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AMENDED IN ASSEMBLY JULY 1, 1999
AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 948

Introduced by Senator Alarcon
(Principal coauthor: Senator Burton)
(Principal coauthor: Assembly Member Dutra)

February 25, 1999

An act to amend Sections 7060, 7060.2, 7060.4, 7060.7, 65009, 65589.5, 65915, and 65950 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 948, as amended, Alarcon. Affordable housing developments.

(1) Under the Ellis Act, public entities generally are prohibited from adopting any statute, ordinance, or regulation, or taking any administrative action, to compel the owner of residential real property to offer or to continue to offer accommodations in the property for rent or lease. The act also authorizes any public entity that has in effect any system of rent control, notwithstanding any provision of the Ellis Act, to subject to specified provisions, accommodations that had been withdrawn from rent or lease and are again

offered for rent or lease for residential purposes within one year of the date that the accommodations were withdrawn pursuant to a 60-day notice.

This bill would revise the act's statement of legislative intent. It would also extend the period from one year to 2 years that accommodations that are offered again for rent or lease for residential purposes are subject to specified regulatory provisions and it would revise those provisions. The bill would also require that a specified notice and conditions apply to a tenant or lessee who is at least 62 years of age or disabled, as defined, and has lived in his or her accommodations for at least one year, as specified, when the owner of the residential property delivers to the public entity a notice of intent to withdraw the accommodations from rent or lease under the act.

The bill would also change the notice of intent to withdraw to the public entity from 60 days to 120 days and would require that these provisions shall only apply to accommodations where the date of delivery to the public entity of the notice of intent to withdraw is on or after January 1, 2000.

(2) Under existing law, the Planning Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year after accrual of the cause of action if it meets certain requirements, including that it is brought in support of the development of housing that meets the requirements for housing persons and families with low or moderate incomes. Where the action or proceeding challenges the adequacy of a housing element, the action or proceeding may be initiated up to 60 days following the date the Department of Housing and Community Development reports its findings concerning the housing element pursuant to specified provisions.

This bill would revise these provisions to include actions or proceedings to encourage or facilitate the development of housing and would include persons and families of very low and middle incomes. The bill would also provide that any action *or proceeding* challenging the adequacy of a housing element pursuant to these provisions may be brought as specified above.



(3) Existing law requires local agencies to make specified findings before disapproving or conditionally approving certain housing development projects. Existing law also requires local agencies to provide developer incentives for the production of lower income housing units within a housing development if the developer meets specified requirements. Developer incentives include, among other things, a density bonus, as defined.

This bill would make specified changes in these findings relating to very low income, low-income, lower to moderate-income housing, middle-income households and the housing element of a general plan, respectively. The bill would revise the definition of “affordable to low- and moderate-income households” to include very low income households or middle-income households, as defined, and would add a definition for “disapprove the development project” to these provisions. The bill would also require the court in any action brought to enforce these provisions to order a local agency, within 60 days, to comply with these provisions and take action on the development projects that were disapproved on the basis of findings that were inadequate or lacked substantial evidence and to retain jurisdiction for this purpose. The bill would also revise the definitions of “density bonus” and “area median income” to mean very low or low- income households for purposes of these provisions.

Because these changes would impose new duties on local agencies, the bill would impose a state-mandated local program.

(4) Under the Permit Streamlining Act, a public agency that is the lead agency for a development project is required to approve or disapprove the project within 180 days from the date of certification by the lead agency of an environmental impact report if the report is prepared pursuant to specified provisions.

This bill, in addition, would reduce that period to 90 days if the development project is affordable to very low or low-income households and the project applicant has provided written notice to the lead agency that an application has been or will be made to a public or federal agency for an



allocation or commitment of financing, tax credits, bond authority, or other financial assistance and there is confirmation that the application was made prior to certification of the environmental impact report.

(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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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

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 7060 of the Government Code is
2 amended to read:

3 7060. (a) No public entity, as defined in Section 811.2,
4 shall, by statute, ordinance, or regulation, or by
5 administrative action implementing any statute,
6 ordinance or regulation, compel the owner of any
7 residential real property to offer, or to continue to offer,
8 accommodations in the property for rent or lease.

9 (b) For the purposes of this chapter, the following
10 definitions apply:

11 (1) "Accommodations" means either of the following:

12 (A) The residential rental units in any detached
13 physical structure containing four or more residential
14 rental units.

15 (B) With respect to a detached physical structure
16 containing three or fewer residential rental units, the
17 residential rental units in that structure and in any other
18 structure located on the same parcel of land, including



1 any detached physical structure specified in
2 subparagraph (A).

3 (2) “Disabled” means a person with a disability, as
4 defined in Section 12955.3 of the Government Code.

