

AMENDED IN SENATE MARCH 11, 2019

**SENATE BILL**

**No. 50**

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**Introduced by Senator Wiener**

**(Coauthors: Senators Caballero, Hueso, Moorlach, ~~and Skinner~~)**

***Skinner, and Stone***

(Coauthors: Assembly Members Burke, *Diep, Fong*, Kalra, Kiley, Low,  
Robert Rivas, Ting, and Wicks)

December 3, 2018

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An act to *amend Section 65589.5 of, and to add Chapter 4.35* (commencing with Section 65918.50) to Division 1 of Title 7 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Wiener. Planning and zoning: housing development: ~~equitable communities incentive; incentives.~~

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

This bill would require a city, county, or city and county to grant upon request an equitable communities incentive when a development proponent seeks and agrees to construct a residential development, as defined, that satisfies specified criteria, including, among other things, that the residential development is either a job-rich housing project or a transit-rich housing project, as those terms are defined; the site does

not contain, or has not contained, housing occupied by tenants or accommodations withdrawn from rent or lease in accordance with specified law within specified time periods; and the residential development complies with specified additional requirements under existing law. The bill would require that a residential development eligible for an equitable communities incentive receive waivers from maximum controls on density and *minimum controls on* automobile parking requirements greater than 0.5 parking spots per unit, up to 3 additional incentives or concessions under the Density Bonus Law, and specified additional waivers if the residential development is located within a  $\frac{1}{2}$ -mile or  $\frac{1}{4}$ -mile radius of a major transit stop, as defined. The bill would authorize a local government to modify or expand the terms of an equitable communities incentive, provided that the equitable communities incentive is consistent with these provisions.

The bill would include findings that the changes proposed by ~~this bill~~ *these provisions* address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities. The bill would also ~~declare the intent of the Legislature to delay implementation of this bill~~ *these provisions* in sensitive communities, as defined, until July 1, 2020, as provided.

By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

*The Housing Accountability Act prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based on a preponderance of the evidence in the record. That law provides that the receipt of a density bonus is not a valid basis on which to find a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision of that act.*

*This bill would additionally provide that the receipt of an equitable communities incentive is not a valid basis on which to find a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision of that act.*

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

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

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

3     65589.5. (a) (1) The Legislature finds and declares all of the  
4     following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (J) California's housing picture has reached a crisis of historic  
38 proportions despite the fact that, for decades, the Legislature has  
39 enacted numerous statutes intended to significantly increase the

1 approval, development, and affordability of housing for all income  
2 levels, including this section.

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

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

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

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

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

32 (d) A local agency shall not disapprove a housing development  
33 project, including farmworker housing as defined in subdivision  
34 (h) of Section 50199.7 of the Health and Safety Code, for very  
35 low, low-, or moderate-income households, or an emergency  
36 shelter, or condition approval in a manner that renders the housing  
37 development project infeasible for development for the use of very  
38 low, low-, or moderate-income households, or an emergency  
39 shelter, including through the use of design review standards,

1 unless it makes written findings, based upon a preponderance of  
2 the evidence in the record, as to one of the following:

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

24 (2) The housing development project or emergency shelter as  
25 proposed would have a specific, adverse impact upon the public  
26 health or safety, and there is no feasible method to satisfactorily  
27 mitigate or avoid the specific adverse impact without rendering  
28 the development unaffordable to low- and moderate-income  
29 households or rendering the development of the emergency shelter  
30 financially infeasible. As used in this paragraph, a “specific,  
31 adverse impact” means a significant, quantifiable, direct, and  
32 unavoidable impact, based on objective, identified written public  
33 health or safety standards, policies, or conditions as they existed  
34 on the date the application was deemed complete. Inconsistency  
35 with the zoning ordinance or general plan land use designation  
36 shall not constitute a specific, adverse impact upon the public  
37 health or safety.

38 (3) The denial of the housing development project or imposition  
39 of conditions is required in order to comply with specific state or  
40 federal law, and there is no feasible method to comply without

1 rendering the development unaffordable to low- and  
2 moderate-income households or rendering the development of the  
3 emergency shelter financially infeasible.

