



# SAN FRANCISCO PLANNING DEPARTMENT

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**DATE:** April 26, 2018  
**TO:** Planning Commission  
**FROM:** Joshua Switzky, Land Use & Housing Program Manager, Citywide Division  
Paolo Ikezoe, Senior Planner, Citywide Division  
**RE:** May 3 Informational Hearing on Central SOMA Housing Sustainability District  
**CASE NO:** 2018-004477PCA

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

This memo includes a summary of California State Assembly Bill (“AB”) 73 – a State law enabling local municipalities to create ‘Housing Sustainability Districts,’ as well as preliminary information on a proposed ordinance creating a Housing Sustainability District in the Central SOMA Plan Area. The proposed local ordinance has not been introduced at the Board of Supervisors as of the publication of this memo, but is anticipated to be introduced prior to the Commission hearing on May 10, at which point the Commission can consider it for adoption. Full text of AB73, as adopted in September 2017, is included as an attachment.

## **AB73 Summary**

AB73 was introduced by Assemblymember David Chiu on December 16, 2016. It passed in the Assembly and Senate on September 15, 2017, and was signed into law by Governor Brown on September 29, 2017.

AB73 authorized local municipalities throughout California to establish ‘housing sustainability districts’ (HSDs) to facilitate the production of housing in areas served by existing infrastructure. HSDs are envisioned as overlay districts, within which project sponsors who opt in to the HSD receive ministerial approval of permits in return for agreeing to include at least 10% of units on-site affordable to lower income households and to pay prevailing wages or use skilled labor for construction of the project. While local governments are responsible for passing local ordinances creating HSDs, AB73 specified minimum requirements for such districts and parameters individual projects must meet to qualify within any such districts. Local municipalities that create eligible HSDs are entitled to receive a zoning incentive payment from the California Department of Housing and Community Development (HCD).

In order for a Housing Sustainability District to meet the State’s requirements (as laid out in AB 73), the following general requirements must be met:

- 1) The District must be within one-half mile of public transit, or otherwise highly suitable for residential or mixed-use development
- 2) The District is effective for no more than ten years, with the possibility for an extension of an additional ten years
- 3) The area of an individual district must not be larger than 15% of the city’s total land area
- 4) The district must allow for the ministerial approval of housing projects

- 5) At least 20% of all housing units constructed in the District must be affordable to very low, low, and moderate income households for a period of no less than 55 years
- 6) An ordinance creating the district must include procedures and timelines for review of projects
- 7) The local municipality must prepare an EIR identifying any mitigation measures housing projects within the district must undertake to mitigate any environmental impacts.

Within any qualifying HSD, AB73 requires an individual housing project meet the following minimum requirements in order to receive ministerial approval:

- 1) Be located in a zoning district that principally permits residential use
- 2) Include no more than 50% of its proposed square footage as non-residential uses
- 3) Include at least 10% units on-site affordable to lower-income households  
(In San Francisco, all projects would still be required to satisfy Section 415 inclusionary requirements, either through providing all inclusionary units on-site, or through a combination of on-site and off-site/fee payments)
- 4) Agree to pay prevailing wages to all construction workers involved in the project, if the project consists of 74 or fewer units (this threshold is lowered to 49 or fewer units on January 1, 2022), or use a skilled and trained workforce to complete the project if the project consists of 75 or more units (this threshold is lowered to 50 or more units on January 1, 2022), with some exceptions

A jurisdiction must submit an HSD ordinance for approval and certification by HCD.

### **Central SOMA Plan's Suitability as a Housing Sustainability District**

The Central SOMA Area Plan appears to meet all of AB73's requirements, and designation as a Housing Sustainability District would offer many benefits. The Central SOMA Plan Area makes up less than one percent of the city's total land area, is entirely within one half mile of public transit, and is highly suitable for residential and mixed-use development. The Plan estimates that at least 33% of all housing units constructed within the Central SOMA Plan Area will be permanently affordable to very low, low and moderate income households, which surpasses AB73's requirement that at least 20% of all units within an HSD be affordable to these income levels for at least 55 years.

The Central SOMA Area Plan involved a multi-year public deliberation process, during which zoning, land use, height, and design standards were vetted by multiple stakeholders. Creating a Housing Sustainability District in Central SOMA would not change any of those standards. Instead, it would allow residential projects meeting those adopted standards a streamlined review and approval process, provided they also met the HSD's additional requirements (including on-site affordable housing and construction wage/ labor requirements).

The Central SOMA EIR analyzes the environmental impacts of the Plan's zoning changes and development accommodated by these parameters, and identifies mitigation measures for projects developed under the Plan's zoning, thus meeting AB 73's requirement for preparation of an EIR.

