TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	
	:	No. 25-1102
of	:	
	:	November 5, 2026
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The HONORABLE TOM LACKEY, ASSEMBLYMEMBER, has requested an opinion on questions relating to the Housing Crisis Act of 2019.

QUESTIONS PRESENTED AND CONCLUSIONS

1. Government Code section 66300(b)(1) prohibits urban cities and counties from imposing restrictions on residential development capacity. If a locality passes a law to allow *more* housing, can a referendum *rejecting* that change violate subdivision (b)(1)?

Yes. A referendum rejecting a legislative enactment that would allow additional housing can constitute a prohibited moratorium-like restriction on housing development within the meaning of section 66300(b)(1).

2. Can a locality unilaterally invalidate a referendum that violates section 66300(b)(1)?

No. A city or county cannot deem a referendum void without a court order.

3. What statute of limitations governs private section 66300(b)(1) actions?

It depends. A three-year limitations period applies to challenges to referenda, while a 90-day limitations period applies to land use decisions by a local legislative body.

BACKGROUND

The Housing Crisis Act of 2019 was enacted to address California's "housing supply crisis."[1] The Legislature found that "housing demand [was] far outstripping supply," resulting in "very expensive" housing and "rapid" rent increases.[2] Despite high demand, homebuilders were "unable to meet that demand because of local rules that limit the number of units or simply prohibit building altogether."[3] So the Housing Crisis Act declared a "statewide housing emergency" and "[s]uspend[ed] certain restrictions on the development of new housing."[4] The Act includes several provisions to ease limits on homebuilding. Relevant here is Government Code section 66300, which restricts local authority to modify land use regulations in ways that limit housing development.

1. Local land use authority derives from California's Planning and Zoning Law.[5] Under this statute, every city and county is required to "adopt a comprehensive, long-term general plan for [its] physical development."[6] The general plan must "comprise an integrated, internally consistent and compatible statement of policies" for local planning.[7]

As relevant here, a general plan must include a "land use element." The land use element "designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, . . . education, public buildings and grounds, . . . and other categories of public and private uses of land."[8]

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[1] Sen. Bill No. 330 (2019-2020 Reg. Sess.) § 2, subd. (a)(1) (S.B. 330).

[2] *Id.*, § 2, subd. (a).

[3] Off. of Sen. Floor Analyses, Sen. Rules Com., analysis of S.B. 330, Sept. 5, 2019, p. 7.

[4] S.B. 330, § 2, subds. (b), (c)(1) (declaring "housing emergency" until Jan. 1, 2025); Sen. Bill No. 8 (2021-2022 Reg. Sess.) § 13, subd. (b) (S.B. 8) (extending emergency until Jan. 1, 2030).

[5] This law is codified as title 7 of the Government Code (sections 65000-66499.58).

[6] Gov. Code, § 65300. This requirement also applies to every charter city. (*Ibid.*)

[7] *Id.*, § 65300.5, subd. (a).

[8] *Id.*, § 65302, subd. (a).

The general plan, including its land use element, functions "as the 'constitution for all future developments' within the city or county."[9] Specific plans and zoning ordinances implement the applicable general plan and must be consistent with that plan.[10]

Specific plans are not required, but can be adopted by cities and counties "for the systematic implementation of the general plan."[11] Specific plans are commonly used for "a particular development site or sub-area."[12] A specific plan must "specify . . . [t]he distribution, location, and extent of the uses of land" within its area.[13]

Zoning ordinances implement and must follow the general plan and any specific plans that apply. Zoning ordinances "divide" the jurisdiction "into zones" to dictate the "intensity of land use" in each zone, as well as development attributes such as "location, height, bulk, number of stories, and size of buildings."[14]

General plans, specific plans, and zoning ordinances each operate by defining categories within which uniform standards apply. General plan categories can be broad, while zoning offers more detail.[15] Once defined, categories are mapped to specific areas or parcels. A general plan must show "the proposed general distribution and general location" for categories.[16] Zoning ordinances are more precise; zones must have definite boundaries so that property owners know what rules apply.[17]

Any parcel's residential capacity is a product of several attributes of the applicable land use categories. Some rules cap the number of dwelling units per acre or per lot. Others—like limits on height, floor area ratio, or setbacks—restrict capacity indirectly.

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[9] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570, quoting *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774, 782.

[10] See Gov. Code, §§ 65454 (specific plans), 65860 (zoning ordinances).

[11] *Id.*, § 65450.

[12] California Department of Real Estate, Reference Book: Information Relating to Real Estate Practice, Licensing and Examinations (2010) p. 476.

[13] Gov. Code, §§ 65451, 65454.

[14] *Id.*, §§ 65850, 65851.

