No. A159658 and A159320

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST DISTRICT, DIVISION FOUR

CALIFORNIA RENTERS LEGAL ADVOCACY AND EDUCATION FUND, ET AL.,

Petitioners,

v.

CITY OF SAN MATEO,

Respondent;

XAVIER BECERRA, ATTORNEY GENERAL,

Intervenor.

County Superior Court, Case No. 18CIV02105
Hon. George A. Miram, Judge

INTERVENOR'S REPLY BRIEF

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INTRODUCTION

Respondents City of San Mateo, et al. (collectively, "City"), concede the existence of a statewide housing shortage, concede the Housing Accountability Act (HAA) is "on the whole" constitutional, concede the HAA provisions setting forth a substantial evidence standard of review survives rational basis scrutiny, and concede the Legislature can impose a specific standard of review and shift burdens of proof. (See Resp. Opp. Brief ("ROB"), pp. 15, 39, 41, 55.) On these concessions alone, the trial court's explicit decision to curtail the HAA's prescribed standard of review, by either misapplying the HAA or ignoring it on the assumption that the HAA is unconstitutional, must be reversed.

In opposition to the Attorney General's Opening Brief, the City raises a deceptively narrow point that, while the HAA "on the whole" is constitutional, its key part, set forth in Section 65589.5, subdivision (f)(4), is not.[1] But none of the City's arguments—ranging from the speculative procedural due process rights of nonparties, to the elevation of the HAA's reasonable

[1] Unless otherwise specified, all references are to the Government Code.

person standard of review into an actual private person being delegated with municipal functions—pass muster. Subdivision (f)(4) neither infringes on due process rights nor violates the municipal non-delegation rule. It merely sets forth a standard of review for localities, like the City, to follow in determining if a housing development project is consistent, compliant, and in conformity with the ordinances and local standards previously promulgated. Read together with the other applicable provisions of the HAA, it prevents local authorities from blocking housing projects that conform to the objective standards that the locality itself has put in place. And like other statutes that have withstood home-rule scrutiny, it leaves undisturbed local control, so long as local control does not unjustifiably undermine progress towards the State's goals set forth in the HAA.

ARGUMENT

I. BY DEFERRING TO RESPONDENTS' ERRONEOUS FINDINGS, THE TRIAL COURT IGNORED THE HAA

A. The Attorney General's Intervention Is not Strictly Limited to Constitutional Matters

As a threshold matter, the City claims that the Attorney General exceeds the scope of intervention because the trial court's specific finding could be read as not implicating constitutional

issues. (ROB, p. 18.) The City then takes issue with the Attorney General's argument that the trial court misapplied the HAA by deferring to the Respondents' findings, and argues that the Attorney General should not have been permitted to intervene, or, alternatively, that intervention be limited to constitutional issues. (*Ibid*.)

But the Attorney General's statutory right to intervene is not limited in scope. (See Code of Civ. Proc. § 902.1.) Rather, the Attorney General's right to intervene is triggered by a notice of entry of judgment in which a state statute or regulation has been declared unconstitutional by the court. (*Ibid*; see also Code of Civ. Proc. § 664.5, subd. (e).) Once triggered by such a notice, nothing in the Code of Civil Procedure mandates that the Attorney General's intervention be strictly limited to constitutional issues. (*Ibid*.) This makes both common and legal sense. In some cases, a constitutional problem only arises *because* a statute has been misinterpreted or misapplied. Under the City's theory, the Attorney General, charged with defending the validity of state statutes, is categorically prohibited from even briefing those points. In addition, the City's narrow reading of the law would allow litigants to avoid the Attorney General's intervention by

unreasonably narrowing issues on appeal to purposefully avoid addressing constitutional ones. (See, e.g., *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 568 [declining both parties' contention that a municipal wage order did not conflict with state law].)

