356 (Ting) – Cannabis: Local Jurisdictions: Retail Commercial Cannabis Activity would, if more than 50% of the electorate of a local jurisdiction voted in favor of Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), require the jurisdiction to issue a minimum number of local licenses authorizing specified retail cannabis commercial activity.

Additionally, the bill would require the minimum number of licenses issued to be one-sixth of the number of currently active, on-sale general licenses for alcoholic beverage sales in a city/county unless the minimum number would result in a ratio greater than one local license for retail cannabis commercial activity for every 15,000 residents of the city/county (Attachment 1).

This item requests the Legislative/Lobby Liaisons consider taking a position on Assembly Bill 1356 (AB 1356).

DISCUSSION
Background
On November 8, 2016, the AUMA passed with 57% voter approval in California and became law on November 9, 2016. In Beverly Hills, it passed with 64% voter approval. What is unknown is if the voters in Beverly Hills supported the recreational use of marijuana or if they supported both the recreational use and the allowance of commercial cannabis businesses in Beverly Hills.

On June 18, 2017, the City Council conducted a first reading of an ordinance prohibiting all commercial cannabis activity (both medical and non-medical) except for the delivery of medical cannabis. A second reading of the ordinance occurred on August 8, 2017. Thirty days later, the ordinance went into effect.

Summary of the AUMA
The AUMA legalizes marijuana under state law, for use and personal cultivation by adults 21 or older. It also imposes state taxes on cannabis sales and commercial cultivation; provides for industry licensing and establishes standards for cannabis products; and allows local regulation and taxation of cannabis businesses.
Further, the AUMA specifically provides that local jurisdictions may still adopt and enforce ordinances to regulate cannabis activities/businesses through local zoning, land use, and police powers.

**AB 1356**

AB 1356 erodes the local regulatory authority of cities and counties, which is explicitly provided for in AUMA and removes the ability for cities to decide what is appropriate for their communities. The City's state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for AB 1356 to the City (Attachment 2).

Some key specifics from AB 1356 include:

- Requires local jurisdictions where more than 50 percent of the electorate voted in favor of AUMA to issue a minimum number of local licenses that authorize medicinal retail cannabis commercial activity or a combination of medicinal retail cannabis commercial activity and adult-use retail cannabis commercial activity.

- Sets the minimum number of local licenses for the specified retail cannabis commercial activity at one-sixth of the number of on-sale general license types for alcoholic beverages unless that would result in a ratio greater than one local license for every 15,000 residents in the jurisdiction, in which case the minimum number of licenses would be determined by dividing the jurisdiction’s population by 15,000 and rounding down to the nearest whole number.

- If a local jurisdiction does not submit its local ordinance to the electorate or the ordinance fails to receive 50% of the vote, then the local jurisdiction will have 120 days following that election to issue local licenses.

- Exempt a local jurisdiction that on or after January 1, 2017, and before January 1, 2020 submitted for voter approval a local ordinance or resolution that:
  - Would have authorized retail cannabis commercial activity but did not receive support from a majority of the electorate, or;
  - Would prohibit retail cannabis commercial activity that received support from the majority of the electorate.

AB 1356 passed out of Assembly Appropriations Committee on May 16, 2019 and is now on the Assembly floor.

**FISCAL IMPACT**

Should AB 1356 pass, City staff will need to develop costs associated with a variety of approaches the City may take for implementing the new law; or, alternatively, challenging the legality of the new law.

**RECOMMENDATION**

As the City strongly supports local control, should the Liaisons recommend the City take a position of oppose on AB 1356, then staff will draft a letter for the Mayor to sign. This action would require no further approval by the City Council.
Should the Liaisons recommend a position of support or neutral, then staff will place the item on a future City Council Agenda for concurrence as the direction provided would conflict with the City Council adopted Legislative Platform.

The Liaisons may also provide other direction to staff in regards to AB 1356.
An act to amend Section 26200 of, and to add Section 26200.1 to, the Business and Professions Code, relating to cannabis.

LEGISLATIVE COUNSEL’S DIGEST

AB 1356, as amended, Ting. Cannabis: local jurisdictions: retail commercial cannabis activity.

The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including retail commercial cannabis activity. MAUCRSA gives the Bureau of Cannabis Control in the Department of Consumer Affairs the power, duty, purpose, responsibility, and jurisdiction to regulate commercial cannabis activity in the state as provided by the act. MAUCRSA does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis businesses within that local jurisdiction.
This bill, if more than 50% of the electorate of a local jurisdiction voted in favor of AUMA, would require a local jurisdiction to issue a minimum number of local licenses authorizing specified retail cannabis commercial activity within that jurisdiction that would be permitted by a retailer license issued under MAUCRSA. The bill would require the minimum number of those local licenses required to be issued in that jurisdiction to be \( \frac{25}{6} \% \) of the number of currently active on-sale general licenses for alcoholic beverage sales in that jurisdiction, as specified, unless the minimum number would result in a ratio greater than one local license for retail cannabis commercial activity for every 10,000 residents of the local jurisdiction, in which case the bill would require the minimum number to be determined by dividing the number of residents in the local jurisdiction by 10,000 and rounding down to the nearest whole number. The bill would authorize a local jurisdiction to impose a fee on licensees to cover the regulatory costs of issuing those local licenses. The bill would exempt from these provisions a local jurisdiction that, on or before January 1, 2017, and until January 1, 2020, submitted to the electorate of the local jurisdiction a specified local ordinance or resolution relating to retail cannabis commercial activity that received a specified vote of the electorate.

This bill would allow any local jurisdiction subject to the requirements of this bill that wants to establish a lower amount of these local licenses to submit an ordinance or other law, that clearly specifies the level of participation in the retail commercial cannabis market it would allow, to the electorate of that local jurisdiction at the next regularly scheduled local election following the operative date of this bill. The bill would provide that the local ordinance or other local law becomes effective if approved by more than 50% of its electorate. The bill would require the local jurisdiction to issue those licenses as otherwise required by this bill within a specified period of time if a local jurisdiction subject to the requirements of this bill does not submit a local ordinance or other local law regarding the lower amount of licenses to the electorate, or that local ordinance or other local law fails to receive more than 50% of the approval of the electorate voting on the issue. The bill would provide that these provisions are prohibited from being construed to require a local jurisdiction to authorize adult-use retail cannabis commercial activity. By imposing additional requirements on local jurisdictions 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.

AUMA authorizes the Legislature to amend its provisions with a $\frac{2}{3}$ vote of both houses to further its purposes and intent.

This bill would declare that its provisions further the purposes and intent of AUMA.


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

SECTION 1. Section 26200 of the Business and Professions Code is amended to read:

(a) (1) This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction, except as provided in Section 26200.1.

(2) This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 10 days of notification, the bureau shall inform the relevant licensing authorities. Within 60 days of being so informed by the bureau, the relevant licensing authorities shall begin the process to determine whether a license issued to the
licensee should be suspended or revoked pursuant to Chapter 3
(commencing with Section 26030).
(d) For facilities issued a state license that are located within
the incorporated area of a city, the city shall have full power and
authority to enforce this division and the regulations promulgated
by the bureau or any licensing authority, if delegated by the state.
Notwithstanding Sections 101375, 101400, and 101405 of the
Health and Safety Code or any contract entered into pursuant
thereto, or any other law, the city shall assume complete
responsibility for any regulatory function pursuant to this division
within the city limits that would otherwise be performed by the
county or any county officer or employee, including a county
health officer, without liability, cost, or expense to the county.
(e) (1) This division does not prohibit the issuance of a state
temporary event license to a licensee authorizing onsite cannabis
sales to, and consumption by, persons 21 years of age or older at
a county fair event, district agricultural association event, or at
another venue expressly approved by a local jurisdiction for the
purpose of holding temporary events of this nature, provided that
the activities, at a minimum, comply with all the following:
(A) The requirements of paragraphs (1) to (3), inclusive, of
subdivision (g).
(B) All participants who are engaged in the onsite retail sale of
cannabis or cannabis products at the event are licensed under this
division to engage in that activity.
(C) The activities are otherwise consistent with regulations
promulgated and adopted by the bureau governing state temporary
event licenses.
(D) A state temporary event license shall only be issued in local
jurisdictions that authorize such events.
(E) A licensee who submits an application for a state temporary
event license shall, 60 days before the event, provide to the bureau
a list of all licensees that will be providing onsite sales of cannabis
or cannabis products at the event. If any changes occur in that list,
the licensee shall provide the bureau with a final updated list to
reflect those changes. A person shall not engage in the onsite retail
sale of cannabis or cannabis products, or in any way participate in
the event, who is not included in the list, including any updates,
provided to the bureau.
(2) The bureau may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the bureau governing state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The bureau may require the event and all participants to cease operations without delay if in the opinion of the bureau or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The bureau may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the bureau that authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the bureau may require the event and all participants to cease operations immediately.

(4) The order by the bureau for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the bureau for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, “smoking” has the same meaning as defined in subdivision (c) of Section 22950.5.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.
(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

SEC. 2. Section 26200.1 is added to the Business and Professions Code, to read:

26200.1. (a) (1) Except as provided in subdivision (d), a local jurisdiction shall comply with the requirements of this subdivision if more than 50 percent of the electorate of that local jurisdiction, as determined using election data from the Secretary of State, voted in favor of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016, an initiative measure enacted as Proposition 64 at the November 8, 2016, statewide general election.

(2) A local jurisdiction described in paragraph (1) shall issue a minimum number of local licenses that authorize medicinal retail cannabis commercial activity, or a combination of medicinal retail cannabis commercial activity and adult-use retail cannabis commercial activity, within the jurisdiction that would be permitted by a retailer license described in Section 26070, as determined by paragraph (3). A local jurisdiction may impose a fee on licensees to cover the regulatory costs of issuing those local licenses.

(3) (A) Except as provided in subparagraph (C), the minimum number of local licenses for retail cannabis commercial activity that a local jurisdiction is required to issue pursuant to paragraph (2) is 25 percent one-sixth of the number of on-sale general license types for alcoholic beverage sales that are currently active in that jurisdiction, as determined pursuant to subparagraph (B).

(B) (i) (I) If the local jurisdiction is a city, the number of on-sale general licenses for alcoholic beverages shall be determined by adding all of the currently active licenses issued in the jurisdiction that are of a license type listed in subclause (II). If the local jurisdiction is a county, the number of on-sale general licenses for alcoholic beverages shall be determined by adding all of the currently active licenses issued in the unincorporated regions of the county that are of a license type listed in subclause (II).

(II) For purposes of subclause (I), the following on-sale general license types shall be counted: Types 47, 47D, 48, 48D, 57, 57D, 68, 70, 71, 71D, 75, 75D, 78, and 78D.
(ii) The number determined in clause (i) shall be divided by four and rounded up to the nearest whole number using generally accepted mathematical rounding practices.

(iii) If the number of local licenses for retail commercial cannabis determined in clause (ii) would result in a ratio equal to, or fewer than, one local license for retail cannabis commercial activity for every 15,000 residents of the local jurisdiction, the number determined in clause (ii) shall be the minimum number of local licenses the jurisdiction is required to issue pursuant to paragraph (2).

(C) Notwithstanding subparagraphs (A) and (B), if the number of local licenses for retail commercial cannabis determined in clause (ii) of subparagraph (B) would result in a ratio greater than one local license for retail cannabis commercial activity for every 15,000 residents of the local jurisdiction, the minimum number of local licenses that the local jurisdiction is required to issue pursuant to paragraph (2) shall be determined by dividing the number of residents in the local jurisdiction by 15,000 and rounding down to the nearest whole number.

(b) Notwithstanding subdivision (a), a local jurisdiction described in paragraph (1) of subdivision (a) that wants to establish a lower amount of local licenses for retail cannabis commercial activity than required by subdivision (a) shall do all of the following:

(1) Create a local ordinance or other local law that clearly specifies the level of participation in the retail commercial cannabis market the local jurisdiction will allow.

(2) Submit that ordinance or other local law to the electorate of that local jurisdiction at the next regularly scheduled local election following the operative date of this section.

(3) If the ordinance or other local law is approved by more than 50 percent of the electorate of that local jurisdiction voting on the issue, then the new ordinance or other local law shall become effective in that local jurisdiction.

(c) If a local jurisdiction described in paragraph (1) of subdivision (a) does not submit a local ordinance or other local law to the electorate as described in subdivision (b), or that local ordinance or other local law fails to receive more than 50 percent of the approval of the electorate of that local jurisdiction voting on the issue as described in subdivision (b), then the local
(d) A local jurisdiction is exempt from this section if either of
the following applies:
(1) On or after January 1, 2017, and until January 1, 2020, the
local jurisdiction submitted to the electorate of the local jurisdiction
a local ordinance or resolution that authorizes retail cannabis
commercial activity, and a majority of the electorate voted not to
approve the local ordinance or resolution.
(2) On or after January 1, 2017, and until January 1, 2020, the
local jurisdiction submitted to the electorate of the local jurisdiction
a local ordinance or resolution that prohibits retail cannabis
commercial activity, and a majority of the electorate voted to
approve the local ordinance or resolution.
(e) For purposes of this section, all of the following shall apply:
(1) “Electorate of a county” means the electorate of the
unincorporated area of the county.
(2) “Local jurisdiction” means a city, county, or a city and a
county.
(3) “Local license” means any license, permit, or other
authorization from the local jurisdiction.
(f) This section shall not be construed to require a local
jurisdiction to authorize adult-use retail cannabis commercial
activity.
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
SEC. 4. The Legislature finds and declares that this act furthers
the purposes and intent of the Control, Regulate and Tax Adult
Use of Marijuana Act as stated in subdivisions (u) and (x) of
Section 3 of that act.
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Silvia Solis Shaw, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1356 (Ting) Cannabis: Local Jurisdictions: Retail Commercial Cannabis Activity.

Introduction and Background
Assembly Member Ting introduced AB 1356 which is sponsored by United Domestic Workers of America and UDW/AFSCME Local 3930 and would require local jurisdictions where more than 50 percent of the electorate voted in favor of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (Proposition 64) to issue a minimum number of local licenses that authorize medicinal retail cannabis commercial activity, or a combination of medicinal retail cannabis commercial activity and adult-use retail cannabis commercial activity that would be permitted by a retailer licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The bill would require the minimum number of local licenses to be equal to one-sixth of the number of active on-sale general licenses for alcoholic beverages unless that ratio is greater than one local license for every 15,000 residents.

Specifically, this bill would:
- Require local jurisdictions where more than 50 percent of the electorate voted in favor of Prop 64 in 2016 to issue a minimum number of local licenses that authorize medicinal retail cannabis commercial activity, or a combination of medicinal retail cannabis commercial activity and adult-use retail cannabis commercial activity;
- Set the minimum number of local licenses for the specified retail cannabis commercial activity at one-sixth of the number of on-sale general license types for alcoholic beverages unless that would result in a ratio greater than one local license for every 15,000 residents in the jurisdiction, in which case the minimum number of licenses would be determined by dividing the jurisdiction’s population by 15,000 and rounding down to the nearest whole number;
- Allow local jurisdictions to authorize a lower number of local licenses for retail cannabis commercial activity if they:
  - Create a local ordinance or law that specifies the level of participation in the retail cannabis market the local jurisdiction will allow;
  - Place the ordinance or law on the ballot for majority voter approval at the next regularly scheduled local election following the operative date of the bill.
- If a local jurisdiction does not submit its local ordinance to the electorate or the ordinance fails to receive 50% of the vote, then the local jurisdiction will have 120 days following that election to issue local licenses;
- Exempt a local jurisdiction that on or after January 1, 2017, and before January 1, 2020 submitted for voter approval a local ordinance or resolution that:
Would have authorized retail cannabis commercial activity but did not receive support from a majority of the electorate, or;

Would prohibit retail cannabis commercial activity that received support from the majority of the electorate.

**Status of Legislation**
The bill is pending on the Assembly Second Reading File.

**Support and Opposition**

*(Please note that the registered support and opposition is based on a prior version of the bill)*

The sponsors of the bill note that while 393 out of 538 jurisdictions voted in favor of Proposition 64 two-thirds of the state prohibit even a single cannabis retailer. They argue that this creates an undue burden for In-Home Supportive Services providers who, due to restrictive local ordinances, may have to travel great distances to purchase medicinal cannabis for their clients. They assert that this bill will increase accessibility for patients who utilize medicinal cannabis.

The bill is opposed by several organizations representing local governments. The League of California Cities argues that the bill erodes local regulatory authority over cannabis commercial activity which is a specified provision within Proposition 64. Opponents of the bill argue that requiring cities to establish a 1 to 4 ratio of local retail cannabis licenses to liquor licenses removes the ability for local jurisdictions to decide what is appropriate for their communities and subverts the intent of the voters who approved Proposition 64.

**Support**
United Domestic Workers of America, UDW/AFSCME Local 3930 (Sponsor)
Americans for Safe Access
Association of Cannabis Professionals
CalAsian Chamber of Commerce
California Cannabis Industry Association
California Hispanic Chambers of Commerce
Cannabis Distribution Association
CannaCraft
High Desert Cannabis Association
SEIU State Council
Southern California Coalition
Veterans Cannabis Group
Weedmaps

**Opposition**
California State Association of Counties
League of California Cities
Rural County Representatives of California
Smart Approaches to Marijuana California
April 15, 2019

The Honorable Evan Low  
Chair, Assembly Committee on Business & Professions  
State Capitol Building, Room 4126  
Sacramento, CA 95814

RE:  **AB 1356 (Ting) Local Jurisdictions: Retail Commercial Cannabis Activity**  
Notice of OPPOSITION (As introduced)

Dear Assembly Member Low:

On behalf of the League of California Cities®, I regret to inform you of our opposition to Assembly Bill 1356. Under this bill, if more than 50 percent of the voters of a local jurisdiction voted in favor of Proposition 64, these local jurisdictions would be required to adopt a local licensing structure for retail commercial cannabis activity. More specifically, the bill requires these cities to issue a minimum of one retail cannabis license for every four liquor licenses.

The League believes that AB 1356 fundamentally erodes the local regulatory authority of cities and counties, which is explicitly provided for in Proposition 64. In seeking to remove, a local government’s ability to either approve retail cannabis shops at a different concentration level or prohibit them within its jurisdiction, this bill completely subverts the intent of the voters who approved Proposition 64. In essence, attempting to require cities to establish a 1 to 4 ratio of local retail cannabis licenses to liquor licenses removes the ability for locals to decide what is appropriate for their communities. By obligating such a ratio, AB 1356 proposes an arbitrary land use standard for individual cities and counties based on the results of a statewide ballot measure. Ultimately, it is questionable at best as to whether, under Proposition 64, the state even has the unilateral authority to impose such a requirement without voter approval.

It should also be noted that the Legislature created a regulatory framework for medical cannabis more than a year prior to the enactment of Proposition 64. That legislatively-enacted framework serves as the basis of regulatory structure provided for in the adult-use scheme. In the construction of both frameworks, the crafters recognized the need for local control, primarily as part of cities’ and counties’ land use authority. In crafting Proposition 64, stakeholders took note of and purposely avoided the local control model within Oregon’s licensing scheme, which ties the ability to permit commercial cannabis to the level of the ‘yes’ vote the county received in that statewide election.

We acknowledge that many are frustrated with the slow and deliberate pace of many jurisdictions in authorizing commercial cannabis activities. We also recognize that a handful of cities continue to hold onto ideological reasons for not sanctioning commercial cannabis activities. The overwhelming number of ‘pause’ cities, however, are simply waiting for the industry to settle and assessing how the state will administer the licensing scheme. Changing the local authorization rules while in the middle of the implementation of the current regulatory framework will only serve to hinder the trust and partnership established between local jurisdictions and the state on this issue.
This heavy-handed approach is similar to the recent regulatory effort to force the allowance of cannabis deliveries anywhere in the state, despite any local limiting ordinance or prohibition that would otherwise restrict this commercial activity. While that provision is being litigated and will likely be overturned as a violation of Proposition 64, AB 1356 is likely to bring about more even litigation and confusion to an already fraught industry, which we view as counter-productive to the overall goals put forth by those who wish to promote further access.

For these reasons, the League opposes AB 1356. If you have any questions, please feel free to contact me at (916) 658-8252.

Sincerely,

Charles Harvey
Legislative Representative

cc. The Honorable Phil Ting
Members, Assembly Committee on Business and Professions
Robert Sumner, Consultant, Assembly Committee on Business and Professions
Bill Lewis, Consultant, Assembly Republican Caucus
Item B-3
INTRODUCTION

Senate Bill 58 (Wiener) - Alcoholic Beverages: Hours of Sale would create a pilot program for five years that would allow alcoholic beverages to be sold between the hours of 2 a.m. and 4 a.m. for the cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood (Attachment 1) for the onsite consumption of alcohol.

This item requests the Legislative/Lobby Liaisons consider taking a position on Senate Bill 58 (SB 58). Should the Liaisons recommend the City take a position on SB 58, then staff will place the item on a future City Council Agenda for concurrence as this item is not listed in the City Council adopted Legislative Platform.

DISCUSSION

Background

California Alcohol Beverage Control (ABC) has the exclusive authority to license and regulate the manufacturing, distribution, and sale of alcoholic beverages within California. There are approximately 50,000 on-sale licensees that have been issued in the state.

An on-sale license authorizes the sale of alcoholic beverages for consumption on the premises. An off-sale license authorizes the sale of alcoholic beverages for consumption off the premises in the original, sealed containers. There are over 9,000 on-sale licenses issued within the identified pilot cities which could potentially be impacted by this bill.

Over the years, local governments have requested increased authority to directly regulate establishments that sell alcohol in their respective communities, especially concerning zoning laws and conditional use permits. Currently, state law prohibits the sale of any alcoholic beverages between the hours of 2 a.m. and 6 a.m. of the same day. Any violation of this law is considered a misdemeanor.

The hours during which alcoholic beverages can be purchased varies across the United States. At least 15 states across the country delegate complete or partial authority for setting or extending service hours to the local jurisdictions, subject to state approval. A number of cities
have extended services hours including Chicago, Washington, D.C., New York City, Buffalo, Las Vegas, Louisville, Atlanta, Indianapolis, Miami Beach, and New Orleans.

In 2018, Senator Wiener drafted a similar ordinance which the City opposed (Attachment 2).

**Proposed Legislation**

Senator Scott Wiener has authored a bill to create a five-year pilot program, beginning January 1, 2022, to issue an additional hours license to an on-sale licensee in a qualified city that would allow alcoholic beverages to be sold between the house of 2 a.m. and 4 a.m. According to Senator Wiener, “social and nightlife venues are an economic driver in many communities, and the state’s food service and entertainment industries generate billions of dollars in consumer spending ….”

As written, SB 58 is an optional tool for local control over nightlife and, if implement, is projected to increase tax revenue and tourism for the identified pilot cities. While our City traditionally has supported local control, this legislation would adversely impact Beverly Hills as the consumption of alcohol in West Hollywood or Los Angeles would cause a need for an increase in DUI enforcement. The City could also see an increase in potential fatal accidents caused by the extended hours for alcohol sales.

Some key provisions in SB 58 include:

- Requiring the ABC, beginning January 1, 2022, conduct a pilot program that may issue an additional hours license authorizing the selling of alcoholic beverages at an individual on-sale licensed premise between the hours of 2 a.m. and 4 a.m. within a qualified city (defined as the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood) if the local governing body of that qualified city designates a task force composed of at least one member of law enforcement and one additional member of the California Highway Patrol, to develop a recommended local plan.

- Requiring an on-sale licensee that is issued an additional hours permit have all persons engaged in the sale or service of alcohol during the additional hours period complete a responsible beverage training course.

- Prohibiting off-sale alcoholic beverage sales privileges during the additional hours period.

- Requiring the California Highway Patrol by January 1, 2024, provide the Legislature with a report on the regional impact of the additional hours service areas, which shall include information on any additional costs incurred by adjacent cities and counties as a result of being adjacent to an area with additional service hours, including the impact that an additional hours service area had on arrests for driving under the influence in adjacent cities, counties, and cities and counties.

- Require a qualified city that chooses to participate in the pilot program, by January 1, 2020, to provide the Legislature with a report on the regional impact of the additional hours licenses which shall include information on the overall costs of providing policing during the additional service hours and any impact the additional service hours had on crime rates in the city, including arrests for driving under the influence, a detailed description of the number of licensees that applied for additional hours licenses, the
number of additional hours licenses issued, and any conditions placed on those licenses.

Public Safety Concerns

In 2017, there were 10,874 alcohol-related traffic fatalities in the United States involving drivers with a blood alcohol concentration (BAC) level of .08g/dL or higher. This totaled 29 percent of all traffic fatalities in the United States and resulted in an average of one alcohol-related driving fatality every 48 minutes. The estimated economic cost of all alcohol-related vehicle accidents in the United States in 2010 is estimated at $44 billion (Attachment 3).