[15] *Id.*, §§ 65302, subd. (a), 65852; see, e.g., San Diego Municipal Code, ch. 13, pp. 35-50 (33 residential zones).

[16] Gov. Code, § 65302, subd. (a).

[17] See *United Outdoor Advertising Co. v. Business, Transportation & Housing Agency* (1988) 44 Cal.3d 242, 249.

Cities and counties must follow special procedures to adopt or amend general plans, specific plans, and zoning ordinances.[18] Among other requirements, these procedures include steps like written recommendations from planning agencies, consultation with affected institutions, and public hearings. Under Government Code section 65858, however, localities are permitted to adopt temporary "interim" ordinances (also referred to as moratorium ordinances) to protect safety, health, and welfare, without following the usual procedures; unless renewed, these ordinances can last up to 45 days.

2. Local land use regulation is subject to the constitutional referendum power.[19] The procedures governing city and county referenda are set out in the Elections Code.[20] A referendum is possible only after final enactment of an ordinance by a legislative body. To allow voters to weigh in, most ordinances cannot "become effective" until 30 days after "final passage."[21] During this 30-day period, voters can "petition protesting the adoption of an ordinance."[22] If enough voters join the petition, "the ordinance shall be suspended."[23] Unless the legislative body repeals the ordinance on its own, a "measure" must be placed on the ballot "submit[ting] the ordinance to the voters."[24] The enacted ordinance remains suspended while the voters make their decision.

If the voters opt to approve the ordinance, the suspension is lifted, so the ordinance "become[s] effective."[25] If the voters reject the ordinance, there are two consequences. First, "the temporary suspension becomes permanent by operation of law."[26] Second, the city or county is temporarily prohibited from reenacting the same measure. For cities, that prohibition lasts for one year (by statute).[27] Counties are prohibited from reenacting

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[18] See, e.g., Gov. Code, §§ 65350-65362 (general plans), 65853-65857 (zoning).

[19] Cal. Const., art. II, § 11; *Dwyer v. City Council of Berkeley* (1927) 200 Cal. 505.

[20] Elec. Code, §§ 9140-9147 (counties), 9234-9247 (cities).

[21] *Id.*, §§ 9141 (counties), 9235 (cities).

[22] *Id.*, §§ 9144 (counties), 9237 (cities).

[23] *Id.*, §§ 9144 (counties), 9237 (cities).

[24] *Id.*, §§ 9145, 9147 (counties); see also *id.*, § 9241 (cities).

[25] *Id.*, §§ 9145 (counties), 9241 (cities).

[26] *County of Kern v. T.C.E.F., Inc.* (2016) 246 Cal.App.4th 301, 319; see Elec. Code, §§ 9144, 9145 (counties), 9237, 9241 (cities).

[27] Elec. Code, § 9241.

an "essential feature" of the measure until there is "a material change in circumstances."[28]

3. Government Code section 66300 restricts the authority of certain urban cities and counties to limit housing development.[29] The statute also expressly applies to the electorate's "referendum power."[30] Relevant here, subdivision (b)(1) prohibits "enact[ing]" land use measures that would have the "effect[]" of imposing a moratorium-like restriction on housing development or reducing the amount of housing permitted in certain other ways.

Our requestor asks three questions about this statute: (1) whether a referendum rejecting a measure that authorizes additional housing can violate section 66300(b)(1); (2) whether a locality can declare such a referendum void on its own, without a court order; and (3) what limitations period applies to private-party actions under this statute.[31]

ANALYSIS

1. Section 66300(b) Applies to Referenda Rejecting Legislative Enactments that Would Allow Additional Housing

Our requestor asks whether certain kinds of referenda violate section 66300(b)(1). The question envisions the following sequence of events: First, a city or county legislative body enacts a "general plan amendment or specific plan for housing development" that would "increase[] the 'intensity of land use'" or "permit[] housing on land where it would otherwise not be allowed." Second, voters then reject that enactment via referendum.

a. Our requestor first asks whether such a referendum would constitute a moratorium-type restriction prohibited by subdivision (b)(1)(B)(i), which provides:

> [W]ith respect to land where housing is an allowable use, an affected county or an affected city *shall not enact* a development policy, standard, or condition that would have . . . the following *effect*[]: . . .

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[28] *County of Kern v. Alta Sierra Holistic Exchange Service* (2020) 46 Cal.App.5th 82, 85, 97; see Elec. Code, §§ 9140-9147.

[29] Gov. Code, § 66300, subd. (b)(1).

[30] *Id.*, subd. (a)(3).

[31] Assemblymember Tom Lackey, letter requesting opn. to Atty. Gen. Rob Bonta, Opn. Unit, Dept. of J., June 25, 2026, pp. 2-3.

