



# AGENDA REPORT

## CITY OF SAN CLEMENTE

### CITY COUNCIL MEETING

910 Calle Negocio  
2nd Floor  
San Clemente, California  
www.san-clemente.org

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**Meeting Date:** May 7, 2024

Agenda Item: 10D

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**Submitted By:** Community Development

**Prepared By:** Adam Atamian, Community Development Director

**Subject:**

**CONSIDERATION OF A LETTER IN OPPOSITION TO ASSEMBLY BILL 1886 (ALVAREZ) - HOUSING ELEMENT LAW; SUBSTANTIAL COMPLIANCE: HOUSING ACCOUNTABILITY ACT**

**Fiscal Impact:**

None.

**Summary:**

Before the City Council is a resolution approving the issuance of a letter in opposition to Assembly Bill (AB) 1886. CalCities (fka the League of California Cities) has requested that local jurisdictions weigh in on the matter by opposing the proposed law because it would (1) hinder the City's ability to self-certify its housing element and (2) increase the availability of the "builder's remedy", which could be used to construct projects that are inconsistent with the City's General Plan, development standards, and planning review/entitlement process.

**Background:**

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law, commonly referred to as the Housing Element Law, prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development (HCD) to review and determine whether the housing element substantially complies with the Housing Element Law.

If HCD finds that a draft housing element or amendment does not substantially comply with the Housing Element Law, existing law requires the legislative body of the city or county to either (A) change the draft element or amendment to substantially comply with the Housing Element Law or (B) adopt the draft housing element or amendment without changes and make specified findings as to why the draft element or amendment substantially complies with the Housing Element Law despite the findings of HCD.

AB 1886 would eliminate self-certification (option B, above) for the purpose of what it means to have a housing element "in substantial compliance with the law." As a result, this bill would reduce the ability of local authority of cities and counties to self-certify their housing elements, creating more opportunity for these documents to be non-compliant. A major concern with this is the inherent encouragement in AB 1886 of the future use of "builder's remedy" projects. When a city's housing element is not in compliance with Housing Element Law, the use of the "builder's remedy" is permitted, allowing a developer to choose any site other than a site that is identified

for very low, low-, or moderate-income housing, and construct a project that is inconsistent with both the city's general plan and zoning. AB 1886 would facilitate such projects for those cities that have a good faith disagreement with HCD based on substantial evidence.

**Discussion:**

Cal Cities has communicated their opposition to AB 1886 (Alvarez) and is encouraging the City to consider submitting a letter of opposition.

The bill would:

- Remove local control and more easily allow developers to use the "builder's remedy", which in turn could be used to construct project(s) that are inconsistent with the City's general plan, development standards, and planning review/entitlement process; and
- Hinder the City's ability to self-certify its housing element in the event that HCD disagrees with a city's assertion that their Housing Element is in "substantial compliance with housing element law".

**Council Options:**

- Adopt Resolution No. 24-70, provided as Attachment 1, which will approve and authorize the Mayor to execute the letter of opposition for AB 1886, provided as Attachment 2;
- Modify and adopt Resolution No. 24-70; or
- Do not adopt Resolution No.24-70, which will result in the City not taking a position on AB 1886.

**Environmental Review/Analysis:**

Not a "project" pursuant to CEQA Guidelines Section 15378 (14 CCR 15378). The Letter of Opposition for AB 1886 has no potential for resulting in either a direct or physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

**Recommended Actions:**

Staff Recommendation

STAFF RECOMMENDS THAT the City Council adopt Resolution No. 24-70, which would approve, and authorize the Mayor to execute, a letter of opposition to Assembly Bill 1886.

**Attachment:**

1. Resolution No 24-70
2. Opposition Letter for AB 1886 (Alvarez)
3. The League of California Cities Opposition Letter
4. AB 1886 Bill Text

**Notification:**

The Honorable David A. Alvarez (via e-mail)

Members, Assembly Committee on Local Government (via e-mail)

Linda Rios, Senior Consultant, Assembly Committee on Local Government (via e-mail)

Congressman Mike Levin (via e-mail)  
William Weber, Assembly Republican Caucus (via e-mail)  
Senator Janet Nguyen (via e-mail)  
Assemblywoman Laurie Davies (via e-mail)  
League of California Cities (via e-mail)

RESOLUTION NO. 24-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE A LETTER IN OPPOSITION TO ASSEMBLY BILL 1886 (ALVAREZ) AND CAUSE THE DELIVERY OF SAID LETTER TO THE CHAIR OF THE CALIFORNIA STATE ASSEMBLY'S LOCAL GOVERNMENT COMMITTEE

WHEREAS, Assembly Bill (AB) 1886, as proposed, is an example of the continued erosion of local decision making from local government entities, and removes fundamental provisions of the Housing Element law; and

WHEREAS, AB 1886, as proposed, promotes diversion of local control over existing components of its current general plan adoptions, development standards, and planning/entitlement process; and

WHEREAS, AB 1886 encourages the use of the "Builder's Remedy" by eliminating self-certification of a Housing Element by a local legislative body and counters the intent of having a Housing Element in effect that is legally compliant; and

WHEREAS, in partnership with CalCities, the City Council desires to communicate to the State Legislature that AB 1886 is counterproductive to the statewide housing construction initiative and promotes an unnecessary path for developers to bypass local development requirements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Clemente that:

Section 1. The City Council of the City of San Clemente opposes AB 1886 on the following grounds:

1. It removes local control and allows developers to use the "builder's remedy", which in turn could be used to construct project(s) that is/are inconsistent with the City's General Plan, development standards, and planning review/entitlement process; and
2. It would hinder the City's ability to self-certify its housing element in the event that HCD disagrees with its assertion that the Housing Element is in "substantial compliance with housing element law".

Section 2. The City Council authorizes the Mayor to execute and cause the delivery of the letter in opposition to AB 1886 in a form substantially similar to that presented to the City Council on May 7, 2024.

Section 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) §  
CITY OF SAN CLEMENTE    )

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 24-70 was adopted at a regular meeting of the City Council of the City of San Clemente held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
Elizabeth A. Mitchell, City Attorney



# San Clemente

CELEBRATING 90 YEARS OF INCORPORATION

**OFFICE OF THE MAYOR  
AND CITY COUNCIL**

Victor Cabral  
Mayor

Mark Enmeier  
Mayor Pro Tem

Chris Duncan

Steve Knoblock

Rick Loeffler

**CITY MANAGER**

Andy Hall

910 Calle Negocio  
San Clemente, CA 92673  
Phone: (949) 361-8200

May 7, 2024

The Honorable Juan Carrillo  
Chair, Assembly Local Government Committee  
1020 N St, Room 157  
Sacramento, CA 95814

**RE: AB 1886 (Alvarez) Housing Element Law: Substantial Compliance**  
**Notice of Opposition** (As of April 1, 2024)

Dear Chair Carrillo,

The City of San Clemente regrettably must oppose measure **AB 1886 (Alvarez)** because it turns its back to a fundamental provision of current housing element law: A city may disagree with HCD; explain why its housing element is in substantial compliance with the law; and then adopt that housing element which is thereafter considered “in substantial compliance with housing element law.”

For decades, cities have worked with HCD to draft housing plans that accommodate their fair share of housing at all income levels. These extensive and complex plans can take years to develop, include public involvement and engagement, and environmental review. Cities go to great lengths to ensure that their housing elements substantially comply with the law, even if HCD disagrees. Current law acknowledges this fact by allowing cities to “self-certify” their housing element or take the issue to court and have a judge make the final determination of substantial compliance.

AB 1886 encourages “builder’s remedy” projects by eliminating self-certification for the purpose of what it means to have a housing element “in substantial compliance with the law.” The “builder’s remedy” allows a developer to choose any site other than a site that is identified for very low-, low-, or moderate-income housing, and construct a project that is inconsistent with both the city’s general plan and zoning. AB 1886 facilitates such projects for those cities that have a good faith disagreement based in substantial evidence.

“The Spanish Village  
by the Sea”

San Clemente prides itself on the preservation of its housing via our effort to maintain the beauty of Spanish Colonial Revival and other favorable design standards to its exterior aesthetics and architecture. The "builder's remedy" would severely hinder our ability to follow those important planning guidelines, allow deviations from our design standards/municipal codes, and create unnecessary tensions within our community. Therefore, the City of San Clemente **opposes AB 1886 (Alvarez)** as it precludes a local jurisdiction's ability to deny certain housing projects, regardless of local zoning, if it does not have a compliant Housing Element.

