



# Introduction to the New Surplus Land Act

Wednesday, May 8, 2024

*Jena S. Acos, City Attorney, Carpinteria, Brownstein Hyatt Farber Schreck, LLP  
Sydne Rennie, Associate Attorney, Brownstein Hyatt Farber Schreck, LLP*

## **DISCLAIMER**

*This publication is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in these materials. The League of California Cities does not review these materials for content and has no view one way or another on the analysis contained in the materials.*

**Copyright © 2024, League of California Cities. All rights reserved.**

This paper, or parts thereof, may not be reproduced in any form without express written permission from the League of California Cities. For further information, contact the League of California Cities at 1400 K Street, 4<sup>th</sup> Floor, Sacramento, CA 95814. Telephone: (916) 658-8200.

## **Introduction to New Surplus Land Act\***

League of California Cities  
City Attorneys Spring Conference May 2024

### **About the Authors**

Jena Acos is a shareholder at Brownstein Hyatt Farber Schreck, LLP. Jena centers her practice on water and public agency law. She takes a strategic approach to breaking down problems and generating candid dialogue that is often key to resolving complex issues.

Sydne Rennie is an associate attorney at Brownstein Hyatt Farber Schreck, LLP. Sydne's practice involves working with private developers and public agencies on their real estate and business needs.

*\*Please note that this paper is an updated version of an article by the same authors that recently ran in the LA Lawyer magazine.*

## **Introduction to New Surplus Land Act**

Since the Surplus Land Act (“Act”) was enacted in 1968, the population of California has more than doubled, outpacing the production of new housing and creating a significant affordable housing crisis. In response, the state significantly amended the Act in 2019 in order to leverage it as a mechanism to create opportunities to redevelop public land suitable for new affordable housing. Yet, public agencies around the state have experienced difficulties in grappling with the Act in its amended form.

In the most recent legislative session ended in October 2023, Gov. Gavin Newsom signed further amendments to the Act into law in order to clarify certain aspects that had proved cumbersome in practice. This article provides an overview of the Act, its recent 2023 amendments, and some of the changes the Act has wrought in its amended form. This article also highlights the California Department of Housing and Community Development’s (“HCD”) forthcoming amendments to the Surplus Land Act Guidelines.

### **Overview of the Act**

The California Legislature originally enacted the Act, codified in Government Code section 54220 et seq., with the intention of increasing the amount of public land available for public uses and affordable housing. Prior to selling public land no longer necessary for agency use, the Act required local agencies (i.e., cities, counties and special districts) first to offer such land to certain specified entities for purchase. The Act also established a negotiation process that local agencies were required to follow when disposing of land in accordance with the Act.<sup>1</sup> In its original form, the Act was not considered a significant impediment to the alienation of public land.

In 2019, the California Legislature passed Assembly Bill 1486 (“AB 1486”), which significantly expanded the scope of the Act and imposed new penalties for noncompliance. The amendments made by AB 1486 caused confusion among public agencies and made the property disposition process much more onerous. In response, Gov. Newsom recently signed Senate Bill 747 (“SB 747”) and Assembly Bill 480 (“AB 480”) into law in October 2023, which, together, provide public agencies much-needed clarity and flexibility in complying with the Act.

Below we consider the historical development of the Act and provide analysis and commentary regarding how the recent amendments have affected public agencies. We also look at the potential impacts of HCD’s forthcoming amendments to the Surplus Land Act Guidelines.