> Imposing a *moratorium or similar restriction or limitation on housing development*, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city . . . .[32]

The terms "affected county" and "affected city" are defined to "include[] the electorate . . . exercising its local initiative or referendum power."[33] A "development policy, standard, or condition" includes a "provision of, or amendment to" "a general plan," "a specific plan," or "a zoning ordinance."[34]

i. We begin with the text of subdivision (b)(1)(B)(i). This provision is written expansively. Its key term is "moratorium," but it also extends to any "similar restriction or limitation on housing development." Additionally, section 66300 directs that its provisions are to be "broadly construed so as to maximize the development of housing."[35]

Here is how dictionaries define the relevant terms: A "moratorium" is a "suspension of a specific activity."[36] A "restriction" is "a regulation that restricts or constrains."[37] Similarly, a "limitation" is "a restriction or restraint imposed from without," including "by law."[38] ("Restrict" and "limit" both mean "set bounds or limits to."[39])

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[32] Gov. Code, § 66300, subd. (b)(1)(B)(i), italics added. Although not at issue here, the provision excludes restrictions enacted "to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium or for projects specifically identified as existing restricted affordable housing." (*Ibid.*) Exempted restrictions cannot be enforced unless approved by the Department of Housing and Community Development. (*Id.*, subd. (b)(1)(B)(ii).)

[33] Gov. Code, § 66300, subd. (a)(3).

[34] *Id.*, subd. (a)(5).

[35] *Id.*, subd. (e)(2).

[36] Black's Law Dict. (12th ed. 2024), moratorium; see also, e.g., Webster's 3d New Internat. Dict. (1993) p. 1469 ("a suspension of activity"); Oxford English Dict. (2nd ed. 1989) ("A postponement, an agreed delay, a deliberate temporary suspension").

[37] Webster's 3d New Internat. Dict. (1993) p. 1937; see also *ibid.* (defining "restrict" as "to set bounds or limits to"); Oxford English Dict. (2026), restriction ("a limiting condition or regulation").

[38] Webster's 3d New Internat. Dict. (1993) p. 1312.

[39] *Ibid.* (defining "limit"); see also *id.* at p. 1937 (providing an identical definition for "restrict").

Local moratoria on specific kinds of land use or development are commonplace.[40] As noted, section 65858 authorizes cities and counties to adopt "interim ordinance[s]" that prohibit certain land "uses" as urgency measures not subject to "the procedures otherwise required prior to the adoption of a zoning ordinance." Courts have referred to such ordinances as "moratorium ordinances."[41]

But subdivision (b)(1)(B)(i) is not limited to moratorium ordinances adopted pursuant to section 65858. Instead, with the exception of moratorium ordinances addressing imminent public safety or health threats,[42] it applies broadly to *any* local "policy, standard, or condition" that "would have" the "effect[]" of "[i]mposing a moratorium or similar restriction or limitation on housing development."[43] The question here is whether a referendum rejecting a legislative enactment that would have allowed additional housing imposes a restriction or limitation that is sufficiently "similar" to a moratorium to be prohibited under subdivision (b)(1)(B)(i). For several reasons, we conclude that referenda rejecting such enactments meet this standard and so are prohibited.

As described above, a "moratorium" is a "suspension" of an activity.[44] In this context, a voter referendum automatically imposes several suspensions. To start, a timely referendum petition with enough signatures has the automatic effect of "suspend[ing]" an "ordinance" enacted by a legislative body until it can be considered by voters.[45] The referendum vote must be held at least 88 days after the ordinance is ordered to be submitted to the voters—so regardless of the outcome, one automatic effect of a successful petition is that the ordinance is suspended for at least 88 days.[46] If voters reject the ordinance, there are two additional effects. First, "the temporary suspension"

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[40] E.g., *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 749 (45-day moratorium on issuance of "any permit, variance, license, or other entitlement for operation of a medical marijuana dispensary"); *City of Goleta v. Superior Court* (2006) 40 Cal.4th 270, 280 ("45-day moratorium on approval of development proposals"); *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 536 (moratorium on construction of certain "buildings or structures"); *Carson Mobilehome Park Owners Association v. City of Carson* (1983) 35 Cal.3d 184, 187 ("90-day moratorium on rent increases in mobilehome parks").

[41] See generally, e.g., *Bank of the Orient v. Town of Tiburon* (1990) 220 Cal.App.3d 992.

[42] See *ante*, fn. 32.

[43] Gov. Code, § 66300, subd. (b)(1)(B)(i).

[44] Black's Law Dict. (12th ed. 2024), moratorium; see *ante*, fn. 36.