Should the City and HCD approve a local ordinance creating the Central SOMA Housing Sustainability District, San Francisco would become eligible to receive two 'zoning incentive payments' from the State, the first upon initial approval of the ordinance, and the second prior to the District's sunset date, assuming all requirements have been met.

### **Central SOMA Housing Sustainability District**

AB73 contains minimum requirements and certain parameters for Housing Sustainability Districts, but there is some leeway for local municipalities to tailor HSDs to local context. Creating a Housing Sustainability District in Central SOMA would not change any of the zoning or height requirements of the Area Plan, but would simply allow streamlined ministerial approval of housing projects meeting all specified requirements and zoning standards. Still, there may be certain types and scales of projects for which ministerial approval is not appropriate at this time. A local ordinance will ensure that the Central SOMA HSD reflects local priorities and context, while still incentivizing on-site affordable housing and prevailing wages or union labor for construction.

A local ordinance creating a Central SOMA HSD would meet all of AB73's requirements, and add the following local provisions. (Note that the following provisions are based on staff's understanding of what will likely be included in the proposed ordinance as of the publication of this memo.)

### **Limit the size of projects able to participate in the HSD**

The local ordinance will enable projects with a height of 160 feet or less to participate in the HSD. The Central SOMA Plan considers buildings with heights over 160 feet in height to be towers, which would likely encounter more complex design review considerations and environmental impacts. The local ordinance would retain the Commission's review procedures for these projects of substantial stature. Projects that feature 100% affordable housing, though they very rarely exceed 160 feet, would be exempted from this limitation and would be eligible to opt in to the HSD.

### **Ensure that Non-Residential Uses in Mixed-Use HSD Projects Do Not Bypass Otherwise Applicable Controls**

The local ordinance will stipulate that any non-residential uses in HSD projects seeking ministerial approval are only those that are principally permitted in the underlying zoning district (i.e. do not otherwise require Conditional Use or are not permitted) or that would not require an annual office allocation under Section 321 (ie greater than 24,999 gross square feet). Hence, uses like hotels, formula retail, or non-accessory parking garages, which would otherwise require Conditional Use, could not be included in an HSD project.

### **Ensure HSD projects will not have significant impacts on historic resources**

Parcels containing historic resources listed on Federal or State registers will not be eligible to participate in the Central SOMA HSD.

### **Ensure HSD projects will not lead to any direct displacement of existing residential tenants**

Any housing project that proposes demolition, removal or conversion of any existing dwelling unit will not be eligible to participate in the Central SOMA HSD. Projects wishing to do so will be required to go through the standard approval process, including Section 317 Conditional Use Authorization.

**Ensure that HSD projects comply with all applicable mitigation measures identified in the Central SOMA EIR**

In order to participate in the Central SOMA HSD and receive ministerial approval of permits, a project would be required to comply with all mitigation measures identified as applicable during the PPA process.

**Specify design review and approval process**

AB73 requires a 120-day timeline, from submission of a complete application, within which an approving authority must approve or disapprove an HSD project. Projects not approved or disapproved within the 120-day timeline are automatically deemed approved. The local ordinance will clearly define what constitutes a ‘complete’ application, and start that 120-day timeline at the Department’s determination of completeness of the application. During the 120 day period, the local ordinance will specify that the Department will review all HSD projects according to the recently adopted Urban Design Guidelines as well as any Central SOMA specific guidelines and standards contained within the Plan. AB73 explicitly allows for enforcement of clear “qualitative design requirements.”

AB73 also requires local municipalities with HSDs to conduct a public hearing, in accordance with the Brown Act, on all individual HSD projects, for the public to review and comment on each project with respect to consistency with adopted design requirements. The proposed local ordinance will require an informational hearing at the Planning Department, within the 120 day timeline, to satisfy that requirement.

**Specify monitoring and enforcement process**

The local ordinance will require the Department to monitor and report on the number of projects and residential units (including affordable units, by level of affordability) completed every year within the HSD, as part of the annual Housing Inventory.

Any project choosing to participate in the Central SOMA HSD will be required to submit affidavits of their agreements to pay prevailing wages or use skilled and trained labor, as well as to implement applicable mitigation measures identified in the Central SOMA EIR. After Planning approval of an HSD project, the local ordinance directs the Office of Labor Standards Enforcement (OLSE) to monitor compliance with wage and labor agreements, and requires project sponsors to submit weekly reports to OLSE. HSD projects found to be in violation of wage or labor standards, or mitigation measure agreements, will be subject to enforcement, including fines and/or revocation of permits, by the Department/Zoning Administrator.

