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Senate Bill 902: Undertaking Housing Projects, Overriding Voter Proposals

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Senate Bill 902: Undertaking Housing Projects, Overriding Voter Proposals

Yevgeniy P. Pislar*

Code Section Affected

Government Code § 65913.3 (new)

SB 902 (Wiener); Inactive.

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* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred December 2021; B.A. Public Policy, William Jessup University, 2014. First of all, I extend my utmost gratitude to my friends and family for their continued guidance, support, and encouragement. I would also like to express my gratitude to the staff at the Rural County Representatives of California (RCRC), especially Arthur Wylene, for his immeasurable input and guidance on this research project. Last, but not least, thank you to the entire Law Review staff for helping me edit this article.

I. INTRODUCTION

Sheila James begins her daily eighty-mile commute at 4:00 a.m.¹ Ms. James is a 62-year-old public health adviser who lives in Stockton, yet she works for the United States Department of Health and Human Services in San Francisco.² She begins her commute this early because she cannot afford to live near where she works.³ San Francisco is one of the most expensive metropolitan areas in the United States.⁴ Ms. James exchanged cheaper housing for a lengthy commute.⁵ However, this exchange requires her to take two trains and a bus to commute the eighty miles from Stockton to San Francisco.⁶

Ms. James did not always have such a long commute—she used to live in Alameda, which is only fifteen miles from her work in San Francisco.⁷ However, when a developer repurposed Ms. James’ apartment building and evicted her, she moved to Stockton.⁸ She was able to find a three-bedroom house for \$1,000 per month in Stockton, whereas her one-bedroom apartment in Alameda cost \$1,600.⁹

Many people desire to live in California because of its temperate climate, beautiful coastline, and well-established economic centers.¹⁰ The majority of Californians live in coastal areas.¹¹ These factors, combined with an insufficient amount of housing, result in an increase in housing prices.¹² The increased housing prices in the coastal areas led many people, like Ms. James, to move inland—unintentionally increasing the inland housing prices as well.¹³

Senate Bill (“SB”) 902 focused on increasing housing units per parcel to tackle California’s housing shortage.¹⁴ It would have granted local government the power to enact zoning ordinances rezoning any parcel and increasing the amount of housing units allowed per individual parcel.¹⁵ However, local government can enact these zoning ordinances even if there are local initiatives expressly

1. Conor Dougherty & Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*, N.Y. TIMES (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html> (on file with the *University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. MAC TAYLOR, LEGISLATIVE ANALYST’S OFFICE, CALIFORNIA’S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES 10 (2015), available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf> (on file with the *University of the Pacific Law Review*).

11. *Id.*

12. *Id.*

13. Dougherty & Burton, *supra* note 1.

14. Senate Committee on Housing, Committee Analysis of SB 902, at 1 (May 21, 2020).

15. *Id.*, at 3.

prohibiting them from enacting such ordinances.¹⁶ Although SB 902 sought to increase the supply of housing, it would have unconstitutionally undermined local initiatives, limited the information obtained from environmental reports, and would have failed to address the housing affordability crisis.¹⁷

II. LEGAL BACKGROUND

Land shortage in certain regions of California has long contributed to high housing costs.¹⁸ This shortage is most evident in the coastal metropolitan areas.¹⁹ In these coastal areas, the relatively low rate of housing construction further aggravates the housing crisis.²⁰ Between 1980 and 2010, the amount of housing in California's coastal metropolitan regions increased by 32%, while the amount of housing on the national level increased by 54% on average.²¹ Moreover, in Los Angeles and San Francisco, the amount of housing units only increased by 20%.²² There are three major issues that constrict new housing construction: local resistance, environmental concerns, and land shortages.²³ Various cases and statutes add to the legal complexities of tackling the housing shortage.²⁴ Section A explains the local control of land use planning.²⁵ Section B discusses the environmental reporting requirements involved with developments.²⁶ Section C evaluates the means of increasing housing density to increase the number of housing units with a limited amount land.²⁷

A. Land Use Planning in California

The California Legislature delegates the responsibility of creating a general plan to cities and counties.²⁸ A city or county planning commission creates a general plan, and the city council or county board of supervisors enacts that plan.²⁹

16. *Id.*, at 6.

17. Compare CAL. CONST. art. II, § 1. (establishing all political power as “inherent in the people”), and CAL. CONST. art. II, § 11 (extending the right to initiative to the voters of cities), with SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local governments to make local initiatives a nullity by disregarding them); Senate Committee on Housing, Committee Analysis of SB 902, at 6–7 (May 21, 2020).

18. TAYLOR, *supra* note 10, at 12–13.

19. *Id.* at 12.

20. *Id.* at 10–11.

21. *Id.* at 10.

22. *Id.* at 10–11.

23. *Id.* at 15.

24. See *infra* Section II.A–C (discussing how local and state government seek to alleviate the housing shortage).

25. *Infra* Section II.A.

26. *Infra* Section II.B.

27. *Infra* Section II.C.