[45] Elec. Code, §§ 9144 (counties), 9237 (cities).

[46] By comparison, moratorium ordinances under section 65858 can initially last only 45 days, and can only be extended with a four-fifths vote by the legislative body.

of the ordinance "becomes permanent by operation of law."[47] Second, the legislative body is temporarily prohibited from reenacting the same measure—either for one year (for cities),[48] or until there is "a material change in circumstances" (for counties).[49]

Here, our requestor contemplates an enacted measure that would have either increased the intensity of authorized housing use or permitted housing in new locations. Either way, the measure would allow additional housing compared to the status quo. A successful referendum petition challenging the measure would automatically suspend it from taking effect. Because the measure would have allowed additional housing, suspending the measure also has the effect of suspending development of that additional housing. Moreover, if voters ultimately reject the underlying measure, then development of that housing remains permanently suspended, and the legislative body is temporarily restricted from reenacting a separate ordinance to again authorize that development.

In short, a referendum rejecting an ordinance that would allow additional housing imposes three suspensions: a temporary suspension of the ordinance pending the vote, a permanent suspension after the ballot-box rejection, and an additional suspension of the legislative body's authority to reenact the same policy (for one year or indefinitely). We conclude that the "effect" of these suspensions is to impose "a moratorium or similar restriction or limitation on housing development" in violation of subdivision (b)(1)(B)(i).

A superior court adopted this interpretation in *NRF Project Owner LLC v. City of Oceanside*.[50] In that case, the court considered a referendum rejecting a zoning change that would have enabled a housing development.[51] The court held that the challenged referendum violated the statute's moratorium restriction, because the "effect" of the referendum was to "prevent[] development of up to 585 homes," meaning that the referendum was a "limitation on housing development" under subdivision (b)(1)(B).[52]

Following *Oceanside*, the Legislature amended the Housing Crisis Act to extend its operation by five years, among other changes.[53] During that process, the Assembly

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[47] *County of Kern v. T.C.E.F., Inc.*, *supra*, 246 Cal.App.4th at p. 319; see Elec. Code, §§ 9144, 9145 (counties), 9237, 9241 (cities).

[48] Elec. Code, § 9241.

[49] *County of Kern v. Alta Sierra Holistic Exchange Service*, *supra*, 46 Cal.App.5th at p. 85; see Elec. Code, §§ 9140-9147.

[50] *The NRF Project Owner LLC v. City of Oceanside* (Super. Ct. San Diego County, May 6, 2021, No. 37-2020-00025295-CU-MC-CTL) Minute Order, at p. 1.

[51] *Ibid.*

[52] *Id.* at pp. 2-3.

[53] S.B. 8.

Committee on Local Government specifically cited *Oceanside* as an example of the Act's "impact on housing development."[54] The Committee's analysis noted that the *Oceanside* developer had argued "that the referendum violated the [Housing Crisis Act's] prohibition on housing moratoria," and that the court agreed because the measure "'has the effect of limiting housing development.'"[55] The Legislature then amended section 66300(b) without changing the moratorium language. That legislators were aware of and cited *Oceanside* suggests that the Legislature concurred in (or ratified) the superior court's reasoning that referenda can violate subdivision (b)(1)(B)'s anti-moratorium provision.[56]

ii. We recognize that it is also possible to read the text of subdivision (b)(1) as not applying to referenda at all. The text states that an "affected" city or county "shall not *enact*" a "development policy, standard, or condition" that would have prohibited effects.[57] In turn, a "development policy, standard, or condition" means a "provision of, or amendment to" "a general plan," "a specific plan," or "a zoning ordinance."[58]

One way to read these provisions together is that subdivision (b)(1) applies only to ordinances adopted by a local legislative body or by the electorate as initiative measures. Such legislative enactments—whether passed by a city council, a board of supervisors, or the electorate—can directly enact a "provision of" or "amendment to" a general plan, specific plan, or zoning ordinance. A referendum, by contrast, is possible only after "final passage" of an ordinance by a legislative body.[59] And a referendum that *rejects* a legislative enactment does not, by this account, separately enact a different measure—it simply "rejects a statutory alteration" enacted by the legislative body "*before* it becomes law."[60]

Under this narrower reading, a referendum that rejects a pro-housing legislative enactment would not "enact" a "development policy, standard, or condition" within the meaning of section 66300(b)(1)—it would simply reject an enactment that would have allowed additional housing. So read, considering and then rejecting a pro-housing measure via referendum in this manner would not violate subdivision (b)(1) any more

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[54] Assem. Com. on Local Gov., analysis of S.B. 8, as amended June 1, 2021, p. 6.

[55] *Ibid.*

[56] See *People v. Bouzas* (1991) 53 Cal.3d 467, 475.

