



CITY OF HUNTINGTON BEACH
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648-2702

GRACEY VAN DER MARK
MAYOR

May 8, 2024

The Honorable Scott Wiener
California State Senate
1020 O Street
Sacramento, CA 95829

Re: SB 1037 (Wiener)—Oppose

Dear Senator Wiener:

On behalf of the City of Huntington Beach, I write in opposition to SB 1037, which authorizes the State Attorney General to enforce the adoption of a housing element or enforce any other state law governing a land use decision or housing permit, on behalf of the Department of Housing and Community Development (HCD).

SB 1037 and its provisions represent a significant overreach by the State Attorney General to exert financial and political pressure on local governments. HCD is already well suited to enforce state law. Moreover, current law authorizes HCD to request the Attorney General to act on the Department's behalf. Therefore, we identify this new authority for the Attorney General to unilaterally intervene as wholly unnecessary.

Moreover, the fine levels proposed in SB 1037 are unparalleled and ripe for misuse by the Attorney General for alternative intents. California has imposed a litany of overcomplex provisions related to housing, be it single-use, multifamily dwellings, setbacks, parking requirements, accessory dwelling units, etc., while providing limited to no consistent baseline resources for local governments to comply. The bill would specify that in the instance of proposed violations, the penalties imposed by the Attorney General would range from \$10,000 to \$50,000 per month per violation. And, if a local government does not or cannot afford to pay such penalties, SB 1037 allows the State Controller to intercept "any available state and local funds" to direct them to the Housing Trust Fund. This is ripe for abuse and could severely limit local government's ability to provide essential public services.

The City works in earnest to provide all housing, affordable and market rate, that correspond to the capacity and interests of our residents. SB 1037 extends the state's response to undermine and penalize local control.

For these reasons we oppose SB 1037.

Sincerely,

Gracey Van Der Mark
Mayor

Cc: Huntington Beach City Council

AMENDED IN SENATE MARCH 19, 2024

SENATE BILL

No. 1037

Introduced by Senator Wiener

February 6, 2024

An act to ~~amend~~ *add* Section ~~65400~~ of 65009.1 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, as amended, Wiener. Planning and zoning: ~~general plan.~~
housing element: enforcement.

Existing law, 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. The Planning and Zoning Law requires the Department of Housing and Community Development (HCD) to determine whether the housing element is in substantial compliance with specified provisions of that law. The Planning and Zoning Law requires HCD to notify a city, county, or city and county, and authorizes HCD to notify the office of the Attorney General, that the city, county, or city and county is in violation of state law if the local government has taken action in violation of specified provisions of law. The Planning and Zoning Law also requires, among other things, that an application for a housing development be subject to a specified streamlined, ministerial approval process if the development satisfies certain objective planning standards.

This bill, in any action brought by the Attorney General, on behalf of HCD or in an independent capacity, to enforce the adoption of housing element revisions, as specified, or to enforce any state law that requires a city, county, or local agency to ministerially approve any land use decision or permitting application for a housing development

project, as specified, would subject the city, county, or local agency to specified remedies, including a civil penalty of, at minimum, \$10,000 per month, and not exceeding \$50,000 per month, for each violation, as specified. The bill would require these civil penalties, as specified, to be deposited into the Building Homes and Jobs Trust Fund for the sole purpose of supporting the development of affordable housing located in the affected jurisdiction, except as provided, and would require that expenditure of any penalty moneys deposited into the fund under these provisions be subject to appropriation by the Legislature. In the event a city, county, or local agency fails to pay civil penalties imposed by the court, the bill would authorize the court to require the Controller to intercept any available state and local funds and direct those funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay, as specified.

The bill would make a related statement of legislative findings and declarations.