**Include a ‘use it or lose it’ provision**

The local ordinance will require an HSD project sponsor to file a first construction addendum to the Department of Building Inspection within 36 months of issuance of Planning approval. The

ordinance allows the Zoning Administrator to hold a hearing on the status of any project not meeting this deadline, at which the Zoning Administrator may extend approvals for the project up to a maximum of 12 months at a time.

### **Next Steps and Approval Timeline**

A draft of the local ordinance is anticipated to be introduced at the Board of Supervisors on Tuesday, May 1<sup>st</sup>. Assuming that timeline, a hearing on approval of the proposed ordinance will be at the Planning Commission on May 10 concurrently with the Commission's hearing on certification for the Central SoMa Plan EIR and adoption of the Central SoMa Plan. The case report for that item will include any additional or updated detail on the draft local ordinance, as well as further analysis.

Following that, the ordinance will continue on to the Board of Supervisors for approval. Once approved, the ordinance will be sent to the California Department of Housing and Community Development (HCD) for final approval.

### **Attachment:**

1. Text of AB 73, as adopted on September 29, 2017.


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**AB-73 Planning and zoning: housing sustainability districts.** (2017-2018)

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Date Published: 09/29/2017 09:00 PM

**Assembly Bill No. 73**

CHAPTER 371

An act to amend Section 65582.1 of, and to add Chapter 11 (commencing with Section 66200) to Division 1 of Title 7 of, the Government Code, and to add Chapter 4.3 (commencing with Section 21155.10) to Division 13 of the Public Resources Code, relating to land use.

[ Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017. ]

LEGISLATIVE COUNSEL'S DIGEST

AB 73, Chiu. Planning and zoning: housing sustainability districts.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing.

This bill would authorize a city, county, or city and county, including a charter city, charter county, or charter city and county, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The bill would authorize the city, county, or city and county to apply to the Department of Housing and Community Development for approval for a zoning incentive payment and require the city, county, or city and county to provide specified information about the proposed housing sustainability district ordinance. The bill would require the department to approve a zoning incentive payment if the ordinance meets the above-described requirements and the city's housing element is in compliance with specified law. The bill would also require the department, each October 1 following the approval of the housing sustainability district, to issue a certificate of compliance if the city, county, or city and county meets specified criteria pertaining to the continued compliance with these provisions or to deny certification, as provided. The bill would provide that a city, county, or city and county with a housing sustainability district would be entitled to a zoning incentive payment, subject to appropriation of funds for that purpose, and require that 1/2 the amount be provided upon zone approval by the department and 1/2 the amount upon verification by the department of the issuance of permits for the projected units of residential construction within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. The bill, if the city, county, or city and county reduces the density of sites within the district from specified levels, would require the city, county, or city and county to return the full amount of zoning incentive payments it has received to the department. The bill would also authorize a developer to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to its provisions, as provided.

The bill would authorize a city, county, or city and county to incorporate provisions in its housing sustainability district ordinance prescribing the contents of an application for a permit for residential development, to adopt design review standards, and to charge a project application fee to defray the costs of preparation, adoption, and

administration of the housing sustainability district plan, as provided. The bill would require that a housing sustainability district ordinance be effective for no more than 10 years, but would authorize the city, county, or city and county to renew the ordinance for not more than 10 years. The bill would also require that prevailing wages be paid, and a skilled workforce employed, in connection with all projects within the housing sustainability district, as provided. The bill would establish procedures for review of an application by an approving authority, including requiring the approving authority to conduct a public hearing on an application and issue a written decision within 120 days of receipt of the application. The bill, if a proposed development within a housing sustainability district includes any parcels being used for affordable housing, would require that the approving authority condition approval of the application on the applicant's agreement to replace those affordable housing units. The bill would also prescribe procedures for review of a decision of the approving authority to deny or approve with conditions an application for a permit in the superior court.

The bill would authorize the department to adopt, amend, and repeal standards, forms, or definitions to implement its provisions and exempt those standards, forms, or definitions from specified provisions of the Administrative Procedure Act governing rulemaking. The bill would require the department to publish a report containing specified information about the housing sustainability district program on its Internet Web site no later than November 1, 2018, and each November 1 thereafter.

(2) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would require a lead agency, when designating housing sustainability districts, to prepare an EIR for the designation, as specified. The bill would exempt from CEQA housing projects undertaken in the housing sustainability districts that meet specified requirements.

(3) This bill would declare that its provisions are not severable. The bill would also make findings that it addresses a matter of statewide concern.

(4) This bill would incorporate additional changes to Section 65582.1 of the Government Code proposed by SB 35 to be operative only if this bill and SB 35 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 65582.1 of the Government Code is amended to read:

**65582.1.** The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

- (a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).
- (b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).
- (c) Restrictions on disapproval of housing developments (Section 65589.5).
- (d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).
- (e) Least cost zoning law (Section 65913.1).
- (f) Density bonus law (Section 65915).
- (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
- (h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).
- (i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).