### **Historical Development of the Act**

Before AB 1486, the Act defined surplus land as “land owned by any local agency that is determined to be no longer necessary for the agency’s use, except property being held by the agency for the purpose of exchange.”<sup>2</sup> The Act did not define the term “agency’s use,” nor did it require an agency to identify property as surplus land prior to the land’s disposition.<sup>3</sup>

Under the pre-2019 version of the Act, local agencies “disposing” of surplus land were required to offer the property to various entities prior to disposing of it to a desired transferee or

the general public.<sup>4</sup> Although the Act did not define the word “disposing,” it was widely interpreted to apply only to fee title transfers of properties, and therefore not leases, even though other provisions of the Act did in fact refer to leases.<sup>5</sup>

After receiving notice from a public agency of its intent to “dispose” of a specific piece of land, entities had 60 days to notify the disposing agency of the recipient entity’s intent to purchase or lease the surplus land.<sup>6</sup> Upon the disposing agency’s receipt of notice of an interested entity’s desire to purchase or lease the surplus land, the parties were required to enter good faith negotiations for a period of not less than 90 days in an attempt to determine a mutually satisfactory sales price or lease term.<sup>7</sup> If the parties failed to agree on terms, the land could be disposed of without further compliance with the Act, except for certain provisions related to acquisition of surplus land for the purposes of developing affordable units.<sup>8</sup>

The Act stated that it should not be interpreted to limit the power of any local agency to sell or lease surplus land at fair market value or at less than fair market value.<sup>9</sup> Further, any sale or lease at or below fair market value could not be used to argue that a disposition was inconsistent with the agency’s purpose.<sup>10</sup>

The Act had limited application because it expressly stated “[n]o provision of this article shall be applied when it conflicts with any other provision of statutory law.”<sup>11</sup> Moreover, under the pre-AB 1486 Act, enforcement was limited because failure to comply with the notice provision did “not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value,”<sup>12</sup> and the pre-AB 1486 Act provided no enforcement mechanism for violations.

Although the Act underwent minor amendments after its inception, the general intent of and processes created by the Act remained largely unchanged until 2019, when the California Legislature passed AB 1486.

### **AB 1486 Implements Significant Changes to the Act**

AB 1486, which took effect in 2020, established additional, more onerous, requirements for local agencies to comply with the Act, including by expanding the Act’s reach, imposing additional procedural requirements, requiring HCD to supervise surplus land sales, and imposing penalties for noncompliance.<sup>13</sup>

#### Declaration of Surplus Land

In a change from prior versions of the Act, AB 1486 required local agencies to identify “surplus land” and “exempt surplus land” with written findings prior to taking any action to dispose of the land.<sup>14</sup>

AB 1486 redefined “surplus land” as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use.”<sup>15</sup> AB 1486 further defined “agency’s use” to include “land being used, is planned to be used pursuant to a written plan adopted by the local agency’s governing board for ... agency work or operations, including, but not limited

to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.”<sup>16</sup>

AB 1486 also expressly provided that “‘agency’s use’ shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development” and that “[p]roperty disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency’s use.”<sup>17</sup>

### Exempt Surplus Land

Under AB 1486, the requirements of the Act do not apply to the disposition of any land determined by the agency to be “exempt surplus land.”<sup>18</sup> Pursuant to Section 54221(f)(1) of the Act, “exempt surplus land” includes, without limitation, the following:

- Surplus land that is: (a) less than 5,000 square feet in area, less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or has no record access and is less than 10,000 square feet in area, (b) not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes, and (c) transferred to an owner of contiguous land.
- Surplus land exchanged for another property necessary for the agency’s use.
- Surplus land transferred to another local, state, or federal agency for the agency’s use.
- Surplus land that is a former street, right of way or easement, and is conveyed to an owner of an adjacent property.
- Surplus land that is subject to valid legal restrictions that are not imposed by the local agency and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site.

### Inventory of Sites

AB 1486 required cities and counties to create a central inventory of “surplus land” by Dec. 31 each year.<sup>19</sup> Beginning on April 1, 2021, and annually thereafter, these agencies were to report annual information about all surplus land in accordance with the HCD Guidelines (defined and discussed below).<sup>20</sup> The HCD Guidelines provide forms and specific guidance for reporting this information.

### Notice of Availability and Negotiation Process

Once an agency determines that land is “surplus land” and not “exempt surplus land” and seeks to dispose of it, AB 1486 required the agency to comply with various procedural requirements. The following bullet points outline the general process for disposing of “surplus

land” under the Act after AB 1486. There are slight nuances to the process depending on how the land will ultimately be used by the transferee.