Regardless of how the City tries to characterize the basis of the trial court's overly deferential finding, the trial court itself links its decision to not apply the HAA's prescribed standard of review to its view of the HAA's constitutionality. (2 JA 439 ["This Court finds that the HAA in general and Government Code § 65589.5(f)(4) in particular constitute a significant and unnecessary interference in municipal governance and… cannot possible be construed as 'narrowly tailored' and is, therefore, unenforceable."].) In essence, the trial court declined to properly apply the HAA out of concern that the HAA is unconstitutional, and therefore, replaced the HAA's prescribed standard of review with its own.

B. Striking Subdivision (f)(4) as Unconstitutional, or Misapplying it, Undermines the HAA's Purpose of Ensuring Objectivity and Certainty with Respect to a Housing Project's Consistency Review

A key component of the HAA is the lens through which local agencies must review a proposed housing development to determine if it complies with and conforms to local land use plans, programs, policies, ordinances, standards or requirements. (§ 65589.5, subd. (f)(4); and Cal. Dept. of Housing and Community Development, *Memorandum to Planning Directors and Interested Parties re HAA Technical Assistance Advisory* (Sept 15, 2020), p. 11.)[2] Prior to subdivision (f)(4) being enacted, the default judicial review standard asked whether substantial evidence allowed a reasonable person to agree with the local agency's decision. (§ 65589.5, subd. (m) [actions to enforce the HAA must be made through Section 1094.5 writ review]; Code of Civ. Proc., § 1094.5, subd. (b) [agency's determinations are reviewed for substantial evidence].)

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[2] Available online at https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf (last visited March 16, 2021). See Exhibit 12 to Attorney General's Request for Judicial Notice.

Over the years, the practice in applying the review standard described above resulted in local governments vesting themselves with wide discretion to deem projects inconsistent based on variable interpretations of its own standards. (1 JA 186, 197.) Because local governments could all too easily interpret their own laws so as to deem projects inconsistent with ever-shifting standards, the HAA was, in the eyes of the Legislature, ineffective. (§ 65589.5, subd. (a)(2)(K) [finding that the HAA's intent has not been fulfilled]; 1 JA 185; Appellants' Motion for Judicial Notice, June 29, 2020, Exh. A, pg. 3 [quoting the bill's author: "The HAA's intent is to provide appropriate certainty to all stakeholders in the local approval process…. [u]nfortunately… [there is] far too much latitude for anti-housing and development sentiments to thwart reasonable and much needed housing."].)

With subdivision (f)(4), both local agencies and reviewing courts are now asked if substantial evidence would allow a reasonable person to agree that the project itself is consistent with local standards. Though subtle, this shift in focus removes any deference courts were accustomed to giving to a local agency's subjective decisions—be it based on law or fact—as to

whether a housing development project is in compliance with its local standards.

Read in conjunction with subdivision (j), which requires consistency review to apply to only those standards in effect at the time the application is deemed complete, the intent and effect of these HAA provisions was to inject a level of objectivity, certainty, and transparency of applicable local standards into the project review process, thus increasing the likelihood of projects being found to be consistent, compliant, and in conformity with local standards. (See also § 65589.6 [shifting the burden of proof to local governments in any challenge of a decision made under the HAA to deny a housing project or to approve a project on the condition of lowering its density].)

In effect, the HAA unequivocally requires the local agency and reviewing courts to adhere to an objective reasonable person standard *in toto*, since the City's proposal that deference should still remain to allow cities to subjectively interpret their own standards would not address the problem of denying housing projects based on variable interpretations of local standards.

C. Refusing to Properly Apply Subdivision (f)(4) Raises Constitutional Concerns

In second-guessing the wisdom of the Legislature in prescribing the HAA's standard of review, the trial court inadvertently raised constitutional concerns of its own. Due respect for the political branches of our government requires courts to interpret the laws in accordance with the expressed intention of the Legislature. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632-633 [noting that "[t]his court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed."] [citations omitted]; *Cart v. City of Ojai* (1978) 77 Cal.App.3d 329, 333 n. 1 ["neither trial nor appellate courts are authorized to 'review' legislative determinations."] [citation omitted].) So, even if the trial court reviewing the agency decision disagrees with a state law prescribing a certain standard of review, unless deemed unconstitutional, it is bound to follow that law.

