

AMENDED IN SENATE APRIL 18, 2007

AMENDED IN SENATE APRIL 10, 2007

AMENDED IN SENATE MARCH 22, 2007

SENATE BILL

No. 303

Introduced by Senator Ducheny

February 16, 2007

An act to amend Sections 65301, 65582, 65583, 65583.2, 65584.09, 65585, and 65860 of, to add Sections 65300.1, 65583.3, 65588.2, and 65588.3 to, and to repeal and add Section 65588 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 303, as amended, Ducheny. Local government: housing.

(1) Existing law, the Planning and Zoning Law, governs the authority for and scope of general plans for local governments.

This bill would state the findings of the Legislature regarding the availability and cost of housing throughout the state.

(2) Existing law requires each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city that addresses a number of elements, as specified. Existing law provides that the general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area.

This bill would require the general plan, and each of its elements to encompass a planning and projection period of at least 20 years, except for the housing element, and would require each element, except for the housing element, to be updated at least every 10 years. This bill would require the housing element to be updated, as specified.

(3) Existing law, defines various terms in relation to housing elements.

This bill would define “regional housing need” and “existing and projected housing need” to mean the minimum amount of housing needed over the next 10-year period.

(4) Existing law requires the housing element of a general plan to identify and analyze various elements, and include a statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

This bill would require the statement be relative to the maintenance, preservation, improvement, and development of housing for extremely low, very low, low- and moderate-income households, and for any special housing needs, as specified.

Existing law provides that where the total housing needs identified exceed available resources and the community’s ability to satisfy the need within the content of the general plan requirements, as specified, the quantified objectives must establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a 5-year period.

This bill would, instead, require the quantified objectives to estimate the maximum number of housing units for specified categories that can be constructed, rehabilitated, and conserved over a 10-year period.

Existing law requires the housing element to include, among other things, a program that sets forth a 5-year schedule for actions the local government is undertaking, or intends to undertake to implement the policies and achieve the goals and objectives of the housing element, as specified. The program adopted must, among other requirements, identify actions that will be taken to make sites available during the planning period of the general plan, as specified.

This bill would, instead, require the program to identify sites to facilitate and encourage the development of a variety of types of housing for all income levels, as specified, identify policies and incentives to promote infill development and the efficient uses of land, and to both, remove the constraints to, and provide reasonable accommodations for, specified housing for persons with disabilities, as specified.

The bill would require a city or county to submit to the department written documentation of the jurisdiction’s actions to comply with these requirements.

(5) Existing law requires the housing element of a general plan to include an inventory of sites that can be developed for housing within

the planning period to accommodate that portion of a city's or county's share of the regional housing need for all income levels, as specified, and requires the city or county to provide an analysis demonstrating how the adopted densities accommodate its share of the regional housing need for lower income households or meet specified densities to accommodate housing for lower income households.

This bill would delete the option to provide an analysis demonstrating how the adopted densities accommodate the city's or county's share of the regional housing need for lower income households and would, instead, require cities and counties to meet the specified densities to accommodate housing for lower income households.

(6) Existing law requires the housing element of a general plan to include an inventory of sites that can be developed for housing within the planning period to accommodate that portion of a city's or county's share of the regional housing need for all income levels, as specified.

This bill would require the city council or county board of supervisors to designate and zone sites for residential use to accommodate the jurisdiction's 10-year housing need and make findings regarding the designation and zoning, as specified. The bill would also require the city or county to approve projects that are consistent with the designation and zoning on these sites, as specified. The bill would also require that if the local government has not satisfied these requirements, the development of affordable housing projects, as defined, on sites identified pursuant to the inventory of land suitable for residential development to allow a specified minimum number of units per acre shall be by "use by right" as that term is defined in these provisions. By imposing additional duties upon local officials, this bill would create a state-mandated local program.

(7) Existing law requires each local government to review its housing elements as frequently as appropriate to evaluate a number of factors, as specified.

This bill would revise the factors that each local government is required to evaluate in its review of the housing element and would require the housing element to be updated every 5 years. The bill would also specify the date, not yet determined, that specific groups of local governments are required to update the housing elements, notwithstanding the 5-year requirement.