5 SEC. 2. Section 7060.2 of the Government Code is
6 amended to read:

7 7060.2. If a public entity, by valid exercise of its police
8 power, has in effect any control or system of control on
9 the price at which accommodations may be offered for
10 rent or lease, that entity may, notwithstanding any
11 provision of this chapter, provide by statute or ordinance,
12 or by regulation as specified in Section 7060.5, that any
13 accommodations which have been offered for rent or
14 lease and which were subject to that control or system of
15 control at the time the accommodations were withdrawn
16 from rent or lease, shall be subject to the following:

17 (a) If the accommodations are offered again for rent
18 or lease for residential purposes within two years of the
19 date the accommodations were withdrawn from rent or
20 lease, the following provisions shall govern:

21 (1) The accommodations shall be subject to any
22 control on the price at which they may be offered in the
23 manner and to the same extent as if the accommodations
24 had not been withdrawn from rent or lease. This
25 paragraph shall prevail over any conflicting provision of
26 law authorizing the landlord to establish the rental rate
27 upon the initial hiring of the accommodations.

28 (2) The owner of the accommodations shall be liable
29 to any tenant or lessee who was displaced from the
30 property by that action for actual and exemplary
31 damages. Any action by a tenant or lessee pursuant to this
32 paragraph shall be brought within three years of the
33 withdrawal of the accommodations from rent or lease.
34 However, nothing in this paragraph precludes a tenant
35 from pursuing any alternative remedy available under
36 the law.

37 (3) A public entity which has acted pursuant to this
38 section may institute a civil proceeding against any owner
39 who has again offered accommodations for rent or lease
40 subject to this subdivision, for exemplary damages for



1 displacement of tenants or lessees. Any action by a public
2 entity pursuant to this paragraph shall be brought within
3 three years of the withdrawal of the accommodations
4 from rent or lease.

5 (4) Any owner who offers accommodations again for
6 rent or lease shall first offer the unit for rent or lease to
7 the tenant or lessee displaced from that unit by the
8 withdrawal pursuant to this chapter, if the tenant has
9 advised the owner in writing within 30 days of the
10 displacement of his or her desire to consider an offer to
11 renew the tenancy and has furnished the owner with an
12 address to which that offer is to be directed. That tenant,
13 lessee, or former tenant or lessee may advise the owner
14 at any time during the eligibility of a change of address
15 to which an offer is to be directed.

16 If the owner again offers the accommodations for rent
17 or lease pursuant to this subdivision, and the tenant or
18 lessee has advised the owner pursuant to this subdivision
19 of a desire to consider an offer to renew the tenancy, then
20 the owner shall offer to reinstitute a rental agreement or
21 lease on terms permitted by law to that displaced tenant
22 or lessee.

23 This offer shall be deposited in the United States mail,
24 by registered or certified mail with postage prepaid,
25 addressed to the displaced tenant or lessee at the address
26 furnished to the owner as provided in this subdivision,
27 and shall describe the terms of the offer. The displaced
28 tenant or lessee shall have 30 days from the deposit of the
29 offer in the mail to accept the offer by personal delivery
30 of that acceptance or by deposit of the acceptance in the
31 United States mail by registered or certified mail with
32 postage prepaid.

33 (b) (1) If the accommodations are offered again for
34 residential purposes more than two years after the date
35 the accommodations were withdrawn from rent or lease,
36 the accommodations shall be subject to any control on the
37 price at which they may be offered in the manner and to
38 the same extent as if the accommodations had not been
39 withdrawn from rent or lease, subject to any adjustments
40 otherwise available under the system of control. This



1 subdivision shall prevail over any conflicting provision of
2 law authorizing the landlord to establish the rental rate
3 upon the initial hiring of the accommodations.

4 (2) A public entity which has acted pursuant to this
5 section, may require by statute or ordinance, or by
6 regulation as specified in Section 7060.5, that an owner
7 who offers accommodations again for rent or lease within
8 a period not exceeding 10 years from the date on which
9 they are withdrawn, and which are subject to this
10 subdivision, shall first offer the unit to the tenant or lessee
11 displaced from that unit by the withdrawal, if that tenant
12 or lessee requests the offer in writing within 30 days after
13 the owner has notified the public entity of an intention to
14 offer the accommodations again for residential rent or
15 lease pursuant to a requirement adopted by the public
16 entity under subdivision (c) of Section 7060.4. The owner
17 of the accommodations shall be liable to any tenant or
18 lessee who was displaced by that action for failure to
19 comply with this paragraph, for punitive damages in an
20 amount which does not exceed the contract rent for six
21 months.

22 (c) If the accommodations are demolished, and new
23 accommodations are constructed on the same property,
24 and offered for rent or lease within five years of the date
25 the accommodations were withdrawn from rent or lease,
26 the newly constructed accommodations shall be subject
27 to any system of controls on the price at which they would
28 be offered on the basis of a fair and reasonable return on
29 the newly constructed accommodations,
30 notwithstanding any exemption from such a system of
31 controls for newly constructed accommodations.

32 SEC. 3. Section 7060.4 of the Government Code is
33 amended to read:

34 7060.4. (a) Any public entity which, by a valid
35 exercise of its police power, has in effect any control or
36 system of control on the price at which accommodations
37 are offered for rent or lease, may require by statute or
38 ordinance, or by regulation as specified in Section 7060.5,
39 that the owner notify the entity of an intention to
40 withdraw those accommodations from rent or lease and



1 may require that the notice contain statements, under
2 penalty of perjury, providing information on the number
3 of accommodations, the address or location of those
4 accommodations, the name or names of the tenants or
5 lessees of the accommodations, and the rent applicable to
6 each residential rental unit.