In the context of the Legislature's power to regulate administrative and judicial standards of review, a recent California Supreme Court decision explained that both the

judiciary and executive branches must yield to the power of statutory enactments with few exceptions. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 846.) In denying a petition challenging certain provisions in the Penal Code promulgated by the Death Penalty Reform and Savings Act, the Court emphasized:

> Chaos could ensue if courts were generally able to pick and choose which provisions of the Code of Civil Procedure to follow and which to disregard as infringing on their inherent powers. The same concern applies to the Evidence Code, which, after all, generally limits a court's ability to consider evidence.

(*Ibid*.)

By frustrating the Legislature's precise crafting of a prescribed standard of review, and then substituting that standard with its own "independent judgment" to defer to the City's decision, the trial court's order inadvertently created a similar situation that *Briggs* sought to avoid. This results in uncertainty as to how, if, and when subdivision (f)(4) could ever be consistently applied.[3]

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[3] It remains uncertain if the trial court intended to hold that the HAA is unconstitutional. As discussed above, because the trial court's order declined to follow the HAA's prescribed standard of review, we necessarily must presume it declined to do so because it found the HAA to be unconstitutional, or that the order intended to intrude onto the Legislature's wheelhouse.

II. BY IMPOSING A CERTAIN STANDARD OF REVIEW, THE HAA DOES NOT COMPEL RESPONDENTS TO VIOLATE THE DUE PROCESS RIGHTS OF OTHERS

The City argues that subdivision (f)(4)'s prescribed standard of review somehow deprives adjoining landowners of a meaningful opportunity to be heard. (ROB, pp. 26-32.) Aside from the peculiarity of raising a speculative issue regarding the rights of nonexistent third parties,[4] the City's argument fails because it transmutes subdivision (f)(4) from a standard-of-review provision regarding a project's *compliance* with local standards to one mandating an automatic *approval* process involving a City's discretionary review of subjective criteria. But subdivision (f)(4) neither establishes nor mandates an automatic approval process.

Nowhere in subdivision (f)(4) does it prohibit any local government from setting forth notice and hearing requirements to decide on a proposed housing development project's conformity with local zoning ordinances and land use standards. And,

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[4] A party may not raise issues which only affect the rights of another party. (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703.); see also *Rose v. City of Los Angeles* (C.D. Cal. 1993) 814 F.Supp. 878, 881, ["A section 1983 [constitutional] claim must be based on upon the violation of Plaintiff's personal rights, and not the rights of someone else."].)

contrary to the City's assertion that the HAA's standard of review to measure consistency with local standards would render the City's deliberations meaningless, subdivision (f)(4) does not require local agencies to deem a housing development project to be consistent in advance of any public hearing, nor does subdivision (f)(4) preclude local agencies from finding substantial evidence to be objectively lacking.

The City likens subdivision (f)(4) and the issues raised in this appeal to cases invalidating a prior version of the Permit Streamlining Act on the grounds that, absent a notice and hearing requirement, due process rights of adjoining landowners are infringed upon. (ROB, pp. 28-31.) But those cases all address the automatic approval of *discretionary* land use decisions that changes the local norms. (See *Selinger v. City Council* (1989) 216 Cal.App.3d 259 [approving a subdivision]; *Horn v. County of Ventura* (1979) 24 Cal.3d 605 [same]; *Hayssen v. Bd. of Zoning Adjustments* (1985) 171 Cal.App.3d 400 [conditional use permit/zoning variance]; and *American Tower Corp. v. City of San Diego* (9th Cir. 2014) 763 F.3d 1035 [renewal of conditional use permit/zoning variance].)

In contrast, subdivision (f)(4) is not an automatic approval provision, and only mandates local agencies to apply a certain standard of review when determining if a proposed housing project conforms with local zoning and land use standards. Consequently, adjoining landowners, or any interested persons, are free to engage with local agencies in those deliberations to determine if those standards are met. The City's due process argument simply lacks merit.