The bill would also provide that the deadlines specified for the amendment of the housing element are mandatory and these modifications are not intended to affect existing law with respect to the

planning, use, or development of areas outside the sites designated and zoned for residential use to accommodate the jurisdiction's 10-year housing need.

(8) Existing law requires county and city ordinances to be consistent with the general plan. For a zoning ordinance to be considered consistent with a general plan officially adopted by a county or city, the various land uses authorized by the ordinance must be compatible with the objectives, policies, general land uses and programs specified in the general plan. Existing law also authorizes a resident or property owner within a city or county to bring an action or proceeding to enforce compliance with these provisions within 90 days of the enactment of any new zoning ordinance or the amendment of an existing ordinance. Existing law also applies these provisions to specified charter cities.

This bill would require the county or city zoning ordinances to be consistent with the general plan of the county or city by the date of the next housing element update, and thereafter. The bill would revise the factors required for a zoning ordinance to be considered consistent with a general plan to include a requirement for residential uses that the zoning ordinance allows development at the density range specified in the general plan without the need for any additional land use approval that is legislative or quasi-legislative in nature.

The bill would authorize a property owner to bring an action to require that the zoning on its property be made consistent with the general plan without regard to when the zoning ordinance was adopted or amended. ~~The bill would also entitle a prevailing petitioner who brought an action to enforce these provisions to reasonable attorney's fees.~~

This bill would also declare that these provisions have statewide implications and would apply these provisions to a charter city, charter county, and a charter city and county as well as general law cities and counties.

(9) This bill would make certain declarations concerning the Court of Appeal decision in *Mira Development Corporation of San Diego v. City of San Diego* (1988) 205 Cal.App.3d 1201.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 65300.1 is added to the Government
2 Code, to read:

3 65300.1. The Legislature finds and declares all of the following:

4 (a) The lack of housing is a critical problem that threatens the
5 economic prosperity, environment, and quality of life of California
6 families.

7 (b) The supply and cost of housing throughout the state is
8 inextricably linked to the quantity of suitable and available land
9 designation and zoned to allow residential development, and for
10 that reason, designating and zoning land for housing is a matter
11 of statewide concern.

12 (c) Local governments shall utilize their land use authority in
13 a manner that accommodates housing needs while meeting the
14 objectives for comprehensive planning set forth in Section 65300.

15 SEC. 2. Section 65301 of the Government Code is amended
16 to read:

17 65301. (a) The general plan shall be so prepared that all or
18 individual elements of it may be adopted by the legislative body,
19 and so that it may be adopted by the legislative body for all or part
20 of the territory of the county or city and any other territory outside
21 its boundaries that in its judgment bears relation to its planning.
22 The general plan may be adopted in any format deemed appropriate
23 or convenient by the legislative body, including the combining of
24 elements. The legislative body may adopt all or part of a plan of
25 another public agency in satisfaction of all or part of the
26 requirements of Section 65302 if the plan of the other public
27 agency is sufficiently detailed and its contents are appropriate, as
28 determined by the legislative body, for the adopting city or county.

29 (b) The general plan may be adopted as a single document or
30 as a group of documents relating to subjects or geographic
31 segments of the planning area. The general plan and each of its
32 elements shall encompass a planning and projection period of not
33 less than 20 years, except for the housing element, which shall
34 encompass a planning and projection period consistent with the
35 regional housing need determined under Section 65584. Each
36 element shall be updated as necessary not less than every 10 years,
37 except for the housing element, which shall be updated as provided
38 in Article 10.6 (commencing with Section 65580). *Nothing in this*

1 *subdivision is intended to require a local government to designate*
2 *or zone land for residential use beyond the requirements set forth*
3 *in subdivision (a) of Section 65583.3.*

4 (c) The general plan shall address each of the elements specified
5 in Section 65302 to the extent that the subject of the element exists
6 in the planning area. The degree of specificity and level of detail
7 of the discussion of each element shall reflect local conditions and
8 circumstances. However, this section shall not affect the
9 requirements of subdivision (c) of Section 65302, nor be construed
10 to expand or limit the authority of the Department of Housing and
11 Community Development to review housing elements pursuant to
12 Section 65585 or Section 50459 of the Health and Safety Code.