Like other California jurisdictions, the City of San Clemente faced many challenges on the complex initiative to certify its Housing Element. Countless hours were dedicated to this effort by City staff, consultants, elected officials, and the public; the City spent more than two years working on this prolonged effort of certification. On October 12, 2022, the City's 6<sup>th</sup> Cycle Housing Element was finally approved and certified by HCD. Though the certification had been awarded, the task of implementing the Housing Element Rezoning Program has still been underway post certification.

Leading up to this approval, the City struggled with many inefficiencies in the process as a result of having to comply with the following: unreasonable deadlines set forth by (HCD), lack of clarity on key Housing Element expectations, the tardiness of key Regional Housing Needs Allocation (RHNA) metrics to better analyze the current makeup of housing, lack of adequate staffing and consultants, and massive confusion from the public and our elected body.

The City of San Clemente believes that AB 1886 is counterproductive. What is really needed is for HCD to partner with cities to provide meaningful direction that helps them finalize their housing elements and put those plans to work so that much needed housing construction can occur. Again, for these reasons, the City of San Clemente must **oppose AB 1886 (Alvarez)**. If you have any questions, do not hesitate to contact me at [cabralv@san-clemente.org](mailto:cabralv@san-clemente.org) and (949) 361-8200.

Sincerely,  
Victor Cabral  
Mayor  
City of San Clemente

Cc: The Honorable David A. Alvarez (via e-mail)  
Members, Assembly Committee on Local Government (via e-mail)  
Linda Rios, Senior Consultant, Assembly Committee on Local Government (via e-mail)  
Congressman Mike Levin (via e-mail)  
William Weber, Assembly Republican Caucus (via e-mail)  
Senator Janet Nguyen (via e-mail)  
Assemblywoman Laurie Davies (via e-mail)  
League of California Cities (via e-mail)



April 4, 2024

The Honorable David A. Alvarez  
Member, California State Assembly  
1021 O St, Room 5320  
Sacramento, CA 95814

**RE: AB 1886 (Alvarez) Housing Element Law: Substantial Compliance**  
**Notice of Opposition** (As of April 1, 2024)

Dear Assemblymember Alvarez,

The League of California Cities (Cal Cities) regretfully must oppose your measure **AB 1886**, because it turns its back to a fundamental provision of housing element law: A city may disagree with HCD; explain why its housing element is in substantial compliance with the law; and then adopt that housing element which is thereafter considered "in substantial compliance with housing element law."

For decades, cities have worked with HCD to draft housing plans that accommodate their fair share of housing at all income levels. These extensive and complex plans can take years to develop, include public involvement and engagement, and environmental review. Cities go to great lengths to ensure that their housing element substantially complies with the law, even if HCD disagrees. Current law acknowledges this fact by allowing cities to "self-certify" their housing element or take the issue to court and have a judge make the final determination of substantial compliance.

AB 1886 encourages "builder's remedy" projects by eliminating self-certification for the purpose of what it means to have a housing element "in substantial compliance with the law." The "builder's remedy" allows a developer to choose any site other than a site that is identified for very low-, low-, or moderate-income housing, and construct a project that is inconsistent with both the city's general plan and zoning. AB 1886 facilitates such projects for those cities that have a good faith disagreement based in substantial evidence.

Cal Cities believes that AB 1886 is counterproductive. What is really needed is for HCD to partner with cities to provide meaningful direction that helps them finalize their housing elements and put those plans to work so that much needed housing construction can occur. For these reasons, Cal Cities respectfully **opposes** AB 1886. If you have any questions, do not hesitate to contact me at [bguertin@calcities.org](mailto:bguertin@calcities.org).

Sincerely,

A handwritten signature in blue ink that reads "Brady Guertin".

Brady Guertin  
Legislative Affairs, Lobbyist

**ASSEMBLY BILL****No. 1886**

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**Introduced by Assembly Member Alvarez**January 22, 2024

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An act to amend Sections 65585 and 65589.5 of the Government Code, relating to land use.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1886, as introduced, Alvarez. Housing Element Law: substantial compliance: Housing Accountability Act.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law, commonly referred to as the Housing Element Law, prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development to review and determine whether the housing element substantially complies with the Housing Element Law, as specified. If the department finds that a draft housing element or amendment does not substantially comply with the Housing Element Law, existing law requires the legislative body of the city or county to either (A) change the draft element or amendment to substantially comply with the Housing Element Law or (B) adopt the draft housing element or amendment without changes and make specified findings as to why the draft element or amendment substantially complies with the Housing Element Law despite the findings of the department. Existing law requires a planning agency to promptly submit an adopted housing element or amendment to the department and requires the

department to review the adopted housing element or amendment and report its findings to the planning agency within 60 days.

This bill would require a planning agency that makes the above-described findings as to why a draft housing element or amendment substantially complies with the Housing Element Law despite the findings of the department to submit those findings to the department. The bill would require the department to review those finding in its review of an adopted housing element or amendment. The bill would create a rebuttable presumption of validity for the department's findings as to whether the adopted element or amendment substantially complies with the Housing Element Law. Because the bill would require planning agencies to submit specified findings to the department with an adopted housing element or amendment, the bill would impose a state-mandated local program.

(2) Existing law, the Housing Accountability Act, among other things, 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 unless the local agency makes written findings as to one of certain sets of conditions, as specified. One set of conditions is that (A) the jurisdiction has adopted a housing element that is in substantial compliance with the Housing Element Law, and (B) the jurisdiction has met or exceeded its share of the regional housing need allocation for the planning period for the income category proposed for the housing development project.

This bill would provide that, for purposes of disapproving or conditionally approving a housing development project for very low, low-, or moderate-income households, a housing element or amendment is considered substantially compliant with the Housing Element Law when the local agency has adopted a housing element or amendment and the department or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance with the Housing Element Law. The bill would specify that a determination of substantial compliance continues until the department or a court of competent jurisdiction determines otherwise or the end of the applicable housing element cycle. The bill would provide that these provisions are declaratory of existing law.

(3) The Housing Accountability Act also requires a housing development project to only be subject to the ordinances, policies, and standards adopted and in effect when a preliminary application was submitted, except as specified.

This bill would provide that a housing element or amendment must be considered in substantial compliance with the Housing Element Law only if the element or amendment was determined to be in substantial compliance when a preliminary application or complete application was submitted, as specified. The bill would provide that this provision is declaratory of existing law.

(4) The Housing Accountability Act provides that it does not prohibit a local agency from requiring a housing development project or emergency shelter 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 or need for emergency shelters, except as specified.

This bill would limit the effect of these provisions to local agencies that have adopted a housing element that the department or a court of competent jurisdiction has determined is in substantial compliance with the Housing Element Law.

(5) 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.

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

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

1 SECTION 1. Section 65585 of the Government Code is  
2 amended to read:

3 65585. (a) In the preparation of its housing element, each city  
4 and county shall consider the guidelines adopted by the department  
5 pursuant to Section 50459 of the Health and Safety Code. Those  
6 guidelines shall be advisory to each city or county in the  
7 preparation of its housing element.

8 (b) (1) At least 90 days prior to adoption of a revision of its  
9 housing element pursuant to subdivision (e) of Section 65588, or  
10 at least 60 days prior to the adoption of a subsequent amendment  
11 to this element, the planning agency shall submit a draft element  
12 revision or draft amendment to the department. The local  
13 government of the planning agency shall make the first draft  
14 revision of a housing element available for public comment for at

1 least 30 days and, if any comments are received, the local  
2 government shall take at least 10 business days after the 30-day  
3 public comment period to consider and incorporate public  
4 comments into the draft revision prior to submitting it to the  
5 department. For any subsequent draft revision, the local  
6 government shall post the draft revision on its internet website and  
7 shall email a link to the draft revision to all individuals and  
8 organizations that have previously requested notices relating to  
9 the local government's housing element at least seven days before  
10 submitting the draft revision to the department.

11 (2) The planning agency staff shall collect and compile the  
12 public comments regarding the housing element received by the  
13 city, county, or city and county and provide these comments to  
14 each member of the legislative body before it adopts the housing  
15 element.