- (j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).
- (k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5).
- (l) Limiting moratoriums on multifamily housing (Section 65858).
- (m) Prohibiting discrimination against affordable housing (Section 65008).
- (n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3).
- (o) Community redevelopment law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413).
- (p) Housing sustainability districts (Chapter 11 (commencing with Section 66200)).

**SEC. 1.5.** Section 65582.1 of the Government Code is amended to read:

**65582.1.** The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

- (a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).
- (b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).
- (c) Restrictions on disapproval of housing developments (Section 65589.5).
- (d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).
- (e) Least cost zoning law (Section 65913.1).
- (f) Density bonus law (Section 65915).
- (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
- (h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).
- (i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).
- (j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).
- (k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5).
- (l) Limiting moratoriums on multifamily housing (Section 65858).
- (m) Prohibiting discrimination against affordable housing (Section 65008).
- (n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3).
- (o) Community redevelopment law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413).
- (p) Streamlining housing approvals during a housing shortage (Section 65913.4).
- (q) Housing sustainability districts (Chapter 11 (commencing with Section 66200)).

**SEC. 2.** Chapter 11 (commencing with Section 66200) is added to Division 1 of Title 7 of the Government Code, to read:

**CHAPTER 11. Housing Sustainability Districts**

**66200.** For the purposes of this chapter, the following definitions shall apply:

(a) "Approving authority" means an agency of a city, county, or city and county that is established in the city's, county's, or city and county's housing sustainability district ordinance and designated to review permit applications for development within the housing sustainability district in accordance with Section 66205.

(b) "City, county, or city and county" includes a charter city, charter county, or charter city and county.

(c) "Department" means the Department of Housing and Community Development.

(d) "Developable land" means the area within a housing sustainability district that can be feasibly developed into residential or mixed-use development, including land area occupied by or associated with underutilized residential, commercial, or industrial buildings or uses that have the potential to be converted for residential or mixed use, in accordance with the rules and regulations of the department, except for the following:

(1) Land that is already substantially developed, including existing parks and open space.

(2) Areas exceeding one-half acre that are unsuitable for development due to topographical features or environmental preservation.

(e) "Eligible location" means either of the following:

(1) An area located within one-half mile of public transit.

(2) An area that, by virtue of existing infrastructure, transportation access, existing underutilized facilities, or location, is highly suitable for a residential or mixed-use housing sustainability district.

(f) "Mixed use" means that up to 50 percent of the square footage of a proposed development is designated for nonresidential use.

(g) "Project" means a proposed residential or mixed use development within a housing sustainability district.

(h) "Housing sustainability district" means an area within a city, county, or city and county designated pursuant to this chapter that is superimposed over an area within the jurisdiction of the city, county, or city and county in which a developer may elect to develop a project in accordance with either the housing sustainability district ordinance or the city's, county's, or city and county's otherwise applicable general plan and zoning ordinances.

(i) "Housing sustainability district ordinance" means the ordinance adopted by a city, county, or city and county pursuant to Section 66201 establishing a housing sustainability district.

**66201.** (a) A city, county, or city and county, upon receipt of preliminary approval by the department pursuant to Section 66202, may establish by ordinance a housing sustainability district in accordance with this chapter. The city, county, or city and county shall adopt the ordinance in accordance with the requirements of Chapter 4 (commencing with Section 65800).

(b) An area proposed to be designated a housing sustainability district pursuant to this chapter shall satisfy all of the following requirements:

(1) The area is an eligible location, including any adjacent area served by existing infrastructure and utilities.

(2) The area is zoned to permit residential use through the ministerial issuance of a permit. Other uses may be permitted by conditional use or other discretionary permit, provided that the use is consistent with residential use.

(3) Density ranges for multifamily housing for which the minimum densities shall not be less than those deemed appropriate to accommodate housing for lower income households as set forth in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2, and a density range for single-family attached or detached housing for which the minimum densities shall not be less than 10 units to the acre. A density range shall provide the minimum dwelling units per acre and the maximum dwelling units per acre.

(4) The development of housing is permitted, consistent with neighborhood building and use patterns and any applicable building codes.

(5) Limitations or moratoriums on residential use do not apply to any of the area, other than any limitation or moratorium imposed by court order.

(6) The area is not subject to any general age or other occupancy restrictions, except that the city, county, or city and county may allow for the development of specific projects exclusively for the elderly or the disabled or

for assisted living.

(7) Housing units comply with all applicable federal, state, and local fair housing laws.