13 (d) The requirements of this section shall apply to charter cities.

14 SEC. 3. Section 65582 of the Government Code is amended
15 to read:

16 65582. As used in this article:

17 (a) “Community,” “locality,” “local government,” or
18 “jurisdiction” means a city, city and county, or county.

19 (b) “Council of governments” means a single or multicounty
20 council created by a joint powers agreement pursuant to Chapter
21 5 (commencing with Section 6500) of Division 1 of Title 1.

22 (c) “Department” means the Department of Housing and
23 Community Development.

24 (d) “Housing element” or “element” means the housing element
25 of the community’s general plan, as required pursuant to this article
26 and subdivision (c) of Section 65302.

27 (e) “Regional housing need” and “existing and projected housing
28 need” mean the minimum amount of housing needed over the next
29 10-year period.

30 SEC. 4. Section 65583 of the Government Code is amended
31 to read:

32 65583. The housing element shall consist of an identification
33 and analysis of existing and projected housing needs and a
34 statement of goals, policies, quantified objectives, financial
35 resources, and scheduled programs for the preservation,
36 improvement, and development of housing. The housing element
37 shall identify adequate sites for housing, including rental housing,
38 factory-built housing, and mobilehomes, and shall make adequate
39 provision for the existing and projected needs of all economic

1 segments of the community. The element shall contain all of the
2 following:

3 (a) An assessment of housing needs and an inventory of
4 resources and constraints relevant to the meeting of these needs.
5 The assessment and inventory shall include all of the following:

6 (1) An analysis of population and employment trends and
7 documentation of projections and a quantification of the locality's
8 existing and projected housing needs for all income levels,
9 including extremely low income households, as defined in
10 subdivision (b) of Section 50105 and Section 50106 of the Health
11 and Safety Code. These existing and projected needs shall include
12 the locality's share of the regional housing need in accordance
13 with Section 65584. Local agencies shall calculate the subset of
14 very low income households allotted under Section 65584 that
15 qualify as extremely low income households. The local agency
16 may either use available census data to calculate the percentage
17 of very low income households that qualify as extremely low
18 income households or presume that 50 percent of the very low
19 income households qualify as extremely low income households.
20 The number of extremely low income households and very low
21 income households shall equal the jurisdiction's allocation of very
22 low income households pursuant to Section 65584.

23 (2) An analysis and documentation of household characteristics,
24 including level of payment compared to ability to pay, housing
25 characteristics, including overcrowding, and housing stock
26 condition.

27 (3) An inventory of land suitable for residential development,
28 including vacant sites and sites having potential for redevelopment,
29 and an analysis of the relationship of zoning and public facilities
30 and services to these sites, consistent with the requirements of
31 Section 65583.2.

32 (4) An analysis of potential and actual governmental constraints
33 upon the maintenance, improvement, or development of housing
34 for all income levels, including the types of housing identified in
35 paragraph (1) of subdivision (c), and for persons with disabilities
36 as identified in the analysis pursuant to paragraph (6), including
37 land use controls, building codes and their enforcement, site
38 improvements, fees and other exactions required of developers,
39 and local processing and permit procedures. The analysis shall
40 also demonstrate local efforts to remove governmental constraints

1 that hinder the locality from meeting its share of the regional
2 housing need in accordance with Section 65584 and from meeting
3 the need for housing for persons with disabilities identified
4 pursuant to paragraph (6).

5 (5) An analysis of potential and actual nongovernmental
6 constraints upon the maintenance, improvement, or development
7 of housing for all income levels, including the availability of
8 financing, the price of land, and the cost of construction.

9 (6) An analysis of any special housing needs, such as those of
10 the elderly, persons with disabilities, large families, farmworkers,
11 families with female heads of households, and families and persons
12 in need of emergency shelter.

13 (7) An analysis of opportunities for energy conservation with
14 respect to residential development.