[57] Gov. Code, § 66300, subd. (b)(1), italics added.

[58] *Id.*, subd. (a)(5).

[59] Elec. Code, § 9141 (counties); see also *id.*, § 9235 (cities).

[60] *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1082, italics added.

than if a city council member introduced a pro-housing measure but the full council failed to pass it.

We reject this alternative reading for several reasons. The fundamental problem is that it would render section 66300's reference to the referendum power superfluous. Again, the "affected" cities and counties covered by subdivision (b)(1) are defined to "include[] the electorate of an affected county or city exercising its local . . . referendum power."[61] And subdivision (b)(1) is the statute's primary substantive provision—it is the only part of section 66300 that imposes a *restriction* on "affected" cities and counties.[62] As a result, the only way that the Legislature's choice to include the "referendum power" can have meaning is through subdivision (b)(1).

As a general principle of statutory interpretation, "we consider portions of a statute in the context of the entire statute . . . , giving significance to *every word*, phrase, sentence, and part of an act in pursuance of the legislative purpose."[63] And in the context of this statute, section 66300 states that "[i]t is the intent of the Legislature that this section be *broadly construed* so as to *maximize* the development of housing within this state."[64] Interpreting section 66300(b)(1) as not applying to referenda would violate both of these interpretive guidelines, because it would render superfluous the reference to the "referendum power," and would permit actions that undermine the statute's objective.

Another possible reading of section 66300(b)(1) is that it applies only in scenarios where voters *ratify* an anti-housing ordinance that itself would violate subdivision (b)(1), but not in scenarios where voters *reject* a pro-housing ordinance that complies with the statute. We reject this reading as well, as it would also render the statute's reference to the referendum power effectively meaningless. That is because an ordinance passed by a legislative body that violates section 66300 is "void."[65] If the Legislature meant only to prohibit referenda *ratifying* measures that already violated the statute, there would be no reason to apply subdivision (b)(1) to the referendum power—the measure would already be void immediately upon final passage by the legislative body, regardless of whether there was a referendum. Accordingly, the express inclusion of the "referendum power"

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[61] Gov. Code, § 66300, subd. (a)(3).

[62] All other references to "affected" cities or counties are in provisions that define "affected" or provide exceptions to subdivision (b)(1). (See *id.*, subds. (a), (d) (definitions), subds. (c), (f), (g)(2), (h), (i) (exceptions).)

[63] *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063, italics added.

[64] Gov. Code, § 66300, subd. (e)(2), italics added.

[65] See *id.*, subd. (b)(2) ("Any development policy, standard, or condition . . . that does not comply with this section shall be deemed void").

would have no independent force unless subdivision (b)(1) also applies to referenda that *reject* measures authorizing additional housing.

Finally, we acknowledge that courts "jealously guard" the referendum power and find it preempted only with a "definite indication" or a "clear showing" of legislative intent.[66] But the Legislature is free to restrict local referendum authority, just as it may pass any "general laws of statewide importance that override local legislation."[67] Here, section 66300 clearly addresses a matter of statewide concern—the "housing emergency" declared by the statute.[68] And its reference to the "local . . . referendum power" in a provision that explicitly limits local authority demonstrates a sufficiently clear and definite intent to restrict the referendum power.[69] Indeed, as the *Oceanside* court noted in concluding that section 66300 applies to referenda, "the Legislature made definite indications and a clear showing of intent to preempt referendums."[70]

* * *

In sum, we conclude that section 66300(b)(1) applies to referenda, and that a referendum rejecting a legislative enactment that would have allowed additional housing can constitute a prohibited moratorium-like restriction under subdivision (b)(1)(B)(i).

b. Our requestor also asks whether such referenda can violate subdivision (b)(1)(A). Specifically, the request asks whether a referendum rejecting a measure that would have allowed additional housing can constitute "[a] change in the 'general plan land use designation, specific plan land use designation, or zoning' to a less intensive use, or a reduction in land use intensity, in violation of subdivision (b)(1)(A)."

Subdivision (b)(1)(A) applies to enactments with the "effect[]" of:

> [i] *Changing* the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or [ii] *reducing* the intensity of land use within an existing general plan

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[66] *City of Morgan Hill v. Bushey*, *supra*, 5 Cal.5th at pp. 1078-1079.

[67] *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 779.

[68] S.B. 330, § 2, subd. (b).

[69] See *The NRF Project Owner LLC v. City of Oceanside* (Super. Ct. San Diego County, May 6, 2021, No. 37-2020-00025295-CU-MC-CTL) Minute Order, at p. 1 (explaining that the Housing Crisis Act includes "definite indications and a clear showing of intent to preempt referendums designed to restrict 'development of housing within this state'").