7 Information respecting the name or names of the
8 tenants, the rent applicable to any residential rental unit,
9 or the total number of accommodations, is confidential
10 information and for purposes of this chapter shall be
11 treated as confidential information by any public entity
12 for purposes of the Information Practices Act of 1977, as
13 contained in Chapter 1 (commencing with Section 1798)
14 of Title 1.8 of Part 4 of Division 3 of the Civil Code. A
15 public entity shall, to the extent required by the
16 preceding sentence, be considered an “agency,” as
17 defined by subdivision (d) of Section 1798.3 of the Civil
18 Code.

19 (b) The statute, ordinance, or regulation of the public
20 entity may require that the owner record with the county
21 recorder a memorandum summarizing the provisions,
22 other than the confidential provisions, of the notice in a
23 form which shall be prescribed by the statute, ordinance,
24 or regulation, and require a certification with that notice
25 that actions have been initiated as required by law to
26 terminate any existing tenancies. In that situation, the
27 date on which the accommodations are withdrawn from
28 rent or lease for purposes of this chapter is 120 days from
29 the delivery in person or by first-class mail of that notice
30 to the public entity. However, if the tenant or lessee is at
31 least 62 years of age or disabled, and has lived in his or her
32 accommodations for at least one year prior to the date of
33 delivery to the public entity of the notice of intent to
34 withdraw pursuant to subdivision (a), then the date of
35 withdrawal of the accommodations of that tenant or
36 lessee shall be extended to one year after the date of
37 delivery of that notice to the public entity, provided that
38 the tenant or lessee gives written notice of his or her
39 entitlement to an extension to the owner within 60 days
40 of the date of delivery to the public entity of the notice



1 of intent to withdraw. In that situation, the following
2 provisions shall apply:

3 (1) The tenancy shall be continued on the same terms
4 and conditions as existed on the date of delivery to the
5 public entity of the notice of intent to withdraw, subject
6 to any adjustments otherwise available under the system
7 of control.

8 (2) No party shall be relieved of the duty to perform
9 any obligation under the lease or rental agreement.

10 (3) The owner may elect to extend the date of
11 withdrawal on any other accommodations up to one year
12 after date of delivery to the public entity of the notice of
13 intent to withdraw, subject to paragraphs (1) and (2).

14 (4) Within 30 days of the notification by the tenant or
15 lessee to the owner of his or her entitlement to an
16 extension, the owner shall give written notice to the
17 public entity of the claim that the tenant or lessee is
18 entitled to stay in their accommodations for one year
19 after date of delivery to the public entity of the notice of
20 intent to withdraw.

21 (5) Within 90 days of date of delivery to the public
22 entity of the notice of intent to withdraw, the owner shall
23 give written notice to the public entity and the affected
24 tenant or lessee of the owner's election to extend the date
25 of withdrawal and the new date of withdrawal under
26 paragraph (3).

27 (c) The statute, ordinance, or regulation of the public
28 entity adopted pursuant to subdivision (a) may also
29 require the owner to notify any tenant or lessee displaced
30 pursuant to this chapter of the following:

31 (1) That the public entity has been notified pursuant
32 to subdivision (a).

33 (2) That the notice to the public entity specified the
34 name and the amount of rent paid by the tenant or lessee
35 as an occupant of the accommodations.

36 (3) The amount of rent the owner specified in the
37 notice to the public entity.

38 (4) Notice to the tenant or lessee of his or her rights
39 under paragraph (4) of subdivision (a) of Section 7060.2.

40 (5) Notice to the tenant or lessee of the following:



1 (A) If the tenant or lessee is at least 62 years of age or
2 disabled, and has lived in his or her accommodations for
3 at least one year prior to the date of delivery to the public
4 entity of the notice of intent to withdraw, then tenancy
5 shall be extended to one year after date of delivery to the
6 public entity of the notice of intent to withdraw, provided
7 that the tenant or lessee gives written notice of his or her
8 entitlement to the owner within 60 days of date of
9 delivery to the public entity of the notice of intent to
10 withdraw.

11 (B) The extended tenancy shall be continued on the
12 same terms and conditions as existed on date of delivery
13 to the public entity of the notice of intent to withdraw,
14 subject to any adjustments otherwise available under the
15 system of control.

16 (C) No party shall be relieved of the duty to perform
17 any obligation under the lease or rental agreement
18 during the extended tenancy.

19 (d) The statute, ordinance, or regulation of the public
20 entity adopted pursuant to subdivision (a) may also
21 require the owner to notify the public entity in writing of
22 an intention to again offer the accommodations for rent
23 or lease.

24 SEC. 4. Section 7060.7 of the Government Code is
25 amended to read:

26 7060.7. It is the intent of the Legislature in enacting
27 this chapter to supersede any holding or portion of any
28 holding in *Nash v. City of Santa Monica*, 37 Cal.3d 97 to
29 the extent that the holding, or portion of the holding,
30 conflicts with this chapter, so as to permit landlords to go
31 out of business. However, this act is not otherwise
32 intended to do any of the following:

33 (a) Interfere with local governmental authority over
34 land use, including regulation of the conversion of
35 existing housing to condominiums or other subdivided
36 interests or to other nonresidential use following its
37 withdrawal from rent or lease under this chapter.