15 (8) An analysis of existing assisted housing developments that
16 are eligible to change from low-income housing uses during the
17 next 10 years due to termination of subsidy contracts, mortgage
18 prepayment, or expiration of restrictions on use. “Assisted housing
19 developments,” for the purpose of this section, shall mean
20 multifamily rental housing that receives governmental assistance
21 under federal programs listed in subdivision (a) of Section
22 65863.10, state and local multifamily revenue bond programs,
23 local redevelopment programs, the federal Community
24 Development Block Grant Program, or local in-lieu fees. “Assisted
25 housing developments” shall also include multifamily rental units
26 that were developed pursuant to a local inclusionary housing
27 program or used to qualify for a density bonus pursuant to Section
28 65916.

29 (A) The analysis shall include a listing of each development by
30 project name and address, the type of governmental assistance
31 received, the earliest possible date of change from low-income use
32 and the total number of elderly and nonelderly units that could be
33 lost from the locality’s low-income housing stock in each year
34 during the 10-year period. For purposes of state and federally
35 funded projects, the analysis required by this subparagraph need
36 only contain information available on a statewide basis.

37 (B) The analysis shall estimate the total cost of producing new
38 rental housing that is comparable in size and rent levels, to replace
39 the units that could change from low-income use, and an estimated
40 cost of preserving the assisted housing developments. This cost

1 analysis for replacement housing may be done aggregately for
2 each five-year period and does not have to contain a
3 project-by-project cost estimate.

4 (C) The analysis shall identify public and private nonprofit
5 corporations known to the local government which have legal and
6 managerial capacity to acquire and manage these housing
7 developments.

8 (D) The analysis shall identify and consider the use of all federal,
9 state, and local financing and subsidy programs which can be used
10 to preserve, for lower income households, the assisted housing
11 developments, identified in this paragraph, including, but not
12 limited to, federal Community Development Block Grant Program
13 funds, tax increment funds received by a redevelopment agency
14 of the community, and administrative fees received by a housing
15 authority operating within the community. In considering the use
16 of these financing and subsidy programs, the analysis shall identify
17 the amounts of funds under each available program which have
18 not been legally obligated for other purposes and which could be
19 available for use in preserving assisted housing developments.

20 (b) (1) A statement of the community's goals, quantified
21 objectives, and policies relative to the maintenance, preservation,
22 improvement, and development of housing for extremely low, very
23 low, low- and moderate-income households, and for any special
24 housing needs identified in paragraph (6) of subdivision (a).

25 (2) It is recognized that the total housing needs identified
26 pursuant to subdivision (a) may exceed available resources and
27 the community's ability to satisfy this need within the content of
28 the general plan requirements outlined in Article 5 (commencing
29 with Section 65300). Under these circumstances, the quantified
30 objectives need not be identical to the total housing needs. The
31 quantified objectives shall estimate the maximum number of
32 housing units for extremely low, very low, low- and
33 moderate-income categories, that can be constructed, rehabilitated,
34 and conserved over a ~~ten-year~~ *10-year* time period.

35 (c) A program that sets forth a five-year schedule of actions the
36 local government is undertaking or intends to undertake to
37 implement the policies and achieve the goals and objectives of the
38 housing element through the administration of land use and
39 development controls, provision of regulatory concessions and
40 incentives, and the utilization of appropriate federal and state

1 financing and subsidy programs when available and the utilization
2 of moneys in a low- and moderate-income housing fund of an
3 agency if the locality has established a redevelopment project area
4 pursuant to the Community Redevelopment Law (Division 24
5 (commencing with Section 33000) of the Health and Safety Code).
6 In order to make adequate provision for the housing needs of all
7 economic segments of the community, the program shall do all of
8 the following:

9 *(1) (A) Identify actions that shall be taken (i) to make sites*
10 *available during the first year of the planning period of the housing*
11 *element with appropriate zoning and development standards and*
12 *with services and facilities to accommodate that portion of the*
13 *city's or county's share of the regional housing need for each*
14 *income level that could not be accommodated on sites identified*
15 *in the inventory completed pursuant to paragraph (3) of subdivision*
16 *(a) without rezoning, and (ii) to comply with the requirements of*
17 *Section 65584.09.*

18 ~~(1) (A)~~

19 *(B) Identify sites, as needed, to facilitate and encourage the*
20 *development of a variety of types of housing for all income levels,*
21 *including multifamily rental housing, factory-built housing,*
22 *manufactured homes, housing for agricultural employees,*
23 *supportive housing, single-room occupancy units, emergency*
24 *shelters, and transitional housing.*