(8) The area of the proposed housing sustainability district does not exceed 15 percent of the total land area under the jurisdiction of the city, county, or city and county unless the department approves a larger area in furtherance of the purposes of this chapter.

(9) The total area of all housing sustainability districts within the city, county, or city and county does not exceed 30 percent of the total land area under the jurisdiction of the city, county, or city and county.

(10) The housing sustainability district ordinance provides for the manner of review by an approving authority, as designated by the ordinance, pursuant to Section 66205 and in accordance with the rules and regulations adopted by the department.

(11) Development projects in the area comply with the requirements of Section 66208, regarding the replacement of affordable housing units affected by the development.

(c) The city, county, or city and county may apply uniform development policies or standards that will apply to all projects within the housing sustainability district, including parking ordinances, public access ordinances, grading ordinances, hillside development ordinances, flood plain ordinances, habitat or conservation ordinances, view protection ordinances, and requirements for reducing greenhouse gas emissions.

(d) The city, county, or city and county may provide for mixed-use development within the housing sustainability district.

(e) An amendment or repeal of a housing sustainability district ordinance shall not become effective unless the department provides written approval to the city, county, or city and county. The city, county, or city and county may request approval of a proposed amendment or repeal by submitting a written request to the department. The department shall evaluate the proposed amendment or repeal for the effect of that amendment or repeal on the city's, county's, or city and county's housing element. If the department does not respond to a written request for amendment or repeal of an ordinance within 60 days of receipt of that request, the request shall be deemed approved.

(f) The housing sustainability district ordinance shall do all of the following:

(1) Provide for an approving authority to review permit applications for development within the housing sustainability district in accordance with Section 66205.

(2) (A) Subject to subparagraph (B), require that at least 20 percent of the residential units constructed within the housing sustainability district be affordable to very low, low-, and moderate-income households and subject to a recorded affordability restriction for at least 55 years. A development that is affordable to persons and families whose income exceeds the income limit for persons and families of moderate income shall include no less than 10 percent of the units for lower income households at affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code, unless the city, county, or city and county has adopted a local ordinance that requires that a greater percentage of the units be for lower income households, in which case that ordinance shall apply.

(B) For a city, county, or city and county that includes its entire regional housing needs allocation pursuant to Section 65584 within the housing sustainability district, the percentages of the total units constructed or substantially rehabilitated within the housing sustainability district shall match the percentages in each income category of the city's, county's, or city and county's regional housing need allocation.

(C) Nothing in this section shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, general plan amendment, specific plan, resolution, or other land use policy or regulation requiring that any housing development contain a fixed percentage of affordable housing units.

(3) Specify that a project is not deemed to be for residential use if it is infeasible for actual use as a single or multifamily residence.

(4) Require that an applicant for a permit for a project within the housing sustainability district do the following, as applicable:

(A) Certify to the approving authority that either of the following is true, as applicable:

(i) That the entirety of the project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the project is not in its entirety a public work, that all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the approving authority approves the application, then for those portions of the project that are not a public work all of the following shall apply:

(I) The applicant shall include the prevailing wage requirement in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subclause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For projects for which any of the following conditions apply, certify to the approving authority that a skilled and trained workforce will be used to complete the project if the approving authority approves the project application:

(I) On and after January 1, 2018, until December 31, 2021, the project consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the project consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the project consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the project consists of more than 50 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the project consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the applicant has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the project.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the project.

(III) Except as provided in subclause (IV), the applicant shall provide to the approving authority, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the approving authority pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a project within a housing sustainability district that is subject to approval by the approving authority is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(5) Provide that a project is not eligible for approval from the approving authority if it involved or involves the subdivision that is, or, notwithstanding this chapter, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The project has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (4).

(B) The project is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (4).

(6) Provide for relocation assistance for persons and families displaced from their residences due to development within the housing sustainability district.

(g) A housing sustainability district ordinance adopted pursuant to this section shall remain in effect for no more than 10 years, except that the city, county, or city and county may renew the housing sustainability district ordinance, for an additional period not exceeding 10 years, before the date upon which it would otherwise be repealed pursuant to this subdivision.

(h) This section shall not be construed to affect the authority of a city, county, or city and county to amend its zoning regulations pursuant to Chapter 4 (commencing with Section 65800), except to the extent that an amendment affects a housing sustainability district.

(i) The city, county, or city and county shall comply with Chapter 4.3 (commencing with Section 21155.10) of Division 13 of the Public Resources Code.

**66202.** (a) (1) A city, county, or city and county that has proposed an ordinance establishing a housing sustainability district in accordance with this chapter may apply to the department for preliminary approval of a housing sustainability district. The department shall make a preliminary determination as to the eligibility of the proposed housing sustainability district for approval.