Internationally peer-reviewed research conducted over the past 40 years shows that changes in last call times of 2 hours or more are associated with an increase in alcohol-related traffic accidents and tickets for driving under the influence (DUI). Some key findings in the research include:

- Research in Australia and Norway suggests later last call times increase violence by 17 percent to 50 percent.
- Different last call times between areas can cause a “splash effect” onto nearby communities as intoxicated drivers travel from one area with a last call time of 2 a.m. to another area with a last call time of 4 a.m.
- Late-night consumption of alcohol can create deadly drivers even at the legal .08 BAC standard as fatigue and alcohol interact.

Public health related research at the University of California Los Angeles (“UCLA”) Fielding School of Public Health and UCLA Geffen School of Medicine has found that two or more hours of increased alcohol sales will produce an increase in vehicle accident injuries and admissions to the emergency rooms of hospitals.

Additionally, the California Office of Traffic Safety (OTS) has reported that fatality alcohol-related vehicle accidents are a chronic and worsening problem for the state. Alcohol-impaired driving fatalities (fatalities in crashes involving a driver or motorcycle rider with BAC of 0.08 grams per deciliter (g/dL) or higher) increased 16.3 percent from 2015 to 2016 as there were 911 fatalities in 2015 and 1,059 in 2016. Since 2014, alcohol-related traffic accident deaths has risen 21 percent. This increase in alcohol-related traffic fatalities is occurring despite the existence of ride share. While OTS does not yet list the data for 2017, the National Highway Transportation and Safety Administration (NHTSA) has listed a figure of 1,120 alcohol-related traffic fatalities in California for 2017.

There is also a concern that while 17 percent of the state’s population is in the pilot cities, the metropolitan districts in an around these areas includes 76 percent of the state’s population. Given the hours people travel on the road to and from their workplace, there is a high probability of mixing late night drivers who are under the influence of alcohol and early morning commuters. Additionally, there may be an increase cost to the neighboring jurisdictions of the pilot cities to deter driving under the influence as well as responding to alcohol-related traffic accidents.

Support/Opposition

As of March 2019, organizations in support of SB 58 include:
• California Hotel & Lodging Association
• City of Coachella
• City of West Hollywood
• San Francisco Bar Owner Alliance

Organization listed in opposition to SB 58 include:
• Alcohol Justice
• City of Los Angeles
• Institute of Public Strategies
• Saving Lives Coalition

SB 58 passed out of the Senate Appropriations Committee on May 16, 2019.

**FISCAL IMPACT**

The fiscal impact of this legislation is unknown to the City. It is anticipated that there will be more people driving under the influence of alcohol through the City as two of the pilot cities are adjacent to Beverly Hills. This may cause an increase in calls for service for both the Fire Department and Police Department. Whether or not additional staffing would be required to address these calls for service cannot be determined at this time.

**RECOMMENDATION**

After discussion of Senate Bill 58 (Wiener) – Alcoholic Beverages: Hours of Sale, the Liaisons may recommend the following actions:

1) Support SB 58;
2) Support if amended SB 58;
3) Oppose SB 58;
4) Oppose unless amended SB 58;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 58, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
An act to amend, repeal, and add Section 25631 of, and to add and repeal Section 25634 of, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL’S DIGEST

SB 58, as amended, Wiener. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor. Existing law provides for moneys collected as fees pursuant to the act to be deposited in the Alcohol Beverage Control Fund, with those moneys generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill, beginning January 1, 2022, and before January 2, 2026, would require the Department of Alcoholic Beverage Control to conduct a pilot program that would authorize the department to issue an additional hours license to an on-sale licensee located in a
qualified city that would authorize, with or without conditions, the selling, giving, or purchasing of alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the qualified city in which the licensee is located. The bill would impose specified fees related to the license to be deposited in the Alcohol Beverage Control Fund. The bill would require the applicant to notify specified persons of the application for an additional hours license and would provide a procedure for protest and hearing regarding the application. The bill would require the Department of the California Highway Patrol and each qualified city that has elected to participate in the program to submit reports to the Legislature and specified committees regarding the regional impact of the additional hours licenses, as specified. The bill would provide that any person under 21 years of age who enters and remains in the licensed public premises during the additional serving hours without lawful business therein is guilty of a misdemeanor, as provided. The pilot program would apply to Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.

This bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would make legislative findings and declarations as to the necessity of a special statute for the qualified cities.


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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the state to promote the responsible consumption of alcoholic beverages through making multiple planning options available to local communities and entertainment areas of the state, including the option of extended services hours up to a limit of 4 a.m. in communities and areas of the state where
those extended hours are found by the governing body of the
responsible community to be proper and appropriate.
(b) At least 15 states across the country delegate complete or
partial authority for setting service hours to local jurisdictions or
allow local jurisdictions to extend the hours of service, subject to
state approval.
(c) The Legislature supports a well-planned and managed
nightlife that can have a profound positive impact on a local
economy, generating direct tax revenues, and growing public funds
through revitalized business districts, and increased tourism.
(d) The Legislature supports the world-renowned California
licensed restaurant, venue, and entertainment industry, which
generates more than $50 billion every year in consumer spending
in California communities on jobs, goods and services, and related
industries, and that attracts world-class acts as well as tourists to
visit and enjoy California.
(e) The Legislature has determined that it is in the best interest
of the State of California for extended hours of operation policies
to be administered by the Department of Alcoholic Beverage
Control in connection with applications for additional hour
privileges, with the fees for those applications to be determined
and assessed by the department at a rate that will fully reimburse
the department for administrative expenses.
SEC. 2. Section 25631 of the Business and Professions Code
is amended to read:
25631. (a) (1) Except as provided in subdivision (b), any on-
or off-sale licensee, or agent or employee of that licensee, who
sells, gives, or delivers to any persons any alcoholic beverage or
any person who knowingly purchases any alcoholic beverage
between the hours of 2 a.m. and 6 a.m. of the same day, is guilty
of a misdemeanor.
(2) For the purposes of this subdivision, on the day that a time
change occurs from Pacific standard time to Pacific daylight saving
time, or back again to Pacific standard time, “2 a.m.” means two
hours after midnight of the day preceding the day such change
occurs.
(b) (1) Beginning January 1, 2021, 2022, and before January
2, 2026, 2027, in a city that has additional serving hours pursuant
to Section 25634, any on-sale licensee, or agent or employee of
the licensee, who sells or gives to any person any alcoholic
beverage or any person who knowingly purchases any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.

(2) For the purposes of this subdivision, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, “4 a.m.” means four hours after 12 midnight of the day preceding the day the change occurs.

(c) This section shall remain in effect only until January 2, 2026, and as of that date is repealed, unless a later enacted statute that is enacted before January 2, 2026, deletes or extends that date.

SEC. 3. Section 25631 is added to the Business and Professions Code, to read:

25631. (a) (1) Any on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.

(2) For the purposes of this section, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, “2 a.m.” means two hours after midnight of the day preceding the day such change occurs.

(b) This section shall be operative January 2, 2026, 2027.

SEC. 4. Section 25634 is added to the Business and Professions Code, to read:

25634. (a) Beginning January 1, 2021, 2022, notwithstanding Section 25631, the department shall conduct a pilot program and, pursuant to that pilot program, may issue an additional hours license that would authorize, with or without conditions, the selling, giving, or purchasing of alcoholic beverages at an individual on-sale licensed premises between the hours of 2 a.m. and 4 a.m. within a qualified city if the local governing body of that qualified city does the following:

(1) Designates a task force comprised of members, including at least one member of law enforcement and one additional member of the Department of the California Highway Patrol, to develop a recommended local plan that meets all of the following requirements:
(A) Shows that the public convenience or necessity will be served by the additional hours.

(B) Identifies the service area in which an on-sale licensed premises would be eligible for an additional hours license and further identifies the area that will be affected by the additional hours and demonstrates how that area will benefit from the additional hours.

(C) Shows significant support by residents and businesses within the additional hours service area for the additional hours, pursuant to a determination by the local governing body.

(D) Includes an assessment by the local governing body, prepared in consultation with local law enforcement, regarding the potential impact of an additional hours service area and the public safety plan, created by local law enforcement, for managing those impacts that has been approved by the local governing body. The assessment shall include crime statistics, data derived from police reports, emergency medical response data, sanitation reports, and public health reports related to the additional hours service area.

(E) Shows that transportation services are readily accessible in the additional hours service area during the additional service hours.

(F) Includes programs to increase public awareness of the transportation services available and unavailable in the additional hours service area and the impacts of alcohol consumption.

(G) Includes an assessment of the potential impact of an additional hours service area on adjacent cities, counties, and cities and counties, including, but not limited to, nearby law enforcement agencies.

(H) Indicates that the qualified city chooses to participate in the pilot program.

(2) Based upon its independent assessment, adopts an ordinance that satisfies the elements of the local plan, including the requirements of subparagraphs (A) to (H), inclusive, of paragraph (1), and submits the ordinance to the department.

(3) For purposes of this section:

(A) “Local governing body” means the city council or the board of supervisors, as may be applicable, of a qualified city.
(B) “Qualified city” means the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.

(4) A local governing body may comply with this section and approve a local plan and submit an ordinance to the department beginning January 1, 2020.

(b) (1) Upon receipt of an ordinance adopted pursuant to paragraph (2) of subdivision (a), including documentation regarding protests to the ordinance, the department shall review the ordinance to ensure that the ordinance contains the information required by paragraph (1) of subdivision (a). The department shall not issue an additional hours license to an applicant if the ordinance from the qualified city does not meet the requirements of paragraph (2) of subdivision (a).

(2) The department—shall may review ordinances beginning January 1, 2020.

(c) (1) (A) An on-sale licensee shall not apply for an additional hours license pursuant to this section until the department has received the ordinance adopted pursuant to paragraph (2) of subdivision (a).

(B) Subject to subparagraph (A), an on-sale licensee may apply for an additional hours license beginning January 1, 2020. The department may issue additional hours licenses pursuant to this section beginning January 1, 2020. An additional hours license issued on or after January 1, 2020, and before January 1, 2022, shall become effective on January 1, 2021. An additional hours license issued on or after January 1, 2021, shall become effective on its effective date.

(2) An on-sale licensee that has conditions on the license that restrict the hours of sale, service, or consumption of alcohol to a time earlier than 2 a.m. shall not be eligible for an additional hours license authorizing the sale, service, or consumption of alcoholic beverages after 2 a.m. for any day or days of the week during which a restriction exists.

(3) An on-sale licensee issued an additional hours license pursuant to this section shall require that all persons engaged in the sale or service of alcohol during the additional hours period complete a responsible beverage training course.
Notwithstanding Section 23401, off-sale privileges shall not be exercised during the additional hours period allowed pursuant to the additional hours license.

(5) An additional hours license is not transferable between on-sale licensed premises.

(6) All new, existing, and previously legally nonconforming on-sale licensees, including previous person-to-person transferee licensees, will be subject to the local governing body’s requirements for an additional hours license. The local governing body may charge an additional hours licensee a fee to fund local law enforcement.

(7) The determination of the necessity for, and types of, local licensing and local permitting shall be made by the local governing body.

(d) (1) Upon receipt of an application by an on-sale licensee for an additional hours license pursuant to this section, the department shall make a thorough investigation, including whether the additional hours license sought by the applicant would unreasonably interfere with the quiet enjoyment of their property by the residents of the city, county, or city and county in which the applicant’s licensed premises are located, and may deny an application in the same manner as provided in Section 23958.

(2) The applicant shall notify the law enforcement agencies of the city, the residents of the city located within 500 feet of the premises for which an additional hours license is sought, and any other interested parties, as determined by the local governing body, of the application by an on-sale licensee for an additional hours license pursuant to this section within 30 consecutive days of the filing of the application, in a manner determined by the local governing body.

(3) Protests may be filed at any office of the department within 30 days from the first date of notice of the filing of an application by an on-sale licensee for an additional hours license. The time within which a local law enforcement agency may file a protest shall be extended by the period prescribed in Section 23987.

(4) The department may reject protests, except protests made by a public agency or public official, if it determines the protests are false, vexatious, frivolous, or without reasonable or probable cause at any time before hearing thereon, notwithstanding Section 24300. If, after investigation, the department recommends that an
additional hours license be issued notwithstanding a protest by a public agency or a public official, the department shall notify the agency or official in writing of its determination and the reasons therefor, in conjunction with the notice of hearing provided to the protestant pursuant to Section 11509 of the Government Code. If the department rejects a protest as provided in this section, a protestant whose protest has been rejected may, within 10 days, file an accusation with the department alleging the grounds of protest as a cause for revocation of the additional hours license and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) This section shall not be construed as prohibiting or restricting any right that the individual making the protest might have to a judicial proceeding.

(e) (1) If, after investigation, the department recommends that an additional hours license be issued, with or without conditions, notwithstanding that one or more protests have been accepted by the department, the department shall notify the local governing body and all protesting parties whose protests have been accepted in writing of its determination.

(2) Any person who has filed a verified protest in a timely fashion pursuant to subdivision (d) that has been accepted pursuant to this section may request that the department conduct a hearing on the issue or issues raised in the protest. The request shall be in writing and shall be filed with the department within 15 business days of the date the department notifies the protesting party of its determination as required under paragraph (1).

(3) At any time prior to the issuance of the additional hours license, the department may, in its discretion, accept a late request for a hearing upon a showing of good cause. Any determination of the department pursuant to this subdivision shall not be an issue at the hearing nor grounds for appeal or review.

(4) If a request for a hearing is filed with the department pursuant to paragraph (2), the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing.

(5) Notwithstanding that a hearing is held pursuant to paragraph (4), the protest or protests of any person or persons who did not
request a hearing as authorized in this section shall be deemed withdrawn.

(6) If a request for a hearing is not filed with the department pursuant to this section, any protest or protests shall be deemed withdrawn and the department may approve the on-sale licensee’s application for an additional hours license without any further proceeding.

(7) If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

(f) (1) The department shall notify the applicant of the outcome of the application for an additional hours license. Any conditions placed on the on-sale license shall apply to the additional hours license. Any additional conditions placed upon the additional hours license pursuant to this section shall be subject to Article 1.5 (commencing with Section 23800).

(2) The premises for which an additional hours license is issued shall be restricted to patrons 21 years of age or older during the additional hours period. Any person under 21 years of age who enters and remains in the licensed premises during the additional hours period without lawful business therein is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200), no part of which shall be suspended. This provision does not prohibit the presence on the licensed premises of a person under 21 years of age that is otherwise authorized by law.

(3) Section 24203 applies to an additional hours license issued pursuant to this section. An additional hours license may be suspended or revoked separately from the on-sale license.

(g) (1) The applicant shall, at the time of application for an additional hours license pursuant to this section, accompany the application with a nonrefundable fee of two thousand five hundred dollars ($2,500). Fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund.

(2) An original and annual fee for an additional hours license issued pursuant to this section shall be two thousand five hundred dollars ($2,500).

(h) The department shall adopt rules and regulations to enforce the provisions of this section.

(i) (1) On or before January 1, 2026, the Department of the California Highway Patrol shall provide the Legislature and
the Senate and Assembly Committees on Governmental Organization with a report on the regional impact of the additional hours service areas, which shall include information on any additional costs incurred by adjacent cities, counties, and cities and counties and law enforcement as a result of an additional service area, including the impact an additional hours service area had on arrests for driving under the influence in adjacent cities, counties, and cities and counties. The report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(2) Each qualified city that chooses to participate in the pilot program shall provide the Legislature and the Senate and Assembly Committees on Governmental Organization with a report on the regional impact of the additional hours licenses within one year of the first additional hours license being issued in that city, and then once each year thereafter. The report shall include information on any impact the additional service hours had on crime rates in the city, including arrests for driving under the influence and domestic violence. The report shall also include a detailed description of the number of licensees that applied for additional hours licenses, the number of additional hours licenses issued, and conditions placed on those licenses, if any, by the department. The report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(j) This section shall remain in effect only until January 2, 2026, and as of that date is repealed.

SEC. 5. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique abilities of the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood to provide the infrastructure needed to implement an additional service hours pilot program and the interest of those cities in this type of pilot program.

SEC. 6. 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.
Attachment 2
Dear Senator Wiener,

On behalf of the City of Beverly Hills, I write to you in respectful OPPOSITION to your SB 905 (Wiener), which would allow on-sale licensees to sell, give, or purchase alcoholic beverages on licensed premises between the hours of 2 a.m. and 4 a.m. in several cities throughout the state.

Current law prohibits California alcohol licensed businesses from selling, serving, and allowing open containers of alcohol to remain in the public portion of a business from 2 a.m. to 6 a.m. SB 905 (Wiener) would require the Department of Alcoholic Beverage Control to establish a pilot program to extend allowable serving hours to 4 a.m. and issue a non-transferable “additional hours license” for on-sale licensed premises in Cathedral City, Coachella, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.

California currently experiences over 10,500 alcohol-related deaths and $34 billion in costs annually related to alcohol use. The California Office of Traffic Safety has reported that fatality alcohol-related accidents are a chronic and worsening problem for the state. Between 2014 and 2016, alcohol-related traffic accident deaths rose 21 percent. That number can only increase with two additional hours of alcohol consumption. Thus, the only benefit of selling alcohol between 2 a.m. and 4 a.m. will be greater profits to bars, restaurants, and club owners, while the public and all levels of government will be forced to continue to cover the costs of alcohol-related incidents.

Additionally, public health related research at the University of California Los Angeles (“UCLA”) Fielding School of Public Health and UCLA Geffen School of Medicine has found that two or more hours of increased alcohol sales will produce an increase in vehicle accident injuries and admissions to the emergency rooms of hospitals. Other public health related research conducted over the last 40 years found that two or more hours of increased alcohol sales will produce increases in alcohol consumption and alcohol
related problems including violence, emergency room admissions, injuries, alcohol-impaired driving, and motor vehicle accidents.

Although the bill indicates that the local governing body would develop and adopt an ordinance regulating these extended serving hours, this provision does nothing to protect localities that are next to or nearby the cities listed in the pilot program. Communities in close but separate jurisdictions are not offered any protections from the deleterious effects caused by extending the availability of alcohol in neighboring communities.

This bill does nothing to address the issues of our City having to increase the number of law enforcement officers during these extended hours to manage the impacts of inebriated individuals during these hours, especially as the cities of Los Angeles and West Hollywood are immediately adjacent to Beverly Hills. Extending service hours would likely lead to an increase in drunk driving, with the real possibility of mixing late night drunk drivers and early morning commuters.

This bill fails to address the significant negative impacts of making alcohol available for sale for longer hours on communities surrounding the cities qualified for the pilot program that will undoubtedly have to manage the negative consequences of this bill.

For these reasons, the City of Beverly Hills respectfully OPPOSES your SB 905 (Wiener). Thank you for your consideration.

Sincerely,

Julian A. Gold, MD
Mayor, City of Beverly Hills

cc: The Honorable Ben Allen, 26th Senate District
    The Honorable Richard Bloom, 50th Assembly District
    Andrew K. Antwih, Shaw / Yoder / Antwih, Inc.
Attachment 3
Key Findings

- In 2017 there were 10,874 fatalities in motor vehicle traffic crashes involving drivers with BACs of .08 g/dL or higher. This totaled 29 percent of all traffic fatalities for the year. (Note: It is illegal in every State to drive with a BAC of .08 g/dL or higher.)
- An average of 1 alcohol-impaired-driving fatality occurred every 48 minutes in 2017.
- The estimated economic cost of all alcohol-impaired crashes (involving alcohol-impaired drivers or alcohol-impaired nonoccupants) in the United States in 2010 (the most recent year for which cost data is available) was $44 billion.
- Of the traffic fatalities in 2017 among children 14 and younger, 19 percent occurred in alcohol-impaired-driving crashes.
- The 21- to 24-year-old age group had the highest percentage (27%) of drivers with BACs of .08 g/dL or higher in fatal crashes compared to other age groups in 2017.
- The percentage of drivers with BACs of .08 g/dL or higher in fatal crashes in 2017 was highest for fatalities involving motorcycle riders (27%), compared to passenger cars (21%), light trucks (20%), and large trucks (3%).
- The rate of alcohol impairment among drivers involved in fatal crashes in 2017 was 3.6 times higher at night than during the day.
- In 2017 among the 10,874 alcohol-impaired-driving fatalities, 68 percent (7,368) were in crashes in which at least one driver had a BAC of .15 g/dL or higher.

Alcohol-Impaired Driving

Drivers are considered to be alcohol-impaired when their blood alcohol concentrations (BACs) are .08 grams per deciliter (g/dL) or higher. Thus, any fatal crash involving a driver with a BAC of .08 g/dL or higher is considered to be an alcohol-impaired-driving crash, and fatalities occurring in those crashes are considered to be alcohol-impaired-driving fatalities. The term “drunk driving” is used instead of alcohol-impaired driving in some other NHTSA communication and material. The term “driver” refers to the operator of any motor vehicle, including a motorcycle.

Estimates of alcohol-impaired driving are generated using BAC values reported to the Fatality Analysis Reporting System (FARS) and BAC values imputed when they are not reported. In this fact sheet, NHTSA uses the term “alcohol-impaired” in evaluating the FARS statistics. In all cases throughout this fact sheet, use of the term does not indicate that a crash or a fatality was caused by alcohol impairment, only that an alcohol-impaired driver was involved in the crash. This document also includes BACs of .00 g/dL (no alcohol), .01+ g/dL, and .15+ g/dL solely for comparison purposes.

In this fact sheet for 2017 the alcohol-impaired-driving information is presented as follows:

- Overview
- Economic Cost for All Traffic Crashes
- Children
- Environmental Characteristics
- Time of Day and Day of Week
- Drivers
- Fatalities by State

This fact sheet contains information on fatal motor vehicle crashes and fatalities based on data from the FARS. FARS is a database containing information on every fatal crashes in the 50 States, the District of Columbia, and Puerto Rico (Puerto Rico is not included in U.S. totals).

Overview

All 50 States, the District of Columbia, and Puerto Rico have by law set a threshold making it illegal to drive with a BAC of .08 g/dL or higher. In 2017 there were 10,874 people killed in alcohol-impaired-driving crashes, an average of 1 alcohol-impaired-driving fatality every 48 minutes. These alcohol-impaired-driving fatalities accounted for 29 percent of all motor vehicle traffic fatalities in the United States in 2017.

Of the 10,874 people who died in alcohol-impaired-driving crashes in 2017, there were 6,618 drivers (61%) who had BACs of .08 g/dL or higher. The remaining fatalities consisted of 3,075 motor vehicle occupants (28%) and 1,181 nonoccupants (11%). The distribution of fatalities in these crashes by role is shown in Table 1.
Table 1
Fatalities, by Role, in Crashes Involving at Least One Driver
With a BAC of .08 g/dL or Higher, 2017

<table>
<thead>
<tr>
<th>Role</th>
<th>Number</th>
<th>Percent of Total Fatalities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drivers With BAC=.08+ g/dL</td>
<td>6,618</td>
<td>61%</td>
</tr>
<tr>
<td>Passengers Riding With Driver</td>
<td>1,492</td>
<td>14%</td>
</tr>
<tr>
<td>Subtotal</td>
<td>8,110</td>
<td>75%</td>
</tr>
<tr>
<td>Occupants of Other Vehicles</td>
<td>1,583</td>
<td>15%</td>
</tr>
<tr>
<td>Nonoccupants (pedestrians/pedalcyclists/other)</td>
<td>1,181</td>
<td>11%</td>
</tr>
<tr>
<td><strong>Total Alcohol-Impaired-Driving Fatalities</strong></td>
<td><strong>10,874</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Note: Percentages may not equal sum of components due to independent rounding.

Fatalities in alcohol-impaired-driving crashes decreased by 1.1 percent (10,996 to 10,874 fatalities) from 2016 to 2017. Alcohol-impaired-driving fatalities in the past 10 years have declined by 7 percent from 11,711 in 2008 to 10,874 in 2017. The national rate of alcohol-impaired-driving fatalities in motor vehicle crashes in 2017 was 0.34 per 100 million vehicle miles traveled (VMT), down from 0.35 in 2016. The alcohol-impaired-driving fatality rate in the past 10 years has declined by 13 percent, from 0.39 in 2008 to 0.34 in 2017. Figure 1 presents the fatality numbers and rates for the past decade.

Figure 1
Fatalities and Fatality Rate per 100 Million VMT in Alcohol-Impaired-Driving Crashes, 2008–2017


Economic Cost for All Traffic Crashes

The estimated economic cost of all motor vehicle traffic crashes in the United States in 2010 (the most recent year for which cost data is available) was $242 billion, of which $44 billion resulted from alcohol-impaired crashes (involving alcohol-impaired drivers or alcohol-impaired nonoccupants). Included in the economic costs are:

- Lost productivity,
- Workplace losses,
- Legal and court expenses,
- Medical costs,
- Emergency medical services,
- Insurance administration,
- Congestion, and
- Property damage.