[70] *Id.* at p. 2. Although the court did not specifically analyze whether a referendum can be an "enact[ment]" under section 66300 (the question we discuss above), the court's holding that a referendum can violate subdivision (b)(1) implicitly concludes that it can.

> land use designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B) or subdivision (h).[71]

This provision defines "reducing the intensity of land use" to include "reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity."

As explained above, land use regulations operate by first defining land use categories (such as zones) and then mapping those categories to specific locations. Subdivision (b)(1)(A)'s two main clauses correspond to these steps:

i. First, the "reducing" clause (clause "ii" in the quote above) applies to measures that *redefine* existing land use *categories* (i.e., "designation[s]" and "district[s]"). This clause prohibits redefining land use categories in a manner that "reduc[es] the intensity of land use . . . below what was allowed . . . as in effect on January 1, 2018."[72] Here, that 2018 baseline as a practical matter renders this clause inapplicable to referenda. A referendum that rejects a legislative enactment simply leaves in place the status quo prior to the rejected measure's passage. But the Housing Crisis Act did not take effect until January 2020, meaning that any covered referendum will generally restore a *post-2018* status quo, and so would not redefine a land use category to reduce its "intensity" "below what was allowed . . . on January 1, 2018.[73] Still, the inapplicability of this clause to referendum is unlikely to make any practical difference, because referenda rejecting measures that would have redefined land use categories to permit *more* housing would still violate subdivision (b)(1)(B)(i)'s anti-moratorium provision, as discussed above.

ii. Second, the "[c]hanging" clause applies to measures that *redesignate* particular *parcels* to a preexisting "designation" or zoning category that permits "a less intensive use."[74] From the text of the statute, it is not entirely clear whether the 2018 baseline date

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[71] Gov. Code, § 66300, subd. (b)(1)(A), italics added. The exception in subparagraph (B)(ii) applies to limitations approved by the Department of Housing and Community Development to protect against health and safety threats, or for certain affordable housing projects. Subdivision (h) allows concurrent reductions and increases in residential capacity as long as "there is no net loss in residential capacity."

[72] Gov. Code, § 66300, subd. (b)(1)(A).

[73] See Cal. Const., art. IV, § 8, subd. (c)(2) (effective dates of statutes).

[74] Gov. Code, § 66300, subd. (b)(1)(A).

also applies to this clause. If it does, then the clause is inapplicable to referenda for the reasons just described. But even so, referenda that would otherwise be covered by this clause could still be prohibited by subdivision (b)(1)(B)(i)'s anti-moratorium provision.

In our view, the better reading of the statute appears to be that the 2018 baseline does not apply to measures that change the designation of parcels from one category to another. This reading best aligns with the text: "Changing" a category "to a less intensive use" is a grammatically complete comparison. By contrast, it would be disjointed to consider a "less intensive use . . . below what was allowed . . . on January 1, 2018." If the statute meant to apply the 2018 baseline to the parcel-redesignation clause, we would expect the statute to discuss a less intensive use "*than*" what was allowed on January 1, 2018, not "*below*" what was allowed on that date.[75] And construing the 2018 baseline to apply only to the category-redefinition clause is consistent with the Legislature's instruction to construe the section "broadly" and its exceptions "narrowly," "to maximize the development of housing within this state."[76]

In any event, we need not definitively resolve whether subdivision (b)(1)(A)'s 2018 baseline also applies to the parcel-redesignation clause. Our requestor's question does not specify whether the amendments envisioned would accomplish their objectives by redefining land use categories or by redesignating parcels or regions to different preexisting categories. And subdivision (b)(1)(B)(i)'s anti-moratorium provisions would apply to the hypothesized referenda regardless of the mechanics of the underlying legislative enactment that was rejected. Accordingly, the referenda envisioned by our requestor would be void as a moratorium-like restriction under section 66300(b)(1)(B)(i).

2. A City or County May Not Unilaterally Declare a Referendum that Violates Section 66300 Void and Unenforceable

We next consider whether a city or county that determines that a referendum violates section 66300 may unilaterally declare the referendum void.

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[75] The only textual indication that the 2018 baseline could apply to both clauses is the fact that the "[c]hanging" and "reducing" clauses are not separated by a comma, while there is a comma before the "below what was allowed . . . on January 1, 2018" clause. But this comma did not appear in the originally enacted version of the statute. (See S.B. 330, § 13.) Instead, it was added by a subsequent enactment intended to clarify other aspects of this provision. (See S.B. 8, § 11; Leg. Counsel's Digest, S.B. 8.) There is no indication that the subsequent insertion of a comma was intended to substantively alter the provision's meaning; to the contrary, the Legislature stated that the amendments to subdivision (b)(1)(A) did "not constitute a change in, but are declaratory of, existing law." (S.B. 8, § 11, codified at Gov. Code, § 66300, subd. (j).)

