

Assembly Bill No. 2234

CHAPTER 651

An act to amend Section 65589.5 of, and to add Sections 65913.3 and 65913.3.5 to, the Government Code, relating to planning and zoning.

[Approved by Governor September 28, 2022. Filed with
Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2234, Robert Rivas. Planning and zoning: housing: postentitlement phase permits.

(1) Existing law, the Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each public agency to provide a development project applicant with a list that specifies the information that will be required from any applicant for a development project. The act requires public agencies to approve or disapprove of a development project within certain specified timeframes. Existing law requires a city, county, or special district to provide specified information, including a current schedule of fees, exactions, and affordability requirements applicable to a proposed housing development project, and an archive of impact fee nexus studies, cost of service studies, or equivalent studies, conducted by the city, county, or special district, on its internet website.

The Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, specified housing development projects, including projects for very low, low, or moderate-income households and projects for emergency shelters, that comply with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time the application for the project is deemed complete, unless the local agency makes specified written findings supported by a preponderance of the evidence in the record. The act authorizes a project applicant, a person who would be eligible to apply for residency in the housing development or emergency shelter, or a housing organization to bring a lawsuit to enforce its provisions.

This bill would require a local agency to compile a list of information needed to approve or deny a postentitlement phase permit, as defined, to post an example of a complete, approved application and an example of a complete set of postentitlement phase permits for at least 5 types of housing development projects, as defined, in the jurisdiction, as specified, and to make those items available to all applicants for these permits no later than January 1, 2024. The bill would define "local agency" for these purposes to mean a city, county, or city and county.

This bill would require a local agency, beginning on specified dates determined by population size, to provide an option for postentitlement

phase permits to be applied for, completed, and retrieved by the applicant on its internet website, and accept applications for postentitlement phase permits and any related documentation by electronic mail until that process has been established. The bill would require the local agency to list on their internet website or provide by electronic mail upon request, as applicable, the current processing status of the applicant's permit.

This bill would establish time limits for completing reviews regarding whether an application for a postentitlement phase permit is complete and compliant, and whether to approve or deny an application, as specified, and would make any failure to meet these time limits a disapproval of the housing development project and a violation of the Housing Accountability Act. The bill would define specified terms for its purposes. By imposing additional duties on local officials, the bill would impose a state-mandated local program.

(2) The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, based on various coastal resources planning and management policies set forth in the act.

This bill would provide that the above provisions would not apply to permits required and issued by specified government agencies, including permits required and issued by the California Coastal Commission.

(3) The Housing Accountability Act also requires a housing development project to be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted, except as specified. Existing law specifies the act does not prohibit a housing development project that is an affordable housing project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted if the project has not commenced construction within 3.5 years. Existing law defines "affordable housing project" for purposes of those provisions to mean a housing development in which units within the development are subject to a recorded affordability restriction for at least 55 years, among other things.

This bill would instead require either that units within the development be subject to a recorded affordability restriction for at least 55 years for rental housing and 45 years for owner-occupied housing or that the first purchaser of each unit participate in an equity sharing agreement, as specified.

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

(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.

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

SECTION 1. Section 65589.5 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section

50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

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

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

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

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

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

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

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or conditionally approve the housing development project or emergency shelter.

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

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

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the

burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

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

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

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

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

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

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

(A) Residential units only.

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

(C) Transitional housing or supportive housing.

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

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

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

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

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

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

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

(7) “Lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(8) Until January 1, 2030, “objective” means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

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

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

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

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

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the

applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

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

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

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

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

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

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

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

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required

by this section or without making findings supported by a preponderance of the evidence.

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

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

(ii) If the court finds that one of the conditions in clause (i) is met, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section.

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

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including,

but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

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

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

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court’s order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond,

in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner’s points and authorities, (2) by the respondent with respondent’s points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

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

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

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

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

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

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

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

(I) Units within the development are subject to a recorded affordability restriction for at least 55 years for rental housing and 45 years for owner-occupied housing, or the first purchaser of each unit participates in

an equity sharing agreement as described in subparagraph (C) of paragraph (2) of subdivision (c) of Section 65915.

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

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

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

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

(E) The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, including any other locally authorized program that offers additional density or other development bonuses when affordable housing is provided. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

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

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

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

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

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued,

nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

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

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

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

SEC. 2. Section 65913.3 is added to the Government Code, to read:

65913.3. (a) (1) A local agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a postentitlement phase permit. The local agency may revise the lists of information required from an applicant. Any revised list shall not apply to any permit pending review.