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

~~Existing law, 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 requires the planning agency of a city or county to provide an annual report to certain specified entities by April 1 of each year that includes specified information.~~

~~This bill would make nonsubstantive changes to those provisions.~~

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California has a statewide housing shortage crisis.
- 4 (b) California's housing crisis stifles economic growth,
- 5 contributes to the homelessness epidemic, consumes an
- 6 ever-growing share of the paychecks of working families, and
- 7 holds millions of households back from realizing the California
- 8 dream of achieving housing security or home ownership.
- 9 Conversely, new construction of residences, particularly

1 *multifamily homes, induces a chain of moves, ultimately adding*
2 *more housing units affordable to middle- and low-income*
3 *households.*

4 *(c) Restrictive zoning, land use planning, and burdensome*
5 *residential permitting practices and policies, at the local level in*
6 *particular, are a major cause of the shortfall between California's*
7 *housing needs and the available supply of housing. For example,*
8 *despite the obligations of local governments under the Housing*
9 *Element Law to update their general plans, including required*
10 *rezoning for additional sites to address projected housing needs,*
11 *numerous cities and counties continue to delay and, at times even*
12 *refuse, to undertake required actions to encourage, promote, and*
13 *facilitate the development of housing to accommodate the*
14 *established regional housing need. The absence of updated housing*
15 *elements that are substantially compliant with state law causes*
16 *unnecessary uncertainty and delay in approving housing*
17 *development applications. This cumulative delay causes many*
18 *local governments to continue to fall behind in meeting their share*
19 *of regional housing need.*

20 *(d) These restrictive practices and policies continue to persist*
21 *despite other statewide reforms to expedite, streamline, and*
22 *ministerially approve the planning and construction of housing of*
23 *all types, including housing affordable to persons and families of*
24 *lower income. While not exhaustive, these reforms can be found*
25 *in the following provisions:*

26 *(1) Accessory dwelling units, as described in Sections 65852.150*
27 *and 65852.2 of the Government Code.*

28 *(2) By-right housing, in which certain multifamily housing is*
29 *designated a permitted use, as described in Section 65589.4 of the*
30 *Government Code.*

31 *(3) Reduced time for action on affordable housing applications*
32 *under the approval of the development permits process, as*
33 *described in Article 5 (commencing with Section 65950) of Chapter*
34 *4.5 of Division 1 of Title 7 of the Government Code.*

35 *(4) Streamlining housing approvals during a housing shortage,*
36 *as described in Section 65913.4 of the Government Code.*

37 *(5) Streamlining agricultural employee housing development*
38 *approvals, as described in Section 17021.8 of the Health and Safety*
39 *Code.*

1 (6) *The Housing Crisis Act of 2019, as described in Chapter*
2 *654 of the Statutes of 2019 (Senate Bill 330).*

3 (7) *Allowing four units to be built on single-family parcels*
4 *statewide, as described in Chapter 162 of the Statutes of 2021*
5 *(Senate Bill 9).*

6 (8) *The Middle Class Housing Act of 2022, as described in*
7 *Section 65852.24 of the Government Code.*

8 (9) *The Affordable Housing and High Road Jobs Act of 2022,*
9 *as described in Chapter 4.1 (commencing with Section 65912.100)*
10 *of Division 1 of Title 7 of the Government Code.*

11 (10) *Housing element law requirements and required rezoning*
12 *to address unmet housing needs, as described in Chapter 974 of*
13 *the Statutes of 2018 (Senate Bill 828) and Chapter 358 of the*
14 *Statutes of 2021 (Assembly Bill 1398).*

15 SEC. 2. *Section 65009.1 is added to the Government Code, to*
16 *read:*

17 65009.1. (a) *In any action brought by the Attorney General,*
18 *on behalf of the Department of Housing and Community*
19 *Development or in an independent capacity, to enforce the adoption*
20 *of housing element revisions pursuant to the schedule set forth in*
21 *subdivision (e) of Section 65588, or to enforce any state law that*
22 *requires a city, county, or local agency to ministerially approve,*
23 *without discretionary review, any land use decision or permitting*
24 *application for a housing development project, the city, county,*
25 *or local agency shall be subject to the following remedies:*