38 (b) Preempt local or municipal environmental or land
39 use regulations, procedures, or controls that govern the
40 demolition and redevelopment of residential property.



1 (c) Override procedural protections designed to
2 prevent abuse of the right to evict tenants.

3 (d) Permit an owner to withdraw from rent or lease
4 less than all of the accommodations, as defined by
5 paragraph (1) or (2) of subdivision (b) of Section 7060.

6 (e) Grant to any public entity any power which it does
7 not possess independent of this chapter to control or
8 establish a system of control on the price at which
9 accommodations may be offered for rent or lease, or to
10 diminish any such power which that public entity may
11 possess, except as specifically provided in this chapter.

12 (f) Alter in any way either Section 65863.7 relating to
13 the withdrawal of accommodations which comprise a
14 mobilehome park from rent or lease or subdivision (f) of
15 Section 798.56 of the Civil Code relating to a change of use
16 of a mobilehome park.

17 SEC. 5. Section 65009 of the Government Code is
18 amended to read:

19 65009. (a) (1) The Legislature finds and declares
20 that there currently is a housing crisis in California and it
21 is essential to reduce delays and restraints upon
22 expeditiously completing housing projects.

23 (2) The Legislature further finds and declares that a
24 legal action *or proceeding* challenging a decision of a city,
25 county, or city and county has a chilling effect on the
26 confidence with which property owners and local
27 governments can proceed with projects. Legal actions *or*
28 *proceedings* filed to attack, review, set aside, void, or
29 annul a decision of a city, county, or city and county
30 pursuant to this division, *including, but not limited to, the*
31 *implementation of general plan goals and policies that*
32 *provide incentives for affordable housing, open-space*
33 *and recreational opportunities, and other related public*
34 *benefits,* can prevent the completion of needed
35 developments even though the projects have received
36 required governmental approvals.

37 (3) The purpose of this section is to provide certainty
38 for property owners and local governments regarding
39 decisions made pursuant to this division.



1 (b) (1) In an action or proceeding to attack, review,
2 set aside, void, or annul a finding, determination, or
3 decision of a public agency made pursuant to this title at
4 a properly noticed public hearing, the issues raised shall
5 be limited to those raised in the public hearing or in
6 written correspondence delivered to the public agency
7 prior to, or at, the public hearing, except where the court
8 finds either of the following:

9 (A) The issue could not have been raised at the public
10 hearing by persons exercising reasonable diligence.

11 (B) The body conducting the public hearing
12 prevented the issue from being raised at the public
13 hearing.

14 (2) If a public agency desires the provisions of this
15 subdivision to apply to a matter, it shall include in any
16 public notice issued pursuant to this title a notice
17 substantially stating all of the following: “If you challenge
18 the (nature of the proposed action) in court, you may be
19 limited to raising only those issues you or someone else
20 raised at the public hearing described in this notice, or in
21 written correspondence delivered to the (public entity
22 conducting the hearing) at, or prior to, the public
23 hearing.”

24 (3) The application of this subdivision to causes of
25 action brought pursuant to subdivision (d) applies only to
26 the final action taken in response to the notice to the city
27 or county clerk. If no final action is taken, then the issue
28 raised in the cause of action brought pursuant to
29 subdivision (d) shall be limited to those matters
30 presented at a properly noticed public hearing or to those
31 matters specified in the notice given to the city or county
32 clerk pursuant to subdivision (d), or both.

33 (c) (1) Except as provided in subdivision (d), no
34 action or proceeding shall be maintained in any of the
35 following cases by any person unless the action or
36 proceeding is commenced and service is made on the
37 legislative body within 90 days after the legislative body’s
38 decision:

39 (A) To attack, review, set aside, void, or annul the
40 decision of a legislative body to adopt or amend a general



1 or specific plan. This paragraph does not apply where an
2 action is brought based upon the complete absence of a
3 general plan or a mandatory element thereof, but does
4 apply to an action attacking a general plan or mandatory
5 element thereof on the basis that it is inadequate.

6 (B) To attack, review, set aside, void, or annul the
7 decision of a legislative body to adopt or amend a zoning
8 ordinance.

9 (C) To determine the reasonableness, legality, or
10 validity of any decision to adopt or amend any regulation
11 attached to a specific plan.

12 (D) To attack, review, set aside, void, or annul the
13 decision of a legislative body to adopt, amend, or modify
14 a development agreement. An action or proceeding to
15 attack, review, set aside, void, or annul the decisions of a
16 legislative body to adopt, amend, or modify a
17 development agreement shall only extend to the specific
18 portion of the development agreement that is the subject
19 of the adoption, amendment, or modification. This
20 paragraph applies to development agreements,
21 amendments, and modifications adopted on or after
22 January 1, 1996.

23 (E) To attack, review, set aside, void, or annul any
24 decision on the matters listed in Sections 65901 and 65903,
25 or to determine the reasonableness, legality, or validity of
26 any condition attached to a variance, conditional use
27 permit, or any other permit.