- Issuance of Notice of Availability. The local agency must issue a notice of availability to certain specified entities prior to disposing of property or participating in negotiations to dispose of property.<sup>21</sup>
- Response to Notice of Availability. Any interested party must respond to the notice of availability within 60 days.<sup>22</sup> If more than one interested party responds to the notice of availability, then the local agency must give first priority to the entity that agrees to use the site for housing and agrees to make at least 25% of the units affordable. If more than one entity agrees to these terms, the local agency is required to give priority to the entity willing to construct the most affordable housing or, if the entities propose the same number of affordable units, the entity committing to the highest level of affordability.<sup>23</sup>
- Good Faith Negotiation. The local agency is required to negotiate in “good faith” for at least 90 days with an eligible interested party that responds to the notice of availability. If no agreement can be reached, then the local agency has no further obligation to negotiate.<sup>24</sup>
- Affordability Covenant. Any disposition of land for construction of 10 or more residential units, subsequent to failed negotiations with an interested entity or if no interested entity responds to a notice of availability, must be encumbered by a recorded covenant that requires at least 15% of the units constructed to be affordable.<sup>25</sup>

### Enforcement and Remedies

AB 1486 authorized HCD to enforce violations of the Act after issuing a notice of violation to a local agency.<sup>26</sup> If an agency disposes of property after receiving a notice of violation from HCD and without resolving the violation, HCD can refer the issue to the California attorney general to seek a penalty in the amount of 30% of the sale price or fair market value of the land disposed of in violation of the Act. AB 1486 also allowed third parties to enforce alleged violations of the Act by filing suit. However, dispositions in violation of the Act are not invalidated as a result of the non-compliance.<sup>27</sup>

The City of Anaheim’s (“Anaheim”) proposed disposition to an Angel Baseball (“Angels”) entity provides one example of how an enforcement action initiated by HCD in connection with an alleged violation of the Act may play out. Anaheim and the Angels had an ongoing lease, dating back to 1966, for Angel Stadium and the surrounding property. Starting in early 2019, Anaheim and the Angels began discussing a potential sale of the property from Anaheim to the Angels. Apparently without complying with the Act, Anaheim approved a purchase and sale agreement with the Angels in 2019. Anaheim later approved an amended version of the purchase and sale agreement in September 2020, which HCD challenged. After a series of discussions regarding the amended purchase and sale agreement, HCD issued a notice of violation in December 2021.<sup>28</sup> From there, the parties ultimately reached a settlement agreement by which Anaheim and the Angels would proceed with the sale, but Anaheim would contribute \$96 million of the sale proceeds into an affordable housing trust, the proceeds of which would be used within Anaheim.<sup>29</sup>

The Act does not include an attorneys' fee clause; however, Code of Civil Procedure section 1021.5 (California's private attorney general statute) may provide a successful petitioner an avenue to claim attorneys' fees for enforcing an important right affecting the public interest.

### HCD Guidelines

AB 1486 empowered HCD to provide guidance on how to comply with the Act's provisions and to make available educational resources and materials that inform each agency of its obligations under the Act.<sup>30</sup>

HCD published guidelines ("HCD Guidelines") in 2021, which significantly expanded the scope of the Act. The HCD Guidelines defined a "disposition" of surplus land to include leases involving demolition or development (e.g., ground leases) or leases for a term of five or more years.<sup>31</sup> The HCD Guidelines also required local agencies to notify HCD and obtain HCD's input at various points in the disposition process, thereby providing HCD with multiple opportunities to assess whether an agency's disposition complies with the Act (and initiate enforcement action in the event it does not).

The extensive amendments made by AB 1486 resulted in public agencies significantly modifying their existing disposition processes and procedures. This led to confusion and frustration among agencies across the state. In response to these concerns, the Legislature took up two "clean-up" bills to make clarifying revisions to the Act—SB 747 and AB 480. In fact, the Legislature made the enactment of each bill contingent on the enactment of the other. Gov. Newsom signed both into law in October 2023.