III. THE HAA'S REASONABLE PERSON STANDARD OF REVIEW IS NOT AN ACTUAL, PRIVATE PERSON DELEGATED WITH MUNICIPAL FUNCTIONS

The City argues that, by imposing a reasonable person standard of review to determine a project's conformity to local standards, the HAA improperly vests final decision-making authority to an unaccountable "person," violating the nondelegation of municipal affairs doctrine set forth in article XI, section 11, of the California Constitution. (ROB, pp. 35-36.) The City then implies that this "person" could be *any* person—biased and self-serving—who would step into the shoes of local authorities and, regardless of the weight of the evidence, overrule a majority determination that a project does not conform to local standards. (*Ibid.*)

But the City fails to satisfy the threshold requirement to identify a private person or body to which a municipal function has been actually delegated. (*City of Torrance v. Superior Court* (1976) 16 Cal.3d 195, 209 [noting that a challenged Code of Civil Procedure provision manifestly does not result in a delegation of municipal functions to a "private person or body"]; *Henshaw v. Foster* (1917) 176 Cal. 507, 512-13 [rejecting argument that voters could constitute private person or body for purposes of predecessor to Cal. Const., art. XI, § 11].) And the mere fact that state law curbs the City's discretion based on a reasonable person standard of review does not mean that the City's municipal functions have been actually delegated to an unknown person, real or imaginary. Such a theory, if adopted, would mean that *any* limits placed by the state on a city council's discretion, leading to an outcome different from what a city council might want to do, would constitute an unlawful delegation. This is not the law, as affirmed by the California Supreme Court. (*City of Torrance*, *supra*, 16 Cal.3d at 209.)

As discussed in the Attorney General's Opening Brief, *City of Torrance* holds that no unlawful delegation arises from a state law that merely boosts the power of a private party to defeat a

local government in litigation over a land-use decision. (*Ibid*; IOB, pg. 41-42.) This is precisely what subdivision (f)(4), properly applied, does. While altering the odds of an project applicant's success, subdivision (f)(4) does not delegate municipal functions to any private party, known or unknown. Indeed, Respondents' lamentation that subdivision (f)(4) requires a city to approve a project upon the basis of a *reasonable* person finding, even though "the considered decision of the elected City Council may be exactly the opposite" (ROB, p. 44), speaks less to unlawful delegation and more to the City's expectation that its subjective determinations should be upheld *regardless* of their conformity with state law.

In addition, the City's non-delegation argument misapprehends subdivision (f)(4). That subdivision imposes a *reasonable* person standard of review. It does not, as the City seems to argue, require project approval solely on the grounds of *any* person's conclusion. In fact, subdivision (f)(4) explicitly removes bias and self-interest, requiring the local agency or the reviewing court to take a clean, objective look at the applicable local standards. In so doing, it empowers a local agency to

disregard any tainted lens through which that local agency had previously viewed the project.

This would in all practicality mean the approval of more projects, thereby alleviating the statewide housing shortage that no individual municipality can adequately address on its own. Under well-settled principles, a law addressing an issue that transcends individual local boundaries cannot be invalidated under the municipal non-delegation doctrine. (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 282; see also *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 493-494 [holding that state laws tackling broader issues transcending local boundaries cannot be invalidated under the municipal non-delegation doctrine].)

IV. SUBDIVISION (f)(4) OF THE HAA DOES NOT VIOLATE THE HOME-RULE DOCTRINE

The City concedes, as it must, that the HAA on the whole does not violate the right to home rule. (ROB, pp. 19, 45.) The City attempts to qualify its concession by claiming that charter cities are merely exempt from the reasonable person standard of review provision of the HAA, subdivision (f)(4), because such a provision fails home-rule scrutiny. (ROB, p. 45.)