28. CAL. GOV'T CODE § 65300 (West 2020).

29. *Id.*

The plan creates a policy that helps local officials develop and preserve resources for the future.³⁰ The land use element of a general plan determines and administers the uses of land.³¹ To implement the land use element of a general plan, cities and counties also adopt various zoning ordinances, laws, and regulations governing land use and intensity.³² These zoning ordinances divide the city or county into various zones and districts while also regulating the specific details of the buildings and land in these zones.³³

Land use planning is a function of local government under the California Constitution's police powers.³⁴ However, the requirement of adopting a general plan is a matter of statewide concern.³⁵ Courts allocate jurisdictional sovereignty and authority between the Legislature and charter cities by distinguishing between a "municipal affair" and a matter of "statewide concern."³⁶ Matters of statewide concern primarily have regional impacts rather than truly being statewide.³⁷ In matters of statewide concern, state law supersedes charter cities.³⁸ However, in matters of municipal affairs, the city charter preempts conflicting state law.³⁹

The Sixth District Court of Appeal considered the meaning of statewide concern in *Anderson v. City of San Jose*.⁴⁰ In this case, two low-income individuals along with two housing advocacy groups challenged the City of San Jose, after it enacted Policy 7-13 ("Policy").⁴¹ The Policy was an ordinance to sell surplus land.⁴² However, the Policy departed from the requirements of the Surplus Lands Act by creating an exemption from the affordable housing restrictions for developers.⁴³ The Policy also allowed the City of San Jose to approve a sale of land for purposes other than affordable housing and increased the income requirement for affordable housing.⁴⁴ The court held the shortage of land for developing

30. *Id.* § 65302.

31. *Id.* § 65302.

32. *Id.* § 65800.

33. *See id.* § 65850 (listing aspects of land use cities and counties may regulate); *see also* GOV'T § 65800 ("[I]t is [the Legislature's] intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.").

34. CAL. CONST. art. XI, §7.

35. *See* GOV'T § 65700 (requiring charter cities to adopt a general plan).

36. *Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 702 (6th Dist. 2019); *see* GOV'T §§ 34100–34102 (describing how the California Constitution distinguishes between two types of cities—"chartered cities" and "general law cities"—and how city charters grant charter cities its authority while the Legislature grants general law cities its authority).

37. *See Anderson*, 42 Cal. App. 5th at 711 (describing a statewide concern as having regional effects).

38. *DeVita v. County of Napa*, 9 Cal. 4th 763, 783 (1995).

39. *See* CAL. CONST. art. XI, § 5 (establishing city charters as supreme over all laws regarding municipal affairs); *see also DeVita*, 9 Cal. 4th at 784 (establishing that the process of amending a general plan is *not* a statewide concern).

40. 42 Cal. App. 5th at 702.

41. *Id.* at 695.

42. *Id.*

43. *Id.*

44. *Id.*

affordable housing is a statewide concern.⁴⁵ The court reasoned the land shortage was a statewide concern because it had an effect beyond an individual municipality's jurisdiction.⁴⁶

To better understand the relationship of local voters to land use planning, Subsection 1 describes voters' right to amend a general plan through local initiatives.⁴⁷ Subsection 2 discusses how a local referendum is available to challenge zoning laws.⁴⁸

1. Amending the General Plan through Local Initiative

In *DeVita v. County of Napa*, the California Supreme Court contemplated voters' right to amend a general plan through a local initiative.⁴⁹ In the November 1990 election, voters in Napa County approved Measure J.⁵⁰ To preserve agricultural land, Measure J amended the land use element of Napa County's general plan until 2021.⁵¹ Furthermore, Measure J stipulated that only the voters could amend the restrictions the initiative added.⁵² In response, a handful of Napa County residents filed a complaint against the County of Napa and its board of supervisors, seeking to overturn the initiative.⁵³ The two issues in the complaint were: (1) voters could not amend the general plan through an initiative; and (2) the initiative could not limit future boards of supervisors in their power to amend the general plan.⁵⁴

The Court first upheld the principle that the process of adopting and amending a general plan is a municipal affair.⁵⁵ The Court also reaffirmed that the California Constitution guarantees the people's power to a referendum and initiative.⁵⁶ The extent of the people's power to an initiative is equivalent to the power granted to the local legislative body in enacting legislative acts.⁵⁷ The Legislature also established the means by which a board of supervisors could obtain information

45. *Anderson*, 42 Cal. App. 5th at 718.

46. *Id.* at 711.

47. *Infra* Subsection II.A.1; *see* CAL. ELEC. CODE § 9201 (West 2020) (describing local initiatives as the process by which local voters may propose municipal ordinances).

48. *Infra* Subsection II.A.2; *see* ELEC. § 9237 (describing the process of a local referendum as the ability of local voters to suspend any municipal ordinance by petition).

49. 9 Cal. 4th 763, 771 (1995).

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *DeVita*, 9 Cal. 4th at 772.

55. *Id.* at 774.

56. *Id.* at 775 ("Initiative and referendum powers may be exercised by the electors of each city and county under procedures that the Legislature shall provide. This section does not affect a city having a charter.") (citing CAL. CONST. art. II, § 11).

57. *Id.* at 776.

on amendments to the general plan.⁵⁸ Consequently, the Court concluded that by establishing these statutes by which the supervisors could obtain this information, the Legislature granted voters the power to amend a general plan through an initiative.⁵⁹ Since Measure J amended the general plan, the *DeVita* Court only discussed amendments to general plans and not voter initiatives or referenda on zoning ordinances.⁶⁰

2. Challenging Zoning Ordinances through Local Referendum

In *City of Morgan Hill v. Bushey*, the California Supreme Court considered whether a local referendum could challenge a zoning amendment.⁶¹ In November 2014, the City of Morgan Hill amended its general plan.⁶² This amendment changed the land use designation of a vacant lot from “industrial” to “commercial.”⁶³ Although the Legislature grants cities and counties maximum control over local zoning matters, it requires the local governing body to adopt zoning ordinances consistent with the general plan.⁶⁴

The zoning designation of the vacant lot was “IL-Light Industrial.”⁶⁵ Consequently, this zoning designation was inconsistent with the “commercial” land use designation found in the general plan.⁶⁶ To make the zoning designation consistent with the general plan, the city approved a zoning ordinance—changing the zoning designation to “CG-General Commercial.”⁶⁷ Due to opposition to building a hotel on the lot, the Morgan Hill Hotel Coalition sent a request for a referendum on this ordinance.⁶⁸ The city council approved the referendum and

58. *See id.* at 777 (“[D]uring the circulation of the petition . . . the board of supervisors may refer the proposed initiative measure to a county agency or agencies for a report on any or all of the following: . . . [its] effect on the internal consistency of the county’s general and specific plans”) (citing CAL. ELEC. CODE § 9111 (2020)).