These costs represent the tangible losses that result from motor vehicle traffic crashes. However, in cases of serious injury or death, such costs fail to capture the relatively intangible value of lost quality-of-life that results from these injuries. When quality-of-life valuations are considered, the total value of societal harm from motor vehicle traffic crashes in the United States in 2010 was an estimated $836 billion, of which $201.1 billion resulted from alcohol-impaired crashes. For further information on cost estimates, see The Economic and Societal Impact of Motor Vehicle Crashes, 2010 (Revised).1

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**Children**

A total of 1,147 children 14 and younger were killed in motor vehicle traffic crashes in 2017. Of these 1,147 fatalities, 220 children (19%) died in alcohol-impaired-driving crashes. Of these 220 child deaths:

- 118 (54%) were occupants of vehicles with drivers who had BACs of .08 g/dL or higher;
- 71 (32%) were occupants of other vehicles;
- 29 (13%) were non occupants (pedestrians, pedalcyclists, or other non occupants); and
- 2 (1%) were drivers.

**Environmental Characteristics**

Figure 2 displays information about the setting surrounding alcohol-impaired drivers involved (killed or survived) in fatal crashes in 2017 including month, land use, weather, light condition, and roadway function class. In 2017 based on known values of alcohol-impaired drivers involved in fatal crashes:

- More occurred in July (9.6%), August (9.0%), and September (9.0%) than the other months;
- 55 percent occurred in urban areas, and 45 percent occurred in rural areas;
- 90 percent occurred in clear/cloudy conditions compared to 7 percent in rainy conditions and 3 percent in other conditions;
- 70 percent occurred in the dark compared to 26 percent in daylight, 3 percent in dusk, and 1 percent in dawn; and
- 87 percent occurred on non-interstate roads compared to 13 percent on interstate roads.

**Figure 2**

**Percentage of Alcohol-Impaired Drivers Involved in Fatal Crashes in 2017, by Month, Land Use, Weather, Light Condition, and Roadway Function Class**

<table>
<thead>
<tr>
<th>Month</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>October</th>
<th>November</th>
<th>December</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent</td>
<td>7.1%</td>
<td>6.9%</td>
<td>7.7%</td>
<td>8.3%</td>
<td>8.5%</td>
<td>8.9%</td>
<td>9.6%</td>
<td>9.0%</td>
<td>8.6%</td>
<td>8.2%</td>
<td>8.1%</td>
<td></td>
</tr>
</tbody>
</table>

**Land Use**

- Urban 55%
- Rural 45%

**Weather**

- Clear/Cloudy 90%
- Other 3%
- Rain 7%

**Light Condition**

- Daylight 26%
- Dark 70%
- Dawn 1%
- Dusk 3%

**Roadway Function Class**

- Interstate 13%
- Non-Interstate Principal Arterial 32%
- Non-Interstate Minor Arterial 20%
- Non-Interstate Collector 20%
- Non-Interstate Local 16%

*Source: 2017 FARS ARF*

*Note: Unknowns were removed before calculating percentages. Percentages may not add up to 100 percent due to individual rounding.*

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2 Unknowns were removed before calculating percentages.

3 See the U.S. Census Bureau link to define urban and rural areas: [www.census.gov/geo/reference/ua/urban-rural-2010.html](http://www.census.gov/geo/reference/ua/urban-rural-2010.html)

4 Definitions for the different roadway function class can be found at [www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf](http://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf)
Time of Day and Day of Week

Table 2 presents information on drivers involved (killed or survived) in fatal crashes in 2008 and 2017 by time of day and day of week, as well as single-vehicle and multiple-vehicle crash data. In 2017:

- The rate of alcohol impairment among drivers involved in fatal crashes was 3.6 times higher at night than during the day (32% versus 9%);
- 32 percent of all drivers involved in single-vehicle fatal crashes were alcohol-impaired, compared to 12 percent in multiple-vehicle fatal crashes; and
- 15 percent of all drivers involved in fatal crashes during the week were alcohol-impaired, compared to 28 percent on weekends.

The biggest drop was alcohol-impaired drivers involved in single-vehicle nighttime crashes from 49 percent in 2008 to 42 percent in 2017 (7% difference).

### Table 2
Drivers Involved in Fatal Crashes With BACs of .08 g/dL or Higher, by Crash Type, Time of Day and Day of Week, 2008 and 2017

<table>
<thead>
<tr>
<th>Drivers Involved in Fatal Crashes</th>
<th>2008</th>
<th>2017</th>
<th>Change in Percentage With BAC=.08+ g/dL 2008–2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Number of Drivers</td>
<td>BAC=.08+ g/dL</td>
<td>Total Number of Drivers</td>
</tr>
<tr>
<td></td>
<td>Number</td>
<td>Percent of Total</td>
<td>Number</td>
</tr>
<tr>
<td>Total</td>
<td>50,416</td>
<td>10,898</td>
<td>22%</td>
</tr>
<tr>
<td>Single-Vehicle Crash</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total*</td>
<td>20,563</td>
<td>7,559</td>
<td>37%</td>
</tr>
<tr>
<td>Daytime</td>
<td>7,997</td>
<td>1,426</td>
<td>18%</td>
</tr>
<tr>
<td>Nighttime</td>
<td>12,338</td>
<td>6,014</td>
<td>49%</td>
</tr>
<tr>
<td>Multiple-Vehicle Crash</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total*</td>
<td>29,853</td>
<td>3,339</td>
<td>11%</td>
</tr>
<tr>
<td>Daytime</td>
<td>18,380</td>
<td>844</td>
<td>5%</td>
</tr>
<tr>
<td>Nighttime</td>
<td>11,422</td>
<td>2,489</td>
<td>22%</td>
</tr>
</tbody>
</table>

| Drivers by Time of Day            |       |      |    |       |      |     |    |
| Daytime                           | 26,377 | 2,270 | 9%  | 27,498 | 2,497 | 9%  | 0  |
| Nighttime                         | 23,760 | 8,503 | 36% | 24,491 | 7,728 | 32% | -4 |

| Drivers by Day of Week and Time of Day |       |      |    |       |      |     |    |
| Weekday*                           | 30,294 | 4,533 | 15% | 32,049 | 4,752 | 15% | 0  |
| Daytime                            | 19,217 | 1,265 | 7%  | 20,291 | 1,545 | 8%  | +1 |
| Nighttime                          | 10,972 | 3,231 | 29% | 11,645 | 3,162 | 27% | -2 |
| Weekend*                           | 20,046 | 6,335 | 32% | 20,152 | 5,566 | 28% | -4 |
| Daytime                            | 7,160  | 1,005 | 14% | 7,207  | 952  | 13% | -1 |
| Nighttime                          | 12,788 | 5,272 | 41% | 12,846 | 4,566 | 36% | -5 |

Source: FARS 2008 Final File, 2017 ARF

*Includes drivers involved in fatal crashes when time of day was unknown.

Daytime – 6 a.m. to 5:59 p.m.
Nighttime – 6 p.m. to 5:59 a.m.
Weekday – Monday 6 a.m. to Friday 5:59 p.m.
Weekend – Friday 6 p.m. to Monday 5:59 a.m.

Drivers

Table 3 provides information on alcohol-impaired drivers involved (killed or survived) in fatal crashes by the age of the driver as well as gender and vehicle type. In fatal crashes in 2017 the highest percentage of drivers with BACs of .08 g/dL or higher was for 21- to 24-year-old drivers (27%), followed by 25- to 34-year-old drivers (26%). The 10-year trend of alcohol-impaired drivers involved increased for older drivers when compared to younger drivers.

The percentages of drivers with BACs of .08 g/dL or higher involved in fatal crashes in 2017 were 21 percent among males and 14 percent among females. In 2017 there were 4 male alcohol-impaired drivers involved for every female alcohol-impaired driver involved (8,022 versus 1,944).
The percentages of drivers involved in fatal crashes with BACs of .08 g/dL or higher in 2017 by vehicle type were 27 percent for motorcycles, 21 percent for passenger cars, and 20 percent for the “light trucks” category (22% for pickup trucks, 19% for SUVs, and 13% for vans). The percentage of drivers with BACs of .08 g/dL or higher in fatal crashes was the lowest for drivers of large trucks (3%).

Table 3

Drivers With BACs of .08 g/dL or Higher Involved in Fatal Crashes, by Age Group, Gender, and Vehicle Type, 2008 and 2017

<table>
<thead>
<tr>
<th>Drivers Involved in Fatal Crashes</th>
<th>2008</th>
<th>2017</th>
<th>Change in Percentage With BAC=.08+ g/dL 2008 and 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Number of Drivers</td>
<td>BAC=.08+ g/dL</td>
<td>Total Number of Drivers</td>
</tr>
<tr>
<td></td>
<td>Number</td>
<td>Percent of Total</td>
<td>Number</td>
</tr>
<tr>
<td>Total</td>
<td>50,416</td>
<td>10,898</td>
<td>22%</td>
</tr>
<tr>
<td>Drivers by Age Group (Years)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16–20</td>
<td>5,750</td>
<td>995</td>
<td>17%</td>
</tr>
<tr>
<td>21–24</td>
<td>5,342</td>
<td>1,830</td>
<td>34%</td>
</tr>
<tr>
<td>25–34</td>
<td>9,800</td>
<td>2,989</td>
<td>31%</td>
</tr>
<tr>
<td>35–44</td>
<td>8,806</td>
<td>2,234</td>
<td>25%</td>
</tr>
<tr>
<td>45–54</td>
<td>8,355</td>
<td>1,712</td>
<td>20%</td>
</tr>
<tr>
<td>55–64</td>
<td>5,717</td>
<td>704</td>
<td>12%</td>
</tr>
<tr>
<td>65–74</td>
<td>2,927</td>
<td>187</td>
<td>6%</td>
</tr>
<tr>
<td>75+</td>
<td>2,672</td>
<td>99</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Drivers by Gender</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>37,061</td>
<td>9,169</td>
<td>25%</td>
</tr>
<tr>
<td>Female</td>
<td>12,627</td>
<td>1,623</td>
<td>13%</td>
</tr>
<tr>
<td><strong>Drivers by Vehicle Type</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passenger Cars</td>
<td>20,379</td>
<td>4,679</td>
<td>23%</td>
</tr>
<tr>
<td>Light Trucks*</td>
<td>19,095</td>
<td>4,311</td>
<td>23%</td>
</tr>
<tr>
<td>—Pickup Trucks</td>
<td>9,040</td>
<td>2,316</td>
<td>26%</td>
</tr>
<tr>
<td>—SUVs</td>
<td>7,278</td>
<td>1,651</td>
<td>23%</td>
</tr>
<tr>
<td>—Vans</td>
<td>2,745</td>
<td>337</td>
<td>12%</td>
</tr>
<tr>
<td>Large Trucks</td>
<td>4,040</td>
<td>63</td>
<td>2%</td>
</tr>
<tr>
<td>Motorcycles</td>
<td>5,405</td>
<td>1,561</td>
<td>29%</td>
</tr>
</tbody>
</table>

Source: FARS 2008 Final File, 2017 ARF.
Note: Numbers shown for groups of drivers do not add to the total number of drivers due to unknown/not reported or other data not included.
*Includes other/unknown light-truck vehicle types.

In 2017 there were 5,054 passenger vehicle drivers killed with BACs of .08 g/dL or higher ("passenger vehicles" include passenger cars as well as light trucks such as vans, SUVs, and pickup trucks). Of these driver fatalities for which restraint use was known, 64 percent were unrestrained. Based on known restraint use, 51 percent of passenger vehicle drivers killed who had BACs of .01 to .07 g/dL were unrestrained, and 39 percent of passenger vehicle drivers killed who had no alcohol (.00 g/dL) were unrestrained.
Figure 3 shows information on the driving record of drivers in fatal crashes in 2017 at different BAC levels. There was little difference by BAC level in the percentage of drivers with previously recorded crashes. Drivers with BACs of .08 g/dL or higher involved in fatal crashes were 4.5 times more likely to have prior convictions for driving while impaired (DWI) than were drivers with no alcohol (9% and 2%, respectively).

**Figure 3**

*Previous 5-Year Driving Records of Drivers Involved in Fatal Crashes, by BAC, 2017*

While a BAC of .08 g/dL is considered to be impaired in all States, the large majority of drivers in fatal crashes with any measurable alcohol had levels far higher. Eighty-four percent (10,344) of the 12,253 drivers with BACs of .01 g/dL or higher who were involved in fatal crashes in 2017 also had BAC levels at or above .08 g/dL, and 56 percent (6,904) also had BAC levels at or above .15 g/dL.

Among the 10,874 alcohol-impaired-driving fatalities in 2017, sixty-eight percent (7,368) were in crashes in which at least one driver in the crash had a BAC of .15 g/dL or higher. Figure 4 presents the distribution of BACs for those drivers with any alcohol in their systems. The most frequently recorded BACs among drinking drivers in fatal crashes was at .16 g/dL.

**Figure 4**

*Distribution of BACs for Drivers With BACs of .01 g/dL or Higher Involved in Fatal Crashes, 2017*
Fatalities by State

Table 4 shows motor vehicle traffic fatalities by State and the highest driver BAC in the crashes in 2017. Figure 5 contains a color-coded map of the percentage of alcohol-impaired-driving fatalities by State in 2017.

- Among all States, the number of fatalities in motor vehicle traffic crashes ranged from 31 (District of Columbia) to 3,722 (Texas), depending on the size and population of the State.
- Alcohol-impaired-driving fatalities were highest in Texas (1,468), followed by California (1,120) and Florida (839), and lowest in the District of Columbia (16).

The percentage of alcohol-impaired-driving fatalities among total traffic fatalities in States ranged from a high of 51 percent (the District of Columbia) to a low of 19 percent (Utah), compared to the national average of 29 percent as shown in Figure 5.

The percentage of fatalities in crashes involving a driver with a BAC of .15 g/dL or higher ranged from a high of 43 percent (the District of Columbia) to a low of 12 percent (Utah), compared to the national average of 20 percent.


Figure 5
Percentage of Alcohol-Impaired-Driving Fatalities by State, 2017

The suggested APA format citation for this document is:


For more information:

Information on traffic fatalities is available from the National Center for Statistics and Analysis, NSA-230, 1200 New Jersey Avenue SE., Washington, DC 20590. NCSA can be contacted at 800-934-8517 or by e-mail at NCSARequests@dot.gov. General information on highway traffic safety can be found at [www.nhtsa.gov/research-data](http://www.nhtsa.gov/research-data). To report a safety-related problem or to inquire about motor vehicle safety information, contact the Vehicle Safety Hotline at 888-327-4236.

### Table 4

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<tr>
<th>State</th>
<th>Total Fatalities*</th>
<th>No Alcohol (BAC=.00 g/dL)</th>
<th>BAC=.01+ g/dL</th>
<th>Alcohol-Impaired (BAC=.08+ g/dL)</th>
<th>BAC=.15+ g/dL</th>
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<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Number</td>
<td>Percent</td>
<td>Number</td>
<td>Percent</td>
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<td>U.S. Total</td>
<td>37,133</td>
<td>24,280</td>
<td>65%</td>
<td>12,747</td>
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</tr>
</tbody>
</table>

*Total includes fatalities in crashes in which there was no driver (includes motorcycle riders) present. Source: 2017 FARS ARF
Item B-4
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: May 22, 2019
SUBJECT: Request Direction on Assembly Bill 1400 (Kamlager-Dove) – Workers' Compensation – Firefighting Operations – Civilian Operations
ATTACHMENTS: 1. Bill Text – AB 1400
2. Coalition Letter of Opposition

INTRODUCTION
Assembly Bill 1400 (Kamlager-Dove) – Workers’ Compensation – Firefighting Operations – Civilian Operations grants certain non-firefighter employees of a fire department the right to a presumption that cancer is a work-related condition for purposes of making a worker’s compensation claim (Attachment 1).

This item requests the Legislative/Lobby Liaisons consider taking a position on Assembly Bill 1400 (AB 1400).

DISCUSSION
Background
Worker’s compensation presumptions (Presumptions) have never been intended to create work-related injuries when, in fact, the injuries in question are not work-related. Rather, presumptions of compensability have been adopted to reflect unique circumstances where injuries or illnesses appear to logically be work-related, but is difficult for the safety officer to prove it is work-related.

There has been some slippage over time from a rigorous application of this rationale, but it remains the underlying premise of presuming injuries or illnesses to be work-related. With very narrow exceptions for privately employed firefighters for public facilities, presumptions of compensability have been granted only to public safety officers – fire and peace officer employees. Thus, the costs of presumptions are borne only by state and local government employers, and only for the narrow class of employee, broadly referred to as public safety employees, whose jobs regularly place them in harm’s way.

As a matter of law, public employers have the opportunity to rebut the presumption, and establish that the injury or condition was not the result of employment. As a practical matter presumptions are rarely rebutted. Opponents argue that the virtual impossibility of proving a negative – especially with respect to cancer – renders the presumptions functionally conclusive.

Summary of AB 1400
AB 1400 proposes to expand the cancer presumption – but not the full range of presumptions granted to public safety employees – to a class of employee that do not constitute active firefighters, but who, according to the proponents, are regularly exposed to toxic materials in the course of their assigned duties.
To address concerns that the definition for the employees that would be covered by this new presumption was too broad, the author has agreed to amend the bill to include a more specific definition which reads:

Civilian employees of a city, county, city and county, district, or other municipal corporation or political subdivision whose job duties cause the employees to be regularly exposed to active fires or health hazards directly resulting from firefighting operations, such as exposure to toxic chemicals deposited on firefighting equipment.

Specifically, this bill:

- Deletes the phrase “active firefighting members” of a fire department from the statute that establishes that cancer is a presumptive work-related illness for public safety employees.
- Replaces that description of the employees who are eligible to benefit from this presumption with the phrase “Fire service personnel with exposure to active fires or health hazards resulting from firefighting operations.”

Supporters of the bill argue that the class of employees covered by this bill is just as entitled to the protection of the cancer presumption as the firefighters who already benefit from the presumption that cancer is job-related because they are exposed to similar hazardous substances and experience higher cancer rates than the population as a whole. They conclude that they fit the rationale for presumptions as if they are actual firefighters.

Opponents have suggested that the implication that these employees must be granted the benefit of a presumption, or they will be left without options for treating their medical issue, is misleading. First, the employee can prove the injury or illness is work-related. Second, even if the employee cannot carry that burden of proof, they have access to health insurance and other employee benefits that assure their conditions can be treated, and sick leave to take time off to recover, and other employer-sponsored disability benefits.

Supporters of AB 1400 include:

- American Federation of State, County and Municipal Employees (AFSCME) AFL-CIO Sponsor
- California Labor Federation
- SMART Local Union 105
- California Fire Chiefs Association (CFCA)
- Fire Districts Association of California (FDAC)

Organizations in opposition to AB 1400 include:

- Acclamation Insurance Management Services (AIMS)
- California Association of Joint Powers Authorities
- California Coalition on Workers’ Compensation (CCWCC)
- County of Los Angeles
- California State Association of Counties (CSAC)
- CSAC Excess Insurance Authority
- California Special Districts Association (CSDA)
- League of California Cities
- Rural County Representatives of California (RCRC)
- Urban Counties of California
This bill passed out of the Assembly with 73 aye votes, zero no votes, and seven Assembly Members either absent, abstaining, or not voting on May 13, 2019.

**FISCAL IMPACT**

It is unknown at this time what the fiscal impact of this legislation would be on the City should it pass; however, it could significantly increase workers’ compensation costs to the City.

**RECOMMENDATION**

After discussion of Assembly Bill 1400 (Kamlager-Dove) – Workers’ Compensation – Firefighting Operations – Civilian Operations the Liaisons may recommend the following actions:

1) Support AB 1400;
2) Support if amended AB 1400;
3) Oppose AB 1400;
4) Oppose unless amended AB 1400;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1400, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
An act to amend Section 3212.1 of, and add Section 3212.18 to, the Labor Code, relating to workers’ compensation.

LEGISLATIVE COUNSEL’S DIGEST


Existing law establishes a workers’ compensation system, administered by the Administrative Director of the Division of Workers’ Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law provides that in the case of active firefighting members of certain fire departments, a compensable injury includes cancer that develops or manifests itself during the period when the firefighter demonstrates that the firefighter was exposed while the firefighter member is in the service of the public agency and exposed to a known carcinogen, as defined. Existing law establishes a presumption that the cancer in these cases arose out of, and in the course of, employment, unless the presumption is controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer.

This bill would make that presumption applicable to fire service personnel with exposure to active fires or health hazards resulting from firefighting operations, rather than active firefighting members: enact a similar law that would be applicable to other employees of a city.
counties, city and county, district, or other municipal corporation or political subdivision whose job duties cause them to be regularly exposed to active fires or health hazards directly resulting from firefighting operations.


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

SECTION 1. Section 3212.18 is added to the Labor Code, to read:

3212.18. (a) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests during a period in which an individual described in subdivision (d) demonstrates that they were exposed to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(b) The compensation that is awarded for an injury due to cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(c) Cancer that develops or manifests as described in subdivision (a) is presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the person has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be applied to an individual following termination of employment for a period of three calendar months for each full year of the requisite employment, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) This section applies to employees of a city, county, city and county, district, or other municipal corporation or political subdivision, other than the persons to whom Section 3212.1 applies, whose job duties cause the employees to be regularly exposed to active fires or health hazards directly resulting from firefighting operations.
operations, such as exposure to toxic chemicals deposited on firefighting equipment.

SECTION 1. Section 3212.1 of the Labor Code is amended to read:

3212.1. (a) This section applies to all of the following:
(1) Fire service personnel with exposure to active fires or health hazards resulting from firefighting operations, whether volunteers, partly paid, or fully paid, of all of the following fire departments:
(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.
(B) A fire department of the University of California and the California State University.
(C) The Department of Forestry and Fire Protection.
(D) A county forestry or firefighting department or unit.
(2) Fire service personnel with exposure to active fires or health hazards resulting from firefighting operations of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.
(3) Fire service personnel with exposure to active fires or health hazards resulting from firefighting operations of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.
(4) Peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.
(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.
(B) For purposes of this paragraph, “fire and rescue services coordinators” means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.
(b) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which an individual described in subdivision (a) is in the service of the department or unit, if the individual demonstrates that there was exposure, while in the service of the department or unit, to a
known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(c) The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the person has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to an individual following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999–2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

(f) This section shall be known, and may be cited, as the William Dallas Jones Cancer Presumption Act of 2010.
Attachment 2
April 1, 2019

Assemblymember Sydney Kamlager-Dove
State Capitol, Room 4015
Sacramento, CA 95814

Dear Assemblymember Kamlager-Dove:

The above organizations respectfully oppose Assembly Bill 1400 (Kamlager-Dove).

The California workers’ compensation system provides generous benefits to firefighters who are diagnosed with cancer. Medical evidence has linked excessive exposure to carcinogens with cancer, so firefighters do not need to demonstrate work causation for related workers compensation benefits. Instead, these injuries and illnesses are presumed under the law to be work related due to the exposure to carcinogens directly related to firefighting operations. Since these injuries are presumed to be industrial, compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity payments, and death benefits.

Existing law specifically excludes administrative personnel from the presumption that cancer is industrial because they are not exposed to the risks of engaging in fire suppression, rescue operation, the protection of life or property. Assembly Bill 1400 expands the qualification for the cancer presumption benefits from firefighters to all “fire service personnel”, without defining what classifications this includes. This would grant presumptive benefits to non-public safety positions that are not exposed to the same safety or health hazards.

Assembly Bill 1400 fails to acknowledge that the broad application of the bill’s provisions would ultimately lead to major investigative difficulties, exposure to civil liability by the local governments employing the firefighter personnel and a misuse of public funds.

Our goal as public employers is to help our injured employees receive the appropriate evidence-based medical care to recover from their work-related illnesses. There should be a broad conversation about presumption eligibility that examines the cost and impacts that such changes would have on injured workers and on local budgets prior to any further coverage expansion.

For these reasons, we request oppose Assembly Bill 1400.
Should you have any questions regarding our position, please contact Faith Conley (Los Angeles County Board of Supervisors) at (916) 441-7888, Faith Lane Borges (CAJPA) at (916) 441-5050, Paul Smith (RCRC) at (916) 447-4806, Dillon Gibbons (CSDA) at (916) 442-7887, Josh Gauger (CSAC) at (916) 650-8129, Jason Schmelzer (CCWC) at (916) 446-4645, Dane Hutchings (League) or Jen Hamelin (CSAC-EIA).

cc: Tom Daly, Chair, Assembly Insurance Members, Assembly Insurance Committee
    Mark Rakich, Assembly Insurance Committee
Item B-5
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: May 22, 2019
SUBJECT: Request Direction on a Position on Senate Bill 542 (Stern) – Worker’s Compensation

INTRODUCTION
Senate Bill 542 (Stern) – Worker’s Compensation creates a rebuttable presumption that a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder is an occupational injury for firefighters, peace officers, arson investigators, parole officers, correctional officers, and fire and rescue services coordinators who work for the Office of Emergency Services (Attachment 1). The provisions of this bill would apply to claims for benefits filed or pending on or after January 1, 2017.

This item requests the Legislative/Lobby Liaisons consider taking a position on Senate Bill 542 (SB 542).