26 (1) *A civil penalty of, at minimum, ten thousand dollars*
27 *(\$10,000) per month, and not exceeding fifty thousand dollars*
28 *(\$50,000) per month, for each violation, accrued from the date of*
29 *the violation until the date the violation is cured.*

30 (2) (A) *All costs of investigating and prosecuting this action,*
31 *including expert fees, reasonable attorney's fees, and costs,*
32 *whenever the Attorney General prevails in a civil action to enforce*
33 *any state laws under this section.*

34 (B) *Awards imposed pursuant to this paragraph shall be paid*
35 *to the Public Rights Law Enforcement Special Fund established*
36 *by Section 12530.*

37 (3) (A) *Other relief as the court deems appropriate, including*
38 *equitable and injunctive relief, provisional or otherwise.*

1 (B) Any injunction, provisional or otherwise, ordered by the
2 court pursuant to this paragraph shall be deemed to be prohibitory,
3 and not affirmative.

4 (b) The purpose of this section is to ensure that, where local
5 land use decisions or actions are arbitrary, capricious, entirely
6 lacking in evidentiary support, contrary to established public
7 policy, unlawful, or procedurally unfair, adequate remedies are
8 available to ensure that state laws mandating streamlined,
9 ministerial approvals related to housing development projects,
10 and the timely adoption of housing element revisions, are promptly
11 and faithfully followed.

12 (c) (1) Any civil penalty levied pursuant to this section shall be
13 deposited into the Building Homes and Jobs Trust Fund for the
14 sole purpose of supporting the development of affordable housing
15 located in the affected jurisdiction. Expenditure of any penalty
16 moneys deposited into the Building Homes and Jobs Trust Fund
17 pursuant to this subdivision shall be subject to appropriation by
18 the Legislature.

19 (2) Any penalty imposed pursuant to this section shall not be
20 paid out of funds already dedicated to affordable housing,
21 including, but not limited to, very low, low-, and moderate-income
22 households.

23 (3) To the extent permitted under the California Constitution,
24 in the event a city, county, or local agency fails to pay civil
25 penalties imposed by the court, the court may require the
26 Controller to intercept any available state and local funds and
27 direct those funds to the Building Homes and Jobs Trust Fund to
28 correct the jurisdiction's failure to pay.

29 (4) Notwithstanding paragraph (1), if the penalty moneys have
30 not been expended five years after deposit, the penalty moneys
31 may be used, upon appropriation, to finance newly constructed
32 affordable housing units in the state without any geographic
33 restrictions.

34 (d) The liability, penalties, and remedies imposed by this section
35 are in addition to any other liability, penalties, and remedies
36 imposed by any other law.

37 SEC. 3. The Legislature finds and declares that the lack of
38 housing is a matter of statewide concern and is not a municipal
39 affair as that term is used in Section 5 of Article XI of the
40 California Constitution. Therefore, the Legislature clarifies that

1 *Section 2 of this act adding Section 65009.1 to the Government*
2 *Code applies to all cities, including charter cities.*

3 ~~SECTION 1. Section 65400 of the Government Code is~~
4 ~~amended to read:~~

5 ~~65400. (a) After the legislative body has adopted all or part~~
6 ~~of a general plan, the planning agency shall do both of the~~
7 ~~following:~~

8 ~~(1) Investigate and make recommendations to the legislative~~
9 ~~body regarding reasonable and practical means for implementing~~
10 ~~the general plan or element of the general plan so that it will serve~~
11 ~~as an effective guide for orderly growth and development,~~
12 ~~preservation and conservation of open-space land and natural~~
13 ~~resources, and the efficient expenditure of public funds relating to~~
14 ~~the subjects addressed in the general plan.~~