16 (3) The department shall review the draft and report its written  
17 findings to the planning agency within 90 days of its receipt of the  
18 first draft submittal for each housing element revision pursuant to  
19 subdivision (e) of Section 65588 or within 60 days of its receipt  
20 of a subsequent draft amendment or an adopted revision or adopted  
21 amendment to an element. The department shall not review the  
22 first draft submitted for each housing element revision pursuant  
23 to subdivision (e) of Section 65588 until the local government has  
24 made the draft available for public comment for at least 30 days  
25 and, if comments were received, has taken at least 10 business  
26 days to consider and incorporate public comments pursuant to  
27 paragraph (1).

28 (c) In the preparation of its findings, the department may consult  
29 with any public agency, group, or person. The department shall  
30 receive and consider any written comments from any public  
31 agency, group, or person regarding the draft or adopted element  
32 or amendment under review.

33 (d) In its written findings, the department shall determine  
34 whether the draft element or draft amendment substantially  
35 complies with this article.

36 (e) Prior to the adoption of its draft element or draft amendment,  
37 the legislative body shall consider the findings made by the  
38 department. If the department's findings are not available within  
39 the time limits set by this section, the legislative body may act  
40 without them.

1 (f) If the department finds that the draft element or draft  
2 amendment does not substantially comply with this article, the  
3 legislative body shall take one of the following actions:

4 (1) Change the draft element or draft amendment to substantially  
5 comply with this article.

6 (2) Adopt the draft element or draft amendment without changes.  
7 The legislative body shall include in its resolution of adoption  
8 written findings that explain the reasons the legislative body  
9 believes that the draft element or draft amendment substantially  
10 complies with this article despite the findings of the department.

11 (g) Promptly following the adoption of its element or  
12 amendment, the planning agency shall submit a copy of *the adopted*  
13 *element or amendment and any findings made pursuant to*  
14 *paragraph (2) of subdivision (f)* to the department.

15 (h) (1) The department shall, within 60 days, review adopted  
16 housing elements or amendments and *any findings pursuant to*  
17 *paragraph (2) of subdivision (f)*, *make a finding as to whether the*  
18 *adopted element or amendment is in substantial compliance with*  
19 *this article*, and report its findings to the planning agency.

20 (2) (A) *For purposes of subdivision (d) of Section 65589.5, a*  
21 *housing element or amendment shall be considered to be in*  
22 *substantial compliance with this article when both of the following*  
23 *conditions are satisfied:*

24 (i) *The local agency adopts the housing element or amendment*  
25 *in accordance with this section.*

26 (ii) *The department or a court of competent jurisdiction*  
27 *determines the adopted housing element or amendment to be in*  
28 *substantial compliance with this article.*

29 (B) *A housing element or amendment shall continue to be*  
30 *considered in substantial compliance with this article until either*  
31 *of the following occur:*

32 (i) *The department or a court of competent jurisdiction*  
33 *determines that the adopted housing element or amendment is no*  
34 *longer in substantial compliance with this article.*

35 (ii) *The end of the applicable housing element cycle.*

36 (C) *This paragraph does not constitute a change in, but is*  
37 *declaratory of, existing law.*

38 (3) *In any legal proceeding initiated to enforce the provisions*  
39 *of this article, the department's findings made pursuant to this*  
40 *subdivision and subdivision (b) shall create a rebuttable*

1 *presumption of validity as to whether the adopted element or*  
2 *amendment substantially complies with this article.*

3 (i) (1) (A) The department shall review any action or failure  
4 to act by the city, county, or city and county that it determines is  
5 inconsistent with an adopted housing element or Section 65583,  
6 including any failure to implement any program actions included  
7 in the housing element pursuant to Section 65583. The department  
8 shall issue written findings to the city, county, or city and county  
9 as to whether the action or failure to act substantially complies  
10 with this article, and provide a reasonable time no longer than 30  
11 days for the city, county, or city and county to respond to the  
12 findings before taking any other action authorized by this section,  
13 including the action authorized by subparagraph (B).

14 (B) If the department finds that the action or failure to act by  
15 the city, county, or city and county does not substantially comply  
16 with this article, and if it has issued findings pursuant to this section  
17 that an amendment to the housing element substantially complies  
18 with this article, the department may revoke its findings until it  
19 determines that the city, county, or city and county has come into  
20 compliance with this article.

21 (2) The department may consult with any local government,  
22 public agency, group, or person, and shall receive and consider  
23 any written comments from any public agency, group, or person,  
24 regarding the action or failure to act by the city, county, or city  
25 and county described in paragraph (1), in determining whether the  
26 housing element substantially complies with this article.

27 (j) The department shall notify the city, county, or city and  
28 county and may notify the office of the Attorney General that the  
29 city, county, or city and county is in violation of state law if the  
30 department finds that the housing element or an amendment to this  
31 element, or any action or failure to act described in subdivision  
32 (i), does not substantially comply with this article or that any local  
33 government has taken an action in violation of the following:

- 34 (1) Housing Accountability Act (Section 65589.5).
- 35 (2) Section 65863.
- 36 (3) Chapter 4.3 (commencing with Section 65915).
- 37 (4) Section 65008.
- 38 (5) Housing Crisis Act of 2019 (Chapter 654, Statutes of 2019,  
39 Sections 65941.1, 65943, and 66300).
- 40 (6) Section 8899.50.

- 1 (7) Section 65913.4.
- 2 (8) Article 11 (commencing with Section 65650).
- 3 (9) Article 12 (commencing with Section 65660).
- 4 (10) Section 65913.11.
- 5 (11) Section 65400.
- 6 (12) Section 65863.2.
- 7 (13) Chapter 4.1 (commencing with Section 65912.100).
- 8 (14) Section 65905.5.
- 9 (15) Section 65852.2.
- 10 (16) Section 65852.21.
- 11 (17) Section 65852.22.
- 12 (18) Section 65852.23.
- 13 (19) Section 65852.24.
- 14 (20) Section 65852.26.
- 15 (21) Section 66411.7.
- 16 (22) Section 65913.16.
- 17 (23) Article 2 (commencing with Section 66300.5) of Chapter
- 18 12.
- 19 (24) Section 65852.28.
- 20 (25) Section 65913.4.5.
- 21 (26) Section 66499.41.
- 22 (k) Commencing July 1, 2019, prior to the Attorney General
- 23 bringing any suit for a violation of the provisions identified in
- 24 subdivision (j) related to housing element compliance and seeking
- 25 remedies available pursuant to this subdivision, the department
- 26 shall offer the jurisdiction the opportunity for two meetings in
- 27 person or via telephone to discuss the violation, and shall provide
- 28 the jurisdiction written findings regarding the violation. This
- 29 paragraph does not affect any action filed prior to the effective
- 30 date of this section. The requirements set forth in this subdivision
- 31 do not apply to any suits brought for a violation or violations of
- 32 paragraphs (1) and (3) to (9), inclusive, of subdivision (j).
- 33 (l) In any action or special proceeding brought by the Attorney
- 34 General relating to housing element compliance pursuant to a
- 35 notice or referral under subdivision (j), the Attorney General may
- 36 request, upon a finding of the court that the housing element does
- 37 not substantially comply with the requirements of this article
- 38 pursuant to this section, that the court issue an order or judgment
- 39 directing the jurisdiction to bring its housing element into
- 40 substantial compliance with the requirements of this article. The

1 court shall retain jurisdiction to ensure that its order or judgment  
2 is carried out. If a court determines that the housing element of  
3 the jurisdiction substantially complies with this article, it shall  
4 have the same force and effect, for purposes of eligibility for any  
5 financial assistance that requires a housing element in substantial  
6 compliance and for purposes of any incentives provided under  
7 Section 65589.9, as a determination by the department that the  
8 housing element substantially complies with this article.

9 (1) If the jurisdiction has not complied with the order or  
10 judgment after 12 months, the court shall conduct a status  
11 conference. Following the status conference, upon a determination  
12 that the jurisdiction failed to comply with the order or judgment  
13 compelling substantial compliance with the requirements of this  
14 article, the court shall impose fines on the jurisdiction, which shall  
15 be deposited into the Building Homes and Jobs Trust Fund. Any  
16 fine levied pursuant to this paragraph shall be in a minimum  
17 amount of ten thousand dollars (\$10,000) per month, but shall not  
18 exceed one hundred thousand dollars (\$100,000) per month, except  
19 as provided in paragraphs (2) and (3). In the event that the  
20 jurisdiction fails to pay fines imposed by the court in full and on  
21 time, the court may require the Controller to intercept any available  
22 state and local funds and direct such funds to the Building Homes  
23 and Jobs Trust Fund to correct the jurisdiction's failure to pay.  
24 The intercept of the funds by the Controller for this purpose shall  
25 not violate any provision of the California Constitution.