(2) The department shall approve an application for preliminary approval for a zoning incentive payment if it determines both that the proposed housing sustainability district ordinance meets the requirements of this chapter and the city's, county's, or city and county's housing element is in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3. If the department denies the application, it shall inform the applicant city, county, or city and county of the deficiencies in its application. A city, county, or city and county may reapply upon correcting those deficiencies identified in the department's denial.

(3) The department shall transmit its determination to the applicant city, county, or city and county.

(b) A city, county, or city and county that has proposed an ordinance establishing a housing sustainability district shall submit all of the following information with its application:

(1) A description of the boundaries of the proposed housing sustainability district.

(2) A description of the developable land within the proposed housing sustainability district.

(3) A description of other residential development opportunities within the city, county, or city and county, including infill development and reuse of existing buildings within already developed areas.

(4) A copy of the city's, county's, or city and county's housing element, adopted in accordance with Article 10.6 (commencing with Section 65580) of Chapter 3.

(5) A copy of the housing sustainability district ordinance adopted pursuant to Section 66201.

(6) A copy of the environmental impact report prepared pursuant to Section 21155.10 of the Public Resources Code.

(7) A copy of the city's, county's, or city and county's design review standards, if any, developed pursuant to Section 66207.

(8) Any other materials that establish the city's, county's, or city and county's compliance with the requirements of Section 66201.

(c) Following preliminary approval of an application pursuant to subdivision (a) and upon receipt of acknowledgment that the housing sustainability district ordinance has taken effect, the department shall confirm approval within 45 days of receipt of the application.

**66203.** (a) On or before October 1 of each year following the approval of a city's, county's, or city and county's housing sustainability district by the department under Section 66202, the department shall issue a certificate of compliance if it finds that the city, county, or city and county has satisfied all of the following requirements:

(1) The city, county, or city and county has in effect a housing sustainability district ordinance adopted pursuant to Section 66201.

(2) The housing sustainability district complies with the minimum requirements of subdivision (b) of Section 66201.

(3) The city, county, or city and county has only denied a permit for a residential development consistent with its housing sustainability district ordinance, the provisions of its housing element, or the requirements of this chapter.

(4) The design review standards, if any, adopted by the city, county, or city and county comply with the requirements of Section 66207.

(b) If the department finds that a city, county, or city and county does not satisfy all of the requirements of subdivision (a), the department may deny certification of the housing sustainability district. A denial pursuant to this subdivision shall not affect the validity of the housing sustainability district ordinance or the application of the ordinance to a development or proposed development within the housing sustainability district.

(c) The department may require a city, county, or city and county to provide any information it deems necessary to review that city's, county's, or city and county's housing sustainability district as required by this section.

**66204.** (a) (1) A city, county, or city and county with a housing sustainability district approved by the department under Section 66202 shall be entitled to a zoning incentive payment, upon appropriation of funds by the Legislature for that purpose.

(2) The amount of payment provided to a city, county, or city and county pursuant to this section shall be based on the number of new residential units constructed within the housing sustainability district. Replacement units constructed in accordance with Section 66208 and any units constructed by a developer who elects to not be subject to the housing sustainability district ordinance pursuant to subdivision (f) of Section 66205 shall not be considered new residential units for purposes of this section.

(b) The department shall issue the first half of the zoning incentive payment to the city, county, or city and county upon preliminary approval of the housing sustainability district ordinance and issuance of the environmental impact report pursuant to Section 21155.10 of the Public Resources Code. The department shall issue the second half of the zoning incentive payment within 10 days of submission of proof of issuance of building permits by the city, county, or city and county for the projected units of residential construction within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year pursuant to Section 66203.

**66205.** (a) (1) A city, county, or city and county may incorporate provisions in its housing sustainability district ordinance prescribing the contents of an application for a permit for residential development.

(2) The city, county, or city and county may charge an application fee to persons seeking government approval of a project within the housing sustainability district. A fee charged pursuant to this paragraph shall be established to defray the costs of preparation, adoption, and administration of the housing sustainability district plan, including costs incurred related to the implementation of Chapter 4.3 (commencing with Section 21155.10) of Division 13 of the Public Resources Code. As nearly as can be estimated, the fee charged shall be a prorated amount in accordance with the applicant's relative benefit derived from the housing sustainability district plan.

(3) The housing sustainability district ordinance may provide for referral of an application for a permit to any officers, agencies, boards, or bureaus of the city, county, or city and county for review and comment. A reviewing officer, agency, board, or bureau shall provide any comments on an application within 60 days of receipt.

(b) The applicable provisions of the city's, county's, or city and county's general plan and housing sustainability district ordinance in effect at the time an application is submitted to the approving authority shall govern the application for the purposes of the following:

(1) The processing and review of the application.