(2) A local agency shall post an example of a complete, approved application and an example of a complete set of postentitlement phase permits for at least five types of housing development projects in the jurisdiction, including, but not limited to, accessory dwelling unit, duplex, multifamily, mixed use, and townhome.

(3) A local agency shall make the items required by paragraphs (1) and (2) available on the agency's internet website no later than January 1, 2024.

(b) (1) (A) A local agency shall determine whether an application for a postentitlement phase permit is complete and provide written notice of this determination to the applicant not later than 15 business days after the local agency received the application.

(B) If the local agency determines an application is incomplete, the local agency shall provide the applicant with a list of incomplete items and a description of how the application can be made complete. The list shall be limited to incomplete items that are included on the lists required by paragraph (1) of subdivision (a). The list and description shall be provided with the written notice required by subparagraph (A).

(2) (A) After receiving a notice that the application was incomplete, an applicant may cure and address the items that are deemed to be incomplete by the local agency.

(B) In the review of an application submitted pursuant to subparagraph (A), the local agency shall not require the application to include an item that was not included in the list required by subparagraph (B) of paragraph (1).

(C) If an applicant submits an application pursuant to subparagraph (A), the local agency shall determine whether the additional application has remedied all incomplete items listed in the determination issued pursuant to subparagraph (B) of paragraph (1). This additional application is subject to the timelines and requirements specified in subparagraph (A) of paragraph (1).

(3) If a local agency does not make a timely determination as required by paragraph (1) or (2) and the application or resubmitted application states that it is for a postentitlement phase permit, the application or resubmitted application shall be deemed to be complete for the purposes of this chapter.

(c) (1) For housing development projects with 25 units or fewer, a local agency shall complete the review and either return in writing a full set of comments to the applicant with a comprehensive request for revisions or return the approved permit application on each postentitlement phase permit requested, and immediately transmit that determination to the applicant by electronic mail and, if applicable, by posting the response on its internet website in the manner prescribed in subdivision (b) of Section 65913.3.5 not later than 30 business days after the local agency determines that an application for a postentitlement phase permit is complete pursuant to subdivision (b).

(2) For housing development projects with 26 units or more, a local agency shall complete the review and either return in writing a full set of comments to the applicant with a comprehensive request for revisions or return the approved permit application on each postentitlement phase permit requested, and immediately transmit that determination to the applicant by electronic mail and, if applicable, by posting the response on its internet website in the manner prescribed in subdivision (b) of Section 65913.3.5 not later than 60 business days after the local agency determines that an application for a postentitlement phase permit is complete pursuant to subdivision (b).

(3) (A) The time limits in this subdivision shall not apply if the local agency makes written findings within the time limits specified in paragraph (1) or (2) based on substantial evidence in the record that the proposed postentitlement phase permit might have a specific, adverse impact on public health or safety and that additional time is necessary to process the application.

(B) For the purposes of this paragraph, “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(4) If the local agency requires review of the application by an outside entity, the time limits in this subdivision shall be tolled until the outside entity completes the review and returns the application to the local agency, at which point the local agency shall complete the review within the time remaining under the time limit, provided that the local agency notifies the applicant within three business days by electronic mail and, if applicable, by posting the notification on its internet website in the manner prescribed in subdivision (b) of Section 65913.3.5 of the tolling and resumption of the time limit.

(d) (1) If a local agency finds that a complete application is noncompliant, the local agency shall provide the applicant with a list of items that are

noncompliant and a description of how the application can be remedied by the applicant within the time limits specified in subdivision (c).

(2) The local agency shall provide the list and description authorized by paragraph (1) when it transmits its determination to the applicant as required by subdivision (c).

(3) If a local agency denies a postentitlement phase permit application based on a determination that the application is noncompliant, the applicant may attempt to remedy the application.

(4) If an applicant submits an application pursuant to paragraph (3), the additional application is subject to the timelines of a new application as specified in subdivision (c).

(e) (1) If a postentitlement phase permit is determined to be incomplete under subdivision (b) or denied or determined to be noncompliant under subdivision (c) or (d), the local agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

(2) (A) With respect to a postentitlement phase permit concerning housing development projects with 25 units or fewer, a local agency on the appeal shall provide a final written determination by not later than 60 business days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-business-day period.