25 *(C) Where the inventory of sites pursuant to paragraph (3) of*
26 *subdivision (a) does not identify adequate sites to accommodate*
27 *the need for groups of all household income levels pursuant to*
28 *Section 65584, the program shall identify sites that shall be made*
29 *available during the first year of the planning period and that can*
30 *be developed for housing within the planning period pursuant to*
31 *subdivision (h) of Section 65583.2.*

32 ~~(B)~~

33 *(D) Identify policies and incentives to promote infill*
34 *development and the efficient use of land, including, but not limited*
35 *to, expedited permit processing, modified development standards,*
36 *and fee waivers.*

37 ~~(C)~~

38 *(E) Where the inventory of sites pursuant to paragraph (3) of*
39 *subdivision (a) does not identify adequate sites to accommodate*
40 *the need for farmworker housing, the program shall provide for*

1 sufficient sites to meet the need with zoning that permits
2 farmworker housing use by right, including density and
3 development standards that could accommodate and facilitate the
4 feasibility of the development of farmworker housing for low- and
5 very low income households.

6 (2) Assist in the development of adequate housing to meet the
7 needs of extremely low, very low, low-, and moderate-income
8 households.

9 (3) Address and, where appropriate and legally possible, remove
10 governmental constraints to the maintenance, improvement, and
11 development of housing, including housing for all income levels
12 and housing for persons with disabilities. The program shall remove
13 constraints to, and provide reasonable accommodations for housing
14 designed for, intended for occupancy by, or with supportive
15 services for, persons with disabilities.

16 (4) Conserve and improve the condition of the existing
17 affordable housing stock, which may include addressing ways to
18 mitigate the loss of dwelling units demolished by public or private
19 action.

20 (5) Promote housing opportunities for all persons regardless of
21 race, religion, sex, marital status, ancestry, national origin, color,
22 familial status, or disability.

23 (6) Preserve for lower income households the assisted housing
24 developments identified pursuant to paragraph (8) of subdivision
25 (a). The program for preservation of the assisted housing
26 developments shall utilize, to the extent necessary, all available
27 federal, state, and local financing and subsidy programs identified
28 in paragraph (8) of subdivision (a), except where a community has
29 other urgent needs for which alternative funding sources are not
30 available. The program may include strategies that involve local
31 regulation and technical assistance.

32 (7) The program shall *specify the date by which each action*
33 *shall be implemented and shall* include an identification of the
34 agencies and officials responsible for the implementation of the
35 various actions and the means by which consistency will be
36 achieved with other general plan elements and community goals.
37 The local government shall make a diligent effort to achieve public
38 participation of all economic segments of the community in the
39 development of the housing element, and the program shall
40 describe this effort.

1 (d) Except as otherwise provided in this article, amendments to
2 this article that alter the required content of a housing element
3 shall apply to both of the following:

4 (1) A housing element or housing element amendment prepared
5 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
6 where a city, county, or city and county submits a first draft to the
7 department for review pursuant to Section 65585 more than 90
8 days after the effective date of the amendment to this section.

9 (2) Any housing element or housing element amendment
10 prepared pursuant to subdivision (e) of Section 65588 or Section
11 65584.02, where the city, county, or city and county fails to submit
12 the first draft to the department before the due date specified in
13 Section 65588 or 65584.02.

14 SEC. 5. Section 65583.2 of the Government Code is amended
15 to read:

16 65583.2. (a) A city's or county's inventory of land suitable
17 for residential development pursuant to paragraph (3) of
18 subdivision (a) of Section 65583 shall be used to identify sites that
19 can be developed for housing within the planning period and that
20 are sufficient to provide for the jurisdiction's entire share of the
21 regional housing need for all income levels pursuant to Section
22 65584 and to comply with the requirements of Section 65584.09.
23 As used in this section, "land suitable for residential development"
24 includes all of the following:

25 (1) Vacant sites zoned for residential use.

26 (2) Vacant sites zoned for nonresidential use that allows
27 residential development.

28 (3) Residentially zoned sites that are capable of being developed
29 at a higher density.

30 (4) Sites zoned for nonresidential use that can be redeveloped
31 for, and as necessary, rezoned for, residential use.