### **Amendments to the Act Under AB 480 and SB 747**

While AB 480 and SB 747 may not completely resolve the confusion and obstacles created by AB 1486, they do provide helpful clarity to public agencies, and they also create some flexibilities for public agencies.

### Key Changes to the Act

SB 747 and AB 480 make several changes to the Act, including the following:

- For some categories of exempt surplus land, the Act now allows agencies to publish a 30-day notice finding that the land is exempt surplus, rather than making such a finding in a public meeting.<sup>32</sup>
- Clarify that the Act only applies to leases of more than 15 years and in which development or demolition will occur.<sup>33</sup>
  - *Note:* This is a significant change from the current HCD Guidelines, which assert the Act applies to leases of as little as five years (subject to some exceptions).

- Clarify that property that is used for the “agency’s use” (and therefore not surplus land) includes: (i) property owned by a port that is used to support logistic uses, sites for broadband equipment or wireless facilities, and waste disposal sites, and (ii) property owned by certain districts and disposed of for commercial or industrial uses or activities or for the sole purpose of investment or generation of revenue, provided that the disposition will directly further the express purpose of the agency or is authorized by statute.<sup>34</sup>
  - *Note:* For ports, this could mean that land leased from a port to a cell tower company is “exempt” surplus, even if the lease is over 15 years or includes development, since the land is arguably still being used for the “agency’s use” and thus is not surplus.
  - *Note:* For districts, this could mean that land leased or sold by certain districts, such as school districts, for revenue-generating purposes is “exempt” surplus if the revenue is used to directly further the express purpose of the district, since such a disposition is arguably for the “agency’s use” and thus is not surplus.
- Expand the definition of “valid legal restrictions” that prohibit housing on a parcel and thereby qualify the parcel as “exempt” surplus land.<sup>35</sup>
- Create new categories of “exempt” surplus land, including:
  - Land where the property is sold for development and includes a required minimum percentage of affordable housing units.<sup>36</sup>
  - Certain land transferred to a community land trust.<sup>37</sup>
  - Land that is owned by a California public-use airport on which residential uses are prohibited pursuant to Federal Aviation Administration Order 5190.6B, Airport Compliance Program, Chapter 20 – Compatible Land Use and Airspace Protection.<sup>38</sup>
  - Certain land owned by an agency whose primary mission or purpose is to supply the public with a transportation system.<sup>39</sup>
- Require that HCD maintain on its internet website not only an up-to-date listing of, but also a link to, all notices of availability throughout the state and a listing of all entities, including housing sponsors, which have notified HCD of their interest in surplus land for the purpose of developing low- and moderate-income housing.<sup>40</sup>
- Identify certain activities that do not constitute “participating in negotiations,” including such as obtaining an appraisal or issuing a request for proposal in accordance with certain exempt surplus designations.<sup>41</sup>