(B) With respect to a postentitlement phase permit concerning housing development projects with 26 units or more, a local agency on the appeal shall provide a final written determination by not later than 90 business days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 90-business-day period.

(f) If a local agency fails to meet the time limits in this section, it shall be in violation of Section 65589.5.

(g) This section does not place limitations on the amount of feedback that a local agency may provide or revisions that a local agency may request of an applicant.

(h) For residential or residential mixed-use developments that are subject to the requirements set forth in Section 65913.4, the provisions of paragraph (2) of subdivision (h) of Section 65913.4 shall apply. Permits for these developments that are subject to paragraph (2) of subdivision (h) of Section 65913.4 shall not be in conflict with the requirements of this section. The local agency shall comply with both sets of standards.

(i) This section does not preclude an applicant and a local agency from mutually agreeing to an extension of any time limit provided by this section. However, a local agency shall not require an agreement as a condition of accepting the application for, or processing of, a postentitlement phase permit, unless the agreement is obtained for the purpose of permitting

concurrent processing of related approvals or an environmental review on the same housing development project.

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

(1) “Housing development project” has the same meaning as in paragraph (3) of subdivision (b) of Section 65905.5.

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

(3) (A) “Postentitlement phase permit” includes all nondiscretionary permits and reviews filed after the entitlement process has been completed that are required or issued by the local agency to begin construction of a development that is intended to be at least two-thirds residential, excluding discretionary and ministerial planning permits, entitlements, and other permits and reviews that are covered under Chapter 4.5 (commencing with Section 65920). A postentitlement phase permit includes, but is not limited to, all of the following:

(i) Building permits, and all inter-departmental review required for the issuance of a building permit.

(ii) Permits for minor or standard off-site improvements.

(iii) Permits for demolition.

(iv) Permits for minor or standard excavation and grading.

(B) A local agency may identify by ordinance a threshold for determining whether a permit constitutes a “minor” or “standard” permit for the purposes of this paragraph, which shall be supported by written findings adopted by the jurisdiction.

(C) A postentitlement phase permit does not include a permit required and issued by the California Coastal Commission, a special district, a utility that is not owned and operated by a local agency, or any other entity that is not a city, county, or city and county.

SEC. 3. Section 65913.3.5 is added to the Government Code, to read:

65913.3.5. (a) (1) A local agency located in a county with a population of 1,100,000 or greater, or a local agency with a population of 75,000 or greater in any county, as determined by the 2020 census, shall comply with subdivision (b) no later than January 1, 2024.

(2) A local agency required to comply with paragraph (1) may extend the time period described in that paragraph by up to two years if the legislative body of the local agency does both of the following by January 1, 2024:

(A) Makes a written finding that adopting an online permitting system by January 1, 2024, would require substantial increases in permitting fees.

(B) Has initiated a procurement process for the purpose of complying with subdivision (b).

(3) (A) The following local agencies shall comply with subdivision (b) no later than January 1, 2028:

(i) A local agency with a population of fewer than 75,000 located in a county with a total population of less than 1,100,000, as determined by the 2020 census.

(ii) A county with a population in the unincorporated area of fewer than 75,000, as determined by the 2020 census.

(B) A local agency required to comply with subparagraph (A) may extend the time period in subparagraph (A) by up to five years if the legislative body of the local agency makes a written finding that adopting an online permitting system on or before January 1, 2028, would require substantial increases in permitting fees.

(b) (1) Subject to subdivision (a), a local agency shall provide an option for postentitlement phase permits to be applied for, completed, and retrieved by the applicant on its internet website.

(2) Until a local agency has established the process required by paragraph (1) on its internet website, it shall accept applications for postentitlement phase permits and any related documentation by electronic mail.

(3) (A) The internet website shall list the current processing status of the applicant’s permit by the local agency. That status shall note whether it is being reviewed by the agency or action is required from the applicant.

(B) A local agency required to accept applications by electronic mail pursuant to paragraph (2) shall respond to inquiries from an applicant regarding the current processing status of the applicant’s permit via electronic mail.

(c) Notwithstanding subdivision (a), this section shall only apply to large jurisdictions, as defined in Section 53559.1 of the Health and Safety Code.

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

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

(2) “Postentitlement phase permit” has the same meaning as in Section 65913.3.

SEC. 4. The Legislature finds and declares that access to affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 2 and 3 of this act adding Sections 65913.3 and 65913.3.5 to the Government Code applies to all cities, counties, and cities and counties, including charter cities, counties, and cities and counties.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.