DISCUSSION
Background
Current law establishes a workers’ compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the California Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state.

Additionally, current law creates presumptions to reflect unique circumstances where injuries or illnesses appear to be logically work-related, but it is difficult for the safety officer to prove it is work-related. Presumptions are rebuttable, but given that many injuries for which presumptions exist can have a variety of causes, it is difficult to prove they are not work-related. Thus, it is rare that employers attempt to rebut presumptions. The absence of a presumption does not mean an employee does not qualify for workers’ comp benefits, but that an employee must prove an injury is work-related in order to qualify.

Furthermore, current law provides that a psychiatric injury can only be considered compensable within the workers’ compensation system if all of the following conditions are met:

- The mental disorder causes disability or need for medical treatment, and it is diagnosed using the terminology and criteria of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.
The employee can demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

In the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury. “Substantial cause” is defined as 35-40% of the causation of all sources combined.

The employee worked for the employer for at least six months, unless the employee’s psychiatric injury is caused by a sudden and extraordinary employment condition.

Summary of SB 542

SB 542 creates a rebuttable presumption for specified peace officers that a diagnosis of a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder is occupational, and therefore covered by the workers’ compensation system.

Specifically, this bill would:

- Create a rebuttable presumption that a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder is an occupational injury for the following peace officers who are primarily engaged in active law enforcement activities:
  - Active firefighting members, whether volunteers, partly paid, or fully paid, of a local government or county, University of California or California State University, or the Department of Forestry and Fire Protection.
  - Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.
  - Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation.
  - Sheriffs, undersheriffs, deputy sheriffs, police chiefs, police officers, and municipal law enforcement inspectors.
  - Members of the California Highway Patrol, University of California Police Department, and California State University Police Department.
  - Members of a community college police department and school district police departments.
  - Members of an arson investigation unit.
  - Parole officers and correctional officers.
  - Fire and rescue services coordinators who work for the Office of Emergency Services.
- Provide that the presumption of an occupational mental health condition or disorder is disputable and may be controverted by evidence, but unless controverted the WCAB is bound by the presumption.
- Extend the presumption following termination of service for a period of three months for each full year of service, not to exceed 60 months, commencing on the last date actually worked in the specified capacity.
- Apply the provisions of this bill to claims filed or pending on or after January 1, 2017, including claims filed on or after that date, that were previously denied or that are being appealed following denial.
Supporters of the bill include:

- CAL FIRE, Local 2881 (co-source)
- California Association of Highway Patrolmen (co-source)
- California Professional Firefighters, AFL-CIO (co-source)
- Peace Officers’ Research Association of California (co-source)
- Steinberg Institute (co-source)
- Association for Los Angeles Deputy Sheriffs
- California Applicant Attorneys Association
- California Correctional Peace Officer Association
- California Correctional Peace Officer Association, Benefit Trust Fund
- California Fire Chiefs Association
- California Labor Federation, AFL-CIO
- Fire Districts Association of California
- Hemet City Firefighters Association, Local 2342
- Los Angeles County Firefighters, Local 1014
- Los Angeles Police Protective league
- Palo Alto Professional Firefighters, Local 1319
- Redlands Professional Firefighters Association
- Riverside Sheriffs’ Association
- Sacramento Area Firefighters, Local 522
- San Bernardino County Professional Firefighters, Local 935
- San Mateo County Firefighters
- Santa Barbara County Firefighters, Local 2046
- Santa Clara County Firefighters, Local 1165
- South San Francisco Firefighters IAFF, Local 1507
- United Firefighters of Los Angeles City, Local 112 Ventura County Professional Firefighters Association, Local 1364

Organizations which oppose SB 562 include:

- American Property Casualty Insurance Association
- California Association of Joint Powers Authorities
- California Coalition on Workers’ Compensation
- California Special Districts Association
- California State Association of Counties
- City of San Carlos
- CSAC Excess Insurance Authority
- League of California Cities
- Rural County Representatives of California
- Urban Counties of California

SB 542 passed out of the Senate Appropriations Committee on May 16, 2019. As of May 19, 2019, this bill has been ordered to a third reading in the Senate.

**FISCAL IMPACT**

It is unknown at this time what the fiscal impact of this legislation would be on the City should it pass; however, it could significantly increase workers’ compensation costs to the City.

**RECOMMENDATION**

After discussion of Senate Bill 542 (Stern) – Worker’s Compensation the Liaisons may recommend the following actions:
1) Support SB 542;
2) Support if amended SB 542;
3) Oppose SB 542;
4) Oppose unless amended SB 542;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 542, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
An act to add Section 3212.15 to the Labor Code, relating to workers’ compensation.

LEGISLATIVE COUNSEL’S DIGEST

SB 542, as introduced, Stern. Workers’ compensation.

Under existing law, a person injured in the course of employment is generally entitled to receive workers’ compensation on account of that injury. Existing law provides that, in the case of certain state and local firefighting personnel and peace officers, the term “injury” includes various medical conditions that are developed or manifested during a period while the member is in the service of the department or unit, and establishes a disputable presumption in this regard.

This bill would provide that in the case of certain state and local firefighting personnel and peace officers, the term “injury” also includes a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder that develops or manifests itself during a period in which the firefighting member or peace officer is in the service of the department or unit. These provisions would apply to claims for benefits filed or pending on or after January 1, 2017.


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

SECTION 1. (a) The Legislature finds and declares all of the following:
Firefighting and law enforcement are recognized as two of the most stressful occupations. Only our nation’s combat soldiers endure more stress. Similar to military personnel, California’s firefighters and law enforcement personnel face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival while placing their lives on the line every day to protect the communities they serve.

Firefighters and law enforcement personnel routinely respond to traumatic incidents and dangerous circumstances, including, but not limited to, fires, stabbings, gun battles and shootings, including active shooter incidents, domestic violence, terrorist acts, riots, automobile accidents, airplane crashes, earthquakes, and other gruesome scenes.

On any given shift, firefighters and law enforcement personnel can be called on to make life and death decisions, witness a young child dying with their grief-stricken family, or be exposed to a myriad of communicable diseases and known carcinogens. Firefighters and law enforcement personnel are constantly at significant risk of bodily harm or physical assault while they perform their duties.

Constant, cumulative exposure to these horrific events make firefighters and law enforcement personnel uniquely susceptible to the emotional and behavioral impacts of job-related stressors. This is especially evident given that the nature of the job often calls for lengthy separation from their families due to a long shift or wildfire strike team response.

Today, a firefighter’s and law enforcement officer’s occupational stress is heightened in the face of California’s “new normal” in which wildland and wildland-urban interface fires continue to annually increase as hot, dry, and wind-whipped conditions persist.

For firefighters, California’s year-round fire seasons and climatic factors are conducive to large-scale, devastating fire events. In 2018, the Carr Fire produced a fire tornado that reached speeds of 143 miles per hour and caused a cataclysmic path of destruction in Redding, where 2 firefighters were among the 7 people who lost their lives.

Last year’s fire storms were a brutal reminder of the ferocity of wildfires and how all too often on-duty firefighters and law enforcement officers incur the stress of witnessing victims flee...
while worrying about whether their own homes, and the safety of their families and neighbors, are threatened. When on duty, firefighters and law enforcement officers endure the added pain of driving through wreckage, seeing destroyed homes, or worse, the skeletal remains of family, friends, and neighbors burned to ash while not being able to stop to provide assistance or comfort.

(8) While the cumulative impacts of these aggressive, deadly events are taking their toll, our firefighters and law enforcement officers continue to stand up to human-caused devastation and nature’s fury, but they are physically and emotionally exhausted.

(9) Despite the job-related dangers and stressors, the call to respond is simple for many public safety personnel. It’s their job. But a high-stress working environment can take an overwhelming mental, emotional, and physical toll as chronic exposure to traumatic events and critical incidents increases the risk for post-traumatic stress and other stress-induced injuries.

(10) While most firefighters and law enforcement officers survive the traumas of their job, sadly, many experience the impacts of occupational stressors when off duty. The psychological and emotional stress of their profession can have a detrimental impact long after their shift is over.

(11) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide. The fire service is four times more likely to experience a suicide than a work-related death in the line of duty in any year.

(12) California has a responsibility to ensure that its fire and law enforcement agencies are equipped with the tools necessary to assist their personnel in mitigating the occupational stress experienced as a result of performing their job duties and protecting the public.

(b) It is, therefore, the intent of the Legislature to enact legislation recognizing the hazards and resulting trauma of these occupations and provide treatment and support for these public servants through presumptive care to our firefighters and law enforcement officers.

SEC. 2. Section 3212.15 is added to the Labor Code, immediately following Section 3212.1, to read:

3212.15. (a) This section applies to all of the following:
(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Peace officers, as defined in Section 830.1, subdivision (a), (b), and (c) of Section 830.2, Section 830.32, subdivisions (a) and (b) of Section 830.37, Sections 830.5 and 830.55 of the Penal Code, who are primarily engaged in active law enforcement activities.

(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

(B) For purposes of this paragraph, “fire and rescue services coordinators” means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(b) The term “injury,” as used in this division, includes a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit.

(c) The compensation that is awarded for post-traumatic stress or mental health disorder shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The post-traumatic stress or mental health disorder so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This
presumption is disputable and may be controverted by other
evidence, but unless so controverted, the appeals board is bound
to find in accordance with the presumption. This presumption shall
be extended to a member following termination of service for a
period of 3 calendar months for each full year of the requisite
service, but not to exceed 60 months in any circumstance,
commencing with the last date actually worked in the specified
capacity.
(e) The act adding this section enacted during the 2019 portion
of the 2019–20 Regular Session shall be applied to claims for
benefits filed or pending on or after January 1, 2017, including,
but not limited to, claims for benefits filed on or after that date
that have previously been denied, or that are being appealed
following denial.
(f) For the purposes of this section, a “mental health condition
or mental disability” means a post-traumatic stress disorder or
mental health disorder as described in the most recent edition of
the Diagnostic and Statistical Manual of Mental Disorders
published by the American Psychiatric Association.
April 1, 2019

The Honorable Henry Stern
California State Senate, 27th District
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 542 (Stern): Workers’ Compensation

OPPOSE

Dear Senator Stern,

The California Coalition on Workers’ Compensation, The California State Association of Counties, The California League of Cities, the American Property Casualty Insurance Association, The California Association of Joint Powers Authorities, CSAC Excess Insurance Authority, the California Special Districts Association, and the Urban Counties of California must respectfully OPPOSE your SB 542, which creates a new presumption of industrial causation for all mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress disorder, or mental health disorder that develops (PTSD) or manifests itself during a period when a firefighter or peace officer is in service of the department.

Our members recognize that police officers and firefighters serve across our state with distinction in some of the most difficult circumstances imaginable. Our members include some of the largest employers of public safety officers in the state, and we have a healthy respect and admiration for people who choose every day to serve their communities. Fundamentally, we do not believe the SB 542 is necessary to give public safety officers, or any other California employee, fair access to the workers’ compensation system for psychiatric injuries.

Current Law
While the workers’ compensation system generally compensates work-related injuries so long as 1% of the injury is from workplace exposure, the legislature specifically created a separate standard for psychiatric injury that requires a worker to demonstrate by the preponderance of the evidence that the actual events of employment were the predominant cause of the psychiatric injury. This is in recognition of the fact that people live complex lives and have many stressors in their lives outside of the workplace that impact their mental health.
It is unclear exactly how the proposed presumption in SB 542 would interact with the following existing California statutes:

- Labor Code Section 3208.3(b)(1): This portion of current law states that “actual events of employment” must be “predominant as to all causes combined of the psychiatric injury”. In other words, the actual events of employment need to be at least 51% of the cause of a worker’s psychiatric condition. Does SB 542 create a presumption that this standard has been met, or does the bill functionally set this standard aside? And if the standard in 3208.3(b)(1) is being set aside, then to what standard must an employer seeking to rebut the presumption be held? If an employer could demonstrate that the actual events of work were only 15% of all causes of the psychiatric injury would that overcome the presumption?

- Labor Code 3208.3(e): This portion of current law creates a series of rules for how and when claims for psychiatric injury can be filed post-termination. These rules exist in statute to address very real public policy concerns that apply no less in the case of public safety personnel than they do for any other employee. SB 542 not only sets aside all these existing rules, but also goes farther by extending a very clear post-termination presumption.

- Labor Code Section 4660.1(c)(1): This portion of current law, which was enacted by SB 863 (De Leon, 2012), limits the permanent disability that can be associated with psychiatric injury that arises out of a physical injury. It is unclear how provisions in SB 542, specifically Section 3212.15(c), would interact with this existing labor code section.

Current law on psychiatric injuries is carefully crafted based on decades of experience in the workers’ compensation system, and some of the provisions of existing law that were designed specifically to fight fraud and unacceptable system behavior are potentially being set aside by SB 542.

**Retroactive Coverage Provisions**

Workers’ compensation law is typically applied on a prospective basis, but SB 542 contains a provision making it retroactive to “claims for benefits filed or pending on or after January 1, 2017, including, but not limited to, claims for benefit files on or after that date that have previously been denied”. We must strenuously oppose any sort of retroactivity. Public agency budgets and their levels and layers of insurance coverage can not adjust retroactively to the type of exposure that would likely be created by SB 542. This provision would retroactively create liability for local governments, and they would have to set aside public funds to properly fund expected claims.

**Need and Cost Completely Unexamined**

While the findings and declarations paint a clear picture of public safety officer exposure to extraordinarily stressful and dangerous situations, the findings do not speak in any way to the current functionality of the workers’ compensation system relative to the types of psychiatric claims in question. California’s workers’ compensation system is studied thoroughly on an annual basis, yet we are aware of no evidence that the workers’ compensation system is treating these types of claims unfairly.

The Department of Industrial Relations did an “Issue Brief” in 2018 in response to a letter from Assemblymember Timothy Grayson. Despite being asked specifically about denial rates for these types of claims, no data was reported that would indicate that public safety officer PTSD claims are being inappropriately denied. In fact, the conclusion of that report states:

“California’s MTUS treatment guidelines and medical evidence search sequence offer appropriate guidance for behavioral health disorders, including PTSD. Pursuant to Labor Code section 3208.3, all workers, including first responders, are covered by workers’ compensation insurance. The evidence shows that cases are underreported and associated stigma prevents care-seeking behavior in general
(including first responders and veterans).” (DIR Issue Brief – Overview of the Behavioral Health of First Responders in California Using PTSD-Related Workers’ Compensation Claims Data – September 4, 2018)

Not only is there a lack of evidence that a presumption is needed, but there is also a lack of information about the cost associated with the changes. We believe the current workers’ compensation system strikes the appropriate balance with respect to psychiatric injuries. Without evidence that a problem exists or an analysis of the potential costs to local entities, especially considering the retroactivity, we don’t believe this legislation should be advanced.

For these reasons and more, we respectfully OPPOSE your SB 542.

Sincerely,

Faith Borges
Legislative Advocate
California Association of Joint Powers Authorities

Josh Gauger
Legislative and Regulatory Representative
California State Association of Counties

Dillon Gibbons
Senior Legislative Representative
California Special Districts Association

Jen Hamelin
Director of Workers’ Compensation
CSAC Excess Insurance Authority

Dane Hutchings
Legislative Representative
League of California Cities

Jean Hurst
Legislative Representative
Urban Counties of California

Jeremy Merz
Vice President
American Property Casualty Insurance Association

Jason Schmelzer
Legislative Advocate
California Coalition on Workers’ Compensation
Item B-6
INTRODUCTION

Assembly Bill 1215 (Ting) – Law Enforcement: Facial Recognition and Other Biometric Surveillance would prohibit a law enforcement agency or law enforcement official from installing, activating, or using any biometric surveillance system in connection with an officer’s body-worn camera or data collected by an officer’s body-worn camera (Attachment 1).

This item requests the Legislative/Lobby Liaisons consider taking a position on Assembly Bill 1215 (AB 1215).

DISCUSSION

Background

Under current state law, policies and procedures have been established to address issues related to the downloading and storage of data recorded by a body-worn camera that is worn by a peace officer. It also requires that those policies and procedures be based on best practices.

Summary of AB 1215

AB 1215 prohibits a law enforcement officer or agency from installing, activating, or using a biometric surveillance system in connection with a law enforcement agency’s body-worn camera or any other camera.

Specifically, AB 1215:

- States that a law enforcement agency or law enforcement official shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera.

- Defines biometric data as "a physiological, biological, or behavioral characteristic that can be used, singly or in combination with each other or with other information, to establish individual identity."

- Defines biometric surveillance system as "any computer software or application that performs facial recognition or other biometric surveillance."

- Declares that facial recognition and other biometric surveillance technology pose unique and significant threats to the civil rights and civil liberties of residents and visitors.
• Declares that the use of facial recognition and other biometric surveillance is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of recognized constitutional rights. States that this technology also allows people to be tracked without consent and would also generate massive databases about law-abiding Californians, and may chill the exercise of free speech in public places.

• Permits a person to bring an action for equitable or declaratory relief in a court of competent jurisdiction against a law enforcement agency or law enforcement official that violates this section, in addition to any other sanctions, penalties, or remedies provided by law.

Supporters of AB 1215 include:
• American Civil Liberties Union of California
• API Chaya
• Anti-Police Terror Coalition
• Asian Law Alliance
• Council on American-Islamic Relations of California
• California Attorneys for Criminal Justice
• California Public Defenders Association
• Center for Media Justice
• Color of Change
• Data for Black Lives
• Defending Rights and Dissent
• Electronic Frontier Foundation
• Fight for the Future
• Indivisible CA
• Justice Teams Network
• Media Alliance
• Oakland Privacy
• RAICES
• San Jose/Silicon Valley NAACP
• Secure Justice
• National Association of Criminal Defense Lawyers
• Library Freedom Project
• Tor Project
• X-Lab

Organizations in Opposition to AB 1215 include:
• California Police Chiefs Association
• California State Sheriffs’ Association

This bill passed out of the Assembly with 45 aye votes, 17 no votes, and 18 Assembly Members either absent, abstaining, or not voting on May 9, 2019.

FISCAL IMPACT
The costs of AB 1215 to the City are unknown at this time. Staff anticipates it would be minimally.

RECOMMENDATION
After discussion of Assembly Bill 1215 (Ting) – Law Enforcement: Facial Recognition and Other Biometric Surveillance, the Liaisons may recommend the following actions:

1) Support AB 1215;
2) Support if amended AB 1215;
3) Oppose AB 1215;
4) Oppose unless amended AB 1215;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1215, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
Introduced by Assembly Member Ting

February 21, 2019

An act to add Section 832.19 to the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL’S DIGEST

AB 1215, as amended, Ting. Law enforcement: facial recognition and other biometric surveillance.

Existing law states the intent of the Legislature to establish policies and procedures to address issues related to the downloading and storage of data recorded by a body-worn camera worn by a peace officer, and requires that those policies and procedures be based on best practices. Existing law requires law enforcement agencies, departments, or entities to consider certain best practices regarding the downloading and storage of body-worn camera data when establishing policies and procedures for the implementation and operation of a body-worn camera system, as specified.

This bill would prohibit a law enforcement agency or law enforcement official from installing, activating, or using any biometric surveillance system in connection with an officer camera or data collected by an officer camera. The bill would authorize a person to bring an action for equitable or declaratory relief against a law enforcement agency or official who violates that prohibition and would make a law enforcement
agency or official liable for actual damages of not less than $4,000 and reasonable attorney’s fees. prohibition.


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

SECTION 1. The Legislature finds and declares all of the following:
(a) Californians value privacy as an essential element of their individual freedom, and are guaranteed a right to privacy in Section 1 of Article 1 of the California Constitution.
(b) Facial recognition and other biometric surveillance technology pose unique and significant threats to the civil rights and civil liberties of residents and visitors.
(c) The use of facial recognition and other biometric surveillance technology is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of recognized constitutional rights. This technology also allows people to be tracked without consent. It would also generate massive databases about law-abiding Californians, and may chill the exercise of free speech in public places.
(d) Facial recognition and other biometric surveillance technology has been repeatedly demonstrated to misidentify women, young people, and people of color and to create an elevated risk of harmful “false positive” identifications.
(e) Facial and other biometric surveillance would corrupt the core purpose of officer-worn body-worn cameras by transforming those devices from transparency and accountability tools into roving surveillance systems.
(f) The use of facial recognition and other biometric surveillance would disproportionately impact the civil rights and liberties of persons who live in highly policed communities. Its use would also diminish effective policing and public safety by discouraging people in these communities, including victims of crime, undocumented persons, people with unpaid fines and fees, and those with prior criminal history from seeking police assistance or from assisting the police.

SEC. 2. Section 832.19 is added to the Penal Code, immediately following Section 832.18, to read:
832.19. (a) For the purposes of this section, the following terms have the following meanings:

(1) “Biometric data” means a physiological, biological, or behavioral characteristic that can be used, singly or in combination with each other or with other information, to establish individual identity.

(2) “Biometric surveillance system” means any computer software or application that performs facial recognition or other biometric surveillance.

(3) “Facial recognition or other biometric surveillance” means either of the following, alone or in combination:

(A) An automated or semiautomated process that captures biometric data of an individual.

(B) An automated or semiautomated process that assists in identifying an individual or generating surveillance information about an individual based on biometric data.

(4) “Law enforcement agency” means any police department, sheriff’s department, district attorney, county probation department, transit agency police department, school district police department, highway patrol, the police department of any campus of the University of California, the California State University, or a community college, the Department of the California Highway Patrol, and the Department of Justice.

(5) “Law enforcement official” means an officer, deputy, employee, or agent of a law enforcement agency.

(6) “Officer camera” means a body-worn camera or similar device that records or transmits images or sound and is attached to the body or clothing of, or carried by, a law enforcement official.

(7) “Surveillance information” means either of the following, alone or in combination:

(A) Any information about a known or unknown individual, including, but not limited to, a person’s name, date of birth, gender, or criminal background.

(B) Any information derived from biometric data, including, but not limited to, assessments about an individual’s sentiment, state of mind, or level of dangerousness.

(8) “Use” means either of the following, alone or in combination:

(A) The direct use of the biometric surveillance system by a law enforcement officer or law enforcement agency.
(B) A request by a law enforcement officer that a law enforcement agency or other third party use the biometric surveillance system on behalf of the requesting entity.

(b) A law enforcement agency or law enforcement official shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera.

(c) In addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a law enforcement agency or law enforcement official that violates this section. A law enforcement agency or official that violates this section is also liable for actual damages, but in no case less than four thousand dollars ($4,000), and reasonable attorney’s fees.
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.

Senate Bill 50 (Wiener) Planning and Zoning: Housing Development: Incentives (SB 50) involves a policy matter that is addressed within the adopted Legislative Platform language. Specifically, the following statement is in the adopted Platform:

Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances

On April 16, 2019 the City Council passed Resolution 19-R-13232 to oppose SB 50.

This item provides an update by the City’s state lobbyist, Shaw/Yoder/Antwih, Inc., on SB 50. A verbal update will be provided on May 22, 2019 to the Liaisons.
Attachment 1
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Silvia Solis Shaw, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: SB 50 (Wiener) Planning and zoning: housing development: incentives.

Introduction and Background

Senator Wiener introduced the California YIMBY sponsored SB 50 on the first day of the 2019-2020 Legislative Session. The bill is a follow-up to last year’s SB 827 (Wiener, 2018) which would have exempted developments in transit-rich housing zones from local controls on maximum density, maximum floor area ratio, minimum automobile parking requirements, and height limits. Addressing the state’s housing crisis is a chief concern of Governor Newsom and the Legislature. During his campaign, Governor Newsom set a goal of building 3.5 million new housing units in California by 2025. Many in the Legislature view local zoning and land use restrictions as key barriers to addressing the state’s housing crisis. As such, over 100 bills have been introduced to assist with the housing crisis. These bills would implement a variety of solutions to address the crisis including streamlining the approval processes for housing and exempting certain projects from local zoning and land use restrictions. With the Democrats in the Legislature holding super-majorities in both houses, it is expected that one or more of these bills will eventually make their way to the Governor’s desk.

Whereas existing law leaves zoning decisions exclusively to local governments this bill would waive bans on multi-family dwellings near high-quality transit and in job-rich areas. This would apply to sites that are within ½ mile of high-quality public transportation or in a job-rich, high opportunity neighborhood.

When the bill was heard in the Senate Governance and Finance Committee on April 24th Senator Wiener and Senator McGuire, the author of SB 4, announced that they would be including elements of SB 4, which would be held in committee, into SB 50.