26 (2) If the jurisdiction has not complied with the order or  
27 judgment after three months following the imposition of fees  
28 described in paragraph (1), the court shall conduct a status  
29 conference. Following the status conference, if the court finds that  
30 the fees imposed pursuant to paragraph (1) are insufficient to bring  
31 the jurisdiction into compliance with the order or judgment, the  
32 court may multiply the fine determined pursuant to paragraph (1)  
33 by a factor of three. In the event that the jurisdiction fails to pay  
34 fines imposed by the court in full and on time, the court may  
35 require the Controller to intercept any available state and local  
36 funds and direct such funds to the Building Homes and Jobs Trust  
37 Fund to correct the jurisdiction's failure to pay. The intercept of  
38 the funds by the Controller for this purpose shall not violate any  
39 provision of the California Constitution.

1 (3) If the jurisdiction has not complied with the order or  
2 judgment six months following the imposition of fees described  
3 in paragraph (1), the court shall conduct a status conference. Upon  
4 a determination that the jurisdiction failed to comply with the order  
5 or judgment, the court may impose the following:

6 (A) If the court finds that the fees imposed pursuant to  
7 paragraphs (1) and (2) are insufficient to bring the jurisdiction into  
8 compliance with the order or judgment, the court may multiply  
9 the fine determined pursuant to paragraph (1) by a factor of six.  
10 In the event that the jurisdiction fails to pay fines imposed by the  
11 court in full and on time, the court may require the Controller to  
12 intercept any available state and local funds and direct such funds  
13 to the Building Homes and Jobs Trust Fund to correct the  
14 jurisdiction's failure to pay. The intercept of the funds by the  
15 Controller for this purpose shall not violate any provision of the  
16 California Constitution.

17 (B) The court may order remedies available pursuant to Section  
18 564 of the Code of Civil Procedure, under which the agent of the  
19 court may take all governmental actions necessary to bring the  
20 jurisdiction's housing element into substantial compliance pursuant  
21 to this article in order to remedy identified deficiencies. The court  
22 shall determine whether the housing element of the jurisdiction  
23 substantially complies with this article and, once the court makes  
24 that determination, it shall have the same force and effect, for all  
25 purposes, as the department's determination that the housing  
26 element substantially complies with this article. An agent appointed  
27 pursuant to this paragraph shall have expertise in planning in  
28 California.

29 (4) This subdivision does not limit a court's discretion to apply  
30 any and all remedies in an action or special proceeding for a  
31 violation of any law identified in subdivision (j).

32 (m) In determining the application of the remedies available  
33 under subdivision (l), the court shall consider whether there are  
34 any mitigating circumstances delaying the jurisdiction from coming  
35 into compliance with state housing law. The court may consider  
36 whether a city, county, or city and county is making a good faith  
37 effort to come into substantial compliance or is facing substantial  
38 undue hardships.

39 (n) Nothing in this section shall limit the authority of the office  
40 of the Attorney General to bring a suit to enforce state law in an

1 independent capacity. The office of the Attorney General may seek  
2 all remedies available under law including those set forth in this  
3 section.

4 (o) Notwithstanding Sections 11040 and 11042, if the Attorney  
5 General declines to represent the department in any action or  
6 special proceeding brought pursuant to a notice or referral under  
7 subdivision (j), the department may appoint or contract with other  
8 counsel for purposes of representing the department in the action  
9 or special proceeding.

10 (p) Notwithstanding any other provision of law, the statute of  
11 limitations set forth in subdivision (a) of Section 338 of the Code  
12 of Civil Procedure shall apply to any action or special proceeding  
13 brought by the office of the Attorney General or pursuant to a  
14 notice or referral under subdivision (j), or by the department  
15 pursuant to subdivision (o).

16 SEC. 2. Section 65589.5 of the Government Code is amended  
17 to read:

18 65589.5. (a) (1) The Legislature finds and declares all of the  
19 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) The jurisdiction has adopted a housing element pursuant to  
12 this article that has been revised in accordance with Section 65588,  
13 is in substantial compliance with this article, and the jurisdiction  
14 has met or exceeded its share of the regional housing need  
15 allocation pursuant to Section 65584 for the planning period for  
16 the income category proposed for the housing development project,  
17 provided that any disapproval or conditional approval shall not be  
18 based on any of the reasons prohibited by Section 65008. If the  
19 housing development project includes a mix of income categories,  
20 and the jurisdiction has not met or exceeded its share of the regional  
21 housing need for one or more of those categories, then this  
22 paragraph shall not be used to disapprove or conditionally approve  
23 the housing development project. The share of the regional housing  
24 need met by the jurisdiction shall be calculated consistently with  
25 the forms and definitions that may be adopted by the Department  
26 of Housing and Community Development pursuant to Section  
27 65400. In the case of an emergency shelter, the jurisdiction shall  
28 have met or exceeded the need for emergency shelter, as identified  
29 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any  
30 disapproval or conditional approval pursuant to this paragraph  
31 shall be in accordance with applicable law, rule, or standards.

32 (2) The housing development project or emergency shelter as  
33 proposed would have a specific, adverse impact upon the public  
34 health or safety, and there is no feasible method to satisfactorily  
35 mitigate or avoid the specific, adverse impact without rendering  
36 the development unaffordable to low- and moderate-income  
37 households or rendering the development of the emergency shelter  
38 financially infeasible. As used in this paragraph, a “specific,  
39 adverse impact” means a significant, quantifiable, direct, and  
40 unavoidable impact, based on objective, identified written public

1 health or safety standards, policies, or conditions as they existed  
2 on the date the application was deemed complete. The following  
3 shall not constitute a specific, adverse impact upon the public  
4 health or safety:

5 (A) Inconsistency with the zoning ordinance or general plan  
6 land use designation.

7 (B) The eligibility to claim a welfare exemption under  
8 subdivision (g) of Section 214 of the Revenue and Taxation Code.

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

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

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

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

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

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

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

1 Environmental Quality Act (Division 13 (commencing with Section  
2 21000) of the Public Resources Code).

3 (f) (1) Except as provided in subdivision (o), nothing in this  
4 section shall be construed to prohibit a local agency *that has*  
5 *adopted a housing element that the department or a court of*  
6 *competent jurisdiction has determined to be in substantial*  
7 *compliance with this article* from requiring the housing  
8 development project to comply with objective, quantifiable, written  
9 development standards, conditions, and policies appropriate to,  
10 and consistent with, meeting the jurisdiction's share of the regional  
11 housing need pursuant to Section 65584. However, the  
12 development standards, conditions, and policies shall be applied  
13 to facilitate and accommodate development at the density permitted  
14 on the site and proposed by the development.

15 (2) Except as provided in subdivision (o), nothing in this section  
16 shall be construed to prohibit a local agency *that has adopted a*  
17 *housing element that the department or a court of competent*  
18 *jurisdiction has determined to be in substantial compliance with*  
19 *this article* from requiring an emergency shelter project to comply  
20 with objective, quantifiable, written development standards,  
21 conditions, and policies that are consistent with paragraph (4) of  
22 subdivision (a) of Section 65583 and appropriate to, and consistent  
23 with, meeting the jurisdiction's need for emergency shelter, as  
24 identified pursuant to paragraph (7) of subdivision (a) of Section  
25 65583. However, the development standards, conditions, and  
26 policies shall be applied by the local agency to facilitate and  
27 accommodate the development of the emergency shelter project.

28 (3) Except as provided in subdivision (o), nothing in this section  
29 shall be construed to prohibit a local agency from imposing fees  
30 and other exactions otherwise authorized by law that are essential  
31 to provide necessary public services and facilities to the housing  
32 development project or emergency shelter.

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

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

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

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

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

11 (A) Residential units only.

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

15 (C) Transitional housing or supportive housing.