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

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

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

29 (B) If the local agency has failed to identify in the inventory of  
30 land in its housing element sites that can be developed for housing  
31 within the planning period and are sufficient to provide for the  
32 jurisdiction's share of the regional housing need for all income  
33 levels pursuant to Section 65584, then this paragraph shall not be  
34 utilized to disapprove or conditionally approve a housing  
35 development project proposed for a site designated in any element  
36 of the general plan for residential uses or designated in any element  
37 of the general plan for commercial uses if residential uses are  
38 permitted or conditionally permitted within commercial  
39 designations. In any action in court, the burden of proof shall be  
40 on the local agency to show that its housing element does identify

1 adequate sites with appropriate zoning and development standards  
2 and with services and facilities to accommodate the local agency's  
3 share of the regional housing need for the very low, low-, and  
4 moderate-income categories.

5 (C) If the local agency has failed to identify a zone or zones  
6 where emergency shelters are allowed as a permitted use without  
7 a conditional use or other discretionary permit, has failed to  
8 demonstrate that the identified zone or zones include sufficient  
9 capacity to accommodate the need for emergency shelter identified  
10 in paragraph (7) of subdivision (a) of Section 65583, or has failed  
11 to demonstrate that the identified zone or zones can accommodate  
12 at least one emergency shelter, as required by paragraph (4) of  
13 subdivision (a) of Section 65583, then this paragraph shall not be  
14 utilized to disapprove or conditionally approve an emergency  
15 shelter proposed for a site designated in any element of the general  
16 plan for industrial, commercial, or multifamily residential uses. In  
17 any action in court, the burden of proof shall be on the local agency  
18 to show that its housing element does satisfy the requirements of  
19 paragraph (4) of subdivision (a) of Section 65583.

20 (e) Nothing in this section shall be construed to relieve the local  
21 agency from complying with the congestion management program  
22 required by Chapter 2.6 (commencing with Section 65088) of  
23 Division 1 of Title 7 or the California Coastal Act of 1976  
24 (Division 20 (commencing with Section 30000) of the Public  
25 Resources Code). Neither shall anything in this section be  
26 construed to relieve the local agency from making one or more of  
27 the findings required pursuant to Section 21081 of the Public  
28 Resources Code or otherwise complying with the California  
29 Environmental Quality Act (Division 13 (commencing with Section  
30 21000) of the Public Resources Code).

31 (f) (1) Nothing in this section shall be construed to prohibit a  
32 local agency from requiring the housing development project to  
33 comply with objective, quantifiable, written development standards,  
34 conditions, and policies appropriate to, and consistent with, meeting  
35 the jurisdiction's share of the regional housing need pursuant to  
36 Section 65584. However, the development standards, conditions,  
37 and policies shall be applied to facilitate and accommodate  
38 development at the density permitted on the site and proposed by  
39 the development.



(2) 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) This section does not 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

1 percent of the units shall be sold or rented to persons and families  
2 of moderate income as defined in Section 50093 of the Health and  
3 Safety Code, or persons and families of middle income, as defined  
4 in Section 65008 of this code. Housing units targeted for lower  
5 income households shall be made available at a monthly housing  
6 cost that does not exceed 30 percent of 60 percent of area median  
7 income with adjustments for household size made in accordance  
8 with the adjustment factors on which the lower income eligibility  
9 limits are based. Housing units targeted for persons and families  
10 of moderate income shall be made available at a monthly housing  
11 cost that does not exceed 30 percent of 100 percent of area median  
12 income with adjustments for household size made in accordance  
13 with the adjustment factors on which the moderate-income  
14 eligibility limits are based.

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

22 (5) "Disapprove the housing development project" includes any  
23 instance in which a local agency does either of the following:

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

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

32 (i) If any city, county, or city and county denies approval or  
33 imposes conditions, including design changes, lower density, or  
34 a reduction of the percentage of a lot that may be occupied by a  
35 building or structure under the applicable planning and zoning in  
36 force at the time the application is deemed complete pursuant to  
37 Section 65943, that have a substantial adverse effect on the viability  
38 or affordability of a housing development for very low, low-, or  
39 moderate-income households, and the denial of the development  
40 or the imposition of conditions on the development is the subject

1 of a court action which challenges the denial or the imposition of  
2 conditions, then the burden of proof shall be on the local legislative  
3 body to show that its decision is consistent with the findings as  
4 described in subdivision (d) and that the findings are supported by  
5 a preponderance of the evidence in the record. For purposes of this  
6 section, “lower density” includes any conditions that have the same  
7 effect or impact on the ability of the project to provide housing.