28 (F) Concerning any of the proceedings, acts, or
29 determinations taken, done, or made prior to any of the
30 decisions listed in ~~paragraphs (1), (2), (3), (4), and (5)~~
31 *subparagraphs (A), (B), (C), (D), and (E)*.

32 (2) In the case of an action or proceeding challenging
33 the adoption or revision of a housing element pursuant to
34 this subdivision, the action or proceeding may, in
35 addition, be maintained if it is commenced and service is
36 made on the legislative body within 60 days following the
37 date that the Department of Housing and Community
38 Development reports its findings pursuant to subdivision
39 (h) of Section 65585.



1 (d) An action or proceeding shall be commenced and
2 the legislative body served within one year after the
3 accrual of the cause of action as provided in this
4 subdivision, if the action or proceeding meets both of the
5 following requirements:

6 (1) It is brought in support of or to encourage or
7 facilitate the development of housing that would increase
8 the community's supply of housing affordable to persons
9 and families with low or moderate incomes, as defined in
10 Section 50079.5 of the Health and Safety Code, or with
11 very low incomes, as defined in Section 50105 of the
12 Health and Safety Code, or middle-income households, as
13 defined in Section 65008 of this code. This subdivision is
14 not intended to require that the action or proceeding be
15 brought in support of or to encourage or facilitate a
16 specific housing development project.

17 (2) It is brought with respect to actions taken pursuant
18 to Article 10.6 (commencing with Section 65580) of
19 Chapter 3 of this division, pursuant to Section 65589.5,
20 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2
21 (commencing with Section 65913).

22 A cause of action brought pursuant to this subdivision
23 shall not be maintained until 60 days have expired
24 following notice to the city or county clerk by the party
25 bringing the cause of action, or his or her representative,
26 specifying the deficiencies of the general plan, specific
27 plan, or zoning ordinance. A cause of action brought
28 pursuant to this subdivision shall accrue 60 days after
29 notice is filed or the legislative body takes a final action
30 in response to the notice, whichever occurs first. A notice
31 or cause of action brought by one party pursuant to this
32 subdivision shall not bar filing of a notice and initiation of
33 a cause of action by any other party.

34 (e) Upon the expiration of the time limits provided for
35 in this section, all persons are barred from any further
36 action or proceeding.

37 (f) Notwithstanding Sections 65700 and 65803, or any
38 other provision of law, this section shall apply to charter
39 cities.



1 (g) Except as provided in subdivision (d), this section
2 shall not affect any law prescribing or authorizing a
3 shorter period of limitation than that specified herein.

4 (h) Except as provided in paragraph (4) of subdivision
5 (c), this section shall be applicable to those decisions of
6 the legislative body of a city, county, or city and county
7 made pursuant to this division on or after January 1, 1984.

8 SEC. 6. Section 65589.5 of the Government Code is
9 amended to read:

10 65589.5. (a) The Legislature finds all of the following:

11 (1) The lack of affordable housing is a critical problem
12 which threatens the economic, environmental, and social
13 quality of life in California.

14 (2) California housing has become the most expensive
15 in the nation. The excessive cost of the state's housing
16 supply is partially caused by activities and policies of
17 many local governments which limit the approval of
18 affordable housing, increase the cost of land for affordable
19 housing, and require that high fees and exactions be paid
20 by producers of potentially affordable housing.

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

27 (4) Many local governments do not give adequate
28 attention to the economic, environmental, and social
29 costs of decisions which result in disapproval of affordable
30 housing projects, reduction in density of affordable
31 housing projects, and excessive standards for affordable
32 housing projects.

33 (b) It is the policy of the state that a local government
34 not reject or make infeasible affordable housing
35 developments which contribute to meeting the housing
36 need determined pursuant to this article without a
37 thorough analysis of the economic, social, and
38 environmental effects of the action and without meeting
39 the provisions of subdivision (d).



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

11 (d) A local agency shall not disapprove a housing
12 development project affordable to very low, low- or
13 moderate-income households or condition approval in a
14 manner which renders the project infeasible for
15 development for the use of very low, low- or
16 moderate-income households unless it makes written
17 findings, based upon substantial evidence in the record,
18 as to one of the following:

19 (1) The jurisdiction has adopted a housing element
20 pursuant to this article that has been revised in
21 accordance with Section 65588 and that is in substantial
22 compliance with this article, and the development
23 project is not needed for the jurisdiction to meet its share
24 of the regional housing need for very low, low-, or
25 moderate-income housing.

26 (2) The development project as proposed would have
27 a specific, adverse impact upon the public health or
28 safety, and there is no feasible method to satisfactorily
29 mitigate or avoid the specific adverse impact without
30 rendering the development unaffordable to low- and
31 moderate-income households. As used in this paragraph,
32 a “specific, adverse impact” means a significant,
33 quantifiable, direct, and unavoidable impact, based on
34 objective, identified written public health or safety
35 standards, policies, or conditions as they existed on the
36 date the application was deemed complete.

37 (3) The denial of the project or imposition of
38 conditions is required in order to comply with specific
39 state or federal law, and there is no feasible method to



1 comply without rendering the development
2 unaffordable to low- and moderate-income households.