Specifically, this bill would:

- Define a “jobs-rich area” as a residential development within an area identified by the Department of Housing and Community Development (HCD) and the Office of Planning and Research (OPR) that meets the following requirements:
  - The area’s characteristics are associated with beneficial economic and educational outcomes for all income levels;
  - The area meets either of the following:
    - New housing would enable residents to live in or near a jobs-rich area defined by employment density and job totals or;
    - New housing in the area would enable shorter commute distances for residents.
• Define a “job-rich housing project” as a residential development in a “jobs-rich area” if both these criteria apply:
  o All parcels in the project have no more than 25% of their area outside the job-rich area;
  o No more than 10% of residential units or 100 units, whichever is less, of the development is outside the job-rich area.
• Define a “transit-rich housing project” as a residential development with parcels that are within ½ mile of a major transit stop or ¼ mile of a stop on a high-quality bus corridor.
• Define a “high-quality bus corridor” as a corridor with fixed route bus service meeting the below requirements:
  o 10-minute average service intervals between the three peak hours from 6am-10am and 3pm-7pm Monday through Friday;
  o 20-minute average service intervals from 6am-10am and 3pm-7pm Monday through Friday;
  o 30-minute average service intervals from 8am-10pm on Saturday and Sunday.
• Require any transit-rich or jobs-rich housing project to receive, upon request, an equitable communities incentive which shall waive requirements on maximum controls on density and minimum parking requirements greater than 0.5 vehicle parking spots per units.
• Allow a local government to grant an equitable communities incentive to development proponents of a residential development if the development;
  o Is either a job-rich or transit-rich housing project;
  o Is located on a site that is zoned to allow housing as an underlying use;
  o Complies with local inclusionary zoning ordinances;
  o Makes an affordable housing contribution in jurisdictions with no inclusionary housing ordinance that follows certain percentage guidelines for affordable units based on total project size.
• Exempt parcels;
  o In the coastal zone in cities with populations under 50,000;
  o In Very High Fire Hazard Severity Zones except;
    ▪ Sites excluded from the specified hazard zone by a local agency,
    ▪ Sites that have adopted fire mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
  o In Historic districts established by local government ordinance prior to December 31, 2010;
  o In counties with a population of 600,000 or less that are in architecturally or historically significant historic districts or in a flood plain;
  o That contained housing that was occupied by tenants with seven years preceding the submission of the application including housing that was demolished or vacated prior to the application of a development permit.
• Allow developers granted an equitable communities incentive for a development located within ½ mile radius, but outside, ¼ mile radius to also receive waivers for:
  o Maximum height requirements less than 45 feet;
  o Maximum floor area ratio requirements less than 2.5;
  o Maximum automobile parking requirements.
• Allow developers granted an equitable communities incentive for a development located within one ¼ mile of a major transit stop to also receive waivers for:
  o Maximum height requirements less than 55 feet;
- Maximum floor area ratio requirements less than 3.25;
- Minimum automobile parking requirements.
- Allow for the creation of fourplexes by right (regardless of jurisdiction population) in residential areas on vacant land and allows conversions of existing structures—but no demolition, as follows:
  - 75% of exterior walls must be intact with no more than a +15% increase in square footage. Also, the development must abide by all other local regulations (setbacks, lot coverage, FAR, height, etc.) and;
  - Prohibits developers from knocking down or altering properties that:
    - Are subject to a recorded covenant, ordinance, or law that restricts rent levels to those affordable to moderate, low, or very low-income individuals or families;
    - Are subject to rent or price controls;
    - Were occupied by tenants within the previous 10 years;
  - Impose no parking minimums within ¼ mile of rail in cities over 100,000, 0.5 spaces per unit minimum elsewhere.
- For “sensitive communities” the bill would:
  - Authorize the COGs or the county board of supervisors in a county without a COG to administer the process to identify sensitive communities with minimum requirements for outreach to disadvantaged populations;
  - Include at a minimum those areas:
    - designated high segregation and poverty and low-resource in California Tax Credit Allocation Committee’s 2019 Opportunity Maps;
    - That are in the top 25% Cal EnviroScreen scores;
    - 2019 HUD qualified census tracts.
  - Allow these communities to opt-in before to a community planning process based on a petition with 20% of the population in the census tract signing the petition and meeting additional outreach requirements.
  - Delay full implementation until January 1, 2026 unless the city or county in which the sensitive community is located has adopted a community plan to increase residential density and multifamily housing near transit stops by July 1, 2025.

**Status of Legislation**

The bill was held in the Senate Appropriations Committee and is now a two-year bill.

**Support and Opposition**

(Please note that the support and opposition provided here is based on the prior version of the bill)

The author’s office lists several co-authors and a base of support that includes but is not limited to affordable housing advocates, local government officials, and rental associations. The author’s office notes that lack of affordable housing in the state and the state’s 3.5 million housing unit shortfall as a driving factor behind the bill. The author’s office also points to the state’s emissions reductions goals and the need for transit-oriented development to meet those goals. Sponsors of the bill also argue that
the bill provides protections for long-term residents by allowing sensitive communities to engage in their own planning process and provides anti-displacement protections.

The bill is opposed by several cities, neighborhood associations, and homeowner groups who argue that the bill overrides local control over planning and land use decisions and applies a one-size-fits-all approach to address the housing crisis. Opponents also raise concerns about how areas subject to the equitable communities incentives will be identified and the impact denser development will have on surrounding areas. The AIDS Healthcare Foundation argues that the bill gives developers far too much leeway in certain areas and does not require nearly enough affordable housing in return.

**Co-Authors**

Sen. Anna Caballero (D-Salinas)
Sen. Ben Hueso (D-San Diego)
Sen. John Moorlach (R-Costa Mesa)
Sen. Nancy Skinner (D-Berkeley)
Sen. Jeff Stone (R-Temecula)
Asm. Autumn Burke (D-Marina Del Rey)
Asm. Kansen Chu (D-San Jose)
Asm. Tyler Diep (R-Westminster)
Asm. Vince Fong (R-Bakersfield)
Asm. Ash Kalra (D-San Jose)
Asm. Kevin Kiley (R-Rocklin)
Asm. Evan Low (D-Campbell)
Asm. Kevin McCarty (D-Sacramento)
Asm. Robert Rivas (D-Hollister)
Asm. Phil Ting (D-San Francisco)
Asm. Buffy Wicks (D-Oakland)

**SUPPORT**

California Apartment Association
California Chamber of Commerce
Natural Resources Defense Council (NRDC)
AARP
Valley Industry and Commerce Association (VICA)
Los Angeles Area Chamber of Commerce
Silicon Valley Leadership Group
California State Council on Developmental Disabilities
Dana Point Chamber of Commerce
Oakland Metropolitan Chamber of Commerce
Orange County Business Council
Oxnard Chamber of Commerce
Bay Area Council
Burbank Housing Development Corporation
City of Emeryville
Murrieta Chamber of Commerce
Local Government Commission
CalAsian Chamber of Commerce
TMG Partners
BRIDGE Housing Corporation
Related California
SPUR
Building Industry Association of the Bay Area
6Beds, Inc.
Santa Maria Valley Chamber of Commerce
North Orange County Chamber of Commerce
Fossil Free California
YIMBY Action
The Silicon Valley Organization
California Community Builders
California National Party
Hamilton Families
California YIMBY
Technet-technology Network
Office of the Mayor, San Francisco
Silicon Valley At Home (Sv@Home)
Facebook, Inc.
Fieldstead And Company, Inc.
Ms.
Schott & Lites Advocates LLC
South Bay YIMBY
3,025 Individuals
Greater Washington
Santa Cruz County Chamber of Commerce
South Bay Jewish Federation
Stripe

**OPPOSITION**

AIDS Healthcare Foundation
City of Lakewood
League of California Cities
Legal Services for Prisoners with Children (LSPC)
South Bay Cities Council of Governments
City of Glendale
City of Santa Clarita
Tenants Together
City of Glendora
City of Chino Hills
City of Cupertino
City of Palo Alto
East Yard Communities for Environmental Justice
Urban Habitat
City of Downey
American Planning Association, California Chapter
City of Vista
Causa Justa: Just Cause
Rancho Cucamonga Coalition for San Francisco Neighborhoods
Dolores Street Community Services
Mission Economic Development Agency
Asian Pacific Environmental Network
Housing Rights Committee of San Francisco
City of La Mirada
City of Pasadena
City of Beverly Hills
Jobs with Justice San Francisco
South of Market Community Action Network
PODER
City of San Mateo
City of Lafayette
Sherman Oaks Homeowners Association
Sacred Heart Community Service
Rancho Palos Verdes
City of Brentwood, California
Senior and Disability Action
Berkeley Tenants Union
City of Redondo Beach
SF Ocean Edge
San Francisco Senior and Disability Action
City of Pinole
Barbary Coast Neighborhood Association
Bay Area Transportation Working Group
Alliance of Californians for Community Empowerment (ACCE) Action
Cow Hollow Association
Dolores Heights Improvement Club
Noe Neighborhood Council
Stand Up for San Francisco
Housing for All Burlingame
Miraloma Park Improvement Club
Homeowners Of Encino
Sutro Avenue Block Club/Leimert Park
Telegraph Hill Dwellers
Toluca Lake Homeowners Association
West Mar Vista Residents Association
San Francisco Rising Alliance
Tenant Sanctuary
1,850 Individuals
Brentwood Community Council - West Los Angeles
Central Valley Empowerment Alliance
Century Glen Hoa
City of Solana Beach
City of Sunnyvale
Preserve LA
Concerned Citizens of Los Feliz
East Mission Improvement Association
Grayburn Avenue Block Club
Jordan Park Improvement Association
Los Angeles Tenants Union - Hollywood Local Case Worker
Los Angeles Tenants Union -- Networking Team
New Livable California DbA Livable California
Northeast Business Economic Development DbA
Northeast Business Association
Planning Association for the Richmond
Redstone Labor Temple Association
Regional-Video
Save Capp Street
South Brentwood Residents Association
Sunset-Parkside Education And Action Committee (Speak)
The San Francisco Marina Community Association
United to Save the Mission
Yah! (Yes to Affordable Housing)
Item B-8
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.
Item C-1
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy and Management Analyst
DATE: May 22, 2019
SUBJECT: Oppose Senate Bill 330 (Skinner) – Housing Crisis Act of 2019
ATTACHMENTS: 1. Summary Memo – SB 330
2. Bill Text – SB 330

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 330 (Skinner) – Housing Crisis Act of 2019 (SB 330) involves a policy matter that is addressed within the adopted Legislative Platform language. Specifically, the following statement is in the adopted Platform:

Oppose legislation that would preempt the City's authority over local taxes and fees

The City's state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for SB 330 to the City (Attachment 1). SB 330 declares a statewide housing crisis and prohibits a city from imposing parking requirements, adjusting impact fees, imposing impact fees on affordable housing projects, and limiting new design standards based on cost for a certain period of time. SB 330 was amended in the Senate Appropriations Committee on May 16, 2019 to, amongst other things, decrease the time period on the moratorium for charging impact fees from ten years to five years. The full text of the amendments are not yet in print; however, as the legislation would still preempt the City's authority over local fees, staff can still author a letter of opposition.

As this legislation is in line with the City Council adopted Legislative Platform, staff will be writing a letter of opposition for the Mayor to sign unless otherwise directed by the Liaisons. Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff. Should the Liaisons recommend a position other than oppose, then staff will place the item on a future City Council Agenda for concurrence.
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: SB 330 (Skinner) Housing Crisis Act of 2019

Introduction and Background
SB 330 (Skinner) would enact the “Housing Crisis Act of 2019,” and make temporary changes, until January 1, 2030, to various housing statues. This bill would make temporary changes to the Permit Streamlining Act and local approval processes, impose restrictions on certain types of development standards, amend the Housing and Accountability Act (HAA), and provide delayed enforcement of certain code violations.

The 1977 Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits. Public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being “deemed complete.” The Act allows local governments to request additional information, potentially extending the time before the clock on the application begins running. Once a complete application for a development has been submitted, local governments must act within (1) 60 days after completing a negative declaration or determining that a project is exempt from review, or (2) 180 days after certifying an environmental impact report (EIR). If a local government fails to approve or disapprove the application within the applicable time period, the application is deemed granted.

Amendments limiting the provisions of the bill to five years will be forthcoming.

Specifically, this bill would:

- Establish the Housing Crisis Act of 2019 and would make numerous temporary changes to housing laws for a ten-year period to facilitate housing construction.
- Establish a process for submitting a complete initial application—separate from and prior to the complete application required for the Permit Streamlining Act clock to begin running—and restricts the changes that local governments may apply to a project after a completed initial application is submitted.
- Specifies that an “affected city” is a city, including a charter city, for which HCD determines that the average of the following is greater than zero:
  - The percentage by which the city’s average rent rate exceeded 130% of the national median rent in 2017.
  - The percentage by which the vacancy rate for rental units is less than the national rate.
- Specifies that an “affected city” does not include a city with a population of 5,000 or fewer and not located in an urban core.
• Specifies that an “affected county” means a county in which at least 50% of the cities are affected cities.
• HCD must determine which cities and counties are “affected cities and counties” by June 30, 2025, which remains valid a second determination, which must be made by June 30, 2025, which remains valid until January 1, 2030.
• Deem a preliminary application to have been submitted by a housing development applicant if they have provided the following information about the project:
  o The specific location.
  o The major physical alternations to the property on which the project is to be located.
  o Site plan showing the location on the property, as well as the massing, height, and approximate square footage, of each building that is to be occupied.
  o The proposed land uses by number of units or square feet using the categories in the applicable zoning ordinance.
  o The proposed number of parking spaces.
  o Any proposed point sources of air or water pollutants.
  o Any species of special concern known to occur on the property.
  o Any historic or cultural resources known to exist on the property.
  o The number of below market rate units and their affordability level.
  o However, if a development proponent revises the project to change the number of units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, the housing development project shall not be deemed to have submitted a preliminary application until the development proponent resubmits the required information that reflects the revisions.
• Prohibit a city or county from conducting more than five de novo hearings on a proposed housing development if it complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.
• Prohibit a local agency from applying ordinances, policies, and standards to a development after a completed initial application is submitted.
  o Local government may apply new standards after the preliminary application was submitted if:
    A. Development fee or exaction is indexed to inflation in the ordinance.
    B. A new standard is needed to mitigate or avoid a specific, adverse impact to public health or safety based on a preponderance of the evidence in the record, and there is no feasible alternative to mitigate it.
    C. A new policy, standard, or ordinance is needed to mitigate an impact of the project to a less than significant level pursuant to CEQA.
    D. The housing development project has not begun construction within 3 years following the date the project was approved.
    E. The housing development project is revised following submittal of a preliminary application such that the number of residential units or square footage of construction changes by 20% or more, excluding the application of a density bonus.
• Allow a development applicant, a person who would be eligible to apply for residency, or a housing organization to file a lawsuit if a local agency requires a housing development project to comply with an ordinance, policy or standard not adopted and in effect when a preliminary application was submitted.
- Require a public agency to provide an applicant with an exhaustive list of items in their application that was deemed incomplete.
  - If an application is deemed incomplete, a local agency cannot ask the applicant to provide new information that was not stated in the initial list.
- Prohibit a local government from adopting a development policy, standard, or condition that would:
  - Change a general plan land use designation.
  - Impose a moratorium or similar restriction on housing development, including mixed-use development. An affected city or county cannot enforce a moratorium until HCD approves it.
  - Impose/enforce design standards established on or after January 1, 2018, that are not objective design standards.
  - Cap the number of housing units that can be approved or constructed either annually or for some other time period.
  - Limiting the population of the affected city or county.
- An affected city or county may enforce a cap on the number of housing units that can be approved or constructed if the provision of law imposing the limit was approved by voters prior to 2005 and is in a predominantly agricultural county. “Predominantly agricultural county” is defined to mean a county that meets both of the following, as determined by the most recent California Farmland Conversion Report Produced by the Department of Conservation:
  - Has more than 550,000 acres of agricultural land.
  - At least one-half of the county area is agricultural land.
- Allow local governments to enact a policy that prohibits commercial use of land that is designated for residential use, such as short-term occupancy of a residence.
- Defines “affected city” to be those that meet all the following conditions:
  - The percentage by which the city’s average rate of rent exceeded 130 percent of the national median rent in 2017, based on the federal 2013-17 American Community Survey 5-year estimates.
  - The percentage by which the vacancy rate for residential rental units is less than the national vacancy rate, based on the federal 2013-17 American Community Survey 5-year estimates.
  - The city has a population of more than 5,000 or has a population of 5,000 or less but is located within an urban core.
- Prohibits an affected city or affected county from:
  - Imposing any new, or increasing or enforcing any existing, requirements that a proposed housing development include parking, as applicable:
    - A minimum parking requirement if the proposed housing development is within one-quarter mile or a rail stop in an affected city that meets either of the following:
      - The affected city is located in a county with a population of greater than 700,000.
      - The affected city has a population of 100,000 or greater and is located in a county with a population of 700,00 or less.
    - A minimum parking requirement in excess of 0.5 spaces per unit in affected cities that are not subject to (A).
  - Charging a development fee or exaction, including water or sewer connection fees, in an amount that exceeds the amount that would have applied to the project on January 1,
2018, except if that fee or exaction is indexed to inflation, or if that fee is charged in lieu of an inclusionary housing requirement.

- Charging any development fees or exactions to deed-restricted units affordable to lower income persons and families.
- Denying a housing project solely because the applicant does not pay a fee that is prohibited by the bill.

- Provides that if the affected county or city approves an application for a conditional use permit for a proposed housing development project and that project would have been eligible for a higher density under the affected county’s or affected city’s general plan land use designation and zoning ordinances as in effect prior to January 1, 2018, the affected county or city must allow the project at that higher density.
- Prohibit a development would require demolition of specified types of affordable housing units or rental units cannot benefit from this bill’s provisions unless (1) the developer agrees to provide relocation benefits to current residents and offers them first right of refusal in the new development, and (2) the development is at least as dense as the existing residential use of the property.
- Apply its provisions to the electorate of an affected city or county and voids any voter initiative or other policy that requires local voter approval to increase the allowable density of housing, to establish housing as an allowable use, or to provide services and infrastructure necessary to develop housing.
- Requires a local agency notice of a violation of any building standard to an owner of an occupied substandard building or unit where residential is a permitted use, including areas zoned for mixed use, to include a statement of the owner’s right of request a delay in enforcement.
- Requires a local agency, upon request of the owner, to delay enforcement for 7 years, or earlier at the discretion of the enforcement agency, if correction is not necessary to protect health and safety.

**Status of Legislation**
SB 330 (Skinner) passed out of the Senate Appropriations on Thursday, May 16th.

**Support and Opposition**
The author and supporters argue that to address the state’s housing crisis and meet California’s housing needs local approvals for housing development need to be streamlined and unnecessary barriers to development need to be removed. They state that for 10-year period outlined in the bill, SB 330 will facilitate housing construction and protect lower income residents from displacement.

The League of California Cities opposes the following provisions: prohibiting parking; freezing impact fees and eliminating development fees on affordable housing, which pay for public improvements and services; and prohibiting design standards. They argue that SB 330 does not require any of the cost savings associated with these limitations to be passed on to the consumer and that developers would most likely pocket the savings. The California Apartment Association is concerned about the inability for builders to demolish older housing stock and replace it with much needed additional housing.

**Support**
Bay Area Council
Building Industry Association of the Bay Area
California Building Industry Association
California Community Builders
California Yimby
EAH Housing
Enterprise Community Partners, Inc.
Facebook, Inc.
Hamilton Families
Oakland Metropolitan Chamber of Commerce
Related California
Silicon Valley At Home
TMG Partners
Urban Displacement Project, UC Berkeley

Opposition

American Planning Association, California Chapter
Association of California Water Agencies
League of California Cities
Livable California
Solana Beach; City of
South Cities Council of Governments
Attachment 2
SENATE BILL No. 330

Introduced by Senator Skinner

February 19, 2019

An act to amend Section 65589.5 of, to amend, repeal, and add Section 65943; Sections 65943 and 65950 of, to add and repeal Sections 65905.5, 65913.3, 65913.10, 65941.1, and 65950.2 of, and to add and repeal Chapter 12 (commencing with Section 66300) of Division 1 of Title 7 of the Government Code, and to add and repeal Section 17921.8 and 17980.12 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

(1) The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based on a preponderance of the evidence in the record. The act specifies that one way to satisfy that requirement is to make findings that the housing development project or emergency shelter is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete. The act requires a local agency that proposes to disapprove a housing...
development project that complies with applicable, objective general plan and zoning standards and criteria that were in effect at the time the application was deemed to be complete, or to approve it on the condition that it be developed at a lower density, to base its decision upon written findings supported by substantial evidence on the record that specified conditions exist, and places the burden of proof on the local agency to that effect. The act requires a court to impose a fine on a local agency under certain circumstances and requires that the fine be at least $10,000 per housing unit in the housing development project on the date the application was deemed complete.

This bill, until January 1, 2030, would specify that an application is deemed complete for these purposes if a complete initial preliminary application was submitted, as described below.

Existing law authorizes the applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization to bring an action to enforce the Housing Accountability Act. If, in that action, a court finds that a local agency failed to satisfy the requirement to make the specified findings described above, existing law requires the court to issue an order or judgment compelling compliance with the act within 60 days, as specified.

This bill, until January 1, 2030, would additionally require a court to issue the order or judgment previously described if the local agency required or attempted to require certain housing development projects to comply with an ordinance, policy, or standard not adopted and in effect when a complete initial preliminary application was submitted.

Existing law authorizes a local agency to require a housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction’s share of the regional housing need, as specified.

This bill, until January 1, 2030, would, notwithstanding those provisions or any other law and with certain exceptions, require that a housing development project only be subject to the ordinances, policies, and standards adopted and in effect when a complete initial preliminary application is submitted, except as specified.

(2) The Planning and Zoning Law, except as provided, requires that a public hearing be held on an application for a variance from the requirements of a zoning ordinance, an application for a conditional use permit or equivalent development permit, a proposed revocation or modification of a variance or use permit or equivalent development
permit, or an appeal from the action taken on any of those applications. That law requires that notice of a public hearing be provided in accordance with specified procedures.

This bill, until January 1, 2030, would prohibit a city or county from conducting more than 5 de novo hearings, as defined, held pursuant to these provisions, or any other law, ordinance, or regulation requiring a public hearing, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time a complete initial application was submitted, as described below. An application is deemed complete, as defined. The bill would require the city or county to consider and either approve or disapprove the housing development project at any of the 5 hearings consistent with the applicable timelines under the Permit Streamlining Act, but would require the city or county to either approve or disapprove the permit within 12 months from when the date on which the application is deemed complete, as provided. Act and prohibit a city or county from continuing a hearing to another date.

(3) The Planning and Zoning Law requires a county or city to designate and zone sufficient vacant land for residential use with appropriate standards, as provided. That law also authorizes a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process and not subject to a conditional use permit if the development satisfies certain objective planning standards.

This bill, until January 1, 2030, with respect to land where housing is an allowable use, use on or after January 1, 2018, would prohibit a county or city in which specified conditions exist, determined by the Department of Housing and Community Development as provided, from (A) imposing any new, increasing or enforcing any existing, requirement that a proposed housing development include parking in excess of specified amounts or (B) charging fees, as defined, for the approval of a housing development project in excess of specified amounts, or charging any fee in connection with the approval of units within the housing development that meet specified affordability criteria, subject to certain exceptions and limitations. If the city or county grants a conditional use permit approving a proposed housing development project and that project would have been eligible for a higher density under the city’s or county’s general plan land use designation and zoning ordinances as in effect on January 1, 2018, the bill would also require the city or county to allow the project at that
higher density. The bill would require a project that requires the demolition of certain types of housing to comply with specified requirements, including the provision of relocation assistance and a right of first refusal in the new housing to displaced occupants. The bill would require that any units for which a developer provides relocation assistance or a right of first refusal be considered in determining whether the housing development project satisfies the requirements, if applicable, of an inclusionary housing ordinance of the county or city.

The bill would state that these provisions would prevail over any conflicting provision of the Planning and Zoning Law or other law regulating housing development in this state, except as specifically provided. The bill would also require that any exception to these provisions, including an exception for the health and safety of occupants of a housing development project, be construed narrowly.

(4) The Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each state agency and each local agency to compile one or more lists that specify in detail the information that will be required from any applicant for a development project. That law requires the state or local agency to provide make copies of this information available to all applicants for development projects and to any persons who request the information.

The bill, until January 1, 2030, for purposes of any state or local law, ordinance, or regulation that requires a city or county to determine whether the site of a proposed housing development project is a historic site, would require the city or county to make that determination, which would remain valid for the pendency of the housing development, at the time the application is deemed complete. The bill, until January 1, 2030, would also require that each local agency make copies of any above-described list with respect to information required from an applicant for a housing development project available both (A) in writing to those persons to whom the agency is required to make information available and (B) publicly available on the internet website of the local agency.

(5) The Permit Streamlining Act requires public agencies to approve or disapprove of a development project within certain timeframes, as specified. The act requires a public agency, upon its determination that an application for a development project is incomplete, to include a list and a thorough description of the specific information needed to complete the application. Existing law authorizes the applicant to submit
the additional material to the public agency, requires the public agency to determine whether the submission of the application together with the submitted materials is complete within 30 days of receipt, and provides for an appeal process from the public agency’s determination. Existing law requires a final written determination by the agency on the appeal no later than 60 days after receipt of the applicant’s written appeal.