Restated briefly, the four-part analytical framework used to resolve home-rule issues for charter cities asks: 1) is the subject of regulation at issue a municipal affair, 2) does an actual conflict exists between state and local law, 3) does the state law address a matter of statewide concern, and 4) is the state law narrowly tailored to avoid unnecessary interference in local governance. (See *State Bldg & Const. Trades Council of Cal. v. City of Vista* (2012) 54 Cal.4th 547, 556.)

The City cites to no authorities permitting the scope of the home-rule doctrine to be narrowed to the standard of review provision of an otherwise valid state statute. Indeed, state statutes prescribing a standard of review to a variety of, public or private, governing bodies, are legion. (See, e.g., Pub. Resources Code, §§ 21168, 21168.5 [CEQA decisions]; Code of Civ. Proc., § 1094.5, subd. (d) [hospital peer review boards]; Water Code, § 10651 [water usage plans by urban water suppliers]; Ed. Code, § 44945 [dismissal of teachers].) But even assuming the City could satisfy the first prong's low threshold and characterize a standard of review provision of an otherwise constitutional statute as a regulation of municipal affairs, the City still cannot show subdivision (f)(4) violates home rule.

A. The HAA's Standard of Review Coexists Easily with Local Land Use Ordinances

As to the second question examining the existence of an actual conflict between state and local laws, no inimical conflict is evident when comparing subdivision (f)(4)'s standard of review to the City's municipal land use ordinances.

Tellingly, the City is unable to identify any specific ordinance or local provision remotely related to any applicable standard of review to which its officials must follow in determining whether housing development projects objectively conforms to its local standards. Instead, the City contends that a conflict exists by reasserting its claim of unlawful delegation. (ROB, pp. 50-51.) But in doing so, the City reveals, once again, a fundamental misunderstanding of what the HAA is designed to do. Neither subdivision (f)(4) nor any other part of the HAA removes the City's obligation to make a consistency finding. To the contrary, the HAA requires such findings to be documented, and to issue written findings if the City feels compelled to exercise its discretion to deny projects for public health or safety reasons. (§ 65589.5, subd. (j).) All of those obligations are

consistent with the City's decision-making powers as granted by local ordinances and rules.

B. The Feeble Pace of Housing Production Across the State Is a Statewide Concern

Even if there were an inimical conflict between subdivision (f)(4) and the City's municipal land use ordinances, subdivision (f)(4) easily passes the remaining two prongs of the Home Rule analysis. The City argues that, while the state's housing supply shortage is a statewide concern, the role localities play in denying housing development projects is not. (ROB, pg. 55.) Courts have categorically and repeatedly rejected this view, consistently holding that charter cities are not exempt from housing-related laws addressing a statewide concern. (*See*, *e.g.*, *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683 [Surplus Lands Act]; *Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451 [state law mandating cities to develop rules to approve accessory dwelling units]; *Buena Vista Gardens Apartments Assn v. City of San Diego* (1985) 175 Cal.App.3d 289, 307 [Housing Element Law]; *Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18 [housing anti-discrimination laws].) And, "[i]n matters of statewide concern, charter cities like

all other cities are subject to the general state laws." (*People v. Stone* (1987) 190 Cal.App.3d Supp. 1, 9.)

Furthermore, for decades, the denial of housing development projects has not been treated as a local issue for cities to address individually. (See *People ex rel. Younger*, *supra*, 5 Cal.3d at 493-494 [observing that regional or statewide issues transcends local boundaries, and thus, can only be addressed by laws tackling those issues regionally or statewide].) The legislative history behind subdivision (f)(4) lays this historical problem bare.[5] Over three decades after the HAA was passed in 1982, anti-housing sentiment still led local governments to thwart housing development, and those local agencies used highly debatable claims of inconsistency with local planning and land use ordinances to justify their rejections. (1 JA 185-186, 197; see also Appellants' Request for Judicial Notice, filed on June 29, 2020, Exh. A, pg. 4 ["In land use cases, courts tend to give a great