(2) The pendency of any appeal of a decision of the approving authority.

(3) If the application is approved, for three years following approval of the application.

(c) (1) The applicant shall file an application for a permit with the official designated for this purpose in the housing sustainability district ordinance of the city, county, or city and county and with the approving authority.

(2) The authority shall conduct a public hearing in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5) and issue a written decision on the application within 120 days of receipt of the application, unless extended by agreement between the approving authority and the applicant. The approving authority shall file a copy of its written decision with the official designated for this purpose in the housing sustainability district ordinance of the city, county, or city and county.

(3) If the approving authority fails to act within 120 days, or within the period agreed upon by the approving authority and the applicant, as applicable, the application shall be deemed approved. In the event an application is deemed approved pursuant to this paragraph, the applicant shall provide notice to any interested parties and

notify the official designated for this purpose in the housing sustainability district ordinance of the city, county, or city and county within 14 days of the application being deemed approved. The notice provided to interested parties shall specify that any appeals must be filed within 20 days following the official's receipt of the notice.

(4) The approving authority shall issue to the applicant a copy of its written decision, including the name and address of the owner of the property proposed to be developed, an identification of the property proposed to be developed, the development plans, and certification that a copy of the decision has been filed with the official designated for this purpose in the housing sustainability district ordinance of the city, county, or city and county.

(d) (1) In reviewing an application for a permit pursuant to this section, the approving authority shall consider the requirements of the housing sustainability district ordinance and of this chapter, including the requirement that the applicant replace affordable housing units affected by the proposed development pursuant to Section 66208.

(2) The approving authority may deny an application only for the following reasons:

(A) The proposed development project does not fully comply with the housing sustainability district ordinance.

(B) The applicant has not submitted all of the required information or paid an application fee required by the housing sustainability district ordinance and necessary for an adequate and timely design review or assessment of potential impacts on nearby property.

(C) The approving authority determines, based upon substantial evidence in light of the whole record of the public hearing on the project, that a physical condition on the site of development that was not known and could not have been discovered with reasonable investigation at the time the application was submitted would have a specific adverse impact upon the public health or safety and that there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. As used in this subparagraph, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact based on identified objective written public health or safety standards, policies, or conditions, as in existence at the time the application is deemed complete. Nothing in this subparagraph is intended to affect thresholds of significance or standards of review for any impact reviewed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(e) The official designated for this purpose in the housing sustainability district ordinance of the city, county, or city and county shall certify the following, as applicable, on a copy of the written decision of the approving authority:

(1) No appeal has been filed, or has been dismissed or denied, within 20 days of the issuance of the decision of the approving authority.

(2) The application is deemed approved by reason of the failure of the approving authority to issue a decision within 120 days of submission of the application.

(f) A developer may choose to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to this chapter, and in so doing shall not receive any of the incentives and benefits or be required to comply with any of the provisions specified in the housing sustainability district ordinance or this chapter.

**66206.** (a) If the approving authority denies an application for a permit submitted in accordance with Section 66205 or has approved it with conditions rendering the project infeasible for residential use, the applicant may appeal that decision by filing a complaint in the superior court.

(b) An appeal pursuant to this section shall be filed within 20 days after the approving authority has filed its decision to deny or conditionally approve the application with the official designated for this purpose in the housing sustainability district ordinance of the city, county, or city and county. The applicant shall provide notice of the appeal and a copy of the complaint to that official. The applicant shall, within 14 days of filing the complaint, serve written notice and provide a copy of the complaint to all defendants by certified mail. The court shall dismiss the complaint if the applicant does not, within 21 days of filing the complaint, file an affidavit with the clerk of the court certifying that the notices required by this subdivision have been provided.

(c) The complaint shall allege the specific reasons why the approving authority's decision does not satisfy the requirements of the housing sustainability district ordinance, the provisions of this chapter, or other applicable

law. The complaint shall name the approving authority as a defendant.

(d) The approving authority shall have the burden of proving that its decision satisfies the requirements of the housing sustainability district ordinance, the provisions of this chapter, or other applicable law based on substantial evidence in light of the whole record.

**66207.** (a) A city, county, or city and county may, in accordance with the regulations adopted by the department, adopt design review standards applicable to development projects within the housing sustainability district to ensure that the physical character of development within the district is complementary to adjacent buildings and structures and is consistent with the city's, county's, or city and county's general plan, including the housing element. For purposes of this section, "design review standard" means the reasonable application of qualitative design requirements that are clear and concise and consistently applied to all types of development applications, with specific terms defined or generally accepted word definitions. Design review of a development within a housing sustainability district shall not constitute a "project" for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(b) Design review standards adopted pursuant to this section shall be adopted at the same time as the housing sustainability district ordinance and submitted to the department with the city's, county's, or city and county's application pursuant to Section 66202. Any subsequent additional design review standards or amendment of existing design review standards shall be subject to written approval by the department in the same manner as specified in subdivision (e) of Section 66201, relating to the amendment or repeal of a housing sustainability district ordinance.