32 (b) The inventory of land shall include all of the following:

33 (1) A listing of properties by parcel number or other unique
34 reference.

35 (2) The size of each property listed pursuant to paragraph (1),
36 and the general plan designation and zoning of each property.

37 (3) For nonvacant sites, a description of the existing use of each
38 property.

39 (4) A general description of any environmental constraints to
40 the development of housing within the jurisdiction, the

1 documentation for which has been made available to the
2 jurisdiction. This information need not be identified on a
3 site-specific basis.

4 (5) A general description of existing or planned water, sewer,
5 and other dry utilities supply, including the availability and access
6 to distribution facilities. This information need not be identified
7 on a site-specific basis.

8 (6) Sites identified as available for housing for above-moderate
9 income households in areas not served by public sewer systems.
10 This information need not be identified on a site-specific basis.

11 (7) A map that shows the location of the sites included in the
12 inventory, such as the land use map from the jurisdiction's general
13 plan for reference purposes only.

14 (c) Based on the information provided in subdivision (b), a city
15 or county shall determine whether each site in the inventory can
16 accommodate some portion of its share of the regional housing
17 need by income level during the planning period, as determined
18 pursuant to Section 65584. The analysis shall determine whether
19 the inventory can provide for a variety of types of housing,
20 including multifamily rental housing, factory-built housing,
21 mobilehomes, housing for agricultural employees, *supportive*
22 *housing, single-room occupancy units*, emergency shelters, and
23 transitional housing. ~~The~~

24 (1) ~~The~~ city or county shall determine the number of housing
25 units that can be accommodated on each site as follows:

26 (1)

27 (A) If local law or regulations require the development of a site
28 at a minimum density, the department shall accept the planning
29 agency's calculation of the total housing unit capacity on that site
30 based on the established minimum density. If the city or county
31 does not adopt a law or regulations requiring the development of
32 a site at a minimum density, then it shall demonstrate how the
33 number of units determined for that site pursuant to this subdivision
34 will be accommodated.

35 (2)

36 (B) The number of units calculated pursuant to ~~paragraph (1)~~
37 *this paragraph* shall be adjusted as necessary, based on the land
38 use controls and site improvements requirement identified in
39 paragraph (4) of subdivision (a) of Section 65583.

40 (3)

1 (2) Sites identified to accommodate housing for lower income
2 households shall ~~allow~~ *be sites that are not already planned for*
3 *nonresidential development or development with housing for*
4 *non-lower income households, and shall permit* densities consistent
5 with the following:

6 (A) For incorporated cities within nonmetropolitan counties and
7 for nonmetropolitan counties that have micropolitan areas: sites
8 allowing at least 15 units per acre.

9 (B) For unincorporated areas in all nonmetropolitan counties
10 not included in subparagraph (A): sites allowing at least 10 units
11 per acre.

12 (C) For suburban jurisdictions: sites allowing at least 20 units
13 per acre.

14 (D) For jurisdictions in metropolitan counties: sites allowing at
15 least 30 units per acre.

16 (d) For purposes of this section, metropolitan counties,
17 nonmetropolitan counties, and nonmetropolitan counties with
18 micropolitan areas are as determined by the United States Census
19 Bureau. Nonmetropolitan counties with micropolitan areas include
20 the following counties: Del Norte, Humboldt, Lake Mendocino,
21 Nevada, Tehama, and Tuolumne and such other counties as may
22 be determined by the United States Census Bureau to be
23 nonmetropolitan counties with micropolitan areas in the future.

24 (e) A jurisdiction is considered suburban if the jurisdiction does
25 not meet the requirements of subparagraphs (A) and (B) of
26 paragraph (3) of subdivision (c) and is located in a Metropolitan
27 Statistical Area (MSA) of less than 2,000,000 in population, unless
28 that jurisdiction's population is greater than 100,000, in which
29 case it is considered metropolitan. Counties, not including the City
30 and County of San Francisco, will be considered suburban unless
31 they are in a MSA of 2,000,000 or greater in population in which
32 case they are considered metropolitan.