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

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

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

31 (2) (A) If the local agency considers a proposed housing  
32 development project to be inconsistent, not in compliance, or not  
33 in conformity with an applicable plan, program, policy, ordinance,  
34 standard, requirement, or other similar provision as specified in  
35 this subdivision, it shall provide the applicant with written  
36 documentation identifying the provision or provisions, and an  
37 explanation of the reason or reasons it considers the housing  
38 development to be inconsistent, not in compliance, or not in  
39 conformity as follows:

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

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

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

12 (3) For purposes of this section, the receipt of a density bonus  
13 pursuant to Section 65915 *or an equitable communities incentive*  
14 *pursuant to Section 65918.51* shall not constitute a valid basis on  
15 which to find a proposed housing development project is  
16 inconsistent, not in compliance, or not in ~~conformity~~, *conformity*  
17 with an applicable plan, program, policy, ordinance, standard,  
18 requirement, or other similar provision specified in this subdivision.

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

32 (5) For purposes of this section, “lower density” includes any  
33 conditions that have the same effect or impact on the ability of the  
34 project to provide housing.

35 (k) (1) (A) The applicant, a person who would be eligible to  
36 apply for residency in the development or emergency shelter, or  
37 a housing organization may bring an action to enforce this section.  
38 If, in any action brought to enforce this section, a court finds that  
39 either (i) the local agency, in violation of subdivision (d),  
40 disapproved a housing development project or conditioned its

1 approval in a manner rendering it infeasible for the development  
2 of an emergency shelter, or housing for very low, low-, or  
3 moderate-income households, including farmworker housing,  
4 without making the findings required by this section or without  
5 making findings supported by a preponderance of the evidence,  
6 or (ii) the local agency, in violation of subdivision (j), disapproved  
7 a housing development project complying with applicable,  
8 objective general plan and zoning standards and criteria, or imposed  
9 a condition that the project be developed at a lower density, without  
10 making the findings required by this section or without making  
11 findings supported by a preponderance of the evidence, the court  
12 shall issue an order or judgment compelling compliance with this  
13 section within 60 days, including, but not limited to, an order that  
14 the local agency take action on the housing development project  
15 or emergency shelter. The court may issue an order or judgment  
16 directing the local agency to approve the housing development  
17 project or emergency shelter if the court finds that the local agency  
18 acted in bad faith when it disapproved or conditionally approved  
19 the housing development or emergency shelter in violation of this  
20 section. The court shall retain jurisdiction to ensure that its order  
21 or judgment is carried out and shall award reasonable attorney's  
22 fees and costs of suit to the plaintiff or petitioner, except under  
23 extraordinary circumstances in which the court finds that awarding  
24 fees would not further the purposes of this section. For purposes  
25 of this section, "lower density" includes conditions that have the  
26 same effect or impact on the ability of the project to provide  
27 housing.

28 (B) (i) Upon a determination that the local agency has failed  
29 to comply with the order or judgment compelling compliance with  
30 this section within 60 days issued pursuant to subparagraph (A),  
31 the court shall impose fines on a local agency that has violated this  
32 section and require the local agency to deposit any fine levied  
33 pursuant to this subdivision into a local housing trust fund. The  
34 local agency may elect to instead deposit the fine into the Building  
35 Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular  
36 Session is enacted, or otherwise in the Housing Rehabilitation  
37 Loan Fund. The fine shall be in a minimum amount of ten thousand  
38 dollars (\$10,000) per housing unit in the housing development  
39 project on the date the application was deemed complete pursuant  
40 to Section 65943. In determining the amount of fine to impose,

1 the court shall consider the local agency's progress in attaining its  
2 target allocation of the regional housing need pursuant to Section  
3 65584 and any prior violations of this section. Fines shall not be  
4 paid out of funds already dedicated to affordable housing,  
5 including, but not limited to, Low and Moderate Income Housing  
6 Asset Funds, funds dedicated to housing for very low, low-, and  
7 moderate-income households, and federal HOME Investment  
8 Partnerships Program and Community Development Block Grant  
9 Program funds. The local agency shall commit and expend the  
10 money in the local housing trust fund within five years for the sole  
11 purpose of financing newly constructed housing units affordable  
12 to extremely low, very low, or low-income households. After five  
13 years, if the funds have not been expended, the money shall revert  
14 to the state and be deposited in the Building Homes and Jobs Fund,  
15 if Senate Bill 2 of the 2017–18 Regular Session is enacted, or  
16 otherwise in the Housing Rehabilitation Loan Fund, for the sole  
17 purpose of financing newly constructed housing units affordable  
18 to extremely low, very low, or low-income households.