[5] The Legislative history behind this amendment, as well as the Legislature's explicit and detailed findings (codified in Section 8559.5, subd. (a)(2)(A) – (L)) regarding the failure of prior versions of the HAA to significantly increase housing development project approvals so as to fulfill the goal of alleviating the state's housing supply shortage, are discussed in Intervenor's Opening Brief (pp. 26-28).

deal of deference to local governments…."], and Exh. C, pg. 4 ["State courts are often too deferential to localities in accepting any justification to deny a good housing project that otherwise meets all development requirements."].) These questionable inconsistency findings and decisions were nonetheless upheld. (*Ibid*.) Under traditional substantial evidence review, all conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency's decision. (See *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 881-882 [applying Code of Civil Procedure section 1094.5 review standards].) This deferential standard remains in place even if an agency changes its mind in interpreting its own rules. (See *Henning v. Industrial Welf. Comm'n* (1988) 46 Cal.3d 1262, 1269-1270 [noting that though entitled to less deference, even when an agency adopts a new interpretation and rejects an old, a court must continue to apply a deferential standard of review].)

To address the problem of the ground shifting beneath the project applicant's feet, the Legislature amended the HAA by adding subdivision (f)(4), which clarified that proposed housing developments *shall* be deemed consistent with local land use, planning, and development standards if a reasonable person

would conclude that there is substantial evidence of conformity with those standards. (§ 65589.5, subd. (f)(4).) Thus, absent subdivision (f)(4), or, in this case, without faithful adherence to subdivision (f)(4)'s standard of review, the HAA would effectively be rendered meaningless. Local agencies would be permitted, as the City did below, to keep moving the goalposts until it found a plausible reason to deny a housing development project.[6]

And because this phenomenon was not limited to just one or a handful of cities, the Legislature saw the need to address the feeble pace of increasing the state's housing supply, and enacted subdivision (f)(4) as part of an effort to remove impediments to achieving the Legislature's stated goal. The Legislature was well-within its authority to do so. (See *Anderson*, *supra*, 42 Cal.App.5th 683 [upholding the Surplus Lands Act]; *Coalition Advocating Legal Housing Options*, *supra*, 88 Cal.App.4th 451 [mandating cities to develop rules to approve accessory dwelling units]; see also *Sacramento County v. Chambers* (1917) 33

[6] See, e.g., Reporter's Transcript, ppg. 5, 10 [discussing that the project was initially denied without a stated reason at the Planning Commission level, with instructions given to the City's planning staff to go and find one].)

Cal.App. 142, 155 [upholding constitutionality of State Bureau of Tuberculosis, for addressing statewide health concerns, as not usurping municipal health-related functions]; *Pixley v. Saunders* (1914) 168 Cal. 152, 160 [holding that regional sanitation district did not unlawfully arrogate municipal function, where sanitation problems extended among multiple cities, unincorporated territory].)

In sum, subdivision (f)(4)'s standard of review is plainly related to the statewide concern that prompted the Legislature to amend the HAA. By shifting the focus to objectively reviewing both the facts and applicable local standards for consistency, a key obstacle to getting housing projects approved is lifted.