59. *DeVita*, 9 Cal. 4th at 772.

60. *Id.* at 771.

61. 5 Cal. 5th 1068, 1075 (2018).

62. *Id.* at 1076.

63. *Id.*

64. *See* CAL. GOV’T CODE § 65800 (West 2020) (“[I]t is [the Legislature’s] intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.”); *see also* GOV’T § 65860 (West 2020) (“County or city zoning ordinances shall be consistent with the general plan of the county or city.”).

65. *City of Morgan Hill*, 5 Cal. 5th at 1077; *see* Morgan Hill Municipal Code §§ 18.24.010, 18.26.010, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/28563/Title-18-Zoning> (on file with the *University of the Pacific Law Review*) (designating five commercial zoning designations—administrative Office (“CO”), Neighborhood Commercial (“CN”), General Commercial (“CG”), Highway Commercial (“CH”), and Service Commercial (“CS”)—and five industrial zoning designations—Commercial Industrial (“CI”), Light Office Industrial (“IO”), Campus Industrial (“IC”), Light Industrial (“ML”), and General Industrial (“IG”)—for the general plan).

66. *Id.* at 1076.

67. *Id.* at 1077.

68. Asit Panwala, *The California Supreme Court’s Decision in City of Morgan Hill v. Bushey Will Not End City Planning*, SCOCABLOG (June 22, 2020), <http://scocablog.com/the-california-supreme-courts-decision-in->

scheduled it for June 2016.⁶⁹ The City of Morgan Hill initiated legal proceedings to strike the referendum from the ballot and confirm the zoning ordinance to avoid a zoning designation inconsistent with the general plan.⁷⁰

The Court reaffirmed the California Constitution reserves the power of the referendum to the people.⁷¹ The voters of the various cities and counties have the same power of referendum to approve or deny local ordinances.⁷² Further, the Court concluded that the people can challenge a zoning ordinance amendment that changes the zoning of a parcel to comply with a general plan amendment.⁷³

Also, the Court held challenges to zoning ordinances are permissible where there are other means available to make zoning consistent with a general plan.⁷⁴ A successful referendum that challenges a zoning amendment prevents the zoning amendment from going into effect—despite the previous zoning designation not complying with the amended general plan.⁷⁵

B. California Environmental Quality Act

In 1970, California enacted the California Environmental Quality Act (“CEQA”).⁷⁶ As part of this law, the Legislature established that maintaining the environment “is a matter of statewide concern.”⁷⁷ Since maintaining environmental quality was of paramount importance, the Legislature mandated that a “project” have a minimal effect on the environment.⁷⁸ Alternatively, the proponents of a project must propose strategies to mitigate the environmental impacts before a local agency could approve the project.⁷⁹

To accomplish this goal, the CEQA mandates that an agency prepare an Environmental Impact Report (“EIR”) to assess the environmental impact the

city-of-morgan-hill-v-bushey-will-not-end-city-planning (on file with the *University of the Pacific Law Review*).

69. *City of Morgan Hill*, 5 Cal. 5th at 1077.

70. *Id.*

71. *Id.* at 1078 (citing CAL CONST. art. IV, § 1).

72. *Id.* at 1078 (citing CAL. CONST. art. II, § 11, subdiv. (a)).

73. *City of Morgan Hill*, 5 Cal. 5th at 1081.

74. *Id.*

75. *Id.*

76. CAL. PUB. RES. CODE § 21050 (West 2020).

77. PUB. RES. § 21000.

78. *See* PUB. RES. § 21002 (establishing that projects must have minimal effect on the environment prior to approval); *see also* PUB. RES. § 21065.

“Project” means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Id.

79. PUB. RES. § 21002.

project will impose on the environment.⁸⁰ An EIR identifies the environmental impact of a project, any alternatives to the proposed project, and strategies for avoiding or mitigating impacts.⁸¹ CEQA requires every lead agency complete an EIR for a project that agency will approve or undertake.⁸² Developers must report a broad range of environmental impacts in an EIR.⁸³ Some of the impacts an EIR must take into account include impacts on air quality, aesthetics, biological resources, traffic, population, land use, and water quality.⁸⁴ Thus, an EIR informs government officials about environmental concerns and consequences of a project before an agency takes action.⁸⁵ An EIR provides information that protects both the environment and allows for informed governmental decisions.⁸⁶

In June 2019, the City of Berkeley filed a lawsuit against the University of California Berkeley (“UC Berkeley”) claiming the university’s EIR inadequately calculated the increase in student enrollment.⁸⁷ The lawsuit claims that the inadequate calculation resulted in a cost of \$21 million per year to provide services to UC Berkeley, while the cost was \$11 million in 2003.⁸⁸ Also, the requested amount of \$21 million represents an increase of over 1,000% of what the City of Berkeley currently receives.⁸⁹ Calls from UC Berkeley’s campus also account for 19% of all police calls, which increased from 14% in 2011.⁹⁰ Likewise, calls for firefighter responses make up 37% of all calls.⁹¹ Additionally, there was an increase in the effects of environmental and noise pollution, strain on the sewer and storm drain system, and increased prices in the housing market.⁹²

80. PUB. RES. § 21002.1.

81. *Id.*

82. *See* PUB. RES. § 21100 (requiring lead agency to draft an environmental impact report “on any project which they propose to carry out or approve”).