**66208.** (a) If a proposed development within a housing sustainability district includes any parcels being used for affordable housing at the time the application is submitted to the approving authority, the approving authority shall condition its approval of the application on the applicant's agreement to replace those affordable housing units.

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

(1) "Affordable housing" shall mean a parcel of property that meets any of the following criteria:

(A) The parcel includes rental dwelling units that are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income.

(B) The parcel is subject to rent or price control through a public entity's valid exercise of its police power.

(C) The parcel includes a housing development that is currently occupied by low- or very low income households.

(2) "Replace" shall mean either of the following, as applicable:

(A) If any affordable housing units described in subdivision (a) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied affordable housing units described in subdivision (a) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units shall be subject to a recorded affordability restriction for at least 55 years.

(B) If all affordable housing units described in subdivision (a) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size, as existed at the high point of those units in the five-year period preceding the

application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the high point is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units shall be subject to a recorded affordability restriction for at least 55 years.

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

**66209.** (a) The department shall be responsible for the administration of this chapter. The department may review, adopt, amend, and repeal standards, forms, or definitions to implement this chapter. Any standards, forms, or definitions adopted to implement this chapter shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(b) (1) The department shall conduct, or cause to be conducted, an annual review of the housing sustainability district program. The department may require participating cities and counties to provide data on housing sustainability districts within their jurisdiction as necessary to conduct this review and prepare the report required by this subdivision.

(2) The department shall publish a report on its Internet Web site no later than November 1, 2018, and each November 1 thereafter. The report shall include all of the following:

(A) The status of the program through the fiscal year prior to the publication of the report.

(B) An identification and description of cities and counties seeking preliminary determination from the department.

(C) An identification of approved housing sustainability districts and the incentive payments awarded for each pursuant to Section 66204.

(D) A summary of the land area within both proposed and approved housing sustainability districts and the purposes for which it is zoned.

(E) The number of projects under review by an approving authority, proposed residential units, building permits issued, and completed housing units as of the date of the report's publication.

(F) An estimate, for the current and immediately succeeding fiscal year, of the number and size of proposed new districts, potential number of residential units allowed in new districts, and anticipated construction activity.

**66210.** If a city, county, or city and county reduces the density of sites within the district from the levels required pursuant to paragraph (3) of subdivision (b) of Section 66201, the city, county, or city and county shall return the full amount of zoning incentive payments it has received under this chapter to the department. Amounts repaid pursuant to this section shall be used for further incentive payments.

**SEC. 3.** Chapter 4.3 (commencing with Section 21155.10) is added to Division 13 of the Public Resources Code, to read:

**CHAPTER 4.3. Housing Sustainability Districts**

**21155.10.** A lead agency shall prepare an environmental impact report when designating a housing sustainability district pursuant to Section 66201 of the Government Code to identify and mitigate, to the extent feasible, environmental impacts resulting from the designation. The environmental impact report shall identify mitigation measures that may be undertaken by housing projects in the housing sustainability district to mitigate the environmental impacts identified by the environmental impact report.

**21155.11.** This division does not apply to a housing project undertaken in a housing sustainability district designated by a local government if all of the following are met:

(a) The lead agency has certified an environmental impact report for the housing sustainability district, and the Department of Housing and Community Development has approved the housing sustainability district pursuant to Section 66202 of the Government Code, within 10 years of the lead agency's review of the housing project.

(b) The housing project meets the conditions specified in the designation for the housing sustainability district.

(c) The housing project is required to implement appropriate mitigation measures identified in the environmental impact report prepared pursuant to Section 21155.10 to mitigate environmental impacts identified by that environmental impact report.

**SEC. 4.** Each provision of this act is a material and integral part of this act, and the provisions of this act are not severable. If any provision of this act or its application is held invalid, this entire act shall be null and void.

**SEC. 5.** The Legislature finds and declares that ensuring that all Californians have access to sustainable housing is not a municipal affair and is instead a matter of statewide concern. Therefore, this act shall apply equally to all cities and counties in this state, including charter cities and charter counties.

**SEC. 6.** Section 1.5 of this bill incorporates amendments to Section 65582.1 of the Government Code proposed by both this bill and Senate Bill 35. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65582.1 of the Government Code, and (3) this bill is enacted after Senate Bill 35, in which case Section 1 of this bill shall not become operative.