3 (4) Approval of the development project would
4 increase the concentration of lower income households in
5 a neighborhood that already has a disproportionately
6 high number of lower income households and there is no
7 feasible method of approving the development at a
8 different site, including those sites identified pursuant to
9 paragraph (1) of subdivision (c) of Section 65583, without
10 rendering the development unaffordable to low- and
11 moderate-income households.

12 (5) The development project is proposed on land
13 zoned for agriculture or resource preservation which is
14 surrounded on at least two sides by land being used for
15 agricultural or resource preservation purposes, or which
16 does not have adequate water or wastewater facilities to
17 serve the project.

18 (6) The development project is inconsistent with both
19 the jurisdiction's zoning ordinance and general plan land
20 use designation as specified in any element of the general
21 plan as it existed on the date the application was deemed
22 complete, and the jurisdiction has adopted a housing
23 element pursuant to this article.

24 (e) Nothing in this section shall be construed to relieve
25 the local agency from complying with the Congestion
26 Management Program required by Chapter 2.6
27 (commencing with Section 65088) of Division 1 of Title
28 7 or the California Coastal Act (Division 20 (commencing
29 with Section 30000) of the Public Resources Code).
30 Neither shall anything in this section be construed to
31 relieve the local agency from making one or more of the
32 findings required pursuant to Section 21081 of the Public
33 Resources Code or otherwise complying with the
34 California Environmental Quality Act (Division 13
35 (commencing with Section 21000) of the Public
36 Resources Code).

37 (f) Nothing in this section shall be construed to
38 prohibit a local agency from requiring the development
39 project to comply with written development standards,
40 conditions, and policies appropriate to, and consistent



1 with, meeting the quantified objectives relative to the
2 development of housing, as required in the housing
3 element pursuant to subdivision (b) of Section 65583.
4 Nothing in this section shall be construed to prohibit a
5 local agency from imposing fees and other exactions
6 otherwise authorized by law which are essential to
7 provide necessary public services and facilities to the
8 development project.

9 (g) This section shall be applicable to charter cities
10 because the Legislature finds that the lack of affordable
11 housing is a critical statewide problem.

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

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

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

38 (3) “Area median income” shall mean area median
39 income as periodically established by the Department of
40 Housing and Community Development pursuant to



1 Section 50093 of the Health and Safety Code. The
2 developer shall provide sufficient legal commitments to
3 ensure continued availability of units for very low or
4 low-income households in accordance with the provisions
5 of this subdivision for 30 years.

6 (4) “Neighborhood” means a planning area
7 commonly identified as such in a community’s planning
8 documents, and identified as a neighborhood by the
9 individuals residing and working within the
10 neighborhood. Documentation demonstrating that the
11 area meets the definition of neighborhood may include a
12 map prepared for planning purposes which lists the name
13 and boundaries of the neighborhood.

14 (5) “Disapprove the development project” includes
15 any instance in which a local agency does either of the
16 following:

17 (A) Votes on a proposed housing development project
18 application and the application is disapproved.

19 (B) Fails to comply with the time periods specified in
20 subparagraph (B) of paragraph (1) of subdivision (a) of
21 Section 65950. An extension of time pursuant to Article 5
22 (commencing with Section 65950) shall be deemed to be
23 an extension of time pursuant to this paragraph.

24 (i) If any city, county, or city and county denies
25 approval or imposes restrictions, including a reduction of
26 allowable densities or the percentage of a lot which may
27 be occupied by a building or structure under the
28 applicable planning and zoning in force at the time the
29 application is deemed complete pursuant to Section
30 65943, which have a substantial adverse effect on the
31 viability or affordability of a housing development
32 affordable to very low, low-, or moderate-income
33 households, and the denial of the development or the
34 imposition of restrictions on the development is the
35 subject of a court action which challenges the denial, then
36 the burden of proof shall be on the local legislative body
37 to show that its decision is consistent with the findings as
38 described in subdivision (d) and that the findings are
39 supported by substantial evidence in the record.



1 (j) When a proposed housing development project
2 complies with applicable, objective general plan and
3 zoning standards and criteria in effect at the time that the
4 housing development project's application is determined
5 to be complete, but the local agency proposes to
6 disapprove the project or to approve it upon the
7 condition that the project be developed at a lower
8 density, the local agency shall base its decision regarding
9 the proposed housing development project upon written
10 findings supported by substantial evidence on the record
11 that both of the following conditions exist:

12 (1) The housing development project would have a
13 specific, adverse impact upon the public health or safety
14 unless the project is disapproved or approved upon the
15 condition that the project be developed at a lower
16 density. As used in this paragraph, a "specific, adverse
17 impact" means a significant, quantifiable, direct, and
18 unavoidable impact, based on objective, identified
19 written public health or safety standards, policies, or
20 conditions as they existed on the date the application was
21 deemed complete.