[76] Gov. Code, § 66300, subd. (e)(2).

Under the California Constitution, voters can propose, approve, or reject local laws using their initiative and referendum powers.[77] The procedures governing local referenda are set forth in the Elections Code. Courts have held that these procedures impose mandatory, ministerial duties on local officials and "have not distinguished between referendums and initiatives with respect to [this] ministerial duty."[78]

Before an election, so long as the statutory procedures have been followed, "[l]ocal governments are not empowered to exercise discretion in determining whether a duly certified referendum is placed on the ballot."[79] Local officials play the "ministerial function of determining whether the procedural requirements have been met."[80]

If "an initiative measure [or referendum] is unlawful and should not be presented to the voters," the "governmental body, or any person or entity with standing, may file a petition for writ of mandate, seeking a court order removing the initiative measure from the ballot."[81] But the government "may not *unilaterally* decide to prevent a duly qualified initiative [or referendum] from being presented to the electorate."[82] Indeed, "courts have uniformly condemned local governments when these legislative bodies have refused to place duly qualified initiatives on the ballot."[83]

A city or county can also "permit [a] measure [or referendum] to be placed on the ballot and then to seek review of its validity postelection."[84]

Nothing in section 66300 departs from these principles or suggests that localities may unilaterally invalidate a procedurally compliant referendum. The statute states that any enactment "that does not comply with this section shall be deemed void."[85] The term "void" aligns with the terminology used by courts and statutes in other preemption

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[77] Cal. Const., art. II, § 11.

[78] *Move Eden Housing v. City of Livermore* (2024) 100 Cal.App.5th 263, 273, fn. 4.

[79] *Ibid.*, quoting *Save Lafayette v. City of Lafayette* (2018) 20 Cal.App.5th 657, 663.

[80] *Id.* at p. 275, quoting *Lin v. City of Pleasanton* (2009) 175 Cal.App.4th 1143, 1155.

[81] *Save Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 149.

[82] *Ibid.*, italics in original.

[83] *Id.* at p. 148. If a jurisdiction nevertheless refuses to place an assertedly illegal measure on the ballot, courts have "[i]n practice . . . allowed local governments to assert such invalidity as a 'defense'" against challenges to the refusal. (*Id.* at p. 150.)

[84] *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465, 482.

[85] Gov. Code, § 66300, subd. (b)(2).

contexts. For example, the California Supreme Court has explained that local laws that conflicts with state law are "void."[86] And section 66300 is not materially different from other ways a referendum might be invalid and yet still must be presented to voters. For instance, officials "may not 'refuse to submit an initiative or referendum measure to the electorate on the ground that it deals with a matter not subject to . . . referendum."[87]

Ultimately, even if a city or county is correct that a referendum is void under subdivision (b)(2), that determination must be made by a court, not a municipality.

3. The Statute of Limitations that Applies to a Housing Crisis Act Challenge Depends on the Nature of the Challenge

Finally, we consider what statute of limitations governs actions brought by private parties to enforce section 66300(b)(1).

Code of Civil Procedure section 338(a) sets a baseline three-year limitations period for "action[s] upon a liability created by statute, other than a penalty or forfeiture." Government Code section 65585(p) applies this period to Housing Crisis Act actions "brought by the office of the Attorney General . . . or by the department [of Housing and Community Development]." Our requestor first asks whether section 65585(p) also applies to actions brought by other parties. We conclude that it does not, as an action by a private party is clearly outside of the "plain language" of this provision.[88]

Our requestor next asks about Government Code section 65009(c), which provides a 90-day limitations period for actions to "attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan" or "zoning ordinance."[89] Our requestor asks whether this period applies to an action under section 66300(b)(1) challenging a "referendum that rejects a decision" by a local legislative body "to adopt or amend a general plan, specific plan, or zoning ordinance."[90]

On its face, the text of section 65009(c) does not extend to voter referenda that reject legislative enactments. As noted, a referendum can occur only *after* a legislative body makes its "final" decision.[91] A referendum is a separate, follow-on action by voters

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[86] *Chevron U.S.A. v. County of Monterey* (2023) 15 Cal.5th 135, 142; *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1116.

[87] *Move Eden Housing v. City of Livermore*, *supra*, 100 Cal.App.5th at p. 274.

[88] See *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.

[89] Gov. Code, § 65009, subd. (c)(1)(A), (B).

[90] We do not consider whether section 65009(c) applies to voter initiatives.