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

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

1 (5) Notwithstanding any other law, until January 1, 2030,  
 2 “deemed complete” means that the applicant has submitted a  
 3 preliminary application pursuant to Section 65941.1 or, if the  
 4 applicant has not submitted a preliminary application, has  
 5 submitted a complete application pursuant to Section 65943.

6 (6) “Disapprove the housing development project” includes any  
 7 instance in which a local agency does any of the following:

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

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

16 (C) Fails to meet the time limits specified in Section 65913.3.

17 (D) (i) Fails to make a determination of whether the project is  
 18 exempt from the California Environmental Quality Act (Division  
 19 13 (commencing with Section 21000) of the Public Resources  
 20 Code), or commits an abuse of discretion, as defined in this  
 21 subparagraph, if all of the following conditions are satisfied:

22 (I) There is substantial evidence in the record before the local  
 23 agency that the housing development project is not located in either  
 24 of the following:

25 (ia) On a site specified in subparagraphs (A) to (C), inclusive,  
 26 or subparagraphs (E) to (K), inclusive, of paragraph (6) of  
 27 subdivision (a) of Section 65913.4.

28 (ib) Within a very high fire hazard severity zone, as determined  
 29 by the Department of Forestry and Fire Protection pursuant to  
 30 Section 51178, or within a high or very high fire hazard severity  
 31 zone as indicated on maps adopted by the Department of Forestry  
 32 and Fire Protection pursuant to Section 4202 of the Public  
 33 Resources Code.

34 (II) The housing development project is located on a legal parcel  
 35 or parcels within an urbanized area and meets one or more of the  
 36 following criteria:

37 (ia) The housing development project is located within one-half  
 38 mile walking distance to either a high-quality transit corridor or a  
 39 major transit stop.

1 (ib) The housing development project is located in a very low  
2 vehicle travel area.

3 (ic) The housing development project is proximal to six or more  
4 amenities pursuant to subclause (IV) of clause (ii) as of the date  
5 of submission of the application for the project.

6 (id) Parcels that are developed with urban uses adjoin at least  
7 75 percent of the perimeter of the project site or at least three sides  
8 of a ~~foursided~~ *four-sided* project site. For purposes of this clause,  
9 parcels that are only separated by a street or highway shall be  
10 considered to be adjoined.

11 (III) The density of the housing development project meets or  
12 exceeds 15 dwelling units per acre.

13 (IV) Both of the following criteria are met:

14 (ia) There is substantial evidence in the record before the local  
15 agency that the housing development project is eligible for an  
16 exemption sought by the applicant.

17 (ib) If the exemption sought by the applicant is subject to an  
18 exception under the Guidelines for Implementation of the  
19 California Environmental Quality Act (Chapter 3 (commencing  
20 with Section 15000) of Division 6 of Title 14 of the California  
21 Code of Regulations), there is substantial evidence in the record  
22 before the local agency that the application of that categorical  
23 exemption is not barred by one of the exceptions set forth in  
24 Section 15300.2 of those guidelines.

25 (V) (ia) The applicant has given timely written notice to the  
26 local agency of the action or inaction that the applicant believes  
27 constitutes a failure to make a determination or an abuse of  
28 discretion, as defined in this subparagraph, and the local agency  
29 did not make a lawful determination within 90 days of the  
30 applicant's written notice. The applicant's written notice shall  
31 contain all of the following:

32 (Ia) The information specified in paragraphs (1), (2), (5), and  
33 (6) of subdivision (a) of Section 15062 of Title 14 of the California  
34 Code of Regulations.

35 (Ib) A citation to the section of Title 14 of the California Code  
36 of Regulations or the statute under which the applicant asserts that  
37 the project is exempt.

38 (Ic) A brief statement of reasons supporting the assertion that  
39 the project is exempt.

1 (Id) A copy of the excerpts from the record constituting  
2 substantial evidence that the criteria of subclauses (I) to (IV),  
3 inclusive, are satisfied.

4 (ib) Within five working days of receiving the applicant’s  
5 written notice required by sub-subclause (ia), the local agency  
6 shall file the notice with the county clerk of each county in which  
7 the project will be located. The county clerk shall post the notice  
8 and make it available for public inspection in the manner set forth  
9 in subdivision (c) of Section 21152 of the Public Resources Code.  
10 Compliance with this sub-subclause is not a condition that must  
11 be satisfied in order to find that the local agency has disapproved  
12 the housing development project under this subparagraph.

13 (ic) The local agency may, by providing a written response to  
14 the applicant within 90 additional days of the applicant’s written  
15 notice, extend the time period to make a lawful determination by  
16 no more than 90 days if the extension is necessary to determine if  
17 there is substantial evidence in the record that the housing  
18 development project is eligible for the exemption sought by the  
19 applicant.

20 (id) If the local agency has given the applicant written notice  
21 of the local agency’s determination that the project is not exempt,  
22 the applicant’s notice shall be deemed timely if and only if it is  
23 delivered to the local agency within 35 days of the date that the  
24 local agency gave the applicant notice of the local agency’s  
25 determination.

26 (ie) If the local agency has not given the applicant the written  
27 notice described in sub-subclause (id), the applicant’s notice shall  
28 be deemed timely if given after 60 days from the date on which  
29 the project application has been received and accepted as complete  
30 by the lead agency, or 60 days from the date on which the project  
31 application has been determined or deemed to be complete within  
32 the meaning of Section 65943, whichever is earlier.

33 (ii) For purposes of this subparagraph, the following definitions  
34 apply:

35 (I) “Abuse of discretion” means that the conditions set forth in  
36 subclauses (I) to (IV), inclusive, of clause (i) are satisfied, but the  
37 local agency does not determine that the project is exempt from  
38 the California Environmental Quality Act (Division 13  
39 (commencing with Section 21000) of the Public Resources Code).

- 1 This subclause sets forth the exclusive definition of “abuse of  
2 discretion” for purposes of this subparagraph.
- 3 (II) “High-quality transit corridor” has the same meaning defined  
4 in subdivision (b) of Section 21155 of the Public Resources Code.
- 5 (III) “Major transit stop” has the same meaning as defined in  
6 Section 21064.3 of the Public Resources Code.
- 7 (IV) “Proximal” to an amenity means either of the following:  
8 (ia) Within one-half mile of either of the following amenities:  
9 (Ia) A bus station.  
10 (Ib) A ferry terminal.  
11 (ib) Within one mile, or for a parcel in a rural area, as defined  
12 in Section 50199.21 of the Health and Safety Code, within two  
13 miles, of any of the following amenities:  
14 (Ia) A supermarket or grocery store.  
15 (Ib) A public park.  
16 (Ic) A community center.  
17 (Id) A pharmacy or drugstore.  
18 (Ie) A medical clinic or hospital.  
19 (If) A public library.  
20 (Ig) A school that maintains a kindergarten or any of grades 1  
21 to 12, inclusive.
- 22 (V) “Urbanized area” has the same meaning as defined in  
23 Section 21071 of the Public Resources Code.
- 24 (VI) (ia) “Very low vehicle travel area” means an urbanized  
25 area, as designated by the United States Census Bureau, where the  
26 existing residential development generates vehicle miles traveled  
27 per capita that is below 85 percent of either regional vehicle miles  
28 traveled per capita or city vehicle miles traveled per capita.
- 29 (ib) For purposes of sub-subclause (ia), “area” may include a  
30 travel analysis zone, hexagon, or grid.
- 31 (ic) For the purposes of determining “regional vehicle miles  
32 traveled per capita” pursuant to sub-subclause (ia), a “region” is  
33 the entirety of incorporated and unincorporated areas governed by  
34 a multicounty or single-county metropolitan planning organization,  
35 or the entirety of the incorporated and unincorporated areas of an  
36 individual county that is not part of a metropolitan planning  
37 organization.
- 38 (iii) This subparagraph shall not be construed to require a local  
39 agency to determine that a project is exempt if, on the record before  
40 the local agency, the project is not eligible for exemption.