15 ~~(2) Provide, by April 1 of each year, an annual report to the~~
16 ~~legislative body, the Office of Planning and Research, and the~~
17 ~~Department of Housing and Community Development that includes~~
18 ~~all of the following:~~

19 ~~(A) The status of the plan and progress in its implementation.~~

20 ~~(B) (i) The progress in meeting its share of regional housing~~
21 ~~needs determined pursuant to Section 65584, including the need~~
22 ~~for extremely low income households, as determined pursuant to~~
23 ~~paragraph (1) of subdivision (a) of Section 65583, and local efforts~~
24 ~~to remove governmental constraints to the maintenance,~~
25 ~~improvement, and development of housing pursuant to paragraph~~
26 ~~(3) of subdivision (c) of Section 65583.~~

27 ~~(ii) The housing element portion of the annual report, as required~~
28 ~~by this paragraph, shall be prepared through the use of standards,~~
29 ~~forms, and definitions adopted by the Department of Housing and~~
30 ~~Community Development. The department may review, adopt,~~
31 ~~amend, and repeal the standards, forms, or definitions to implement~~
32 ~~this article. Any standards, forms, or definitions adopted to~~
33 ~~implement this article shall not be subject to Chapter 3.5~~
34 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
35 ~~2. Before and after adoption of the forms, the housing element~~
36 ~~portion of the annual report shall include a section that describes~~
37 ~~the actions taken by the local government towards completion of~~
38 ~~the programs and status of the local government's compliance with~~
39 ~~the deadlines in its housing element. The report shall be considered~~
40 ~~at an annual public meeting before the legislative body where~~

1 members of the public shall be allowed to provide oral testimony
2 and written comments.

3 (iii) The report may include the number of units that have been
4 completed pursuant to subdivision (c) of Section 65583.1. For
5 purposes of this paragraph, committed assistance may be executed
6 throughout the planning period, and the program under paragraph
7 (1) of subdivision (c) of Section 65583.1 shall not be required.
8 The report shall document how the units meet the standards set
9 forth in that subdivision.

10 (iv) The planning agency shall include the number of units in
11 a student housing development for lower income students for which
12 the developer of the student housing development was granted a
13 density bonus pursuant to subparagraph (F) of paragraph (1) of
14 subdivision (b) of Section 65915.

15 (C) The number of housing development applications received
16 in the prior year, including whether each housing development
17 application is subject to a ministerial or discretionary approval
18 process.

19 (D) The number of units included in all development
20 applications in the prior year.

21 (E) The number of units approved and disapproved in the prior
22 year.

23 (F) The degree to which its approved general plan complies
24 with the guidelines developed and adopted pursuant to Section
25 65040.2 and the date of the last revision to the general plan.

26 (G) A listing of sites rezoned to accommodate that portion of
27 the city's or county's share of the regional housing need for each
28 income level that could not be accommodated on sites identified
29 in the inventory required by paragraph (1) of subdivision (c) of
30 Section 65583 and Section 65584.09. The listing of sites shall also
31 include any additional sites that may have been required to be
32 identified by Section 65863.

33 (H) (i) The number of units of housing demolished and new
34 units of housing, including both rental housing and for-sale housing
35 and any units that the County of Napa or the City of Napa may
36 report pursuant to an agreement entered into pursuant to Section
37 65584.08, that have been issued a completed entitlement, a building
38 permit, or a certificate of occupancy, thus far in the housing
39 element cycle, and the income category, by area median income

1 category, that each unit of housing satisfies. That production report
2 shall do the following:

3 (I) For each income category described in this subparagraph,
4 distinguish between the number of rental housing units and the
5 number of for-sale units that satisfy each income category.

6 (II) For each entitlement, building permit, or certificate of
7 occupancy, include a unique site identifier that must include the
8 assessor's parcel number, but may also include street address, or
9 other identifiers.

10 (ii) For the County of Napa and the City of Napa, the production
11 report may report units identified in the agreement entered into
12 pursuant to Section 65584.08.