33 (f) A jurisdiction is considered metropolitan if the jurisdiction
34 does not meet the requirements for "suburban area" above and is
35 located in a MSA of 2,000,000 or greater in population, unless
36 that jurisdiction's population is less than 25,000 in which case it
37 is considered suburban.

38 (g) For sites described in paragraph (3) of subdivision (b), the
39 city or county shall specify the additional development potential
40 for each site within the planning period and shall provide an

1 explanation of the methodology used to determine the development
2 potential. The methodology shall consider factors including the
3 extent to which existing uses may constitute an impediment to
4 additional residential development, development trends, market
5 conditions, and regulatory or other incentives or standards to
6 encourage additional residential development on these sites.

7 ~~(h) If a local government fails to rezone adequate sites to
8 accommodate the jurisdiction's share of the regional housing need,
9 as determined under Section 65584, and fails to comply with
10 Section 65584.09 prior to the due date for the housing element
11 pursuant to Section 65588, the remaining sites to be rezoned to
12 accommodate the need for housing for extremely low, very low,
13 and low-income households shall permit owner-occupied and rental
14 multifamily residential use by right. The zoning and~~

15 *(h) The program required under subparagraph (A) of paragraph
16 (1) of subdivision (c) of Section 65583 shall accommodate 100
17 percent of the need for housing for very low and low-income
18 households allocated pursuant to Section 65584 for which site
19 capacity has not been identified in the inventory of sites pursuant
20 to paragraph (3) of subdivision (a) of Section 65583 on sites that
21 shall be zoned to permit owner-occupied and rental multifamily
22 residential use by right during the first year of the planning period.
23 The zoning and development standards for these sites shall permit
24 at least 16 units per site at a density of at least 16 units per acre in
25 jurisdictions described in subparagraphs (A) and (B) of paragraph
26 (3) of subdivision (c), and at least 20 units per acre in jurisdictions
27 described in subparagraphs (C) and (D) of paragraph (3) of
28 subdivision (c). At least 50 percent of the very low and low-income
29 housing need shall be accommodated on sites designated for
30 residential use and for which nonresidential uses or mixed uses
31 are not permitted.*

32 (i) For purposes of this section and Section 65583, the phrase
33 “use by right” shall mean that the local government’s review of
34 the owner-occupied or multifamily residential use may not require
35 a conditional use permit, planned unit development permit, or other
36 discretionary local government review or approval that would
37 constitute a “project” for purposes of Division 13 (commencing
38 with Section 21000) of the Public Resources Code. Any subdivision
39 of the sites shall be subject to all laws, including, but not limited to,
40 the local government ordinance implementing the Subdivision

1 Map Act. A local ordinance may provide that “use by right” does
2 not exempt the use from design review. However, that design
3 review shall not constitute a “project” for purposes of Division 13
4 (commencing with Section 21000) of the Public Resources Code.
5 Use by right for all rental multifamily residential housing shall be
6 provided in accordance with subdivision (f) of Section 65589.5.

7 SEC. 6. Section 65583.3 is added to the Government Code, to
8 read:

9 65583.3. (a) The city council or board of supervisors shall
10 designate *in its housing element sufficient land* and zone sites for
11 residential use to accommodate the jurisdiction’s 10-year housing
12 need from the sites identified pursuant to subdivision (a) of Section
13 65583.2. ~~The designation and zoning shall be adopted and in effect~~
14 ~~on the same date the housing element is required to be updated.~~
15 ~~The local government’s pursuant to subdivision (a) of Section~~
16 ~~65583.2. The city council or board of supervisors shall zone~~
17 ~~sufficient sites to accommodate the jurisdiction 5-year housing~~
18 ~~need from the sites identified pursuant to subdivision (a) of Section~~
19 ~~65583.2. The city council or board of supervisors shall ensure that~~
20 ~~all elements of the general plan are internally consistent at the~~
21 ~~time the zoning is adopted. The local government’s obligation to~~
22 ~~designate and zone sites to accommodate its share of the region’s~~
23 ~~10-year housing need for lower income households shall be~~
24 ~~satisfied by zoning sites designating sites in the housing element~~
25 ~~to allow the specified minimum number of units per acre, as~~
26 ~~identified in subparagraphs (A) to (D), inclusive, of paragraph (3)~~
27 ~~of subdivision (c) of Section 65583.2. The local government shall~~
28 ~~prepare, or cause to be prepared, an environmental impact report~~
29 ~~pursuant to the California Environmental Quality Act (Division~~
30 ~~13 (commencing with Section 21000) of the Public Resource Code).~~
31 ~~in connection with the designation and zoning required by this~~
32 ~~subdivision. The environmental impact report shall address~~
33 ~~potentially significant cumulative impacts, growth inducing~~
34 ~~impacts, off-site impacts, and alternative sites. and zoning required~~
35 ~~under this subdivision. The preparation of the environmental~~
36 ~~impact report shall comply with all substantive and procedural~~
37 ~~requirements of the California Environmental Quality Act (Division~~
38 ~~13 (commencing with Section 21000) of the Public Resource Code).~~
39 (b) Any approval sought in connection with a project that is
40 consistent with the designation and zoning on a site designated