83. Elijah Chiland & Adrian Glick Kudler, *A Guide to CEQA: California’s Environmental Law that Developers Love to Hate*, CURBED (Oct 10, 2018, 9:47 AM), <https://la.curbed.com/2012/2/7/10398386/ceqa-california-environmental-quality-act-law> (on file with the *University of the Pacific Law Review*).

84. CTY. OF SAN DIEGO, ENVIRONMENTAL IMPACT REPORT FORMAT AND GENERAL CONTENT REQUIREMENTS 28 (2006), *available at* <https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/docs/EIR-Format-Content-Reqs.pdf> (on file with the *University of the Pacific Law Review*).

85. *Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 1 Cal. 5th 937, 944 (2016).

86. *Id.*

87. Frances Dinkelspiel, *City Sues UC Berkeley for Not Studying Impacts of 30% Student Enrollment Hike*, BERKELEYSIDE (June 17, 2019, 6:00 AM), <https://www.berkeleyside.com/2019/06/17/city-sues-uc-berkeley-for-not-studying-impacts-of-34-student-enrollment-increase> (on file with the *University of the Pacific Law Review*).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

C. Tackling the Housing Shortage Through Upzoning

One attempt by the Legislature to combat the housing shortage was to allow for and codify increased housing density through *upzoning*.⁹³ The practice of upzoning is the rezoning of a parcel to allow for higher density and/or allow for taller buildings, usually housing.⁹⁴ This practice increases the supply of housing by allowing developers and builders to construct more housing units on the same parcel.⁹⁵

To tackle the housing shortage through upzoning, Senator Scott Wiener introduced SB 50.⁹⁶ That bill would have required local governments to grant developers equitable community incentives in exchange for increased housing density.⁹⁷ These incentives granted developers waivers from density and parking requirements.⁹⁸ Additionally, if the new development was near a transit stop, the developers would receive waivers from the height, floor area ratio, and minimum parking requirements.⁹⁹ However, SB 50 did not advance beyond the Senate because it targeted local governments and lacked protection from displacement.¹⁰⁰

III. SENATE BILL 902

In response to SB 50's failure, Senator Wiener introduced SB 902.¹⁰¹ SB 902 did not have any of the incentives found in SB 50.¹⁰² Rather, it sought to increase housing density by streamlining the zoning process.¹⁰³

SB 902 represented the Legislature's attempt to alleviate the housing shortage by allowing for streamlined rezoning.¹⁰⁴ This bill would have granted local

93. Diana Budds, *Will Upzoning Neighborhoods Make Homes More Affordable?*, CURBED (Jan. 30, 2020, 1:00 PM), <https://www.curbed.com/2020/1/30/21115351/upzoning-definition-affordable-housing-gentrification> (on file with the *University of the Pacific Law Review*).

94. *Id.*

95. *Id.*

96. Jenna Chadler, *California's Transit Density Bill Is Back. What Would it do to Los Angeles?*, CURBED (Jan. 7, 2020, 4:04 PM), <https://la.curbed.com/2020/1/7/21054886/california-transit-density-bill-50> (on file with the *University of the Pacific Law Review*).

97. SB 50, 2018 Leg., 2019–2020 Sess. (Cal. 2018) (as amended on Jan. 6, 2020, but not enacted).

98. *Id.*

99. *Id.*

100. Liam Dillon & Taryn Luna, *California Bill to Dramatically Increase Home Building Fails for the Third Year in a Row*, L.A. TIMES (Jan. 30, 2020, 4:49 PM), <https://www.latimes.com/california/story/2020-01-29/high-profile-california-housing-bill-to-allow-mid-rise-apartments-near-transit-falls-short> (on file with the *University of the Pacific Law Review*).

101. Evan Symon, *Senator Wiener Introduces 'SB 50 Lite' Housing Bill to End Single-Family Zoning in CA*, CAL. GLOBE (May 22, 2020, 05:37 PM), <https://californiaglobe.com/section-2/senator-wiener-introduces-sb-50-lite-housing-bill/> (on file with the *University of the Pacific Law Review*).

102. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

103. Senate Committee on Housing, Committee Analysis of SB 902, at 3 (May 21, 2020).

104. *Id.*

governments the authority to increase the density of residential parcels.¹⁰⁵ It would have authorized a local government to enact an ordinance that would increase residential density of any parcel up to ten units per parcel.¹⁰⁶ However, the parcel must be in a “transit-rich area,” a “jobs-rich area,” or an “urban infill site.”¹⁰⁷

SB 902 would have granted local governments the ability to enact zoning ordinances.¹⁰⁸ These ordinances would be valid despite any voter-enacted initiatives prohibiting the local government from enacting zoning ordinances.¹⁰⁹ Further, the bill would have granted these ordinances an exemption from CEQA environmental review.¹¹⁰

IV. ANALYSIS

During his campaign to become the Governor of California, Gavin Newsom called for creating 3.5 million new housing units by 2025.¹¹¹ He called for such a development in hopes of tackling the housing affordability crisis.¹¹² However, SB 902 did not address the affordability crisis and instead may have been costly to

105. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

106. *Id.*

107. *Id.*

“Transit-rich area” means a parcel within one-half mile of a major transit stop or a parcel on a high-quality bus corridor.

“Jobs-rich area” means an area identified by the Department of Housing and Community Development in consultation with the Office of Planning and Research that is high opportunity and either is jobs rich or would enable shorter commute distances based on whether, in a regional analysis, the tract meets both of the following:

(i) The tract is high opportunity, meaning its characteristics are associated with positive educational and economic outcomes for households of all income levels residing in the tract.

(ii) The tract meets either of the following criteria:

(a) New housing sited in the tract would enable residents to live near more jobs than is typical for tracts in the region.

(b) New housing sited in the tract would enable shorter commute distances for residents, relative to existing commute patterns and jobs-housing fit.