- *Note:* This is helpful for public agencies as there was previously some confusion regarding whether agencies could conduct due diligence activities prior to negotiating the disposition of surplus land.
- Clarify that the Act does not: (i) prevent a local agency from obtaining fair market value for the disposition of surplus land, (ii) limit a local agency’s authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land, (iii) require a local agency to dispose of land that is determined to be surplus, or (iv) apply when it conflicts with any other provision of statutory law.<sup>42</sup>
  - *Note:* As is discussed in greater detail below, multiple agencies have argued that the Act does not apply to dispositions governed by the Economic Opportunity Law (codified in Government Code section 52200 et seq.) on a theory that the Act conflicts. Initial drafts of SB 747 identified compliance with the Economic Opportunity Law as an express alternative to compliance with the Act, but these references were ultimately deleted after the Assembly Committee on Housing and Community Development reviewed the draft bill and noted that authorizing compliance with the Economic Opportunity Law as an alternative to compliance with the Act undermined the legislature’s housing goals. In light of this, it is uncertain whether agencies will be able to argue compliance with the Economic Opportunity Law is an alternative to complying with the Act. See discussion, below.
- Prohibit the imposition of financial penalties for violating the Act for non-substantive violations that do not impact the availability or construction of affordable housing.<sup>43</sup>
- Clarify the definition of “disposition value,” which is important as financial penalties are calculated as a percentage of the disposition value. Specifically, in the case of a sale, the “disposition value” is the greater of the final sale price of the land or the fair market value of the surplus land at the time of sale, as determined by an independent appraisal of the land; in the case of a lease, the discounted net present value of the fair market value of the lease as of the date the lease was entered into, as determined by an independent appraisal of the lease of the land.<sup>44</sup>
- Extend the deadline to utilize the exclusive negotiating agreement (“ENA”) exception from Dec. 31, 2022, to Dec. 31, 2027.<sup>45</sup>
  - *Note:* This means that agencies which, prior to the passage of AB 1486, entered into an ENA regarding disposition of a specific piece of land may comply with the less onerous pre-AB 1486 version of the Act instead of the post-AB 1486 version of the Act, provided that the disposition is complete by Dec. 31, 2027.

### Key Takeaways from the Legislative Process

While the actual amendments to the Act made by SB 747 and AB 480 are clearly important, the legislative analysis also has significant impacts. For example, the legislative analysis for SB

747 includes critical analysis and commentary on the relationship between the Act and the Economic Opportunity Law, codified in Government Code section 52200 et seq.

As background, the Economic Opportunity Law authorizes cities and counties to acquire property in furtherance of the creation of an economic opportunity, subject to compliance with certain public noticing and related procedures. On a theory that the Act does not apply when it conflicts with other laws, multiple agencies have sought to avoid compliance with the Act by instead complying with the Economic Opportunity Law. To date, this argument has not been considered by a court of law, but HCD itself has rejected it in technical assistance letters and notices of violation.<sup>46</sup>

Interestingly, the initial drafts of SB 747 included language that expressly identified compliance with the Economic Opportunity Law as an alternative to compliance with the Act. This language would have benefitted many public agencies by allowing them to focus on maximizing revenue from dispositions rather than complying with the tedious notice of availability and negotiation process required by AB 1486. However, as SB 747 made its way through the legislative process, the language regarding the Economic Opportunity Law was struck. During the Assembly Committee on Housing and Community Development's review of the draft bill, the committee staff commented that identifying the Economic Opportunity Law as an alternative to the Act "undermines the changes the Legislature has made over the last few years to prioritize affordable housing in the [Act] by stating that the [Act] would not apply in instances when local agencies are disposing of land pursuant to the state's Economic Opportunity Law." Further, staff recommended that "to maintain the preeminence of the [Act] on publicly-owned land, the committee may wish to amend the bill to remove the ability of Economic Opportunity Law to supersede the [Act]." Thereafter, reference to the Economic Opportunity Law was indeed struck from SB 747.

With the reference to the Economic Opportunity Law pulled from SB 747, coupled with the above legislative history and discussion during the Assembly Committee on Housing and Community Development's review of the draft bill, it is unlikely that agencies will be able to argue that the agency may comply with the Economic Opportunity Law as an alternative to complying with the Act.

In addition to the legislative analysis on the relationship between the Act and the Economic Opportunity Law, another key takeaway from SB 747 and AB 480 is that the legislation essentially blesses the HCD Guidelines. Specifically, while the legislation clarifies the type of leases subject to the Act (and thereby invalidates the portion of the HCD Guidelines regarding the type of leases subject to the Act), the legislation otherwise does not comment on the HCD Guidelines, even though such guidelines arguably went far beyond the scope of the Act. Further, the legislation did not include any provisions clarifying or limiting HCD's authority to issue guidelines. Thus, HCD will continue to have the authority to interpret the Act and publish guidance based on its interpretation.