13 (I) The number of applications submitted pursuant to subdivision
14 (a) of Section 65913.4, the location and the total number of
15 developments approved pursuant to subdivision (c) of Section
16 65913.4, the total number of building permits issued pursuant to
17 subdivision (c) of Section 65913.4, the total number of units
18 including both rental housing and for-sale housing by area median
19 income category constructed using the process provided for in
20 subdivision (c) of Section 65913.4.

21 (J) If the city or county has received funding pursuant to the
22 Local Government Planning Support Grants Program (Chapter 3.1
23 (commencing with Section 50515) of Part 2 of Division 31 of the
24 Health and Safety Code), the information required pursuant to
25 subdivision (a) of Section 50515.04 of the Health and Safety Code.

26 (K) The progress of the city or county in adopting or amending
27 its general plan or local open-space element in compliance with
28 its obligations to consult with California Native American tribes,
29 and to identify and protect, preserve, and mitigate impacts to
30 places, features, and objects described in Sections 5097.9 and
31 5097.993 of the Public Resources Code, pursuant to Chapter 905
32 of the Statutes of 2004.

33 (L) The following information with respect to density bonuses
34 granted in accordance with Section 65915:

35 (i) The number of density bonus applications received by the
36 city or county.

37 (ii) The number of density bonus applications approved by the
38 city or county.

39 (iii) Data from all projects approved to receive a density bonus
40 from the city or county, including, but not limited to, the percentage

1 of density bonus received, the percentage of affordable units in
2 the project, the number of other incentives or concessions granted
3 to the project, and any waiver or reduction of parking standards
4 for the project.

5 (M) The following information with respect to each application
6 submitted pursuant to Chapter 4.1 (commencing with Section
7 65912.100):

8 (i) The location of the project.

9 (ii) The status of the project, including whether it has been
10 entitled, whether a building permit has been issued, and whether
11 or not it has been completed.

12 (iii) The number of units in the project.

13 (iv) The number of units in the project that are rental housing.

14 (v) The number of units in the project that are for-sale housing.

15 (vi) The household income category of the units, as determined
16 pursuant to subdivision (f) of Section 65584.

17 (b) (1) (A) The department may request corrections to the
18 housing element portion of an annual report submitted pursuant
19 to paragraph (2) of subdivision (a) within 90 days of receipt. A
20 planning agency shall make the requested corrections within 30
21 days after which the department may reject the report if the report
22 is not in substantial compliance with the requirements of that
23 paragraph.

24 (B) If the department rejects the housing element portion of an
25 annual report as authorized by subparagraph (A), the department
26 shall provide the reasons the report is inconsistent with paragraph
27 (2) of subdivision (a) to the planning agency in writing.

28 (2) If a court finds, upon a motion to that effect, that a city,
29 county, or city and county failed to submit, within 60 days of the
30 deadline established in this section, the housing element portion
31 of the report required pursuant to subparagraph (B) of paragraph
32 (2) of subdivision (a) that substantially complies with the
33 requirements of this section, the court shall issue an order or
34 judgment compelling compliance with this section within 60 days.
35 If the city, county, or city and county fails to comply with the
36 court's order within 60 days, the plaintiff or petitioner may move
37 for sanctions, and the court may, upon that motion, grant
38 appropriate sanctions. The court shall retain jurisdiction to ensure
39 that its order or judgment is carried out. If the court determines
40 that its order or judgment is not carried out within 60 days, the

1 court may issue further orders as provided by law to ensure that
2 the purposes and policies of this section are fulfilled. This
3 subdivision applies to proceedings initiated on or after the first
4 day of October following the adoption of forms and definitions by
5 the Department of Housing and Community Development pursuant
6 to paragraph (2) of subdivision (a), but no sooner than six months
7 following that adoption.
8 (c) The Department of Housing and Community Development
9 shall post a report submitted pursuant to this section on its internet
10 website within a reasonable time of receiving the report.