19 (ii) If any money derived from a fine imposed pursuant to this  
20 subparagraph is deposited in the Housing Rehabilitation Loan  
21 Fund, then, notwithstanding Section 50661 of the Health and Safety  
22 Code, that money shall be available only upon appropriation by  
23 the Legislature.

24 (C) If the court determines that its order or judgment has not  
25 been carried out within 60 days, the court may issue further orders  
26 as provided by law to ensure that the purposes and policies of this  
27 section are fulfilled, including, but not limited to, an order to vacate  
28 the decision of the local agency and to approve the housing  
29 development project, in which case the application for the housing  
30 development project, as proposed by the applicant at the time the  
31 local agency took the initial action determined to be in violation  
32 of this section, along with any standard conditions determined by  
33 the court to be generally imposed by the local agency on similar  
34 projects, shall be deemed to be approved unless the applicant  
35 consents to a different decision or action by the local agency.

36 (2) For purposes of this subdivision, "housing organization"  
37 means a trade or industry group whose local members are primarily  
38 engaged in the construction or management of housing units or a  
39 nonprofit organization whose mission includes providing or  
40 advocating for increased access to housing for low-income

1 households and have filed written or oral comments with the local  
2 agency prior to action on the housing development project. A  
3 housing organization may only file an action pursuant to this  
4 section to challenge the disapproval of a housing development by  
5 a local agency. A housing organization shall be entitled to  
6 reasonable attorney's fees and costs if it is the prevailing party in  
7 an action to enforce this section.

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

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

1 determined by the court, to the benefit of the plaintiff if the plaintiff  
2 is the project applicant.

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

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

15 **SECTION 1.**

16 *SEC. 2.* Chapter 4.35 (commencing with Section 65918.50) is  
17 added to Division 1 of Title 7 of the Government Code, to read:

18  
19 CHAPTER 4.35. EQUITABLE COMMUNITIES INCENTIVES

20  
21 65918.50. For purposes of this chapter:

22 ~~(a) "Affordable" means available at affordable rent or affordable~~  
23 ~~housing cost to, and occupied by, persons and families of extremely~~  
24 ~~low, very low, low, or moderate incomes, as specified in context,~~  
25 ~~and subject to a recorded affordability restriction for at least 55~~  
26 ~~years.~~

27 ~~(b)~~

28 (a) "Development proponent" means an applicant who submits  
29 an application for an equitable communities incentive pursuant to  
30 this chapter.

31 ~~(c)~~

32 (b) "Eligible applicant" means a development proponent who  
33 receives an equitable communities incentive.

34 ~~(d)~~

35 (c) "FAR" means floor area ratio.

36 ~~(e)~~

37 (d) "High-quality bus corridor" means a corridor with fixed  
38 route bus service that meets all of the following criteria:

39 (1) It has average service intervals of no more than 15 minutes  
40 during the three peak hours between 6 a.m. to 10 a.m., inclusive,



1 and the three peak hours between 3 p.m. and 7 p.m., inclusive, on  
2 Monday through Friday.

3 (2) It has average service intervals of no more than 20 minutes  
4 during the hours of 6 a.m. to 10 ~~a.m.~~, p.m., inclusive, on Monday  
5 through Friday.

6 (3) It has average intervals of no more than 30 minutes during  
7 the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.

8 (e) (1) “Jobs-rich area” means an area identified by the  
9 Department of Housing and Community Development in  
10 consultation with the Office of Planning and Research that is both  
11 high opportunity and jobs rich, based on whether, in a regional  
12 analysis, the tract meets the following:

13 (A) The tract is higher opportunity and its characteristics are  
14 associated with positive educational and economic outcomes for  
15 households of all income levels residing in the tract.

16 (B) The tract meets either of the following criteria:

17 (i) New housing sited in the tract would enable residents to live  
18 in or near a jobs-rich area, as measured by employment density  
19 and job totals.

20 (ii) New housing sited in the tract would enable shorter commute  
21 distances for residents, compared to existing commute levels.

22 (2) The Department of Housing and Community Development  
23 shall, commencing on January 1, 2020, publish and update, every  
24 five years thereafter, a map of the state showing the areas identified  
25 by the department as “jobs-rich areas.”