Although the Act may still have some ambiguities and create some challenges for those subject to it, AB 480 and SB 747 do provide much needed clarity and flexibility that is helpful for public agencies.

## **What Does This Mean for Public Agencies?**

In all of its versions, the Act imposes specific requirements on public agencies disposing of surplus land. The amendments enacted through AB 1486 created the most onerous version of the Act that has existed to date and resulted in confusion and challenges for public agencies across the state. Although SB 747 and AB 480 do not completely eliminate the confusion or the challenges, they are a step in the right direction toward providing clarity and flexibility for public agencies.

For example, as discussed above, the legislative analysis for SB 747 clarifies that compliance with the Economic Opportunity Law is not an alternative to compliance with the Act. While this clarification does not result in increased flexibility for agencies, it does clarify the relationship between the two sets of laws. Additionally, as also discussed above, AB 480 extends the deadline to utilize the ENA exception from Dec. 31, 2022, to Dec. 31, 2027. This results in additional flexibilities for agencies as it allows agencies to comply with the pre-AB 1486 Act for dispositions that are the subject of an ENA entered into prior to the passage of AB 1486. Given that the pre-AB 1486 Act was much less onerous and arguably did not apply to leases, the ability to comply with the pre-AB 1486 Act instead of the current Act is likely to be seen as a positive by many agencies. Finally, as also discussed above, the legislation's silence on the HCD Guidelines clarifies that HCD is in fact authorized to issue such guidelines and that agencies must comply with the same.

How the amended law will interplay with an agency's disposition is an extremely fact-specific analysis that hinges on both the type of agency as well as the unique facts of the contemplated disposition. Given that the amended law took effect Jan. 1, 2024, agencies should start reviewing the amendments and considering how the same may impact their surplus property plans for the upcoming year. Also, agencies should keep in mind that a violation of the Act should not invalidate the transfer but may lead to an enforcement action by HCD that results in the agency being required to distribute a portion of the disposition proceeds into a housing trust.

## **What Happens Next?**

Following the recent enactment of AB 480 and SB 747, HCD released the draft Updated Surplus Land Act Guidelines ("Updated Guidelines"), issued on February 23, 2024. If enacted as proposed, the Updated Guidelines would likely result in significant operational challenges for public agencies.

For example, Section 502(b) of the draft Updated Guidelines purports to grant third-party entities (i.e., not HCD) the ability to issue notices of alleged violations of the Act directly to local agencies. Allowing third parties to directly trigger enforcement deadlines for local agencies without HCD initiation is likely to result in local agencies receiving significant frivolous notices of alleged violations that agencies would then be tasked with responding to. Further, the draft Updated Guidelines include a subjective, open-ended definition of "good faith negotiations". Government Code Section 54223 requires that "After the disposing agency has received a notice of interest from the entity desiring to purchase or lease the surplus land on terms that comply with this article, the disposing agency and the entity shall enter into good faith negotiations to determine

a mutually satisfactory sales price and terms or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the local agency may dispose of the surplus land without further regard to this article....” The draft Updated Guidelines undermine the certainty of the statute by requiring in Section 202(a)(1)(C)(iv)(V) that a local agency not “arbitrarily end active negotiations after 90 days of good faith negotiations.”

HCD accepted public comments on the Updated Guidelines through March 25, 2024. As of the time that this paper was written, final Updated Guidelines have not been issued. We are continuing to monitor the Updated Guidelines and look forward to sharing any additional updates during our presentation.

---

<sup>1</sup> All unlabeled statutory references are to the Government Code.

<sup>2</sup> Gov. Code, § 54221(b) (2019).

<sup>3</sup> Gov. Code, § 54221 (2019).

<sup>4</sup> Gov. Code § 54222 (2019).