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

28 (k) If in any action brought to enforce the provisions
29 of this section, a court finds that the local agency
30 disapproved a project or conditioned its approval in a
31 manner rendering it infeasible for the development of
32 very low, low-, or moderate-income households without
33 properly making the findings required by this section or
34 without making sufficient findings supported by
35 substantial evidence, the court shall issue an order or
36 judgment compelling compliance with this section within
37 60 days, including, but not limited to, an order that the
38 local agency take action on the development project. The
39 court shall retain jurisdiction to ensure that its order or
40 judgment is carried out. If the court determines that its



1 order or judgment has not been carried out within 60
2 days, the court may issue further orders as provided by
3 law to ensure that the purposes and policies of this section
4 are fulfilled.

5 (l) In any action, the record of the proceedings before
6 the local agency shall be filed as expeditiously as possible
7 and, notwithstanding Section 1094.6 of the Code of Civil
8 Procedure, all or part of the record may be filed (1) by
9 the petitioner with the petition or petitioner's points and
10 authorities, (2) by the respondent with respondent's
11 points and authorities, (3) after payment of costs by the
12 petitioner, or (4) as otherwise directed by the court. If the
13 expense of preparing the record has been borne by the
14 petitioner and the petitioner is the prevailing party, the
15 expense shall be taxable as costs.

16 SEC. 7. Section 65915 of the Government Code is
17 amended to read:

18 65915. (a) When a developer of housing proposes a
19 housing development within the jurisdiction of the local
20 government, the city, county, or city and county shall
21 provide the developer incentives for the production of
22 lower income housing units within the development if
23 the developer meets the requirements set forth in
24 subdivisions (b) and (c). The city, county, or city and
25 county shall adopt an ordinance which shall specify the
26 method of providing developer incentives.

27 (b) When a developer of housing agrees or proposes to
28 construct at least (1) 20 percent of the total units of a
29 housing development for lower income households, as
30 defined in Section 50079.5 of the Health and Safety Code,
31 or (2) 10 percent of the total units of a housing
32 development for very low income households, as defined
33 in Section 50105 of the Health and Safety Code, or (3) 50
34 percent of the total dwelling units of a housing
35 development for qualifying residents, as defined in
36 Section 51.3 of the Civil Code, a city, county, or city and
37 county shall either (1) grant a density bonus and at least
38 one of the concessions or incentives identified in
39 subdivision (h) unless the city, county, or city and county
40 makes a written finding that the additional concession or



1 incentive is not required in order to provide for
2 affordable housing costs as defined in Section 50052.5 of
3 the Health and Safety Code or for rents for the targeted
4 units to be set as specified in subdivision (c), or (2)
5 provide other incentives of equivalent financial value
6 based upon the land cost per dwelling unit.

7 (c) A developer shall agree to and the city, county, or
8 city and county shall ensure continued affordability of all
9 lower income density bonus units for 30 years or a longer
10 period of time if required by the construction or
11 mortgage financing assistance program, mortgage
12 insurance program, or rental subsidy program. Those
13 units targeted for lower income households, as defined in
14 Section 50079.5 of the Health and Safety Code, shall be
15 affordable at a rent that does not exceed 30 percent of 60
16 percent of area median income. Those units targeted for
17 very low income households, as defined in Section 50105
18 of the Health and Safety Code, shall be affordable at a rent
19 that does not exceed 30 percent of 50 percent of area
20 median income. If a city, county, or city and county does
21 not grant at least one additional concession or incentive
22 pursuant to paragraph (1) of subdivision (b), the
23 developer shall agree to and the city, county, or city and
24 county shall ensure continued affordability for 10 years of
25 all lower income housing units receiving a density bonus.

26 (d) A developer may submit to a city, county, or city
27 and county a preliminary proposal for the development
28 of housing pursuant to this section prior to the submittal
29 of any formal requests for general plan amendments,
30 zoning amendments, or subdivision map approvals. The
31 city, county, or city and county shall, within 90 days of
32 receipt of a written proposal, notify the housing
33 developer in writing of the procedures under which it
34 will comply with this section. The city, county, or city and
35 county shall establish procedures for carrying out this
36 section, which shall include legislative body approval of
37 the means of compliance with this section. The city,
38 county, or city and county shall also establish procedures
39 for waiving or modifying development and zoning
40 standards which would otherwise inhibit the utilization of



1 the density bonus on specific sites. These procedures shall
2 include, but not be limited to, such items as minimum lot
3 size, side yard setbacks, and placement of public works
4 improvements.

5 (e) The housing developer shall show that the waiver
6 or modification is necessary to make the housing units
7 economically feasible.

8 (f) For the purposes of this chapter, “density bonus”
9 means a density increase of at least 25 percent, unless a
10 lesser percentage is elected by the developer, over the
11 otherwise maximum allowable residential density under
12 the applicable zoning ordinance and land use element of
13 the general plan as of the date of application by the
14 developer to the city, county, or city and county. The
15 granting of a density bonus shall not be interpreted, in
16 and of itself, to require a general plan amendment,
17 zoning change, or other discretionary approval. The
18 density bonus shall not be included when determining
19 the number of housing units which is equal to 10 or 20
20 percent of the total. The density bonus shall apply to
21 housing developments consisting of five or more dwelling
22 units.