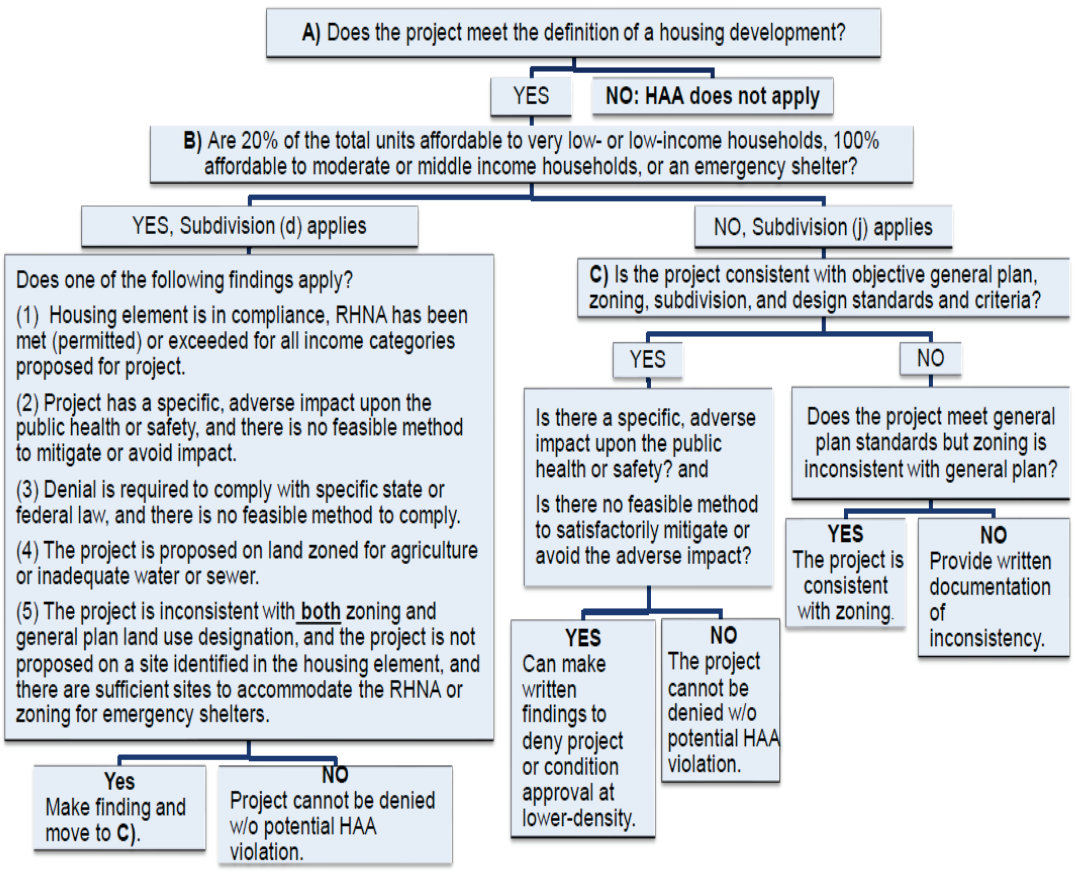
C. The HAA's Standard of Review is Narrowly Tailored, Given the Scope of the Housing Crisis, and Does Not Unduly Interfere with Local Control

As to the Home Rule's fourth and final analytical step, subdivision (f)(4)'s standard of review is reasonably related to the statewide concern described above and sufficiently tailored to respect local control. The City contends that subdivision (f)(4) is not narrowly tailored to addressing the housing shortage because, in essence, it fails the least-restrictive-means test,

failing to limit the HAA's scope to affordable housing. (ROB, pg. 62.) This is both unavailing and wrong. The proper test is whether subdivision (f)(4) "unduly interferes" with local control. (*Vista*, *supra*, 54 Cal.4th at 566.) And, as the Legislature specifically found in 2017, the housing shortage has only worsened, with a housing supply *and* affordability crisis of historic proportions despite efforts to significantly increase the state's housing stock. (§ 65589.5, subd. (a)(2)(A), (J), and (K).)

Because subdivision (f)(4) does not take away the City's ability to establish local standards, but merely requires those standards to be transparent, defined, and objectively attainable, no undue interference should be found. The Supreme Court's decision in *Baggett v. Gates* (2008) 32 Cal.3d 128, 140-141, is particularly instructive. There, the Court upheld a state law impinging upon a city's right to remove or discipline its police officers. (*Ibid.*) In upholding the state law as narrowly tailored, the Court found that "the total effect of this legislation is not to deprive local governments of the right to manage and control their police departments, but to secure basic rights and protections to a segment of public employees who were thought unable to secure them for themselves." (*Id.* at 140.) So, too, here.