<sup>5</sup> AB 1486’s legislative history indicates that the Act was not interpreted as applying to leases. When AB 1486 was first introduced, it contained a definition of “dispose of” that included sales, leases, transfers, or other conveyances of interest in real property. This definition was subsequently removed following the Assembly Committee on Local Government’s consideration of the draft bill, during which they discussed that local governments opposed including “lease” in the definition of “dispose of” because of the problems it would pose for local agencies, thereby indicating that agencies had historically not treated the Act as applying to leases.

<sup>6</sup> Gov. Code § 54222(f) (2019).

<sup>7</sup> Gov. Code § 54223 (2019).

<sup>8</sup> *Id.*

<sup>9</sup> Gov. Code § 54226 (2019).

<sup>10</sup> *Id.*

<sup>11</sup> Gov. Code § 54226 (2019).

<sup>12</sup> Gov. Code § 54230.5 (2019).

<sup>13</sup> Stats. 2019, c. 664 (AB 1486).

<sup>14</sup> Gov. Code § 54221(b)(1) (2023).

<sup>15</sup> *Id.*

<sup>16</sup> Gov. Code § 54221(c)(1) (2023).

<sup>17</sup> *Id.* at (c)(2).

<sup>18</sup> Gov. Code § 54222.3 (2023).

<sup>19</sup> Gov. Code § 54230(a)(1) (2023).

<sup>20</sup> Gov. Code § 54230 (2023); HCD Guidelines §§ 101(b)(1)(E), 200(c), 400(d).

<sup>21</sup> Gov. Code § 54222 (2023).

<sup>22</sup> Gov. Code § 54222(e) (2023).

<sup>23</sup> Gov. Code § 54227(a) (2023).

<sup>24</sup> Gov. Code § 54223(a) (2023).

<sup>25</sup> Gov. Code § 54233 (2023).

<sup>26</sup> Gov. Code § 54230.5(a) (2023).

<sup>27</sup> Gov. Code § 54230.6 (2023).

<sup>28</sup> The Notice of Violation issued by HCD to Anaheim is available at <https://www.hcd.ca.gov/community-development/housing-element/docs/oraanaheim-nov-120821.pdf>.

<sup>29</sup> The settlement agreement between Anaheim and HCD was ultimately never finalized because the deal with the Angels was terminated as a result of FBI investigations related to the Chamber of Commerce CEO’s and Anaheim mayor’s involvement in and actions related to the deal. See, for example, <https://www.justice.gov/usao-cdca/pr/former-mayor-anaheim-agrees-plead-guilty-federal-charges-stemming-attempted-sale->

---

[angel#:~:text=During%20the%20investigation%2C%20FBI%20agents,Angels%2C%20the%20plea%20agreement%20states.](#)

<sup>30</sup> Gov. Code § 54230.5(b)(2)(A) (2023). AB 1486 further authorizes HCD to review, adopt, amend, or repeal guidelines to establish uniform standards to implement the statute pertaining to HCD enforcement and specifies that HCD's adopted standards, forms and definitions are exempt from the rulemaking provisions of the California Administrative Procedure Act. Gov. Code § 54230.5(b)(2)(D) (2023).

<sup>31</sup> HCD Guidelines § 102(h).

<sup>32</sup> Gov. Code § 54221(b)(4).

<sup>33</sup> Gov. Code § 54221(d).

<sup>34</sup> Gov. Code § 54221(c).

<sup>35</sup> Gov. Code § 54221(f)(1)(J).

<sup>36</sup> Gov. Code § 54421(f)(1)(F) and (G).

<sup>37</sup> Gov. Code § 54221(f)(1)(R).

<sup>38</sup> Gov. Code § 54421(f)(1)(Q).

<sup>39</sup> Gov. Code § 54221(f)(1)(S).

<sup>40</sup> Gov. Code § 54222(a)(2).

<sup>41</sup> Gov. Code § 54222(f).

<sup>42</sup> Gov. Code § 54226.

<sup>43</sup> Gov. Code § 54230.5.

<sup>44</sup> *Id.*

<sup>45</sup> Gov. Code § 54234.

<sup>46</sup> See, for example, <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/moreno-valley-nov-101823.pdf>.