“Urban infill site” means a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

108. *Id.*

109. *Id.*

110. Senate Committee on Housing, Committee Analysis of SB 902, at 2 (May 21, 2020).

111. Gavin Newsom, *The California Dream Starts at Home*, MEDIUM (Oct. 20, 2017), <https://medium.com/@GavinNewsom/the-california-dream-starts-at-home-9dbb38c51cae> (on file with the *University of the Pacific Law Review*).

112. *Id.*

low-income earners.¹¹³

Section A explains the extent of the housing shortage.¹¹⁴ Section B analyzes SB 902's impact on local voters.¹¹⁵ Section C addresses how the CEQA exemption could have affected local government.¹¹⁶ Section D explores the concerns of the negative effects of upzoning.¹¹⁷

A. Housing Shortage in California

SB 902 sought to alleviate the housing shortage in California through increased housing density.¹¹⁸ According to a McKinsey Report, California ranks 49th in per capita housing—California has 358 homes for every 1,000 people.¹¹⁹ Only Utah has fewer homes with 347 per 1,000 people.¹²⁰ California “has 14 million homes for 39 million people,”; therefore, to attain the national average of 419 homes for every 1,000 people, California would need an additional 2 million homes.¹²¹

The housing shortage creates a highly competitive housing market that increases housing prices; however, this competitive housing market is somewhat limited to the coastal metropolitan areas.¹²² The increased prices price out many people in the coastal areas.¹²³ Consequently, the residents of the coastal areas move

113. See Budds, *supra* note 93 (explaining how upzoning can lead to an increase in the price of housing and displacement).

114. *Infra* Section IV.A.

115. *Infra* Section IV.B.

116. *Infra* Section IV.C.

117. *Infra* Section IV.D.

118. Senate Committee on Housing, Committee Analysis of SB 902, at 3 (May 21, 2020).

119. MCKINSEY GLOBAL INSTITUTE, A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP: 3.5 MILLION HOMES BY 2025 3 (2016), available at <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.pdf> (on file with the *University of the Pacific Law Review*).

120. *Id.*

121. MCKINSEY GLOBAL INSTITUTE, A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP: 3.5 MILLION HOMES BY 2025 2 (2016), available at <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.pdf> (on file with the *University of the Pacific Law Review*).

California's underproduction of housing is not a new phenomenon. Since the 1970s, the state has added 6.7 million households and 19 million people, but only 6.2 million homes. This means that over a 40-year period, the state added only 325 homes for every 1,000 additional people. During the same period, New York and New Jersey added 1,007 and 681 homes, respectively, for every 1,000 additional people. It is therefore no surprise that California faces a statewide shortage. Today, it has 14 million homes for 39 million people. Again, to put this into context, if California had the same houses-to-people ratio as Texas, it would have 15.1 million homes. If it were to match New York or New Jersey, California would have 16 million homes. Achieving the US average would require 16.5 million homes. So, the state has a shortfall of between one million and 2.5 million homes.

Id.

122. TAYLOR, *supra* note 10, at 10.

123. TAYLOR, *supra* note 10, at 12.

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inland, which increases the housing prices in the inland metropolitan areas as well.¹²⁴ This is the situation in which Ms. James and many other workers like her find themselves.¹²⁵ The increased housing prices have had a ripple effect far into California's inland suburbs.¹²⁶ Further, the high cost of living undoubtedly contributes to California's poverty rate which is the highest in the United States.¹²⁷

In introducing SB 902, Senator Wiener sought to grant local government officials the ability to lessen the severe housing shortage in California through upzoning.¹²⁸ However, increasing density does not always lead to increased supply.¹²⁹ In 2013 and 2015, Chicago enacted policies that allowed for upzoning.¹³⁰ However, these policies increased land values without increasing supply.¹³¹ Consequently, SB 902 may not have led to an increase in the supply of new housing units.¹³²

B. Senate Bill 902's Impact on Local Voters

SB 902 would have granted local governments the authority to override local voter initiatives that prevent local government from enacting zoning ordinances.¹³³ This grant of authority undoubtedly raises concerns of whether local officials should have such power.¹³⁴ Any concern involving local voter initiatives will also include local referenda because the California Constitution grants voters the power of both.¹³⁵ Subsection 1 discusses the effects of SB 902 on local initiatives.¹³⁶ Subsection 2 evaluates the effects of SB 902 on local referenda.¹³⁷

124. *Id.*

125. See Dougherty & Burton, *supra* note 1 (describing how incomes did not increase with the increase in housing prices, forcing many workers to move inland).

126. Dougherty & Burton, *supra* note 1.

127. See TAYLOR, *supra* note 10, at 28 (attributing the high poverty rate in California to the high cost of living, primarily the high cost of housing).

128. Senate Committee on Housing, Committee Analysis of SB 902, at 3 (May 21, 2020).

129. See Budds, *supra* note 93 (discussing a study in Chicago in which allowing for upzoning did not increase the supply of housing units).

130. *Id.*

131. *Id.*

132. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing for upzoning of parcels), with Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction*, 56 URB. AFF. REV. 758, 779 (2019) (discussing how Chicago's upzoning reforms did not increase new construction and permitting).

133. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

134. Senate Committee on Housing, Committee Analysis of SB 902, at 6 (May 21, 2020).

135. See CAL. CONST. art. II, § 11 (granting power of initiative and referendum to electors of counties and cities); see also CAL. CONST. art. IV, § 1 (reserving power of initiative and referendum with the people).

136. *Infra* Subsection IV.A.1.

137. *Infra* Subsection IV.A.2.