- 1 (iv) This subparagraph shall become inoperative on January 1,
- 2 2031.
- 3 (E) Fails to adopt a negative declaration or addendum for the
- 4 project, to certify an environmental impact report for the project,
- 5 or to approve another comparable environmental document, such
- 6 as a sustainable communities environmental assessment pursuant
- 7 to Section 21155.2 of the Public Resources Code, as required
- 8 pursuant to the California Environmental Quality Act (Division
- 9 13 (commencing with Section 21000) of the Public Resources
- 10 Code), if all of the following conditions are satisfied:
- 11 (i) There is substantial evidence in the record before the local
- 12 agency that the site of the housing development project is not
- 13 located on either of the following:
- 14 (I) On a site specified in subparagraphs (A) to (C), inclusive,
- 15 or subparagraphs (E) to (K), inclusive, of paragraph (6) of
- 16 subdivision (a) of Section 65913.4.
- 17 (II) Within a very high fire hazard severity zone, as determined
- 18 by the Department of Forestry and Fire Protection pursuant to
- 19 Section 51178, or within a high or very high fire hazard severity
- 20 zone as indicated on maps adopted by the Department of Forestry
- 21 and Fire Protection pursuant to Section 4202 of the Public
- 22 Resources Code.
- 23 (ii) The housing development project is located on a legal parcel
- 24 or parcels within an urbanized area and meets one or more of the
- 25 following criteria:
- 26 (I) The housing development project is located within one-half
- 27 mile walking distance to either a high-quality transit corridor or a
- 28 major transit stop.
- 29 (II) The housing development project is located in a very low
- 30 vehicle travel area.
- 31 (III) The housing development project is proximal to six or more
- 32 amenities pursuant to subclause (IV) of clause (vii) as of the date
- 33 of submission of the application for the project.
- 34 (IV) Parcels that are developed with urban uses adjoin at least
- 35 75 percent of the perimeter of the project site or at least three sides
- 36 of a ~~four-sided~~ *four-sided* project site. For purposes of this clause,
- 37 parcels that are only separated by a street or highway shall be
- 38 considered to be adjoined.
- 39 (iii) The density of the housing development project meets or
- 40 exceeds 15 dwelling units per acre.

1 (iv) There has been prepared a negative declaration, addendum,  
2 environmental impact report, or comparable environmental review  
3 document that, if duly adopted, approved, or certified by the local  
4 agency, would satisfy the requirements of the California  
5 Environmental Quality Act (Division 13 (commencing with Section  
6 21000) of the Public Resources Code) with respect to the project.

7 (v) The local agency or a body or official to which the agency  
8 has delegated authority to adopt, approve, or certify the negative  
9 declaration addendum, environmental impact report, or comparable  
10 environmental review document has held a meeting at which  
11 adoption, approval, or certification of the environmental review  
12 document was on the agenda and the environmental review  
13 document could have been adopted, approved, or certified, as  
14 applicable, but the agency did either of the following:

15 (I) Committed an abuse of discretion, as defined in this  
16 subparagraph.

17 (II) Failed to decide whether to require further study or to adopt,  
18 approve, or certify the environmental document.

19 (vi) (I) The applicant has given timely written notice to the  
20 local agency of the action or inaction that the applicant believes  
21 constitutes a failure to decide or an abuse of discretion, and the  
22 local agency did not make a lawful determination about whether  
23 to adopt, approve, or certify the environmental review document  
24 within 90 days of the applicant's written notice. The applicant's  
25 written notice shall include a copy of those excerpts from the record  
26 that constitute substantial evidence that the criteria of clauses (i)  
27 to (iv), inclusive, are satisfied.

28 (II) If the local agency has voted to require further study, rather  
29 than adopting, approving, or certifying the negative declaration,  
30 addendum, environmental impact report, or comparable  
31 environmental review document in the form it was presented for  
32 the agency's consideration, the applicant's notice shall be deemed  
33 timely if and only if it is delivered to the local agency within 35  
34 days of the date that the local agency gave written notice of its  
35 decision to the applicant.

36 (III) If the local agency has not voted to require further study,  
37 rather than adopting, approving, or certifying the negative  
38 declaration, addendum, environmental impact report, or comparable  
39 environmental review document in the form it was presented for  
40 the agency's consideration, the applicant's notice shall be deemed

1 timely if given after the time period specified in Section 21151.5  
 2 of the Public Resources Code or another applicable provision of  
 3 that code for completing the addendum, negative declaration,  
 4 environmental impact report, or other comparable environmental  
 5 review document, as applicable, has passed. If the Public Resources  
 6 Code does not specifically describe the deadline to complete the  
 7 applicable environmental document, a 180-day deadline is the  
 8 applicable time period.

9 (vii) For purposes of this subparagraph, the following definitions  
 10 apply:

11 (I) (ia) “Abuse of discretion” means either of the following:

12 (Ia) If the local agency fails to adopt a negative declaration,  
 13 “abuse of discretion” means that the agency, in bad faith or without  
 14 substantial evidence in the record to support a fair argument that  
 15 further environmental study is necessary to identify or analyze  
 16 potentially significant impacts on the physical environment,  
 17 decided to require further environmental study rather than adopting  
 18 the negative declaration.

19 (Ib) If the local agency fails to adopt an addendum for the  
 20 project, certify an environmental impact report for the project, or  
 21 approve another comparable environmental document, “abuse of  
 22 discretion” means that the agency, in bad faith or without  
 23 substantial evidence in the record that further environmental study  
 24 is legally required to identify or analyze potentially significant  
 25 impacts on the physical environment, decided to require further  
 26 environmental study rather than adopting, approving, or certifying  
 27 the environmental review document.

28 (ib) This subclause sets forth the exclusive definition of “abuse  
 29 of discretion” for purposes of this subparagraph.

30 (II) “High-quality transit corridor” has the same meaning defined  
 31 in subdivision (b) of Section 21155 of the Public Resources Code.

32 (III) “Major transit stop” has the same meaning as defined in  
 33 Section 21064.3 of the Public Resources Code.

34 (IV) “Proximal” to an amenity means either of the following:

35 (ia) Within one-half mile of either of the following amenities:

36 (Ia) A bus station.

37 (Ib) A ferry terminal.

38 (ib) Within one mile, or for a parcel in a rural area, as defined  
 39 in Section 50199.21 of the Health and Safety Code, within two  
 40 miles, of any of the following amenities:

- 1 (Ia) A supermarket or grocery store.
- 2 (Ib) A public park.
- 3 (Ic) A community center.
- 4 (Id) A pharmacy or drugstore.
- 5 (Ie) A medical clinic or hospital.
- 6 (If) A public library.
- 7 (Ig) A school that maintains a kindergarten or any of grades 1
- 8 to 12, inclusive.
- 9 (V) “Urbanized area” has the same meaning as defined in
- 10 Section 21071 of the Public Resources Code.
- 11 (VI) (ia) “Very low vehicle travel area” means an urbanized
- 12 area, as designated by the United States Census Bureau, where the
- 13 existing residential development generates vehicle miles traveled
- 14 per capita that is below 85 percent of either regional vehicle miles
- 15 traveled per capita or city vehicle miles traveled per capita.
- 16 (ib) For purposes of sub-subclause (ia), “area” may include a
- 17 travel analysis zone, hexagon, or grid.
- 18 (ic) For the purposes of determining “regional vehicle miles
- 19 traveled per capita” pursuant to sub-subclause (ia), a “region” is
- 20 the entirety of incorporated and unincorporated areas governed by
- 21 a multicounty or single-county metropolitan planning organization,
- 22 or the entirety of the incorporated and unincorporated areas of an
- 23 individual county that is not part of a metropolitan planning
- 24 organization.
- 25 (viii) This subparagraph shall become inoperative on January
- 26 1, 2031.
- 27 (7) (A) For purposes of this section, “lawful determination”
- 28 means any final decision about whether to approve or disapprove
- 29 a statutory or categorical exemption or a negative declaration,
- 30 addendum, environmental impact report, or comparable
- 31 environmental review document under the California
- 32 Environmental Quality Act (Division 13 (commencing with Section
- 33 21000) of the Public Resources Code) that is not an abuse of
- 34 discretion, as defined in clause (ii) of subparagraph (D) of
- 35 paragraph (6) or clause (vii) of subparagraph (E) of paragraph (6).
- 36 (B) This paragraph shall become inoperative on January 1, 2031.
- 37 (8) “Lower density” includes any conditions that have the same
- 38 effect or impact on the ability of the project to provide housing.
- 39 (9) Until January 1, 2030, “objective” means involving no
- 40 personal or subjective judgment by a public official and being

1 uniformly verifiable by reference to an external and uniform  
2 benchmark or criterion available and knowable by both the  
3 development applicant or proponent and the public official.