Subdivision (f)(4) does not deprive local governments of the right to manage and control its planning and design review process, but merely requires local governments to abide by an objective standard of review. In conjunction with other provisions of the HAA, subdivision (f)(4) ensures that housing development projects are afforded a fair and objective review process, which the Legislature specifically found housing development project applicants to have been unable to secure for themselves. The HAA's decision matrix, visualized here, helps illustrate the amount of control afforded to local governments:



(Cal. Dept. of Housing and Community Development, *Memorandum to Planning Directors and Interested Parties re Housing Accountability Act Technical Assistance Advisory* (Sept. 15, 2020), p. 4.)[7] Noticeably missing in this decision matrix are any edicts to adhere to land use or design standards imposed by the state. Subdivision (f)(4) merely requires local governments to follow their own ordinances and land use standards using a reasonable person standard.

Consider what the Legislature did *not* require the City to do here. It did not compel cities to ministerially approve all qualified housing projects under the HAA, though it arguably could have done so. (See § 65913.4 [requiring local jurisdictions falling short of their housing targets to require ministerial approval of certain housing projects]; § 65852.2 [requiring all jurisdictions to ministerially approve accessory dwelling units and junior accessory dwelling units].) Nor did it impose its own land use or building standards, or limit the scope of which local

[7] Available online at https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf (last visited March 16, 2021). See Exhibit 12 to Attorney General's Request for Judicial Notice.

standards to apply, so long as those local standards are readily apparent at the time of application. In other words, rather than use a heavy hand, as many continue to urge,[8] the Legislature merely leveled the playing field in enacting subdivision (f)(4) by requiring local standards to be objectively reasonable and certain when reviewing a project's consistency with those standards. In sum, epitomizing narrow tailoring, all subdivision (f)(4) does is ensure fairness, in the belief that holding cities to their own objective standards should finally increase the local approval of housing development projects.

CONCLUSION

A child born in 1982, when the Legislature first declared the urgency to enact the HAA, would be nearly 40 years old today. Her entire life lived, thus far, under the specter of a severe housing shortage. The City would have us believe that this condition may be a simple fact of life, because—though it admits the existence of a statewide housing shortage—no state laws can

[8] San Francisco Chronicle (March 11, 2021), *Editorial: California's Dangerous Sprawl will Continue Until its Cities Grow*, available online at https://www.sfchronicle.com/opinion/editorials/article/Editorial-California-s-dangerous-sprawl-will-16016430.php

be narrowly tailored enough to pass constitutional muster. The Legislature's measured response in amending the HAA, including prescribing a standard of review only after it became apparent that localities continued to move the goalposts to thwart housing development, proves otherwise.

For that and other foregoing reasons, the Attorney General requests this Court reverse the trial court's decision, and uphold the constitutionality of the HAA in all respects.

Dated: March 17, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Intervenor's Reply Brief uses a 13 point Century Schoolbook font and contains 5,931 words.

Dated: March 17, 2021

Respectfully submitted,

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **San Francisco Bay Area Renters Federation, et al v. City of San Mateo, et al**

Nos.: **A159658 and A159320**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 17, 2021, I electronically served the attached **INTERVENOR'S REPLY BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on March 17, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

Sara M. Hoffman, Emily Lowther Brough, Zacks, Freedman & Patterson PC, 235 Montgomery Street, Suite 400, San Francisco, CA 94104

Jennifer L. Hernandez, Daniel R. Golub, Holland & Knight LLP, 50 California Street, 28th Floor, San Francisco, CA 94111

Barbara E. Kautz, Dolores Bastian Dalton, Goldfarb & Lipman LLP, 1300 Clay Street, 11th Floor, Oakland, CA 94612

Vanneeruk Winnie Tungpagasit, Finkelstein Bender & Fujii LLP, 1528 South El Camino Real, Suite 306, San Mateo, CA 94402

Executive Officer/Clerk, San Mateo County Superior Court, 400 County Center, Redwood City, CA 94063

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 17, 2021, at Oakland, California.

David Pai	*/s/ David Pai*
Declarant	Signature

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