1. Senate Bill 902 Would Have Unconstitutionally Undermined Local Voter Initiatives

SB 902 specified that a local legislative body could pass a zoning ordinance, even if a local voter initiative prohibits the body from doing so.¹³⁸ This grant of authority to a local legislative body renders local voter-enacted initiatives null.¹³⁹ Consequently, SB 902 would have violated the California Constitution because the Constitution expressly guarantees the people the right to enact or reject ballot initiatives.¹⁴⁰

In *DeVita*, the California Supreme Court held that in certain cases the Legislature could preclude the voters' right of initiative.¹⁴¹ The Court employed two factors in determining whether the Legislature precludes voter initiatives.¹⁴² The first is whether the Legislature granted the power to enact legislation to a specific "city council" or "board of supervisors" or if the grant was to a generic "legislative body."¹⁴³ The second is if the law pertains to a statewide concern or a municipal affair.¹⁴⁴

Under the first factor, references to a specific body like city council or board of supervisors carry a greater inference toward excluding ballot measures by the local voters.¹⁴⁵ However, references to a generic legislative body may include the electorate.¹⁴⁶ SB 902 only referenced local government and legislative body and not city council or board of supervisors.¹⁴⁷ This absence of a direct grant to a specific legislative body creates an inference that the Legislature did not intend preclusion of initiatives.¹⁴⁸ Even if the "notwithstanding any local restrictions" language negates the first factor, there is still the second factor to consider.¹⁴⁹

Under the second factor, courts determine whether a matter is of statewide concern.¹⁵⁰ In *Anderson*, the court established that an issue with regional effects is more likely a statewide concern.¹⁵¹ The court further established that the shortage

138. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

139. See SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local governing bodies to disregard local voter initiatives limiting its power).

140. CAL. CONST. art. II, § 11.

141. *DeVita v. County of Napa*, 9 Cal. 4th 763, 776 (1995).

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *DeVita*, 9 Cal. 4th at 776.

147. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

148. *DeVita*, 9 Cal. 4th at 776.

149. See SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting local governing bodies authority to enact zoning ordinances "notwithstanding any local restriction"); see also *DeVita*, 9 Cal. 4th at 776 (providing the two factors both of which a court evaluates).

150. *Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 702 (6th Dist. 2019).

151. *Id.* at 711.

of lots for *affordable* housing is a matter of statewide concern.¹⁵² The dispositive question in determining if SB 902 pertained to a statewide concern is whether increasing housing density affects housing affordability.¹⁵³

SB 902 had a provision stating, “ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair.”¹⁵⁴ However, the Legislature adds such boilerplate language to many bills and statutes.¹⁵⁵ The court in *Anderson* reasoned a declaration by the Legislature that a matter is a statewide concern does not mean the matter is in fact a statewide concern.¹⁵⁶ Courts decide whether something is a statewide concern or a municipal affair.¹⁵⁷ Beside the boilerplate language, SB 902 did not mention affordability or low- and moderate-income housing as a requirement for the new housing developments.¹⁵⁸

Since SB 902 would have granted a *local government* the right to upzone and the bill pertains to a municipal affair, it unlawfully overrides the voters’ right to enact a municipal initiative.¹⁵⁹ By overriding this right of the initiative, SB 902 would have violated the California Constitution.¹⁶⁰

2. Senate Bill 902 may Have Increased the Number of Local Referenda

SB 902 would have allowed local government officials to disregard voter-enacted ordinances expressly prohibiting the local government from enacting zoning ordinances.¹⁶¹ By ignoring the vote of the populace, SB 902 may have increased the amount of local referenda challenging zoning ordinances.¹⁶² The

152. *Id.* at 718.

153. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local government to increase housing density), with *Anderson*, 42 Cal. App. 5th at 718 (establishing sites for affordable housing as a statewide concern).

154. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

155. CAL. GOV’T CODE §§ 65850.01, 65850.5, 65850.55, 65850.6, 65850.7, 65860.1 (West 2020).

156. 42 Cal. App. 5th at 703.

157. *Id.*

158. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted); see also Senate Committee on Housing, Committee Analysis of SB 902, at 6 (May 21, 2020) (describing how the opposition are concerned with the absence of an affordability requirement).

159. Compare CAL. CONST. art. II, § 11 (granting electors in cities the power to exercise the right of initiative), and CAL. CONST. art. XI, § 5 (granting charter cities supremacy in municipal affairs), with SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local government to increase housing density), and *Anderson*, 42 Cal. App. 5th at 718 (establishing sites for affordable housing as a statewide concern).

160. Compare CAL. CONST. art. II, § 11 (granting electors in cities the power to exercise the right of initiative), with SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local government to override local initiatives).

161. See SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local governing bodies enact zoning ordinances despite local initiatives to the contrary).

162. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local governing bodies to disregard local voter initiatives limiting its power), with Panwala, *supra* note 68 (describing how local voters use referendum to overturn zoning ordinances they oppose).

second power the people reserve to themselves is the power of the referendum.¹⁶³ This power grants voters the right to either “approve or reject statutes or parts of statutes.”¹⁶⁴ This right extends to the local level as well.¹⁶⁵

In *City of Morgan Hill v. Bushey*, the Supreme Court of California upheld the right of local voters to challenge zoning ordinances through a referendum.¹⁶⁶ During oral argument, one of the Justices inquired whether the facts would lead to an increase in zoning ordinance referenda.¹⁶⁷ After the Court ruled against the City of Morgan Hill, city officials repealed the zoning ordinance fearing an overwhelming repudiation at the ballot box.¹⁶⁸

The County of San Benito presents another example where voters overturned a local government’s decision due to widespread opposition.¹⁶⁹ There, county supervisors enacted a zoning ordinance rezoning four parcels to residential and commercial designations.¹⁷⁰ Subsequently, the local voters rejected this ordinance by a large majority.¹⁷¹ The supervisors then adopted a similar ordinance rezoning one of those parcels.¹⁷² After this second ordinance, the voters began collecting petitions for a second referendum.¹⁷³ However, the Coronavirus pandemic in 2020 and the resulting stay-at-home order stalled that referendum.¹⁷⁴ If locals disagree with a zoning ordinance, they may overturn it with a referendum—as evidenced in San Benito and Morgan Hill.¹⁷⁵ Similarly, by allowing local governments to disregard the will of the voters, SB 902 may have increased local referenda over zoning ordinances.¹⁷⁶

163. CAL. CONST. art. IV, § 1.

164. *City of Morgan Hill v. Bushey*, 5 Cal. 5th 1068, 1078 (2018) (citing CAL. CONST. art. II, § 9(a)).