23 (g) “Housing development,” as used in this section,
24 means one or more groups of projects for residential units
25 constructed in the planned development of a city, county,
26 or city and county. For purposes of calculating a density
27 bonus, the residential units do not have to be based upon
28 individual subdivision maps or parcels. The density bonus
29 shall be permitted in geographic areas of the housing
30 development other than the areas where the units for the
31 lower income households are located.

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

34 (1) A reduction in site development standards or a
35 modification of zoning code requirements or
36 architectural design requirements which exceed the
37 minimum building standards approved by the California
38 Building Standards Commission as provided in Part 2.5
39 (commencing with Section 18901) of Division 13 of the
40 Health and Safety Code, including, but not limited to, a



1 reduction in setback and square footage requirements
2 and in the ratio of vehicular parking spaces that would
3 otherwise be required.

4 (2) Approval of mixed use zoning in conjunction with
5 the housing project if commercial, office, industrial, or
6 other land uses will reduce the cost of the housing
7 development and if the commercial, office, industrial, or
8 other land uses are compatible with the housing project
9 and the existing or planned development in the area
10 where the proposed housing project will be located.

11 (3) Other regulatory incentives or concessions
12 proposed by the developer or the city, county, or city and
13 county which result in identifiable cost reductions.

14 This subdivision does not limit or require the provision
15 of direct financial incentives for the housing
16 development, including the provision of publicly owned
17 land, by the city, county, or city and county, or the waiver
18 of fees or dedication requirements.

19 (i) If a developer agrees to construct both 20 percent
20 of the total units for lower income households and 10
21 percent of the total units for very low income households,
22 the developer is entitled to only one density bonus and at
23 least one additional concession or incentive identified in
24 Section 65913.4 under this section although the city, city
25 and county, or county may, at its discretion, grant more
26 than one density bonus.

27 SEC. 8. Section 65950 of the Government Code is
28 amended to read:

29 65950. (a) Any public agency that is the lead agency
30 for a development project shall approve or disapprove
31 the project within whichever of the following periods is
32 applicable:

33 (1) One hundred eighty days from the date of
34 certification by the lead agency of the environmental
35 impact report if an environmental impact report is
36 prepared pursuant to Section 21100 or 21151 of the Public
37 Resources Code for the development project.

38 (2) Ninety days from the date of certification by the
39 lead agency of the environmental impact report if an
40 environmental impact report is prepared pursuant to



1 Section 21100 or 21151 of the Public Resources Code for
2 the development project and all of the following
3 conditions are met:

4 (A) The development project is affordable to very low
5 or low-income households, as defined by Sections 50105
6 and 50079.5 of the Health and Safety Code, respectively.

7 (B) Prior to the application being deemed complete
8 for the development project pursuant to Article 3
9 (commencing with Section 65940), the lead agency
10 received written notice from the project applicant that
11 an application has been made or will be made for an
12 allocation or commitment of financing, tax credits, bond
13 authority, or other financial assistance from a public
14 agency or federal agency, and the notice specifies the
15 financial assistance that has been applied for or will be
16 applied for and the deadline for application for that
17 assistance, the requirement that one of the approvals of
18 the development project by the lead agency is a
19 prerequisite to the application for or approval of the
20 application for financial assistance, and that the financial
21 assistance is necessary for the project to be affordable as
22 required pursuant to subparagraph (A).

23 (C) There is confirmation that the application has
24 been made to the public agency or federal agency prior
25 to certification of the environmental impact report.

26 (3) Sixty days from the date of adoption by the lead
27 agency of the negative declaration if a negative
28 declaration is completed and adopted for the
29 development project.

30 (4) Sixty days from the determination by the lead
31 agency that the project is exempt from the California
32 Environmental Quality Act (Division 13 (commencing
33 with Section 21000) of the Public Resources Code) if the
34 project is exempt from the California Environmental
35 Quality Act.

36 (b) Nothing in this section precludes a project
37 applicant and a public agency from mutually agreeing in
38 writing to an extension of any time limit provided by this
39 section pursuant to Section 65957.



1 (c) For purposes of this section, “lead agency” and
2 “negative declaration” shall have the same meaning as
3 those terms are defined in Sections 21067 and 21064 of the
4 Public Resources Code, respectively.

5 SEC. 9. The Legislature finds and declares both of the
6 following:

7 (a) The amendments made by this act to subdivision
8 (c) of Section 65009 of the Government Code, excluding
9 the portion of the amendment related to middle-income
10 households, are declaratory of existing law.

11 (b) The amendments made by this act to Section 65915
12 of the Government Code are declaratory of existing law.

13 SEC. 10. Sections 1 to 5 4, inclusive, of this act shall
14 apply only to accommodations where the date of delivery
15 to the public entity of the notice of intent to withdraw
16 pursuant to subdivision (a) of Section 7060.4 of the
17 Government Code is on or after January 1, 2000. *Chapter*
18 *12.75 (commencing with Section 7060) of Division 7 of*
19 *Title 1 of the Government Code as it existed prior to this*
20 *act shall continue to apply to any accommodations that*
21 *are withdrawn pursuant to a notice of intent to withdraw*
22 *that has been delivered to a public entity prior to January*
23 *1, 2000.*

24 SEC. 11. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.