4 (10) Notwithstanding any other law, until January 1, 2030,  
5 “determined to be complete” means that the applicant has submitted  
6 a complete application pursuant to Section 65943.

7 (i) If any city, county, or city and county denies approval or  
8 imposes conditions, including design changes, lower density, or  
9 a reduction of the percentage of a lot that may be occupied by a  
10 building or structure under the applicable planning and zoning in  
11 force at the time the housing development project’s application is  
12 complete, that have a substantial adverse effect on the viability or  
13 affordability of a housing development for very low, low-, or  
14 moderate-income households, and the denial of the development  
15 or the imposition of conditions on the development is the subject  
16 of a court action which challenges the denial or the imposition of  
17 conditions, then the burden of proof shall be on the local legislative  
18 body to show that its decision is consistent with the findings as  
19 described in subdivision (d), and that the findings are supported  
20 by a preponderance of the evidence in the record, and with the  
21 requirements of subdivision (o).

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

31 (A) The housing development project would have a specific,  
32 adverse impact upon the public health or safety unless the project  
33 is disapproved or approved upon the condition that the project be  
34 developed at a lower density. As used in this paragraph, a “specific,  
35 adverse impact” means a significant, quantifiable, direct, and  
36 unavoidable impact, based on objective, identified written public  
37 health or safety standards, policies, or conditions as they existed  
38 on the date the application was deemed complete.

39 (B) There is no feasible method to satisfactorily mitigate or  
40 avoid the adverse impact identified pursuant to paragraph (1), other

1 than the disapproval of the housing development project or the  
2 approval of the project upon the condition that it be developed at  
3 a lower density.

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

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

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

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

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

31 (4) For purposes of this section, a proposed housing development  
32 project is not inconsistent with the applicable zoning standards  
33 and criteria, and shall not require a rezoning, if the housing  
34 development project is consistent with the objective general plan  
35 standards and criteria but the zoning for the project site is  
36 inconsistent with the general plan. If the local agency has complied  
37 with paragraph (2), the local agency may require the proposed  
38 housing development project to comply with the objective  
39 standards and criteria of the zoning which is consistent with the  
40 general plan, however, the standards and criteria shall be applied

1 to facilitate and accommodate development at the density allowed  
 2 on the site by the general plan and proposed by the proposed  
 3 housing development project.

4 (k) (1) (A) (i) The applicant, a person who would be eligible  
 5 to apply for residency in the housing development project or  
 6 emergency shelter, or a housing organization may bring an action  
 7 to enforce this section. If, in any action brought to enforce this  
 8 section, a court finds that any of the following are met, the court  
 9 shall issue an order pursuant to clause (ii):

10 (I) The local agency, in violation of subdivision (d), disapproved  
 11 a housing development project or conditioned its approval in a  
 12 manner rendering it infeasible for the development of an emergency  
 13 shelter, or housing for very low, low-, or moderate-income  
 14 households, including farmworker housing, without making the  
 15 findings required by this section or without making findings  
 16 supported by a preponderance of the evidence.

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

23 (III) (ia) Subject to sub-subclause (ib), the local agency, in  
 24 violation of subdivision (o), required or attempted to require a  
 25 housing development project to comply with an ordinance, policy,  
 26 or standard not adopted and in effect when a preliminary  
 27 application was submitted.

28 (ib) This subclause shall become inoperative on January 1, 2030.

29 (ii) If the court finds that one of the conditions in clause (i) is  
 30 met, the court shall issue an order or judgment compelling  
 31 compliance with this section within 60 days, including, but not  
 32 limited to, an order that the local agency take action on the housing  
 33 development project or emergency shelter. The court may issue  
 34 an order or judgment directing the local agency to approve the  
 35 housing development project or emergency shelter if the court  
 36 finds that the local agency acted in bad faith when it disapproved  
 37 or conditionally approved the housing development or emergency  
 38 shelter in violation of this section. The court shall retain jurisdiction  
 39 to ensure that its order or judgment is carried out and shall award  
 40 reasonable attorney’s fees and costs of suit to the plaintiff or

1 petitioner, provided however, that the court shall not award  
2 attorney’s fees in either of the following instances:

3 (I) The court finds, under extraordinary circumstances, that  
4 awarding fees would not further the purposes of this section.

5 (II) (ia) In a case concerning a disapproval within the meaning  
6 of subparagraph (D) or (E) of paragraph (6) of subdivision (h), the  
7 court finds that the local agency acted in good faith and had  
8 reasonable cause to disapprove the housing development project  
9 due to the existence of a controlling question of law about the  
10 application of the California Environmental Quality Act (Division  
11 13 (commencing with Section 21000) of the Public Resources  
12 Code) or implementing guidelines as to which there was a  
13 substantial ground for difference of opinion at the time of the  
14 disapproval.

15 (ib) This subclause shall become inoperative on January 1, 2031.

16 (B) Upon a determination that the local agency has failed to  
17 comply with the order or judgment compelling compliance with  
18 this section within 60 days issued pursuant to subparagraph (A),  
19 the court shall impose fines on a local agency that has violated this  
20 section and require the local agency to deposit any fine levied  
21 pursuant to this subdivision into a local housing trust fund. The  
22 local agency may elect to instead deposit the fine into the Building  
23 Homes and Jobs Trust Fund. The fine shall be in a minimum  
24 amount of ten thousand dollars (\$10,000) per housing unit in the  
25 housing development project on the date the application was  
26 deemed complete pursuant to Section 65943. In determining the  
27 amount of fine to impose, the court shall consider the local  
28 agency’s progress in attaining its target allocation of the regional  
29 housing need pursuant to Section 65584 and any prior violations  
30 of this section. Fines shall not be paid out of funds already  
31 dedicated to affordable housing, including, but not limited to, Low  
32 and Moderate Income Housing Asset Funds, funds dedicated to  
33 housing for very low, low-, and moderate-income households, and  
34 federal HOME Investment Partnerships Program and Community  
35 Development Block Grant Program funds. The local agency shall  
36 commit and expend the money in the local housing trust fund  
37 within five years for the sole purpose of financing newly  
38 constructed housing units affordable to extremely low, very low,  
39 or low-income households. After five years, if the funds have not  
40 been expended, the money shall revert to the state and be deposited

1 in the Building Homes and Jobs Trust Fund for the sole purpose  
2 of financing newly constructed housing units affordable to  
3 extremely low, very low, or low-income households.

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

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

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

38 (m) (1) Any action brought to enforce the provisions of this  
39 section shall be brought pursuant to Section 1094.5 of the Code  
40 of Civil Procedure, and the local agency shall prepare and certify

1 the record of proceedings in accordance with subdivision (c) of  
2 Section 1094.6 of the Code of Civil Procedure no later than 30  
3 days after the petition is served, provided that the cost of  
4 preparation of the record shall be borne by the local agency, unless  
5 the petitioner elects to prepare the record as provided in subdivision  
6 (n) of this section. A petition to enforce the provisions of this  
7 section shall be filed and served no later than 90 days from the  
8 later of (1) the effective date of a decision of the local agency  
9 imposing conditions on, disapproving, or any other final action on  
10 a housing development project or (2) the expiration of the time  
11 periods specified in subparagraph (B) of paragraph (5) of  
12 subdivision (h). Upon entry of the trial court's order, a party may,  
13 in order to obtain appellate review of the order, file a petition  
14 within 20 days after service upon it of a written notice of the entry  
15 of the order, or within such further time not exceeding an additional  
16 20 days as the trial court may for good cause allow, or may appeal  
17 the judgment or order of the trial court under Section 904.1 of the  
18 Code of Civil Procedure. If the local agency appeals the judgment  
19 of the trial court, the local agency shall post a bond, in an amount  
20 to be determined by the court, to the benefit of the plaintiff if the  
21 plaintiff is the project applicant.

22 (2) (A) A disapproval within the meaning of subparagraph (D)  
23 of paragraph (6) of subdivision (h) shall be final for purposes of  
24 this subdivision, if the local agency did not make a lawful  
25 determination within the time period set forth in subclause (V) of  
26 clause (i) of that subparagraph after the applicant's timely written  
27 notice.

28 (B) This paragraph shall become inoperative on January 1, 2031.

29 (3) (A) A disapproval within the meaning of subparagraph (E)  
30 of paragraph (6) of subdivision (h) shall be final for purposes of  
31 this subdivision, if the local agency did not make a lawful  
32 determination within 90 days of the applicant's timely written  
33 notice.