26 (f) “Job-rich housing project” means a residential development  
27 within an area identified as a jobs-rich area by the Department of  
28 Housing and Community Development ~~and~~ in consultation with  
29 the Office of Planning and Research, based on indicators such as  
30 proximity to jobs, high area median income relative to the relevant  
31 region, and high-quality public schools, as an area of high  
32 opportunity close to jobs. A residential development shall be  
33 deemed to be within an area designated as job-rich if both of the  
34 following apply:

35 (1) All parcels within the project have no more than 25 percent  
36 of their area outside of the job-rich area.

37 (2) No more than 10 percent of residential units or 100 units,  
38 whichever is less, of the development are outside of the job-rich  
39 area.

(g) “Local government” means a city, including a charter city, a county, or a city and county.

(h) “Major transit stop” means ~~a site containing an existing rail transit station or a ferry terminal served by either bus or rail transit service; that is a major transit stop pursuant to subdivision (b) of Section 21155 of the Public Resources Code.~~

(i) “Residential development” means a project with at least two-thirds of the square footage of the development designated for residential use.

(j) “Sensitive community” means ~~an either of the following:~~

*(1) Except as provided in paragraph (2), an area identified by the Department of Housing and Community Development, which identification shall be updated every five years, in consultation with local community-based organizations in each metropolitan planning region, as an area vulnerable to displacement pressures, based on indicators such as percentage of tenant households living at, or under, the poverty line relative to the region; where both of the following apply:*

*(A) Thirty percent or more of the census tract lives below the poverty line, provided that college students do not compose at least 25 percent of the population.*

*(B) The location quotient of residential racial segregation in the census tract is at least 1.25 as defined by the Department of Housing and Community Development.*

*(2) In the Counties of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma, areas designated by the Metropolitan Transportation Commission on December 19, 2018, as the intersection of disadvantaged and vulnerable communities as defined by the Metropolitan Transportation Commission and the San Francisco Bay Conservation and Development Commission, which identification of a sensitive community shall be updated at least every five years by the Department of Housing and Community Development.*

(k) “Tenant” means a person ~~residing in~~ who does not own the property where they reside, including residential situations that are any of the following:

(1) Residential real property rented by the person under a long-term lease.

(2) A single-room occupancy unit.

(3) An accessory dwelling unit that is not subject to, or does not have a valid permit in accordance with, an ordinance adopted by a local agency pursuant to Section 65852.22.

(4) A residential motel.

(5) *A mobilehome park, as governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).*

~~(5)~~

(6) Any other type of residential property that is not owned by the person or a member of the person's household, for which the person or a member of the person's household provides payments on a regular schedule in exchange for the right to occupy the residential property.

(l) "Transit-rich housing project" means a residential development the parcels of which are all within a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor. A project shall be deemed to be ~~within a one-half mile the radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor~~ if both of the following apply:

(1) All parcels within the project have no more than 25 percent of their area outside of a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor.

(2) No more than 10 percent of the residential units or 100 units, whichever is less, of the project are outside of a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor.

65918.51. ~~(a)~~—A local government shall, upon request of a development proponent, grant an equitable communities incentive, as specified in Section 65918.53, when the development proponent seeks and agrees to construct a residential development that satisfies the requirements specified in Section 65918.52.

~~(b) It is the intent of the Legislature that, absent exceptional circumstances, actions taken by a local legislative body that increase residential density not undermine the equitable communities incentive program established by this chapter.~~

65918.52. In order to be eligible for an equitable communities incentive pursuant to this chapter, a residential development shall meet all of the following criteria:

(a) The residential development is either a job-rich housing project or transit-rich housing project.

(b) The residential development is located on a site that, at the time of application, is zoned to allow housing as an underlying use in the zone, including, but not limited to, a residential, mixed-use, or commercial zone, as defined and allowed by the local government.

(c) (1) If the local government has adopted an inclusionary housing ordinance requiring that the development include a certain number of units affordable to households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, and that ordinance requires that a new development include levels of affordable housing in excess of the requirements specified in paragraph (2), the residential development complies with that ordinance. *The ordinance may provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, offsite construction, or acquisition and rehabilitation of existing units.*

(2) (A) If the local government has not adopted an inclusionary housing ordinance, as described in paragraph (1), ~~and the residential development includes \_\_\_\_\_ or more residential units,~~ the residential development includes ~~onsite~~ *an affordable housing contribution* for households with incomes that do not exceed the limits for extremely low income, very low income, and low income specified in Sections 50093, 50105, and 50106 of the Health and Safety Code. ~~It is the intent of the Legislature to require that any development of \_\_\_\_\_ or more residential units receiving an equitable communities incentive pursuant to this chapter include housing affordable to low, very low or extremely low income households, which, for projects with low or very low income units, are no less than the number of onsite units affordable to low or~~