165. *Id.* (citing CAL. CONST. art. II, § 11(a)).

166. *Id.* at 1091.

167. Panwala, *supra* note 68.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. Erik Chalhoub, *Judge Grants Temporary Suspension of Rezoning*, SAN BENITO.COM (May 20, 2020), <https://sanbenito.com/judge-grants-temporary-suspension-of-rezoning/> (on file with the *University of the Pacific Law Review*).

174. *See id.* (describing the stay-at-home orders effect on the vote gathering along with a lawsuit “contending that the board violated election code by superseding the voters’ March rejection of Measure K through the zoning change approval”).

175. Panwala, *supra* note 68.

176. *Compare* SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local government to increase housing density despite local opposition), *with* Panwala, *supra* note 68 (describing how local voters overturn zoning ordinances they oppose).

C. CEQA Exemptions will Limit Valuable Information

SB 902 would have granted an exemption from CEQA environmental review for any zoning ordinance that complies with this law.¹⁷⁷ This exemption would have allowed a developer and the local agency to forego an EIR for a high-density housing development.¹⁷⁸

A lead governmental agency prepares an EIR based on an assessment of the environmental impacts a project will impose.¹⁷⁹ The EIR must contain any environmental impacts the project may have—including traffic, aesthetics, parking, congestion, etc.¹⁸⁰ This information is valuable because it ensures local government officials would be able to make decisions that would cause the least environmental harm.¹⁸¹

In June 2019, the City of Berkeley filed a lawsuit against UC Berkeley claiming the University’s EIR inadequately calculated the increase in student enrollment.¹⁸² The inaccurate EIR resulted in increased costs of servicing the campus.¹⁸³ Additionally, the inadequate EIR increased strain on the services that first responders provide.¹⁸⁴ Further, there was an increase in the effects of environmental and noise pollution, strain on the sewer and storm drain system, and increased prices in the housing market.¹⁸⁵

SB 902 would have granted an exemption from CEQA review.¹⁸⁶ This exemption would have allowed developers and agencies to bypass filing an EIR on rezoned parcels.¹⁸⁷ By exempting new developments from CEQA, SB 902 would have eliminated the information local officials receive regarding the future impacts of a new development from an EIR.¹⁸⁸ This lack of information would have possibly hindered the local government officials from accurately projecting future service needs and impacts.¹⁸⁹ Consequently, the absence of the information

177. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

178. See SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (providing that parcel upzoned by local government is not a project for purposes of CEQA).

179. CAL. PUB. RES. CODE § 21157.1 (West 2020).

180. CTY. OF SAN DIEGO, *supra* note 84.

181. Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist., 1 Cal. 5th 937, 944 (2016).

182. Dinkelspiel, *supra* note 87.

183. *Id.*

184. *Id.*

185. *Id.*

186. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

187. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting a rezoned parcel is not a project for CEQA review), with CAL. PUB. RES. CODE § 21157.1 (West 2020) (describing projects that require environmental reports).

188. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting a rezoned parcel is not a project for CEQA review), with CTY. OF SAN DIEGO, *supra* note 84 (describing the various areas that an EIR must evaluate).

189. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting a rezoned parcel is not a project for CEQA review), with CTY. OF SAN DIEGO, *supra* note 84

provided in an EIR could make it difficult to foresee and project the amount of strain on existing services a proposed development could have.¹⁹⁰ By limiting the amount of information provided to municipal agencies, SB 902 may have caused unforeseen impacts on city services and the surrounding environment.¹⁹¹

D. Negative Impact of Upzoning

Some legislators have proposed upzoning as a fix for the housing shortage.¹⁹² SB 902 was one such proposal, as it would have allowed up to ten housing units on an individual parcel.¹⁹³ One of the major arguments in favor of upzoning is that building more units on one parcel increases supply and lowers costs.¹⁹⁴ However, the ability to build multiple units on the same amount of land leads to an increase in the value of that land.¹⁹⁵ When Chicago implemented upzoning reforms in 2013 and 2015, the price of housing units increased between 12.2% and 13.2%.¹⁹⁶ Further, these upzoning reforms did not increase the amount of new units.¹⁹⁷ Similarly, SB 902 may not have led to an increase in the supply of new housing units.¹⁹⁸ SB 902 may have even led to an increase in housing prices that would displace local low-income tenants.¹⁹⁹

The media has criticized SB 902 referring to it as “SB 50 Lite.”²⁰⁰ This estimation is fair because SB 902, like SB 50, focuses on increasing housing density.²⁰¹ Although increasing housing density was optional under SB 902, the bill could still have led many Californians to face displacement from upzoning.²⁰²

(describing the various areas that an EIR must evaluate), and Dinkelspiel, *supra* note 87 (detailing UC Berkeley’s inadequate EIR and the subsequent financial, economic, and environmental impact).

190. See Dinkelspiel, *supra* note 87 (explaining how UC Berkeley’s failure to provide an accurate EIR resulted in unforeseen impacts on city services and environment).

191. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting an exemption from CEQA environmental review to proposed developments with), with Dinkelspiel, *supra* note 87 (detailing UC Berkeley’s inadequate EIR and the subsequent financial, economic, and environmental impact).

192. Budds, *supra* note 93.

193. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

194. *Blanket Upzoning—a Blunt Instrument—Won’t Solve the Affordable Housing Crisis*, THE PLANNING REPORT (Mar. 15, 2019), <https://www.planningreport.com/2019/03/15/blanket-upzoning-blunt-instrument-wont-solve-affordable-housing-crisis> (on file with the *University of the Pacific Law Review*).

195. Budds, *supra* note 93.

196. See Freemark, *supra* note 132, at 773 (discussing degree of change in property transaction prices).

197. See *id.* at 779 (discussing degree of change in new construction and permitting).

198. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing for upzoning of parcels), with Freemark, *supra* note 132, at 779 (discussing how Chicago’s upzoning reforms did not increase new construction and permitting).

199. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing for upzoning of parcels), with Budds, *supra* note 93 (arguing that upzoning alone does not create affordable housing).

200. Symon, *supra* note 101.

201. *Id.*

202. *Id.*

Since upzoning allows for multiple units on one parcel, this leads to an increase in the value of that land as developers gain a larger profit from constructing multiple housing units.²⁰³ These more expensive lots lead to increased housing prices, which prices people out of the housing market.²⁰⁴ This fear of gentrification and displacement is one of the reasons SB 50 failed.²⁰⁵ Since SB 902 did not contain a housing affordability requirement, the bill induces the same fear of displacement that SB 50 induced.²⁰⁶

V. CONCLUSION

SB 902 would have allowed for upzoning parcels.²⁰⁷ It would have granted local government the authority to increase the amount of permitted housing units in any parcel to ten.²⁰⁸ However, increasing the amount of housing units allowed in a parcel also increases the value of that parcel.²⁰⁹ Due to the high cost of land, the subsequent cost of housing increases.²¹⁰ The new market-rate housing displaces existing tenants without providing any affordable housing.²¹¹ This displacement results in an exodus of people from the coastal metropolitan areas to other regions of the state—usually the Central Valley.²¹² Subsequently, people move from coastal regions either because housing prices price them out of the market, or, like Ms. James, they are able to buy better housing at a lower cost elsewhere.²¹³

SB 902 would have also granted an exemption from CEQA review.²¹⁴ However, this exemption would have undermined local government officials by limiting the valuable information they receive from an EIR.²¹⁵ Furthermore, this lack of information would have inhibited local officials from making accurate

203. Budds, *supra* note 93.

204. Symon, *supra* note 101; *see* Budds, *supra* note 93 (explaining how increasing the amount of units allowed on an individual parcel makes the land more valuable).

205. Sandy Perry, *SB 50 Will Worsen Renters' Displacement Crisis*, SAN JOSE SPOTLIGHT (Jan. 27, 2020), <https://sanjosespotlight.com/perry-sb-50-will-worsen-renters-displacement-crisis/> (on file with the *University of the Pacific Law Review*).

206. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted); *see also* Senate Committee on Housing, Committee Analysis of SB 902, at 6 (May 21, 2020) (describing how the opposition are concerned with the absence of an affordability requirement).

207. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

208. *Id.*

209. Budds, *supra* note 93.

210. *See* Budds, *supra* note 93 (explaining how upzoning leads to luxury market-rate housing).

211. Budds, *supra* note 93.

212. Dougherty & Burton, *supra* note 1.

213. *See* Dougherty & Burton, *supra* note 1 (detailing how workers in the Bay Area are better able to afford housing in the Central Valley rather than the Bay Area).

214. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

215. *Compare* SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting a rezoned parcel is not a project for CEQA review), *with* CTY. OF SAN DIEGO, *supra* note 84 (describing the various areas that an EIR must evaluate).

projections for the future.²¹⁶ Relying on limited information may increase the unforeseen costs, strain municipal services, and have negative impacts on the environment.²¹⁷

SB 902 likewise would have allowed local government to enact ordinances despite local voter opposition.²¹⁸ By ignoring the desire of voters, SB 902 may have increased local referenda challenging the zoning ordinances local governments will attempt to enact.²¹⁹ More importantly, SB 902 would have permitted local government to enact legislation “notwithstanding any local restrictions.”²²⁰ Such blatant disregard for local initiatives would render local initiatives meaningless.²²¹ Finally, and most importantly, SB 902 would have overridden the voters’ right to enact local restrictions on local government—undermining the constitutional right to initiative.²²² This Constitutional violation strikes at the very heart of California’s form of government: direct democracy.²²³

216. See Dinkelspiel, *supra* note 87 (detailing UC Berkeley’s inaccurate EIR and the unanticipated subsequent financial, economic, and environmental impact).

217. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (granting an exemption from CEQA environmental review to proposed developments with), with Dinkelspiel, *supra* note 87 (detailing UC Berkeley’s inadequate EIR and the unforeseen financial, economic, and environmental impact).

218. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

219. Compare SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local governing bodies to disregard local voter initiatives limiting its power), with Panwala, *supra* note 68 (describing how local voters overturn zoning ordinances they oppose).

220. SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted).

221. See *id.* (allowing local governing bodies to disregard local voter initiatives limiting its power to enact zoning ordinances).

222. Compare CAL. CONST. art. II, § 1. (establishing all political power as “inherent in the people”), and CAL. CONST. art. II, § 11 (extending the right to initiative to the voters of cities), with SB 902, 2020 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on May 21, 2020, but not enacted) (allowing local governments to make local initiatives a nullity by disregarding them).

223. See CAL. CONST. art. II, § 1; (finding that all the political power resides with the people).

* * *