[91] Elec. Code, §§ 9141 (counties), 9235 (cities).

that can permanently suspend that legislative decision.[92] But a referendum does not itself "adopt or amend" a land use regulation, nor is the voter's decision whether to ratify or suspend the already-passed legislative enactment a "decision of a legislative body."[93] Moreover, a challenge to a referendum that rejects a legislative decision does not seek to "attack, review, set aside, void, or annul" that decision—it seeks to *reinstate* the decision by lifting the permanent suspension imposed by the referendum.

In general, limitations periods like section 65009(c) are "technical defenses which should be strictly construed to avoid the forfeiture of a plaintiff's rights."[94] That principle weighs against applying section 65009 beyond its text. But even looking past the statutory text, nothing in section 65009 (or section 66300) indicates a clear intent to apply the 90-day limitations period to referenda that reject pro-housing ordinances.

Section 65009 states that its purpose is to "to reduce delays and restraints upon expeditiously completing housing projects" by limiting the "chilling effects" posed by the threat of litigation, and "to provide certainty for property owners and local governments regarding decisions made pursuant to this division."[95] Here, none of these objectives necessarily require a short limitations period for challenging referenda that reject measures allowing additional housing. After the enactment of such an ordinance, there would be a 30-day deadline for a referendum petition (and a 90-day deadline to challenge the measure in court). If the referendum resulted in rejection of the measure, any housing projects potentially enabled by the measure would be "restrain[ed]" and "delay[ed]" indefinitely; challenging the referendum could result in *lifting* this restraint.

Moreover, with local land use decisions, the "chilling effects" and uncertainty to land owners (and governments) result primarily from the potential for challenges by *third parties*. But once a referendum rejects a legislative measure allowing new housing, this context flips: land owners would likely be the parties most incentivized to challenge the

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[92] See *County of Kern v. T.C.E.F., Inc.*, *supra*, 246 Cal.App.4th at p. 319; Elec. Code, §§ 9144, 9145 (counties); *id.*, §§ 9237, 9241 (cities).

[93] In *General Development Co., L.P. v. City of Santa Maria* (2012) 202 Cal.App.4th 1391, 1394-1395, the court held that when a legislative body proposes an amendment to a zoning ordinance, the phrase "decision of a legislative body to . . . amend a zoning ordinance" in section 65009(c)(1)(B) extends to either outcome of that "decision"—in other words, to the decision to reject a proposed amendment as well as the decision to approve. That analysis is not relevant to referenda, though, because a referendum is possible only *after* "the decision of a legislative body" to approve a proposed amendment.

[94] E.g., *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 56-57.

[95] Gov. Code, § 65009, subd. (a)(3).

referendum, and any party who wanted prompt resolution would be free to bring an action immediately, regardless of the limitations period.

Finally, the Housing Crisis Act states that section 66300 is intended to be applied "broadly" "to maximize the development of housing."[96] Enabling challenges to referenda that violate this statute is one way to promote maximal housing development. Moreover, this statute sets a three-year limitations period for challenges by the Attorney General or the Department of Housing and Community Development.[97] As a result, the potential for private lawsuits challenging a referendum within this same three-year period will not extend the period in which property owners and governments would face uncertainty.[98]

For these reasons, we conclude that section 65009(c)'s 90-day limitations period does not apply to actions challenging referenda that reject legislative decisions. Because this limitations period does not apply, Housing Crisis Act challenges to referenda are governed instead by the baseline three-year limitations period for "action[s] upon a liability created by statute" set forth in section 338 of the Code of Civil Procedure.[99]

CONCLUSION

A referendum rejecting a measure that would allow additional housing can constitute a moratorium-like restriction prohibited by section 66300(b)(1)(B)(i). But a city or county cannot deem such a referendum void on its own; it must obtain a court order. The limitations period that applies to challenges under the Housing Crisis Act depends on the action challenged: decisions by local legislative bodies are generally subject to a 90-day limitations period, while referenda are subject to a three-year period.

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[96] *Id.*, § 66300, subd. (e)(2).

[97] See *id.*, § 65585, subd. (p).

[98] In addition to substantive challenges, referenda are also subject to procedural challenges not applicable to legislative-body decisions. (E.g., Elec. Code, § 16401.)

[99] In *Believe in Chico LLC v. City of Chico* (Cal. Ct. App., Aug. 6, 2026, No. C104553), 2026 WL 2271921, a section 66300 challenge to a referendum was recently dismissed as untimely. The court did not decide which limitations period applied. It noted that the various challenges were moot and/or time-barred even under section 338, and declined to decide whether the voter referendum was subject to section 65009(c). (*Id.*, at p. *3 fn. 3.)