This bill, until January 1, 2030, would provide that a housing development project, as defined, shall be deemed to have submitted a complete initial application upon providing specified information about the proposed project to the city or county from which approval for the project is being sought and would require the Department of Housing and Community Development to adopt a standardized form that applicants for housing development projects may use for that purpose, as specified.

The Permit Streamlining Act generally requires that a public agency that is the lead agency for a development project approve or disapprove a project within 120 days from the date of certification by the lead agency of an environmental impact report prepared for certain development projects, but reduces this time period to 90 days from the certification of an environmental impact report for development projects meeting certain additional conditions relating to affordability. Existing law defines “development project” for these purposes to mean a use consisting of either residential units only or mixed-use developments consisting of residential and nonresidential uses that satisfy certain other requirements.
This bill, until January 1, 2030, would reduce the time period in which a lead agency under these provisions is required to approve or disapprove a project from 120 days to 90 days, for a development project generally described above, and from 90 days to 60 days, for a development project that meets the above-described affordability conditions. The bill would recast the definition of “development project” for these purposes to mean a housing development project, as defined in the Housing Accountability Act.

(6)

(5) The Planning and Zoning Law, among other things, requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and of any land outside its boundaries that relates to its planning. That law authorizes the legislative body, if it deems it to be in the public interest, to amend all or part of an adopted general plan, as provided. 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, until January 1, 2030, with respect to land where housing is an allowable use, use on or after January 1, 2018, except as specified, would prohibit a county or city, including the electorate exercising its local initiative or referendum power, in which specified conditions exist, determined by the Department of Housing and Community Development as provided, from enacting a development policy, standard, or condition, as defined, that would have the effect of (A) changing the land use designation or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018; (B) imposing or enforcing a moratorium on housing development within all or a portion of the jurisdiction of the county or city, except as provided; (C) imposing or enforcing new design standards established on or after January 1, 2018, that are not objective design standards, as defined; or (D) establishing or implementing certain limits on the number of permits issued by, or the population of, the county or city, unless the limit was approved prior to January 1, 2005, in a predominantly agricultural county, as defined. The bill would, notwithstanding these prohibitions, allow a city or county to prohibit the commercial use of land zoned for residential use.
consistent with the authority of the city or county conferred by other law. The bill would state that these prohibitions would apply to any zoning ordinance adopted or amended on or after January 1, 2018, and that any zoning ordinance adopted, or amendment to an existing ordinance or to an adopted general plan or specific plan, development policy, standard, or condition on or after that date that does not comply would be deemed void.

The bill would state that these prohibitions would prevail over any conflicting provision of the Planning and Zoning Law or other law regulating housing development in this state, except as specifically provided. The bill would also require that any exception to these provisions, including an exception for the health and safety of occupants of a housing development project, be construed narrowly. The bill would also declare any requirement to obtain local voter approval or supermajority approval of any body of the county or city for specified purposes related to housing development against public policy and void.

(7) The State Housing Law, among other things, requires the Department of Housing and Community Development to propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission, and to adopt, amend, and repeal other rules and regulations for the protection of the public health, safety, and general welfare of the occupant and the public, governing hotels, motels, lodging houses, apartment houses, and dwellings, and buildings and structures accessory thereto. That law specifies that the provisions of the State Housing Law and the building standards and rules and regulations adopted pursuant to that law apply in all parts of the state and requires specified entities within each city, county, or city and county to enforce within its jurisdiction those pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels, or dwellings. That law authorizes an enforcement agency to institute an appropriate action or proceeding to prevent, restrain, correct, or abate violations of that law, or building standards, rules, or regulations adopted pursuant to that law, after providing 30 days’ notice, or a shorter period of time under certain circumstances. A violation of the State Housing Law, or any building standard, rule, or regulation adopted pursuant to that law, is a misdemeanor.

This bill would require the department to propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission, and to adopt, amend, or repeal other rules and
regulations for the protection of the public health, safety, and general welfare of the occupant and the public, applicable to occupied substandard buildings, as defined, in lieu of the above-described building standards, rules, and regulations. The bill would provide that an occupied substandard building that complies with these alternative building standards, rules, and regulations is deemed to be in compliance with the State Housing Law, and the building standards, rules, and regulations adopted pursuant to that law, for a period of 7 years following the date on which the enforcement agency finds a violation of the State Housing Law or a related building standard, rule, or regulation. The bill would make these provisions inoperative, except as specified, on January 1, 2030, and repeal these provisions on January 1, 2037.

This bill would authorize the owner of an occupied substandard building or unit in a zone where residential use is a permitted use that receives a notice to correct a violation of a building standard under the State Housing Law or abate a nuisance to submit an application to the enforcement agency requesting that enforcement of the violation or nuisance be delayed for up to 7 years. The bill would require the enforcement agency to grant a request to delay enforcement if it determines that correcting the violation or abating the nuisance is not necessary to protect health and safety. The bill would repeal these provisions as of January 1, 2030.

(7) This 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.

(8) By imposing various new requirements and duties on local planning officials with respect to housing development, and by changing the scope of a crime under the State Housing Law, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.
(9) This bill would provide that the provisions of the act are severable.


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

SECTION 1. This act shall be known, and may be cited, as the Housing Crisis Act of 2019.

SEC. 2. (a) The Legislature finds and declares the following:

(1) California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita.

(2) Consequently, existing housing in this state, especially in its largest cities, has become very expensive. Seven of the 10 most expensive real estate markets in the United States are in California. In San Francisco, the median home price is $1.6 million.

(3) California is also experiencing rapid year-over-year rent growth with three cities in the state having had overall rent growth of 10 percent or more year-over-year, and of the 50 United States cities with the highest United States rents, 33 are cities in California.

(4) California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over the next 7 years.

(5) The housing crisis has particularly exacerbated the need for affordable homes at prices below market rates.

(6) The housing crisis harms families across California and has resulted in all of the following:

(A) Increased poverty and homelessness, especially first-time homelessness.

(B) Forced lower income residents into crowded and unsafe housing in urban areas.

(C) Forced families into lower cost new housing in greenfields at the urban-rural interface with longer commute times and a higher exposure to fire hazard.

(D) Forced public employees, health care providers, teachers, and others, including critical safety personnel, into more affordable housing farther from the communities they serve, which will
exacerbate future disaster response challenges in high-cost, high-congestion areas and increase risk to life. (E) Driven families out of the state or into communities away from good schools and services, making the ZIP Code where one grew up the largest determinate of later access to opportunities and social mobility, disrupting family life, and increasing health problems due to long commutes that may exceed three hours per day.

(7) The housing crisis has been exacerbated by the additional loss of units due to wildfires in 2017 and 2018, which impacts all regions of the state. The Carr Fire in 2017 alone burned over 1,000 homes, and over 50,000 people have been displaced by the Camp Fire and the Woolsey Fire in 2018. This temporary and permanent displacement has placed additional demand on the housing market and has resulted in fewer housing units available for rent by low-income individuals.

(8) Individuals who lose their housing due to fire or the sale of the property cannot find affordable homes or rental units and are pushed into cars and tents.

(9) Costs for construction of new housing continue to increase. According to the Terner Center for Housing Innovation at the University of California, Berkeley, the cost of building a 100-unit affordable housing project in the state was almost $425,000 per unit in 2016, up from $265,000 per unit in 2000.

(10) Lengthy permitting processes and approval times, fees and costs for parking, and other requirements further exacerbate cost of residential construction.

(11) The housing crisis is severely impacting the state’s economy as follows:

(A) Employers face increasing difficulty in securing and retaining a workforce.

(B) Schools, universities, nonprofits, and governments have difficulty attracting and retaining teachers, students, and employees, and our schools and critical services are suffering.

(C) According to analysts at McKinsey and Company, the housing crisis is costing California $140 billion a year in lost economic output.

(12) The housing crisis also harms the environment by doing both of the following:
(A) Increasing pressure to develop the state’s farm lands, open space, and rural interface areas to build affordable housing, and increasing fire hazards that generate massive greenhouse gas emissions.

(B) Increasing greenhouse gas emissions from longer commutes to affordable homes far from growing job centers.

(13) Homes, lots, and structures near good jobs, schools, and transportation remain underutilized throughout the state and could be rapidly remodeled or developed to add affordable homes without subsidy where they are needed with state assistance.

(14) Reusing existing infrastructure and developed properties, and building more smaller homes with good access to schools, parks, and services, will provide the most immediate help with the lowest greenhouse gas footprint to state residents.

(b) In light of the foregoing, the Legislature hereby declares a statewide housing emergency, to be in effect until January 1, 2030.

(c) It is the intent of the Legislature, in enacting the Housing Crisis Act of 2019, to do both of the following:

1) Suspend certain restrictions on the development of new housing during the period of the statewide emergency described in subdivisions (a) and (b).
2) Work with local governments to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement.

SEC. 3. Section 65589.5 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(G) The majority of California renters, more than 3,000,000
households, pay more than 30 percent of their income toward rent
and nearly one-third, more than 1,500,000 households, pay more
than 50 percent of their income toward rent.
When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

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

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

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

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

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

It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).
(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas. 

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

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.
(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

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

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

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

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

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

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

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

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

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

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

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

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

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

2. “Housing development project” means a use consisting of any of the following:
   (A) Residential units only.
   (B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
   (C) Transitional housing or supportive housing.

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

4. “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.
(5) Notwithstanding any other law, until January 1, 2030, “deemed complete” means that the applicant has submitted a complete initial preliminary application pursuant to Section 65941.1.

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

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

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

(7) “Lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(8) Until January 1, 2030, “objective standard or criteria” means one that involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.

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

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect
at the time that a complete initial application was submitted pursuant to Section 65941.1, the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

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

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

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

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

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

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

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

(k) (1) (A) (i) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii):

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

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence.
(III) (ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a complete initial preliminary application was submitted.

(ib) This subclause shall become inoperative on January 1, 2030.

(ii) If the court finds that one of the conditions in clause (i) is met, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney’s fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency’s progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and
moderate-income households, and federal HOME Investment
Partnerships Program and Community Development Block Grant
Program funds. The local agency shall commit and expend the
money in the local housing trust fund within five years for the sole
purpose of financing newly constructed housing units affordable
to extremely low, very low, or low-income households. After five
years, if the funds have not been expended, the money shall revert
to the state and be deposited in the Building Homes and Jobs Fund,
if Senate Bill 2 of the 2017–18 Regular Session is enacted, or
otherwise in the Housing Rehabilitation Loan Fund, for the sole
purpose of financing newly constructed housing units affordable
to extremely low, very low, or low-income households.
  (ii) If any money derived from a fine imposed pursuant to this
subparagraph is deposited in the Housing Rehabilitation Loan
Fund, then, notwithstanding Section 50661 of the Health and Safety
Code, that money shall be available only upon appropriation by
the Legislature.
  (C) If the court determines that its order or judgment has not
been carried out within 60 days, the court may issue further orders
as provided by law to ensure that the purposes and policies of this
section are fulfilled, including, but not limited to, an order to vacate
the decision of the local agency and to approve the housing
development project, in which case the application for the housing
development project, as proposed by the applicant at the time the
local agency took the initial action determined to be in violation
of this section, along with any standard conditions determined by
the court to be generally imposed by the local agency on similar
projects, shall be deemed to be approved unless the applicant
consents to a different decision or action by the local agency.
  (2) For purposes of this subdivision, “housing organization”
means a trade or industry group whose local members are primarily
engaged in the construction or management of housing units or a
nonprofit organization whose mission includes providing or
advocating for increased access to housing for low-income
households and have filed written or oral comments with the local
agency prior to action on the housing development project. A
housing organization may only file an action pursuant to this
section to challenge the disapproval of a housing development by
a local agency. A housing organization shall be entitled to
reasonable attorney’s fees and costs if it is the prevailing party in
an action to enforce this section.

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

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

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

(o) (1) Subject to paragraphs (2) and (5), (6), a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a complete initial preliminary application is was submitted pursuant to Section 65941.1.

(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the initial preliminary application is was submitted pursuant to Section 65941.1 in the following circumstances:

(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a complete initial preliminary application is was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a complete initial preliminary application is was submitted is necessary to mitigate an impact of the project to a less than significant level pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(D) The housing development project has not commenced construction within three years following the date that the project received final approval. For purposes of this subparagraph, “final approval” means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:
(i) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.

(ii) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

(E) The housing development project is revised following submittal of a complete initial preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver or similar provision. For purposes of this subdivision, “square footage of construction” means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a complete initial preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the complete initial application was submitted.

(4) For purposes of this subdivision, “ordinances, policies, and standards” means includes general plan, community plan, specific plan, zoning, and design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall become inoperative on January 1, 2030.

(p) This section shall be known, and may be cited, as the Housing Accountability Act.
SEC. 4. Section 65905.5 is added to the Government Code, to read:

65905.5. (a) (1) Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time a complete initial application was submitted pursuant to Section 65941.1, an application is deemed complete, a city or county shall not conduct more than five de novo hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing. "Hearing in connection with the approval of that housing development project. The city or county shall consider and either approve or disapprove the application at any of the five hearings allowed under this section consistent with the applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)), except that, subject to paragraph (2), the city or county shall act to either approve or disapprove the permit within 12 months from when the date on which the application is deemed complete (65920)). The city or county shall schedule each hearing to occur within 30 days following the request by the applicant, or an earlier date if otherwise required by law. The city or county shall not continue any hearing subject to this section to another date.

(2) Notwithstanding paragraph (1), the 12 month period shall be extended for a time period equal to the amount of time that elapses after a public agency has transmitted a determination regarding the sufficiency of an application until the applicant submits revised materials.

(b) For purposes of this section:

(1) "Deemed complete" means that the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time when the application was submitted.

(2) "Hearing" includes any public hearing, workshop, or similar meeting conducted by the city or county with respect to the housing development project, whether by the legislative body of the city or county, the planning agency established pursuant to Section 65100, or any other agency, department, board, or commission of the city or county or any committee or subcommittee thereof.
(3) “Housing development project” has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(c) (1) For purposes of this section, a housing development project shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent, compliant, or in conformity.

(e)

(2) A proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan. If the local agency complies with the written documentation requirements of paragraph (2) of subdivision (j) of Section 65589.5, the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning that is consistent with the general plan; however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(d) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

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

SEC. 5. Section 65913.3 is added to the Government Code, to read:

65913.3. (a) (1) As used in this section:

(A)

(1) (A) Except as otherwise provided in subparagraph (B), “affected city” means a city, including a charter city, for which the Department of Housing and Community Development determines, in any calendar year, pursuant to subdivision (f), that the average of both of the following amounts exceeds ___: is greater than zero:
(i) The percentage by which the city’s average rate of rent exceeded 130 percent of the national median rent in 2017, based on the federal 2013–2017 American Community Survey 5-year Estimates.

(ii) The percentage by which the vacancy rate for residential rental units is less than the national vacancy rate, based on the federal 2013–2017 American Community Survey 5-year Estimates.

(B) Notwithstanding subparagraph (A), “affected city” does not include any city that has a population of 5,000 or less and is not located within an urban core.

(2) “Affected county” means a county in which at least 50 percent of the cities located within the territorial boundaries of the county are affected cities.

(3) Notwithstanding any other law, for purposes of any action that this section prohibits an affected county or an affected city from doing, “affected county or affected city” and “affected city” includes the electorate of the affected county or affected city, as applicable, exercising its local initiative or referendum power with respect to any act that is subject to that power by other law, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the affected county or affected city.

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

(b) Notwithstanding any other law, with respect to land where housing is an allowable use, use on or after January 1, 2018, an affected county or an affected city, as applicable, shall not do either of the following:

(1) Impose any new, or increase or enforce any existing, requirement that a proposed housing development include parking, as applicable:

(A) A minimum parking requirement if the proposed housing development is within one-quarter mile of a rail stop in an affected city that meets either of the following:

(i) The affected city is located in a county with a population of greater than 700,000.

(ii) The affected city has a population of 100,000 or greater and is located in a county with a population of 700,000 or less.
(B) A minimum parking requirement in excess of 0.5 spaces per unit in affected cities that are not subject to subparagraph (A).

(2) (A) Subject to subparagraphs (B) and (C), charge any fee, as that term is defined in subdivision (b) of Section 66000, or impose any other exaction imposed in connection with the approval of a development project for the approval of a housing development project in excess of the amount of fees or other exactions that would have applied to the proposed housing development project as of January 1, 2018. For purposes of this subparagraph, “other exaction” includes, but is not limited to, sewer and water connection charges, community benefit charges, and requirements that the project include public art.

(B) Notwithstanding subparagraph (A) and except as otherwise provided in subparagraph (C), the affected county or affected city shall not charge any fee, as that term is defined in subdivision (b) of Section 66000, in connection with the approval of any unit within a housing development that meets the following criteria:

(i) The unit is affordable to persons and families with a household income equal to or less than 80 percent of the area median income.

(ii) The unit is subject to a recorded affordability restriction for at least 55 years.

(C) Notwithstanding subparagraph (A), an affected city or affected county may impose an increase in a fee, charge, or other monetary exaction resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee, charge, or other monetary exaction.

(D) (i) Notwithstanding any provision of this paragraph to the contrary, an affected county or affected city may charge a fee that is in lieu of a housing development’s compliance with any requirement imposed by the affected county or affected city, as applicable, to include a certain percentage of affordable units.

(ii) Nothing in this section prevents an affected county or an affected city from charging a fee that is in lieu of a housing development’s compliance with any requirement imposed by the affected county or affected city, as applicable, to include a certain percentage of affordable units.

(E) An affected county or affected city shall not deny or refuse to approve a housing development project on the basis of an
applicant’s failure or refusal to pay an amount of fee or other exaction that exceeds the amount allowed under subparagraph (A) or any fee that the affected county or affected city is prohibited from charging pursuant to subparagraph (B).

(c) A proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria in effect as of January 1, 2018, but the zoning for the project site is inconsistent with the general plan. If the local agency complies with the written documentation requirements of paragraph (2) of subdivision (j) of Section 65589.5, the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning that is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(d) If the affected county or affected city approves an application for a conditional use permit for a proposed housing development project and that project would have been eligible for a higher density under the affected county’s or affected city’s general plan land use designation and zoning ordinances as in effect prior to January 1, 2018, the affected county or affected city shall allow the project at that higher density.

(e) (1) Notwithstanding any other provision of this section, if a proposed housing development project subject to this section would require the demolition of residential property as described in paragraph (2), an affected county or an affected city may only approve that housing development if all of the following apply:

(A) There is no net loss of units being rented at an affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) The proposed housing development project is at least as dense as increases density above the density of the existing residential use of the property, property, including an increased number of deed-restricted low-income units.
(C) Existing residents are allowed to occupy their units until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(D) The developer agrees to provide both of the following:

(i) Relocation benefits to the occupants of those affordable residential rental units, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(ii) A right of first refusal for units available in the new housing development project at rents commensurate with the occupants’ previous rent or compensation to previous occupants who will be displaced. Affordable to the household at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(E) The affected county or city is not otherwise prohibited from approving the demolition of the affordable rental units pursuant to subparagraph (A), (B).

(2) For purposes of this subdivision, “residential property” means:

(A) Residential rental units that are any of the following:

(i) Assisted pursuant to Section 8 of the United States Housing Act of 1937.

(ii) Subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(iii) Affordable to persons with a household income equal to or less than 80 percent of the area median income.

(B) A residential structure containing residential dwelling units currently occupied by tenants, or were previously occupied by tenants if those dwelling units were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 and subsequently offered for sale by the subdivider or subsequent owner of the property.

(3) Any units for which a developer provides relocation assistance or a right of first refusal pursuant to subparagraph (D) of paragraph (1) shall be considered in determining whether the housing development project satisfies the requirements, if applicable, of an inclusionary housing ordinance of the affected county or affected city requiring that the development include a
certain number of units affordable at the applicable household
income levels of the household.

(f) The Department of Housing and Community Development
shall determine those cities and counties in this state that are
affected cities and affected counties, in accordance with subdivision
(a), within the following time periods:
(1) The department shall make an initial determination pursuant
to this subdivision no later than June 30, 2020. The department’s
determination shall remain valid until the department’s second
determination pursuant to paragraph (2).
(2) The department shall review its initial determination and
make a second determination pursuant to this subdivision no later
than June 30, 2025. The department’s determination shall remain
valid until January 1, 2030.

(g) (1) Except as provided in paragraphs (3) and (4) and
in subdivision (h), this section shall prevail over any conflicting
 provision of this title or other law regulating housing development
in this state to the extent that this section more fully advances
the intent specified in paragraph (2).
(2) It is the intent of the Legislature that this section be construed
so as to maximize the development of housing within this state.
Any exception to the requirements of this section, including an
exception for the health and safety of occupants of a housing
development project, shall be construed narrowly.
(3) This section shall not be construed as prohibiting planning
standards that allow greater density in or reduce the costs to a
housing development project or mitigation measures that are
necessary to comply with the California Environmental Quality
Act (Division 13 (commencing with Section 21000) of the Public
Resources Code).
(4) This section shall not apply to a housing development project
located within a very high fire hazard severity zone. For purposes
of this paragraph, “very high fire hazard severity zone” has the
same meaning as provided in Section 51177.
(h) (1) Nothing in this section supersedes, limits, or otherwise
modifies the requirements of, or the standards of review pursuant
to, Division 13 (commencing with Section 21000) of the Public
Resources Code.
(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

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

SEC. 6. Section 65913.10 is added to the Government Code, to read:

65913.10. (a) For purposes of any state or local law, ordinance, or regulation that requires the city or county to determine whether the site of a proposed housing development project is a historic site, the city or county shall make that determination at the time the application for the housing development project is deemed complete. A determination as to whether a parcel of property is a historic site shall remain valid during the pendency of the housing development project for which the application was made.

(b) For purposes of this section, “deemed section:

(1) “Deemed complete” means that the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time when the application was submitted.

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

(c) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

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

SEC. 7. Section 65941.1 is added to the Government Code, to read:

65941.1. (a) A housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have submitted a complete initial preliminary application upon providing the following information about the
proposed project to the city, county, or city and county from which
approval for the project is being sought:

(1) The specific location.

(2) The major physical alterations to the property on which the
project is to be located.

(3) A site plan showing the location on the property, as well
as the massing, height, and approximate square footage, of each
building that is to be occupied.

(4) The proposed land uses by number of units or square feet
using the categories in the applicable zoning ordinance.

(5) The proposed number of parking spaces.

(6) Any proposed point sources of air or water pollutants.

(7) Any species of special concern known to occur on the
property.

(8) Any historic or cultural resources known to exist on the
property.

(9) The number of below market rate units and their affordability
levels.

(b) The Department of Housing and Community Development
shall adopt a standardized form that applicants for housing
development projects may use for the purpose of satisfying the
requirements for submittal of a—complete initial preliminary
application. Adoption of the standardized form shall not be subject
to Chapter 3.5 (commencing with Section 11340) of Part 1 of
Division 3 of Title 2 of the Government Code.

(c) A housing development project shall not be deemed as
having submitted a completed initial application if, following the
initial application being deemed complete, After submittal of a
preliminary application, if the development proponent revises the
project such that the number of residential units or square footage
of construction changes by 20 percent or more, exclusive of any
increase resulting from the receipt of a density bonus, incentive,
concession, waiver, or similar provision. provision, the housing
development project shall not be deemed to have submitted a
preliminary application until the development proponent resubmits
the information required by subdivision (a) so that it reflects the
revisions. For purposes of this subdivision, “square footage of
construction” means the building area, as defined by the California
Building Standards Code (Title 24 of the California Code of
Regulations).
(d) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 8. Section 65943 of the Government Code is amended to read:

65943. (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency’s submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency’s determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials described in subdivision (a), the public agency shall determine in writing whether the application as supplemented or amended by the submitted materials is complete and shall immediately transmit that determination to the applicant. In making this determination, the public agency is limited to determining whether the application as supplemented or amended includes the information required by the list and a thorough description of the specific information needed to complete the application required by subdivision (a). If the written determination is not made within
that 30-day period, the application together with the submitted
materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are
determined not to be complete pursuant to subdivision (b), the
public agency shall provide a process for the applicant to appeal
that decision in writing to the governing body of the agency or, if
there is no governing body, to the director of the agency, as
provided by that agency. A city or county shall provide that the
right of appeal is to the governing body or, at their option, the
planning commission, or both.

There shall be a final written determination by the agency on
the appeal not later than 60 calendar days after receipt of the
applicant’s written appeal. The fact that an appeal is permitted to
both the planning commission and to the governing body does not
extend the 60-day period. Notwithstanding a decision pursuant to
subdivision (b) that the application and submitted materials are
not complete, if the final written determination on the appeal is
not made within that 60-day period, the application with the
submitted materials shall be deemed complete for the purposes of
this chapter.

(d) Nothing in this section precludes an applicant and a public
agency from mutually agreeing to an extension of any time limit
provided by this section.

(e) A public agency may charge applicants a fee not to exceed
the amount reasonably necessary to provide the service required
by this section. If a fee is charged pursuant to this section, the fee
shall be collected as part of the application fee charged for the
development permit.