~~very low income households that would be required pursuant to subdivision (f) of Section 65915 for a development receiving a density bonus of 35 percent.~~

*(B) For purposes of this paragraph, the residential development is subject to one of the following:*

*(i) If the project has 10 or fewer units, no affordability contribution is imposed.*

*(ii) If the project has 11 to 20 residential units, the development proponent may pay an in-lieu fee to the local government for affordable housing, where feasible, pursuant to subparagraph (C).*

*(iii) If the project has more than 20 residential units, the development proponent shall do either of the following:*

*(I) Make a comparable affordability contribution toward housing offsite that is affordable to lower income households, pursuant to subparagraph (C).*

*(II) Include units on the site of the project that are affordable to extremely low income, as defined in Section 50105 of the Health and Safety Code, very low income, or low-income households, as defined in Section 50079.5 of the Health and Safety Code, as follows:*

<i>Project Size</i>	<i>Inclusionary Requirement</i>
<i>21– 200 units</i>	<i>15% low income; or 8% very low income; or 6% extremely low income</i>
<i>201–350 units</i>	<i>17% low income; or 10% very low income; or 8% extremely low income</i>
<i>351 or more units</i>	<i>25% low income; or 15% very low income; or 11% extremely low income</i>

*(C) The development proponent of a project that qualifies pursuant to clause (ii) or subclause (I) of clause (iii) of subparagraph (B) may make a comparable affordability contribution toward housing offsite that is affordable to lower income households, as follows:*

*(i) The local government collecting the in-lieu fee payment shall make every effort to ensure that future affordable housing will be sited within one-half mile of the original project location within*

1 *the boundaries of the local government by designating an existing*  
2 *housing opportunity site within a one-half mile radius of the project*  
3 *site for affordable housing. To the extent practicable, local housing*  
4 *funding shall be prioritized at the first opportunity to build*  
5 *affordable housing on that site.*

6 *(ii) If no housing opportunity sites that satisfy clause (i) are*  
7 *available, the local government shall designate a site for affordable*  
8 *housing within the boundaries of the local government and make*  
9 *findings that the site for the affordable housing development*  
10 *affirmatively furthers fair housing, as defined in Section 8899.50.*

11 *(D) Affordability of units pursuant to this paragraph shall be*  
12 *restricted by deed for a period of 55 years for rental units or 45*  
13 *years for units offered for sale.*

14 (d) The site does not contain, or has not contained, either of the  
15 following:

16 (1) Housing occupied by tenants within the seven years  
17 preceding the date of the application, including housing that has  
18 been demolished or that tenants have vacated prior to the  
19 application for a development permit.

20 (2) A parcel or parcels on which an owner of residential real  
21 property has exercised ~~his or her~~ *their* rights under Chapter 12.75  
22 (commencing with Section 7060) of Division 7 of Title 1 to  
23 withdraw accommodations from rent or lease within 15 years prior  
24 to the date that the development proponent submits an application  
25 pursuant to this chapter.

26 (e) The residential development complies with all applicable  
27 labor, construction employment, and wage standards otherwise  
28 required by law and any other generally applicable requirement  
29 regarding the approval of a development project, including, but  
30 not limited to, the local government's conditional use or other  
31 discretionary permit approval process, the California  
32 Environmental Quality Act (Division 13 (commencing with Section  
33 21000) of the Public Resources Code), or a streamlined approval  
34 process that includes labor protections.

35 (f) The residential development complies with all other relevant  
36 standards, requirements, and prohibitions imposed by the local  
37 government regarding architectural design, restrictions on or  
38 oversight of demolition, impact fees, and community benefits  
39 agreements.

(g) The equitable communities incentive shall not be used to undermine the economic feasibility of delivering low-income housing under the state density bonus program or a local implementation of the state density bonus program, or any locally adopted program that puts conditions on new development applications on the basis of receiving a zone change or general plan amendment in exchange for benefits such as increased affordable housing, local hire, or payment of prevailing wages.

65918.53. (a) ~~A residential development~~ Any *transit-rich or jobs-rich housing project* that meets the criteria specified in Section 65918.52 shall receive, upon request, an equitable communities incentive as follows:

~~(1) Any eligible applicant shall receive the following:~~

~~(A)~~

~~(1)~~ A waiver from maximum controls on density.