34 (B) This paragraph shall become inoperative on January 1, 2031.

35 (n) In any action, the record of the proceedings before the local  
36 agency shall be filed as expeditiously as possible and,  
37 notwithstanding Section 1094.6 of the Code of Civil Procedure or  
38 subdivision (m) of this section, all or part of the record may be  
39 prepared (1) by the petitioner with the petition or petitioner's points  
40 and authorities, (2) by the respondent with respondent's points and

1 authorities, (3) after payment of costs by the petitioner, or (4) as  
 2 otherwise directed by the court. If the expense of preparing the  
 3 record has been borne by the petitioner and the petitioner is the  
 4 prevailing party, the expense shall be taxable as costs.

5 (o) (1) (A) Subject to paragraphs (2), (6), and (7), and  
 6 subdivision (d) of Section 65941.1, a housing development project  
 7 shall be subject only to the ordinances, policies, and standards  
 8 adopted and in effect when a preliminary application including all  
 9 of the information required by subdivision (a) of Section 65941.1  
 10 was submitted.

11 (B) *For purposes of a local agency’s approval, conditional*  
 12 *approval, or disapproval of a housing development project*  
 13 *pursuant to subdivision (d), a housing element or amendment shall*  
 14 *be considered in substantial compliance with this article only if*  
 15 *the element or amendment was in substantial compliance, as*  
 16 *determined by the department or a court of competent jurisdiction,*  
 17 *when a preliminary application, including all of the information*  
 18 *required by subdivision (a) of Section 65941.1, was submitted or,*  
 19 *if a preliminary application was not submitted, when a complete*  
 20 *application pursuant to Section 65943 was submitted. This*  
 21 *subparagraph does not constitute a change in, but is declaratory*  
 22 *of, existing law.*

23 (2) Paragraph (1) shall not prohibit a housing development  
 24 project from being subject to ordinances, policies, and standards  
 25 adopted after the preliminary application was submitted pursuant  
 26 to Section 65941.1 in the following circumstances:

27 (A) In the case of a fee, charge, or other monetary exaction, to  
 28 an increase resulting from an automatic annual adjustment based  
 29 on an independently published cost index that is referenced in the  
 30 ordinance or resolution establishing the fee or other monetary  
 31 exaction.

32 (B) A preponderance of the evidence in the record establishes  
 33 that subjecting the housing development project to an ordinance,  
 34 policy, or standard beyond those in effect when a preliminary  
 35 application was submitted is necessary to mitigate or avoid a  
 36 specific, adverse impact upon the public health or safety, as defined  
 37 in subparagraph (A) of paragraph (1) of subdivision (j), and there  
 38 is no feasible alternative method to satisfactorily mitigate or avoid  
 39 the adverse impact.

1 (C) Subjecting the housing development project to an ordinance,  
2 policy, standard, or any other measure, beyond those in effect when  
3 a preliminary application was submitted is necessary to avoid or  
4 substantially lessen an impact of the project under the California  
5 Environmental Quality Act (Division 13 (commencing with Section  
6 21000) of the Public Resources Code).

7 (D) The housing development project has not commenced  
8 construction within two and one-half years, or three and one-half  
9 years for an affordable housing project, following the date that the  
10 project received final approval. For purposes of this subparagraph:

11 (i) “Affordable housing project” means a housing development  
12 that satisfies both of the following requirements:

13 (I) Units within the development are subject to a recorded  
14 affordability restriction for at least 55 years for rental housing and  
15 45 years for owner-occupied housing, or the first purchaser of each  
16 unit participates in an equity sharing agreement as described in  
17 subparagraph (C) of paragraph (2) of subdivision (c) of Section  
18 65915.

19 (II) All of the units within the development, excluding managers’  
20 units, are dedicated to lower income households, as defined by  
21 Section 50079.5 of the Health and Safety Code.

22 (ii) “Final approval” means that the housing development project  
23 has received all necessary approvals to be eligible to apply for,  
24 and obtain, a building permit or permits and either of the following  
25 is met:

26 (I) The expiration of all applicable appeal periods, petition  
27 periods, reconsideration periods, or statute of limitations for  
28 challenging that final approval without an appeal, petition, request  
29 for reconsideration, or legal challenge having been filed.

30 (II) If a challenge is filed, that challenge is fully resolved or  
31 settled in favor of the housing development project.

32 (E) The housing development project is revised following  
33 submittal of a preliminary application pursuant to Section 65941.1  
34 such that the number of residential units or square footage of  
35 construction changes by 20 percent or more, exclusive of any  
36 increase resulting from the receipt of a density bonus, incentive,  
37 concession, waiver, or similar provision, including any other locally  
38 authorized program that offers additional density or other  
39 development bonuses when affordable housing is provided. For  
40 purposes of this subdivision, “square footage of construction”

1 means the building area, as defined by the California Building  
2 Standards Code (Title 24 of the California Code of Regulations).

3 (3) This subdivision does not prevent a local agency from  
4 subjecting the additional units or square footage of construction  
5 that result from project revisions occurring after a preliminary  
6 application is submitted pursuant to Section 65941.1 to the  
7 ordinances, policies, and standards adopted and in effect when the  
8 preliminary application was submitted.

9 (4) For purposes of this subdivision, “ordinances, policies, and  
10 standards” includes general plan, community plan, specific plan,  
11 zoning, design review standards and criteria, subdivision standards  
12 and criteria, and any other rules, regulations, requirements, and  
13 policies of a local agency, as defined in Section 66000, including  
14 those relating to development impact fees, capacity or connection  
15 fees or charges, permit or processing fees, and other exactions.

16 (5) This subdivision shall not be construed in a manner that  
17 would lessen the restrictions imposed on a local agency, or lessen  
18 the protections afforded to a housing development project, that are  
19 established by any other law, including any other part of this  
20 section.

21 (6) This subdivision shall not restrict the authority of a public  
22 agency or local agency to require mitigation measures to lessen  
23 the impacts of a housing development project under the California  
24 Environmental Quality Act (Division 13 (commencing with Section  
25 21000) of the Public Resources Code).

26 (7) With respect to completed residential units for which the  
27 project approval process is complete and a certificate of occupancy  
28 has been issued, nothing in this subdivision shall limit the  
29 application of later enacted ordinances, policies, and standards  
30 that regulate the use and occupancy of those residential units, such  
31 as ordinances relating to rental housing inspection, rent  
32 stabilization, restrictions on short-term renting, and business  
33 licensing requirements for owners of rental housing.

34 (8) (A) This subdivision shall apply to a housing development  
35 project that submits a preliminary application pursuant to Section  
36 65941.1 before January 1, 2030.

37 (B) This subdivision shall become inoperative on January 1,  
38 2034.

39 (p) (1) Upon any motion for an award of attorney’s fees  
40 pursuant to Section 1021.5 of the Code of Civil Procedure, in a

1 case challenging a local agency’s approval of a housing  
2 development project, a court, in weighing whether a significant  
3 benefit has been conferred on the general public or a large class  
4 of persons and whether the necessity of private enforcement makes  
5 the award appropriate, shall give due weight to the degree to which  
6 the local agency’s approval furthers policies of this section,  
7 including, but not limited to, subdivisions (a), (b), and (c), the  
8 suitability of the site for a housing development, and the  
9 reasonableness of the decision of the local agency. It is the intent  
10 of the Legislature that attorney’s fees and costs shall rarely, if ever,  
11 be awarded if a local agency, acting in good faith, approved a  
12 housing development project that satisfies conditions established  
13 in subclauses (I), (II), and (III) of clause (i) of subparagraph (D)  
14 of paragraph (6) of subdivision (h) or clauses (i), (ii), and (iii) of  
15 subparagraph (E) of paragraph (6) of subdivision (h).

16 (2) This subdivision shall become inoperative on January 1,  
17 2031.

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

20 (r) The provisions of this section are severable. If any provision  
21 of this section or its application is held invalid, that invalidity shall  
22 not affect other provisions or applications that can be given effect  
23 without the invalid provision or application.

24 SEC. 3. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 a local agency or school district has the authority to levy service  
27 charges, fees, or assessments sufficient to pay for the program or  
28 level of service mandated by this act, within the meaning of Section  
29 17556 of the Government Code.

O