(f) Each city and each county shall make copies of any list
compiled pursuant to Section 65940 with respect to information
required from an applicant for a housing development project,
project, as that term is defined in paragraph (2) of subdivision (h)
of Section 65589.5, available both (1) in writing to those persons
to whom the agency is required to make information available
under subdivision (a) of that section, and (2) publicly available on
the internet website of the city or county.

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

SEC. 9. Section 65943 is added to the Government Code, to
read:
(a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency’s determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant’s written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the
submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

(f) This section shall become operative on January 1, 2030.

SEC. 10. Section 65950 of the Government Code is amended to read:

65950. (a) A public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) One hundred twenty—Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c).

(3) Ninety-Sixty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c) and all of the following conditions are met:

(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with
Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(4) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.

(5) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.

(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of paragraphs (2) and (3) of subdivision (a) and Section 65952, “development project” means a use consisting of either of the following: housing development project, as that term is defined in paragraph (2) of subdivision (h) of Section 65589.5.

(1) Residential units only.

(2) Mixed use developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50 percent of the total square footage of the development and are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, “neighborhood commercial” means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.
(d) For purposes of this section, “lead agency” and “negative declaration” have the same meaning as defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

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

SEC. 11. Section 65950 is added to the Government Code, to read:

65950. (a) A public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) One hundred twenty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c).

(3) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c) and all of the following conditions are met:

(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline
for application for that assistance, the requirement that one of the
approvals of the development project by the lead agency is a
prerequisite to the application for or approval of the application
for financial assistance, and that the financial assistance is
necessary for the project to be affordable as required pursuant to
subparagraph (A).
(C) There is confirmation that the application has been made
to the public agency or federal agency prior to certification of the
environmental impact report.
(4) Sixty days from the date of adoption by the lead agency of
the negative declaration, if a negative declaration is completed
and adopted for the development project.
(5) Sixty days from the determination by the lead agency that
the project is exempt from the California Environmental Quality
Act (Division 13 (commencing with Section 21000) of the Public
Resources Code), if the project is exempt from that act.
(b) This section does not preclude a project applicant and a
public agency from mutually agreeing in writing to an extension
of any time limit provided by this section pursuant to Section
65957.
(c) For purposes of paragraphs (2) and (3) of subdivision (a)
and Section 65952, “development project” means a use consisting
of either of the following:
(1) Residential units only.
(2) Mixed-use developments consisting of residential and
nonresidential uses in which the nonresidential uses are less than
50 percent of the total square footage of the development and are
limited to neighborhood commercial uses and to the first floor of
buildings that are two or more stories. As used in this paragraph,
“neighborhood commercial” means small-scale general or
specialty stores that furnish goods and services primarily to
residents of the neighborhood.
(d) For purposes of this section, “lead agency” and “negative
declaration” have the same meaning as defined in Sections 21067
and 21064 of the Public Resources Code, respectively.
(e) This section shall become operative on January 1, 2030.
SEC. 12. Section 65950.2 is added to the Government Code,
to read:
65950.2. (a) Notwithstanding any other law, the deadlines
specified in this article are mandatory.
(b) This section shall remain in effect only until January 1, 2030,
and as of that date is repealed.

SEC. 11.
SEC. 13. Chapter 12 (commencing with Section 66300) is
added to Division 1 of Title 7 of the Government Code, to read:

Chapter 12. Housing Crisis Act of 2019

66300. (a) As used in this section:
(1) (A) Except as otherwise provided in subparagraph (B),
“affected city” means a city, including a charter city, for which
the Department of Housing and Community
Development determines, in any calendar year, pursuant to
subdivision (d), that the average of both of the following amounts
exceeds zero:
(i) The percentage by which the city’s average rate of rent
exceeded 130 percent of the national median rent in 2017, based
on the federal 2013–2017 American Community Survey
5-year Estimates.
(ii) The percentage by which the vacancy rate for residential
rental units is less than the national vacancy rate, based on the
federal 2013-2017 American Community Survey 5-year Estimates.
(B) Notwithstanding subparagraph (A), “affected city” does not
include any city that has a population of 5,000 or less and is not
located within an urban core.
(2) “Affected county” means a county in which at least 50
percent of the cities located within the territorial boundaries of the
county are affected cities.
(3) Notwithstanding any other law, “affected county“ and
“affected city” includes the electorate of an affected county or city
exercising its local initiative or referendum power, whether that
power is derived from the California Constitution, statute, or the
charter or ordinances of the affected county or city.
(4) “Department” means the Department of Housing and
Community Development.
(5) “Development policy, standard, or condition” means any of
the following:
(A) A provision of, or amendment to, a general plan.
(B) A provision of, or amendment to, a specific plan.

(C) A provision of, or amendment to, a zoning ordinance.

(D) A subdivision standard or criterion.

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

(7) “Objective design standard” means a design standard that involve no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.

(b) (1) Notwithstanding any other law, with respect to land where housing is an allowable use, use on or after January 1, 2018, an affected county or an affected city shall not enact a development police, standard, or condition that would have any of the following effects:

(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, “less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, for property zoned for residential use in the affected county’s or city’s zoning ordinance, or anything that would lessen the intensity of housing, as defined in paragraph (1) of subdivision (f).

(B) (i) Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium or for projects specifically identified as existing restricted affordable housing.
(ii) The affected county or affected city, as applicable, shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, the department. The department shall approve a zoning ordinance submitted to it pursuant to this subparagraph only if it determines that the zoning ordinance satisfies the requirements of this subparagraph. If the department denies approval of a zoning ordinance imposing a moratorium or similar restriction or limitation on housing development as inconsistent with this subparagraph, that ordinance shall be deemed void.

(C) Imposing or enforcing design standards established on or after January 1, 2018, that are not objective design standards.

(D) Except as provided in subparagraph (E), establishing or implementing any provision that:

   (i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.

   (ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.

   (iii) Limits the population of the affected county or affected city, as applicable.

(E) Notwithstanding subparagraph (D), an affected city or county may enforce a limit on the number of approvals or permits or a cap on the number of housing units that can be approved or constructed if the provision of law imposing the limit was approved by voters prior to January 1, 2005, and the affected city or county is located in a predominantly agricultural county. For the purposes of this subparagraph, “predominantly agricultural county” means a county that meets both of the following, as determined by the most recent California Farmland Conversion Report produced by the Department of Conservation:

   (i) Has more than 550,000 acres of agricultural land.

   (ii) At least one-half of the county area is agricultural land.

(2) Any development policy, standard, or condition enacted on or after January 1, 2018, that does not comply with this section shall be deemed void.
(c) Notwithstanding subdivisions (b) and (d), (e), an affected county or affected city may enact a development policy, standard, or condition to prohibit the commercial use of land that is designated for residential use, including, but not limited to, short-term occupancy of a residence, consistent with the authority conferred on the county or city by other law.

(d) The Department of Housing and Community Development shall determine those cities and counties in this state that are affected cities and affected counties, in accordance with subdivision (a), within the following time periods:

1. The department shall make an initial determination pursuant to this subdivision no later than June 30, 2020. The department’s determination shall remain valid until the department’s second determination pursuant to paragraph (2).
2. The department shall review its initial determination and make a second determination pursuant to this subdivision no later than June 30, 2025. The department’s determination shall remain valid until January 1, 2030.

(e) (1) Except as provided in paragraphs (3) and (4), in subdivision (g), this section shall prevail over any conflicting provision of this title or other law regulating housing development in this state to the extent that this section more fully advances the intent specified in paragraph (2).
2. It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state. Any exception to the requirements of this section, including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly.
3. This section shall not be construed as prohibiting the adoption or amendment of a zoning ordinance, development policy, standard, or condition in a manner that:
   A. Allows greater density.
   B. Facilitates the development of housing.
   C. Reduces the costs to a housing development project.
   D. Imposes or implements mitigation measures as necessary to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
(4) This section shall not apply to a housing development project located within a very high fire hazard severity zone. For purposes of this paragraph, “very high fire hazard severity zone” has the same meaning as provided in Section 51177.

(e) (1) Notwithstanding Section 9215, 9217, or 9323 of the Elections Code or any other provision of law, except the California Constitution and as provided in paragraph (2), any requirement that local voter approval, or the approval of a supermajority of any body of the affected county or the affected city, be obtained to increase the allowable intensity of housing, to establish housing as an allowable use, or to provide services and infrastructure necessary to develop housing, is hereby declared against public policy and void. For purposes of this subdivision, “intensity of housing” is broadly defined to include, but is not limited to, height, density, or floor area ratio, or open space or lot size requirements, or setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would be a less intensive use or reduction in the intensity of land use as defined in this subdivision.

(2) This section shall not be construed to void a height limit, urban growth boundary, or urban limit established by the electorate of an affected county or an affected city on or before January 1, 2018.

(f) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(g) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

(h) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.
This chapter shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 12. Section 17921.8 is added to the Health and Safety Code, to read:

17921.8. (a) As used in this section, “occupied substandard building” means a building in which one or more persons reside that an enforcement agency finds is in violation of any provision of this part, any building standards published in the State Building Standards Code, or any other rule or regulation adopted pursuant to this part, other than the building standards and rules and regulations adopted pursuant to this section.

(b) (1) (A) Except as provided in paragraph (2), the department shall propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and shall adopt, amend, or repeal other rules and regulations for the protection of the public health, safety, and general welfare of the occupant and the public, applicable to occupied substandard buildings in lieu of those building standards; rules, and regulations adopted pursuant to Section 17921:

(B) The building standards proposed, and the rules and regulations adopted or amended, pursuant to this paragraph shall establish minimum health and safety standards for occupied substandard buildings, as follows:

(i) The building standards, rules, and regulations shall require that an occupied substandard building include adequate sanitation and exit facilities and comply with seismic safety standards.

(ii) The building standards, rules, and regulations shall permit those conditions proscribed by Section 17920.3 which do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant.

(iii) Notwithstanding Section 17922, the building standards, rules, and regulations need not be substantially the same as those contained in the most recent editions of the international or uniform industry codes specified by that section.

(2) Notwithstanding paragraph (1), the building standards proposed to be adopted or amended, and the rules and regulations adopted or amended, by the State Fire Marshal pursuant to subdivision (b) of Section 17921 shall apply to an occupied substandard building.
(c) Notwithstanding any other law, an occupied substandard building that complies with the building standards, rules, and regulations adopted pursuant to this section shall be deemed to be in compliance with this part, the building standards published in the State Building Standards Code relating to this part, or any other rule or regulation promulgated pursuant to this part, for a period of seven years following the date on which an enforcement agency finds that the occupied substandard building is otherwise in violation of this part or any building standard, rule, or regulation adopted pursuant to this part. If, at the end of this seven-year period, the enforcement agency finds that the occupied substandard building is still in violation of any provision of this part, any building standards published in the State Building Standards Code, or any other rule or regulation adopted pursuant to this part, the occupied substandard building shall be subject to enforcement as provided in this part.

(d) (1) This section, other than subdivision (c), shall become inoperative on January 1, 2030.

(2) This section shall remain in effect only until January 1, 2037, and as of that date is repealed.

SEC. 14. Section 17980.12 is added to the Health and Safety Code, to read:

17980.12. (a) As used in this section, “occupied substandard building or unit” means a building or unit in which one or more persons reside that an enforcement agency finds is in violation of any provision of this part, any building standards published in the California Building Standards Code, or any other rule or regulation adopted pursuant to this part.

(b) (1) An enforcement agency that issues to an owner of an occupied substandard building or unit in a zone where residential use is a permitted use, including areas zoned for mixed use, a notice to correct a violation of any provision of any building standard adopted pursuant to this part, or to abate a nuisance pursuant to this part, shall include in that notice a statement that the owner of the occupied substandard building or unit has the right to request a delay in enforcement of up to seven years.

(2) The owner of an occupied substandard building or unit that receives a notice to correct a violation or abate a nuisance, as described in paragraph (1), may submit an application to the enforcement agency, in the form and manner prescribed by the
enforcement agency, requesting that the enforcement of the
violation be delayed for up to seven years on the basis that
correcting the violation or abating the nuisance is not necessary
to protect health and safety.

(3) The enforcement agency shall grant an application submitted
pursuant to paragraph (2) and delay enforcement if it determines
that correcting the violation or abating the nuisance is not
necessary to protect health and safety. An enforcement agency
may require violations or nuisances that impact health and safety
to be corrected or abated earlier than seven years.

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

SEC. 15. The Legislature finds and declares that the provision
of adequate housing, in light of the severe shortage of housing at
all income levels in this state, is a matter of statewide concern and
is not a municipal affair as that term is used in Section 5 of Article
XI of the California Constitution. Therefore, the provisions of this
act apply to all cities, including charter cities.

SEC. 16. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution for certain
costs that may be incurred by a local agency or school district
because, in that regard, this act creates a new crime or infraction,
eliminates a crime or infraction, or changes the penalty for a crime
or infraction, within the meaning of Section 17556 of the
Government Code, or changes the definition of a crime within the
meaning of Section 6 of Article XIII B of the California
Constitution.

However, if the Commission on State Mandates determines that
this act contains other costs mandated by the state, reimbursement
to local agencies and school districts for those costs shall be made
pursuant to Part 7 (commencing with Section 17500) of Division
4 of Title 2 of the Government Code.

SEC. 17. 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 C-2
TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cindy Owens, Policy and Management Analyst

DATE: May 22, 2019

SUBJECT: Oppose Assembly Bill 1279 (Bloom) – High Resource Areas

ATTACHMENTS: 1. Summary Memo – Assembly Bill 1279
2. Bill Text – Assembly Bill 1279

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 1279 (Bloom) – High Resource Areas (AB 1279) involves a policy matter that is addressed within the adopted Legislative Platform language. Specifically, the following statement is in the adopted Platform:

Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances

The City's state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for AB 1279 to the City (Attachment 1). As AB 1279 allows for “by-right” approval of certain housing development projects in high resource areas, staff will be writing a letter of opposition for the Mayor to sign unless otherwise directed by the Liaisons.

Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff. Should the Liaisons recommend a position other than oppose, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
       Silvia Solis Shaw, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
       Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1279 (Bloom) Planning and Zoning: Housing Development: High-Resource Areas.

Introduction and Background
AB 1279 was introduced by Assembly Member Bloom and is sponsored by the California Rural Legal Assistance Foundation and Western Center on Law & Poverty. This bill would require “by-right” approval of certain housing development projects in high resource areas.

Specifically, this bill would:
- Define the following a “high-resource area” as an area of high opportunity and low residential density that is not experiencing gentrification and displacement and is not at high risk for future gentrification or displacement;
- Require the Department of Housing and Community Development (HCD) in collaboration with California Fair Housing Task Force by January 1, 2021 and every five years thereafter, to designate high-resource areas in consultation with relevant stakeholders;
- Allow cities and counties to appeal to HCD to remove the “high-resource” designation to areas within their jurisdictions;
- Upon request of a developer a housing development project shall be use by right in a high-resource area despite of city or county’s general plan, zoning ordinance, or regulation if it satisfies the following criteria:
  - If the development project is in any portion of a high-resource area where allowable uses are limited to single family residential development:
    - The project consists of no more than four residential units and has a height no more than 20 feet;
    - Either of the following apply:
      - The initial sales price or initial rent for units in the development project does not exceed the amount affordable housing cost or affordable rent with household incomes less than 100% of area median income or;
      - The initial sales price or rent exceeds the limit above, the developer agrees to pay a fee to the city or county equal to 10%;
    - The project complies with objective design standards of the city or county. Prohibits city or county from requiring development project to comply with an objective design standard that would preclude development from having four units or impose limitation of less than 20 feet.
  - If the development project is in any portion of a high-resource area where residential use is an allowable use:
- The project consists of no more than 40 residential units and has a height no more than 30 feet;
- The project is on a site that is ¼ acre or larger and is either adjacent to an arterial road or within a central business district;
- Projects of more than 10 units have at least 10% of their units dedicated to affordable housing for low-income households and 5% to very low-income households;
- The project complies with all objective design standards and prohibits the city or county from requiring the project to comply with standards that would preclude the development from including up to 40 units or impose a height limit less than 30 feet.
  - If the development project is in any portion of a high-resource area where residential or commercial uses are an allowable use:
    - The project consists of no more than 100 residential units and has a height no more than 55 feet;
    - The project is on a site that is ½ acre or larger and is either adjacent to an arterial road or within a central business district;
    - The project has at least 25% of its units dedicated to affordable housing for low-income households and 25% to very low-income households;
    - The project complies with all objective design standards and prohibits the city or county from requiring the project to comply with standards that would preclude the development from including up to 100 units or impose a height limit less than 55 feet.

- Prohibit a development from being eligible as a use by right if any of the following apply:
  - The project would require the demolition of rental housing that is occupied or has been occupied within the past 10 years;
  - The project is proposed to be located that is in a coastal zone, prime farmland or farmland of statewide importance, wetlands, a very high or high fire hazard severity zone, a hazardous waste site, within a delineated earthquake fault zone, a special flood hazard area, a regulatory floodway, lands identified for conservation in an adopted natural community conservation plan, habitat for protected species, lands under conservation easement;
  - The project is proposed on a site that is not an infill site.

Status of Legislation
The bill passed out of the Assembly Appropriations Committee on May 16, 2019.

Support and Opposition
The supporters of the bill say it will address exclusionary zoning practices in high resource areas which can make racial and economic segregation worse along with reduce opportunities for lower-wage workers to live closer to where they work. They further argue it will facilitate mixed-income and affordable housing in high resource areas with lower community density.

There is no formal opposition to the bill; however the California State Association of counties and the Urban Counties of California have expressed concerns. They take issue with the bill’s “delegation of legislative prerogative to the executive branch to develop definitions that will dictate communities and neighborhoods where AB 1279’s provisions overriding local zoning would apply” and would prefer those definitions to be in statute. Their concerns also include the appeals process and they’ve requested that
the bill require local plans to allow for a similar number of units at similar levels of affordability as would be similar to AB 1279’s by-right provisions.

**Support**
California Rural Legal Assistance Foundation [SPONSOR]
Western Center On Law & Poverty, Inc. [SPONSOR]
Dan Kalb, City Councilmember, City of Oakland
Public Advocates Inc.
Techequity Collaborative

**Opposition**
None
Attachment 2
An act to add Section 65913.6 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 1279, as introduced, Bloom. Planning and zoning: housing development: high-resource areas.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. That law allows a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process not subject to a conditional use permit if the development satisfies certain objective planning standards, including that the development is (1) located in a locality determined by the Department of Housing and Community Development to have not met its share of the regional housing needs for the reporting period, and (2) subject to a requirement mandating a minimum percentage of below-market rate housing, as provided.

This bill would require the department to designated areas in this state as high-resource areas, as provided, by January 1, 2021, and every 5 years thereafter. The bill would authorize a city or county to appeal the designation of an area within its jurisdiction as a high-resource area during that 5-year period. In any area designated as a high-resource area, the bill would require that a housing development project be a use...
by right, upon the request of a developer, in any high-resource area
designated pursuant be a use by right in certain parts of the high-resource
area if those projects meet specified requirements, including specified
affordability requirements. For certain development projects where the
initial sales price or initial rent exceeds the affordable housing cost or
affordable rent to households with incomes equal to or less than 100%
of the area median income, the bill would require the applicant agree
to pay a fee equal to 10% of the difference between the actual initial
sales price or initial rent and the sales price or rent that would be
affordable, as provided. The bill would require the city or county to
deposit the fee into a separate fund reserved for the construction or
preservation of housing with an affordable housing cost or affordable
rent to households with a household income less than 50% of the area
median income.

This bill would require that the applicant agree to, and the city and
county ensure, the continued affordability of units affordable to lower
income and very low income households for 45 years, for rented units,
or 55 years, for owner-occupied years. The bill would provide that a
development housing is ineligible as a use by right under these
provisions if it would require the demolition of rental housing that is
currently occupied by tenants, or has been occupied by tenants within
the past 10 years, or is located in certain areas. 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.

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 does not apply to the ministerial
approval of projects.

This bill, by requiring approval of certain development projects as a
use by right, would expand the exemption for ministerial approval of
projects under CEQA.

By adding to the duties of local planning officials with respect to
approving certain development projects, 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:

(1) “Department” means the Department of Housing and Community Development.

(2) “High-resource area” means an area of high opportunity and low residential density that is not currently experiencing gentrification and displacement, and that is not at a high risk of future gentrification and displacement, designated by the department pursuant to subdivision (b).

(3) “Infill site” means a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(4) (A) “Use by right” means that the local government’s review of the development project under this section 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 (Division 2 (commencing with Section 66410)).

(B) A local ordinance may provide that “use by right” does not exempt the development project 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.

(b) (1) No later than January 1, 2021, and every five years thereafter, the department shall designate areas in this state as
high-resource areas in accordance with this section. In designating
areas of the state as high-resource areas, the department shall
collaborate with the California Fair Housing Task Force, convened
by the department and the California Tax Credit Allocation
Committee, and shall solicit input from members of the public and
ensure participation from all economic segments of the community
as well as members of those classes protected pursuant to Section
12955. Except as provided in paragraph (2), the designation of an
area as a high-resource area shall remain valid for five years.

(2) (A) A city or county that includes within its jurisdictional
boundaries an area designated as a high-resource area pursuant to
this section may appeal to the department to remove that
designation at any point during the five-year period specified in
paragraph (1) by submitting an appeal in a form and manner
prescribed by the department.

(B) The department may remove the designation of a city or
county that submits an appeal pursuant to subparagraph (A) if it
finds, based on substantial evidence, that the city or county has
adopted policies after the area was designated as a high-resource
area that meet the following requirements:

(i) The policies permit development of higher density housing
in the high-resource area, in a manner substantially similar to
subdivision (c), than were allowed under the city’s or county’s
policies in effect at the time the area was designated as a high-resource
area.

(ii) The policies are sufficient to accommodate a similar number
of housing units within the area and at similar levels of affordability
as would be allowed under subdivision (c).

(iii) The policies are consistent with the city’s or county’s
obligation to affirmatively further fair housing pursuant to Section
8999.50.

(C) In considering an appeal of a city or county submitted
pursuant to this subparagraph (A), the department shall consult
with the California Fair Housing Task Force and shall issue a
decision within 90 days of receiving the appeal.

(D) The decision of the department regarding an appeal pursuant
to this paragraph shall be final.

(c) Notwithstanding any inconsistent provision of a city’s or
county’s general plan, specific plan, zoning ordinance, or
regulation, upon the request of a developer a housing development
project shall be a use by right in any high-resource area designated pursuant to this section if the development satisfies the following criteria:

(1) If the development project is located in any portion of the high-resource area where allowable uses are limited to single-family residential development:

(A) The development project consists of no more than four residential units and has a height of no more than 20 feet.

(B) Either of the following apply:

(i) The initial sales price or initial rent for units in the development project does not exceed the amount of affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to households with a household income equal to or less than 100 percent of the area median income, as determined by the department pursuant to Section 50093 of the Health and Safety Code.

(ii) If the initial sales price or initial rent exceeds the limit specified in clause (i), the developer agrees to pay a fee to the county or city equal to 10 percent of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable to households making up to 100 percent of the area median income, as provided in this subparagraph. The city or county shall deposit any fee received pursuant to this clause into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to households with a household income less than 50 percent of the area median income, as determined by the department pursuant to Section 50093 of the Health and Safety Code.

(C) The development project complies with all objective design standard of the city or county. However, the city or county shall not require the development project to comply with an objective design standard that would preclude the development from including up to four units or impose a maximum height limitation of less than 20 feet.

(2) If the development project is located in any portion of the high-resource area where residential use is an allowable use:
(A) The development project consists of no more than 40 residential units and has a height of no more than 30 feet.

(B) The development project is located on a site that is one-quarter acre in size or greater and is either adjacent to an arterial road or located within a central business district.

(C) (i) For development projects consisting of 10 or fewer units, either of the following apply:

(I) The initial sales price or initial rent for units in the development project does not exceed the amount of affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to households with a household income equal to or less than 100 percent of the area median income, as determined by the department pursuant to Section 50093 of the Health and Safety Code.

(II) If the initial sales price or initial rent exceeds the limit specified in subclause (I), the developer agrees to pay a fee to the county or city equal to 10 percent of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable to households making up to 100 percent of the area median income, as provided in this subparagraph. The city or county shall deposit any fee received pursuant to this subparagraph into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to households with a household income less than 50 percent of the area median income, as determined by the department pursuant to Section 50093 of the Health and Safety Code.

(ii) For development projects consisting of more than 10 units, at least 10 percent of the units in the development project have an affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to lower income households and at least 5 percent have an affordable housing cost or affordable rent to very low income households. However, if the city or county requires that the development project include a greater percentage of units that are affordable to lower income and very low income households, the development project shall comply with that greater requirement.
(D) The development project complies with all objective design standards of the city or county. However, the city or county shall not require the development project to comply with an objective design standard that would preclude the development from including up to 40 units or impose a maximum height limitation of less than 30 feet.