~~(B)~~

(2) A waiver from ~~maximum~~ *minimum* automobile parking requirements greater than 0.5 automobile parking spots per unit.

~~(C)~~

(3) Up to three incentives and concessions pursuant to subdivision (d) of Section 65915.

~~(2)~~

(b) An eligible applicant proposing a residential development that is located within a one-half mile radius, but outside a one-quarter mile radius, of a major transit stop ~~and includes no less than \_\_\_\_\_ percent affordable housing units~~ shall receive, in addition to the incentives specified in ~~paragraph (1), subdivision (a),~~ waivers from all of the following:

~~(A)~~

~~(1)~~ Maximum height requirements less than 45 feet.

~~(B)~~

(2) Maximum FAR requirements less than 2.5.

~~(C)~~

(3) Notwithstanding subparagraph (B) of paragraph (1), any maximum automobile parking requirement.

~~(3)~~

(c) An eligible applicant proposing a residential development that is located within a one-quarter mile radius of a major transit ~~and includes no less than \_\_\_\_\_ percent affordable housing units~~

1 *stop* shall receive, in addition to the incentives specified in  
2 ~~paragraph (1)~~, *subdivision (a)*, waivers from all of the following:

3 ~~(A)~~

4 *(1)* Maximum height requirements less than 55 feet.

5 ~~(B)~~

6 *(2)* Maximum FAR requirements less than 3.25.

7 ~~(C)~~

8 ~~(3) Notwithstanding subparagraph (B) of paragraph (1)~~, *(1) of*  
9 *subdivision (b)*, any ~~maximum~~ *minimum* automobile parking  
10 requirement.

11 ~~(4)~~

12 *(d)* Notwithstanding any other law, for purposes of calculating  
13 any additional incentive or concession in accordance with Section  
14 65915, the number of units in the residential development after  
15 applying the equitable communities incentive received pursuant  
16 to this chapter shall be used as the base density for calculating the  
17 incentive or concession under that section.

18 ~~(5)~~

19 *(e)* An eligible applicant proposing a project that meets all of  
20 the requirements under Section 65913.4 may submit an application  
21 for streamlined, ministerial approval in accordance with that  
22 section.

23 ~~(b)~~

24 *(f)* The local government may modify or expand the terms of  
25 an equitable communities incentive provided pursuant to this  
26 chapter, provided that the equitable communities incentive is  
27 consistent with, and meets the minimum standards specified in,  
28 this chapter.

29 65918.54. The Legislature finds and declares that this chapter  
30 addresses a matter of statewide concern rather than a municipal  
31 affair as that term is used in Section 5 of Article XI of the  
32 California Constitution. Therefore, this chapter applies to all cities,  
33 including charter cities.

34 65918.55. ~~(a) It is the intent of the Legislature that~~  
35 ~~implementation~~ *Implementation* of this chapter *shall* be delayed  
36 in sensitive communities until July 1, 2020.

37 ~~(b) It is further the intent of the Legislature to enact legislation~~  
38 ~~that does all of the following:~~

39 ~~(1)~~



(b) Between January 1, 2020, and \_\_\_\_\_, ~~allows~~ a local government, in lieu of the requirements of this chapter, ~~to may~~ opt for a community-led planning process *in sensitive communities* aimed toward increasing residential density and multifamily housing choices near transit ~~stops~~. *stops, as follows:*

~~(2) Encourages sensitive~~

~~(1) Sensitive communities to opt for that pursue a~~ community-led planning process at the neighborhood level ~~to develop~~ shall, on or before January 1, 2025, produce a community plan that may include zoning and any other policies that encourage multifamily housing development at a range of income levels to meet unmet needs, protect vulnerable residents from displacement, and address other locally identified priorities.

~~(3) Sets minimum performance standards for community plans, such as minimum~~

~~(2) Community plans shall, at a minimum, be consistent with the overall residential development capacity and the minimum affordability standards set forth in this chapter.~~ *chapter within the boundaries of the community plan.*

~~(4) Automatically applies the~~

~~(3) The provisions of this chapter shall apply on January 1, 2025, to sensitive communities that do have not have adopted community plans that meet the minimum standards described in paragraph (3), (2), whether those plans were adopted prior to or after enactment of this chapter.~~

~~SEC. 2.~~

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