(3) (A) If the development project is located in any portion of the high-resource area where residential or commercial uses are an allowable use:

(i) The development project consists of no more than 100 residential units and has a height of no more than 55 feet.

(ii) The development project is located on a site that is one-half acre in size or greater and is either adjacent to an arterial road or located within a central business district.

(iii) At least 25 percent of the units in the development project have an affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to lower income households and at least 25 percent have an affordable housing cost or affordable rent to very low income households.

(iv) The development project complies with all objective design standards of the city or county. However, the city or county shall not require the development project to comply with an objective design standard that would preclude the development from including up to 100 units or impose a maximum height limitation of less than 55 feet.

(B) A development project that is a use by right pursuant to this paragraph shall be eligible for a density bonus or other incentives or concessions if it includes units within an affordable housing cost or affordable rent, as specified in Sections 50052.5 and 50053, respectively, of the Health and Safety Code, to lower income and very low income households in excess of the minimum amount required by clause (ii) of subparagraph (A).

(4) An applicant for a development project that is a use by right pursuant to paragraph (1), (2), or (3) shall agree to, and the city or county shall ensure, the continued affordability of units included in the development project that are affordable to lower income and very low income households in accordance with the applicable affordability requirement under this subdivision for at least the following periods of time:
(A) Fifty-five years for units that are rented.
(B) Forty-five years for units that are owner occupied.
(d) A development project shall not be eligible for approval as a use by right pursuant to subdivision (c) if any of the following apply:
   (1) The development project would require the demolition of rental housing that is currently occupied by tenants or has been occupied by tenants within the past 10 years.
   (2) The development project is proposed to be located on a site that is any of the following:
      (A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.
      (B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
      (C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
      (D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high- or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
      (E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

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

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall...
not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.  
(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.  
(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).  
(K) Lands under conservation easement.  
(3) The development project is proposed to be located on a site that is not an infill site.  
(e) This section shall not be construed to prevent a developer from submitting an application for a development permit in a high-resource area under the county’s or city’s general plan, specific plan, zoning ordinance, or regulation for a project that does not meet the criteria specified in subdivisions (c) and (d).  
(f) The Legislature finds and declares that ensuring residential development at greater density in high-resource areas of this state is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.  
SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIB 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 C-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 1763 (Chiu) – Planning and Zoning: Density Bonuses: Affordable Housing (AB 1763) involves a policy matter that is addressed within the adopted Legislative Platform language. Specifically, the following statement is in the adopted Platform:

**Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances**

The City’s state lobbyist, Shaw/Yoder/Antwih, Inc., provided a summary memo for AB 1763 to the City (Attachment 1). AB 1763 would alter land use policies based on transit service that is not under the authority of local jurisdictions.

As this legislation is in line with the City Council adopted Legislative Platform, staff will be writing a letter of opposition for the Mayor to sign unless otherwise directed by the Liaisons. Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff. Should the Liaisons recommend a position other than oppose, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1763 (Chiu): Planning and zoning: density bonuses: 100% affordable housing

Introduction and Overview

Density Bonus Law.
Originally enacted in 1979, density bonus law was created to help address the affordable housing shortage and to encourage development of more low and moderate income housing units. It 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.

In return for the inclusion of affordable units in a development, developers are given an increase in density over a city’s zoned density, as well as other concessions and incentives, which are intended to support the inclusion of the affordable units.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus. Failure to adopt an ordinance does not mean a city or county does not have to comply with the law. As part of the density bonus application, a developer may also request incentives, concessions and parking ratio reductions, which can vary depending on the percentage and type of affordable housing included in the project.

AB 1763 revises Density Bonus Law (DBL) to require a city or county to award a developer additional density, concessions and incentives, and height increases if 100 percent of the units in a development are restricted to lower income households.

AB 1763 would give housing developments that have 100 percent affordable units an enhanced density bonus. The author argues that zoning is often a barrier to housing development. Existing zoning - density and height - are often too low for affordable housing developments to pencil out. For affordable housing developers, more density can make a project financially feasible and give a developer the opportunity to compete for a site against a market rate developer.

AB 1763 gives 100 percent affordable housing developments an 80 percent density bonus above existing zoned density and four incentives or concessions. One-hundred percent affordable housing developments near transit would be eligible for an unlimited density bonus plus an increase in height or the floor area ratios, up to a limit.
Specifically, this bill would:

1) Require a city or county to award the following density bonuses when a developer seeks and agrees to construct a housing development that will contain 100% of the total units for lower income households:
   a) Four incentives and concessions;
   b) A density bonus that is 80% of the number of units for lower income households;
   c) For housing development within one-half mile of "a major transit stop," the city, county, or city and county, shall:
      i) Not impose any maximum controls on density;
      ii) Allow a height increase of up to three additional stories or 33 feet; and,
      iii) Allow an increase in the allowable floor area ratio of up to 55% relative to the underlying limit or 4.25, whichever is greater.
   d) For a housing development that is located within one-half mile of "a high quality transit corridor" a city, county, or city and county, shall:
      i) Not impose any maximum controls on density;
      ii) Allow a height increase up to two additional stories, or 22 feet; and,
      iii) Allow an increase in the floor area ratio of up to 50% relative to the underlying limit or 3.75, whichever is greater.

2) Define a "major transit stop" to mean a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

3) Define a "high quality transit corridor" means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

Legislative Status
AB 1763 is currently pending on the Assembly Floor.

Proponents argue that an affordable home is the foundation that allows each of us to care for our families; to be able to get ready to each day and to go our jobs; to live with dignity. While there has been progress over the last two years in addressing the housing and homelessness crises, there are still many steep challenges and barriers to building homes for people surviving on low- and moderate-incomes. The changes in the bill are intended to ensure that a maximum number of units are being built.

According to the California League of Cities, who is opposed unless amended, writes that this bill "would alter existing land use policies based on transit service that is not under the authority of local jurisdictions" and that "granting a developer an unlimited density bonus and three additional stories is too extreme in many communities...such an expansion of [density bonus law] will undermine a city's state-certified housing element and community-based housing plans."

Support / Opposition

Support
California Housing Consortium [SPONSOR]
Abode Communities
Affirmed Housing
Aids Healthcare Foundation
C&C Development
California Housing Consortium
California Rural Legal Assistance Foundation
City of San Diego
Corporation for Supportive Housing
Dan Kalb, City Councilmember, City of Oakland
EAH Housing
Habitat for Humanity California
Housing California
Many Mansions
Palm Communities
Silicon Valley at Home (Sv@Home)
Telacu
The Pacific Companies
The Kennedy Commission
Wakeland Housing And Community Development Corporation
Western Center On Law & Poverty, Inc.

Opposition
League of California Cities (unless amended)
Attachment 2
An act to amend Section 301 of the Public Utilities Code, relating to the Public Utilities Commission; 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST


Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or 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. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers’ units, are for lower income households, as defined. The bill would also require that a housing development that meets this criteria receive 4 incentives or
concessions under the Density Bonus Law. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop or a high-quality transit corridor, as defined, and additionally require the city, county, or city and county to allow an increase in height and floor area ratio in specified amounts that vary depending on whether the development is located within ½ mile of a major transit stop or a high-quality transit corridor. The bill would also make various nonsubstantive changes to the Density Bonus Law.

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.

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.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law specifies the membership of the commission, as provided.

This bill would make nonsubstantive changes to the provision related to the commission’s membership.


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

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.
(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

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

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

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

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section...
based on any changes to the project during the course of
development.

(b) (1) A city, county, or city and county shall grant one density
bonus, the amount of which shall be as specified in subdivision
(f), and, if requested by the applicant and consistent with the
applicable requirements of this section, incentives or concessions,
as described in subdivision (d), waivers or reductions of
development standards, as described in subdivision (e), and parking
ratios, as described in subdivision (p), when an applicant for a
housing development seeks and agrees to construct a housing
development, excluding any units permitted by the density bonus
awarded pursuant to this section, that will contain at least any one
of the following:

(A) Ten percent of the total units of a housing development for
lower income households, as defined in Section 50079.5 of the
Health and Safety Code.

(B) Five percent of the total units of a housing development for
very low income households, as defined in Section 50105 of the
Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections
51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
residency based on age requirements for housing for older persons
pursuant to Section 798.76 or 799.5 of the Civil Code.

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

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

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

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a
person’s homeless status may verify a person’s status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term “unit” as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager’s unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code.

(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), or (F) 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) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects that include 100 percent of the total units, exclusive of a managers’ unit or units, for lower income households.
(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. 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).

(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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<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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<thead>
<tr>
<th>Percentage Very Low Income Units</th>
<th>Percentage Density Bonus</th>
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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) (I) 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 and shall allow a height increase of up to three additional stories, or 33 feet, and an increase in the allowable floor area ratio of up to 55 percent relative to the underlying limit, or 4.25, whichever is greater.

(II) If the housing development is located within one-half mile of a high-quality transit corridor, 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 and shall allow a height increase of up to two additional stories, or 22 feet, and an increase in the allowable floor area ratio of up to 4.75, whichever is greater.
to 50 percent relative to the underlying limit, or 3.75, whichever is greater.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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<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>
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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 child care childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

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

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

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

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

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

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

(4) “Child care childcare facility,” as used in this section, means a child day care daycare facility other than a family day care daycare home, including, but not limited to, infant centers,
preschools, extended-day care daycare facilities, and schoolage childcare centers.

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

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

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

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

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in
setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:
(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

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

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

(A) Zero to one bedroom: one onsite parking space.
(B) Two to three bedrooms: two onsite parking spaces.
(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

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

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) If the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development 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.

(D) 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.

(E) 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).

(F) 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.

(G) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking
study, that includes, but is not limited to, an analysis of parking
availability, differing levels of transit access, walkability access
to transit services, the potential for shared parking, the effect of
parking requirements on the cost of market-rate and subsidized
developments, and the lower rates of car ownership for low-income
and very low income individuals, including seniors and special
needs individuals. The city, county, or city and county shall pay
the costs of any new study. The city, county, or city and county
shall make findings, based on a parking study completed in
conformity with this paragraph, supporting the need for the higher
parking ratio.
(8) A request pursuant to this subdivision shall neither reduce
nor increase the number of incentives or concessions to which the
applicant is entitled pursuant to subdivision (d).
(q) Each component of any density calculation, including base
density and bonus density, resulting in fractional units shall be
separately rounded up to the next whole number. The Legislature
finds and declares that this provision is declaratory of existing law.
(r) This chapter shall be interpreted liberally in favor of
producing the maximum number of total housing units.
SEC. 2. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
a local agency or school district has the authority to levy service
charges, fees, or assessments sufficient to pay for the program or
level of service mandated by this act, within the meaning of Section
SECTION 1. Section 301 of the Public Utilities Code is
amended to read:
301. The membership of the Public Utilities Commission, and
the qualifications and tenure of the members of the commission,
are as provided in Section 1 of Article XII of the California
Constitution.

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Item C-4
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 1112 (Friedman) – Shared Mobility Devices (AB 1112) involves a policy matter that is addressed within the adopted Legislative Platform language. Specifically, the following statement is in the adopted Platform:

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, Inc., provided a summary memo for AB 1112 to the City (Attachment 1). AB 1112 prohibits a local authority from imposing an unduly restrictive requirement on a provider of shared mobility devices, including a requirement that is more restrictive than those applicable to riders of personally owned similar transportation devices. Additionally, the bill finds that shared mobility devices and providers are a statewide concern rather than a municipal affair.

As this legislation is in line with the City Council adopted Legislative Platform, staff will be writing a letter of opposition for the Mayor to sign unless otherwise directed by the Liaisons. Alternatively, the Liaisons may pull this item for discussion and provide other direction to City staff. Should the Liaisons recommend a position other than oppose, then staff will place the item on a future City Council Agenda for concurrence.
May 17, 2019

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw / Yoder / Antwih, Inc.
     Priscilla Quiroz, Legislative Advocate, Shaw / Yoder / Antwih, Inc.
     Tim Sullivan, Legislative Aide, Shaw / Yoder / Antwih, Inc.

Re: AB 1112 (Friedman): Shared Mobility Devices; Local Regulation

Introduction and Overview
Assembly Member Friedman has introduced AB 1112 with the stated goal of establishing uniform regulations regarding the use of data collected by shared mobility device companies and creating a standard process for sharing this information with local governments.

The author believes that local government can use trip data to determine how shared mobility devices will be best utilized in a community. Trip data can also help ensure that appropriate lanes are created to deal with congestion and appropriate docking stations are installed in high-use areas to ensure that sidewalks are minimally impacted for pedestrians.

Summary
AB 1112 (Friedman) Clarifies how a local authority may require a shared mobility device provider to provide trip data within the jurisdiction of the local authority, among other things. Specifically, this bill:

1) Clarifies that a local authority may require a shared mobility device provider, as a condition for operating a shared mobility device program, to provide to the local authority trip data for all trips within its jurisdiction on any shared mobility device.

2) Limits a local authority from imposing on a shared mobility device provider any unduly restrictive requirements, including requiring operation below cost or requiring providers to pay unreasonable fees, or requirements more restrictive than those applicable to riders of personally owned similar transportation devices.

3) Requires all shared scooters to include a single unique alphanumeric ID visible from five feet.

4) Defines "shared mobility device" as a motorized skateboard, motorized scooter, electric bicycle, bicycle, or other similar personal transportation device that is made available to the public for shared use and transportation in exchange for financial compensation through a digital application or other electronic or digital platform.

5) Defines "shared mobility device service provider" as a person or entity that offers, makes available, or provides a shared mobility device in exchange for financial compensation or membership via a digital application or other electronic or digital platform.
6) Defines "Aggregate" as data that relates to a group of trips, from which the start points, stop points, routes, and times of individual trips have been removed and that cannot be used or combined with other information to isolate details of an individual trip.

7) Defines "Deidentified" as information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer.

8) Defines "trip data" as deidentified and aggregated data elements related to trips taken by users of a shared mobility device including, but not limited to, any Global Positioning System, timestamp, or route data.

**Status of the Legislation**
The bill is currently pending on the Assembly Floor.

**Support**

Proponents argue that with the growing success and adoption of electric scooters across the state, AB 1112 will help provide a clear framework for how this micro-mobility solution can best be utilized in order to achieve the vast benefits electric scooters provide.

The League of California Cities argues that the earlier version of this bill would eliminate the ability for cities to fully regulate corporations that offer shared motorized scooter services or implement innovative measures such as incentivizing parking in drop zones and discount programs for low-income and/or the elderly.

The League further states that, while a handful of corporations have been willing to work with cities and counties in deploying this technology in a responsible manner, a number of corporations have been running afoul of local regulation and law enforcement as companies skirt local laws to compete for market share. Unfortunately, AB 1112's elimination of local authority in this space would put the public's safety, health, and welfare at risk."

**Support**
Bay Area Council
Bird
California Hispanic Chambers of Commerce
Central Coast Health Network
Circulate San Diego
Clinicas Del Camino Real
Clinicas Del Valle De Salinas
Congress of Racial Equality
Environmental Defense Fund
Fast Link DTLA
Fixing Angelenos Stuck In Traffic
Interfaith Movement For Human Integrity
Los Angeles Metropolitan Churches
National Action Network
National Asian American Coalition
National Diversity Coalition
Sierra Club California
Silicon Valley Leadership Group
Southern Christian Leadership Conference
Uber Technologies, Inc. (if amended)
Up For Growth National Coalition

**Opposition**
California Walks (unless amended)
City of Pasadena
City of Santa Monica
City of Thousand Oaks
Consumer Attorneys of California
Electronic Frontier Foundation (unless amended)
League of California Cities
City of Pasadena
San Francisco Municipal Transportation Agency
Attachment 2
An act to add Division 16.8 (commencing with Section 39050) to the Vehicle Code, relating to motorized scooters. 

AB 1112, as amended, Friedman. Motorized scooters; shared mobility devices; local regulation.

(1) Existing law generally prescribes the operation of a motorized scooter, defined as a 2-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor or by a source other than electric power. Existing law requires a driver’s license or permit to operate a motorized scooter. Existing law generally prohibits the operation of a motorized scooter on a highway with a speed limit in excess of 25 miles per hour, but permits a local authority to authorize the operation of a motorized scooter on a highway with a speed of up to 35 miles per hour.

This bill would authorize a local authority to regulate motorized scooters by, among other things, assessing limited penalties for moving or parking violations involving the use of motorized scooters. The bill would prohibit a local authority from subjecting the riders of shared
scooters to requirements more restrictive than those applicable to riders of privately owned motorized scooters or bicycles.

The bill would authorize a local authority to regulate scooter share operators by, among other things, requiring a scooter share operator to pay fees that do not exceed the reasonable cost to the local authority of regulating the scooter share operator. The bill would prohibit a local authority from imposing any unduly restrictive requirements on a scooter share operator. The bill would authorize a local authority to require a scooter share operator to provide to the local authority trip data for all trips starting or ending within the jurisdiction of the local authority and would prohibit disclosure of the information pursuant to public records requests received by the local authority.

Existing law generally regulates the operation of bicycles, electric bicycles, motorized scooters, and electrically motorized boards. Existing law allows local authorities to regulate the registration, parking, and operation of bicycles and motorized scooters in a manner that does not conflict with state law.

This bill would define a “shared mobility device” as a bicycle, electric bicycle, motorized scooter, electrically motorized board, or other similar personal transportation device, that is made available to the public for shared use and transportation, as provided. The bill would require shared mobility devices to include a single unique alphanumeric ID. The bill would allow a local authority to require a shared mobility device provider to provide the local authority with deidentified and aggregated trip data as a condition for operating a shared mobility device program. The bill would prohibit the sharing of individual trip data, except as provided by the Electronic Communications Privacy Act. The bill would prohibit a local authority from imposing an unduly restrictive requirement on a provider of shared mobility devices, including a requirement that is more restrictive than those applicable to riders of personally owned similar transportation devices.

The bill would include findings that uniformity in certain aspects of local regulation of motorized scooters and commercial scooter share programs and operators shared mobility devices and providers proposed by this bill addresses a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities and counties, including charter cities and counties.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating
the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.


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

SECTION 1. Division 16.8 (commencing with Section 39050) is added to the Vehicle Code, to read:

DIVISION 16.8. LOCAL REGULATION OF MOTORIZED SCOOTERS

39050. The Legislature finds and declares that a basic level of statewide standards for local regulation of motorized scooters encourages innovation and ensures basic expectations for consumers. Except as expressly stated, it is not the intent of the Legislature that this division limit regulations a local authority may otherwise implement beyond the minimum standards outlined in this division.

39051. For the purposes of this division, the following definitions shall apply, unless the context requires otherwise:

(a) “Shared scooter” means any motorized scooter offered for hire.

(b) “Scooter share operator” means a person offering shared scooters for hire.

(c) “Scooter share program” means the offering of shared scooters for hire.

(d) “Trip data” means any data elements related to trips taken by users of a shared scooter of a scooter-shared operator, including, but not limited to, Global Positioning System, timestamp, or route data.

39051. For the purposes of this division, the following definitions apply, unless the context requires otherwise:

(a) “Aggregate” means data that relates to a group of trips, from which the start points, stop points, routes, and times of individual trips have been removed and that cannot be used, or combined with other information to isolate details of an individual trip.
(b) “Deidentified” means information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a business that uses deidentified information meets all of the following criteria:

(1) Has implemented technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.

(2) Has implemented business processes that specifically prohibit reidentification of the information.

(3) Has implemented business processes to prevent inadvertent release of deidentified information.

(4) Makes no attempt to reidentify the information.

(c) “Shared mobility device” means an electrically motorized board as defined in Section 313.5, a motorized scooter as defined in Section 407.5, an electric bicycle as defined in Section 312.5, a bicycle as defined in Section 231, or other similar personal transportation device, except as provided in subdivision (b) of Section 415, that is made available to the public by a shared mobility service provider for shared use and transportation in exchange for financial compensation via a digital application or other electronic digital platform.

(d) “Shared mobility device service provider” or “provider” means a person or entity that offers, makes available, or provides a shared mobility device in exchange for financial compensation or membership via a digital application or other electronic or digital platform.

(e) “Trip data” means deidentified and aggregated data elements related to trips taken by users of a shared mobility device including, but not limited to, Global Positioning System, time stamp, or route data.

(f) “Individual trip data” means data elements related to trips taken by users of a shared mobility device including, but not limited to, Global Positioning System, time stamp, or route data that are not deidentified and aggregate. Individual trip data is “electronic device information” as defined in subdivision (g) of Section 1546 of the Penal Code and is subject to the protections established in Chapter 3.6 (commencing with Section 1546) of Title 12 of Part 2 of the Penal Code.
39052. All shared—scooters mobility devices operated in the state shall include a single unique alphanumeric ID assigned by the operator provider that is visible from a distance of five feet, that is not obfuscated by branding or other markings, and that is used throughout the state, including by local authorities, to identify the shared—scooter mobility device.

39053. All scooter share operators in the state shall maintain the following insurance coverage:

(a) Commercial general liability insurance coverage with a limit of no less than one million dollars ($1,000,000) per occurrence, and five million dollars ($5,000,000) aggregate.

(b) Automobile insurance coverage with a combined single limit of no less than one million dollars ($1,000,000).

(c) If the scooter share operator employs a person, workers’ compensation coverage of no less than required by law.

39054. A local authority may regulate the operation of motorized scooters within its jurisdiction. These regulations may include, but are not limited to, both of the following:

(a) Restricting the maximum speed at which a person may operate a motorized scooter in a pedestrian zone, including plazas and promenades.

(b) Promulgating and assessing penalties for moving or parking violations involving a motorized scooter on the person responsible for the violation, except that any penalty shall not exceed a penalty assessed to riders of bicycles.

39055. A local authority may regulate the operation of shared scooters within its jurisdiction. These regulations may include, but are not limited to, any of the following:

(a) Requiring a scooter share operator to pay fees, provided that the total amount of any fees collected do not exceed the reasonable and necessary cost to the local authority of administering the scooter share program.

(b) Requiring a scooter share operator to indemnify the local authority for claims, demands, costs, including reasonable attorney’s fees, losses, or damages brought against the local authority, and arising out of any negligent act, error, omission, or willful misconduct by the scooter share operator or its officers or employees, except to the extent that claims, demands, costs, losses, or damages arise out of the local authority’s own negligence or willful misconduct.
(c) In the interests of safety and right-of-way management, designating locations where scooter share operators are prohibited from staging shared scooters, except that at least one location shall be permitted on each side of each city block in commercial zones and business districts.

(d) Promulgating and assessing penalties for moving or parking violations involving a shared scooter on the person responsible for the violation, except that any penalty shall not exceed a penalty assessed to riders of bicycles.

39056. A local authority may require a scooter share operator, \textit{shared mobility device provider}, as a condition for operating a scooter share \textit{shared mobility device} program, to provide to the local authority trip data for all trips starting or ending within the jurisdiction of the local authority on any shared scooter of the scooter share operator, provided that, to protect personal privacy, any data provided to the local authority shall comply with all of the following:

(a) The trip data is provided by an application programming interface, subject to the scooter share operator’s license agreement for the interface, that is subject to a publicly published privacy policy of the local authority or its designee, as applicable, disclosing what data is collected and how the data is used and shared with any third parties.

(b) The trip data provided is safely and securely stored by the local authority, which shall implement administrative, physical, and technical safeguards to protect, secure, and, if appropriate, encrypt or limit access to, the data.

(c) The trip data provided shall be treated as personal, trade secret, and proprietary business information, shall be exempt from public disclosure pursuant to any public records request, and shall not be treated as owned by the local authority.

(d) The trip data shall not be shared with law enforcement, except pursuant to valid legal process, and shall not be shared to third parties without the scooter share operator’s consent, provided that, upon a showing of legitimate and necessary need, a local authority may designate a third party to receive trip data pursuant to subdivision (a) if the third party is in privity with the local authority and maintains compliance with the privacy protections of this subdvision; \textit{shared mobility device}. \textit{Individual trip data shall not be shared with the local authority, except as provided by
Chapter 3.6 (commencing with Section 1546) of Title 12 of Part 2 of the Penal Code.

39058. In regulating shared scooters or shared scooter programs, mobility devices and providers, a local authority shall not impose any unduly restrictive requirement on a scooter share operator, provider, including requiring operation below cost, and shall not subject the riders of shared scooters mobility devices to requirements more restrictive than those applicable to riders of privately owned motorized scooters or bicycles: personally owned similar transportation devices, including, but not limited to, personally owned electric bicycles and electric scooters.

39060. The Legislature finds and declares that uniformity in certain aspects of local regulation of motorized scooters and commercial scooter share programs and operators is of vital statewide importance, and thus a matter of statewide concern. Thus, the Legislature finds and declares that the provisions of this division, providing for uniformity in certain aspects of local regulation of motorized scooters and commercial scooter share programs and operators address 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 division applies to all cities and counties, including charter cities and counties.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 39056 to the Vehicle Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The interest in protecting the personal information of people who use scooter share programs outweighs the public interest in having access to this information.