1 and zoned pursuant to subdivision (a), *or identified under*
2 *paragraph (1) of subdivision (c) of Section 65583 or subdivision*
3 *(c) or (h) of Section 65583.2*, shall be subject to the Permit
4 Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

5 ~~(e) Any approval sought in connection with a project that is~~
6 ~~consistent with the designation and zoning on a site designated~~
7 ~~and zoned pursuant to subdivision (a) may not be denied or~~
8 ~~conditioned on reducing the residential project's density below~~
9 ~~that proposed by the applicant unless by four-fifths vote, the city~~
10 ~~council or board of supervisors makes written findings pursuant~~
11 ~~to subdivision (j) of Section 65589.5. For purposes of this section,~~
12 ~~an abstention shall not count as an affirmative vote for purposes~~
13 ~~of satisfying the four-fifths vote requirement. This provision shall~~
14 ~~not create any inference regarding the effect of an abstention under~~
15 ~~existing law in other situations.~~

16 ~~(d)~~

17 (c) When a complete application has been submitted to develop
18 a project on a site designated and zoned pursuant to subdivision
19 (a), and the project is consistent with the designation and zoning,
20 the designation and zoning applicable to the site may not be
21 changed without the consent of the project applicant except by
22 four-fifths vote of the city council or board of supervisors after
23 making written findings pursuant to subdivision (d) *or* (j) of Section
24 65589.5. *An abstention shall not count as an affirmative vote for*
25 *purposes of satisfying the four-fifths vote required under this*
26 *subdivision. This subdivision shall not create any interference*
27 *regarding the effect of an abstention under existing law in other*
28 *situations.*

29 ~~(e)~~

30 (d) If a court finds that a local government has failed to comply
31 with the requirements of subdivision (a), the court shall retain
32 jurisdiction of the action and issue an order to the local government
33 requiring compliance within 120 days or a lesser period ~~if the court~~
34 ~~determines that a lesser period is appropriate, and shall award~~
35 ~~reasonable attorney's fees to the plaintiff or petitioner. Nothing in~~
36 ~~this section shall be construed as limiting any other remedy that~~
37 ~~may exist for a violation of this article, including attorney's fees~~
38 ~~under Section 1021.5 of the Code of Civil Procedure. *period if the*~~
39 ~~*court determines that a lesser period is appropriate.*~~

1 *SEC. 6.3. Section 65584.09 of the Government Code is*
2 *amended to read:*

3 65584.09. (a) For housing elements due pursuant to Section
4 65588 on or after January 1, 2006, if a city or county in the prior
5 planning period failed to identify or make available adequate sites
6 to accommodate that portion of the regional housing need allocated
7 pursuant to Section 65584, then the city or county shall, within
8 the first year of the planning period of the new housing element,
9 zone or rezone adequate sites to accommodate the
10 unaccommodated portion of the regional housing need allocation
11 from the prior planning period.

12 (b) The requirements under subdivision (a) shall be in addition
13 to any zoning or rezoning required to accommodate the
14 jurisdiction's share of the regional housing need pursuant to Section
15 65584 for the new planning period.

16 (c) Nothing in this section shall be construed to diminish the
17 requirement of a city or county to accommodate its share of the
18 regional housing need for each income level during the planning
19 period set forth in Section 65588, including the obligations to (1)
20 implement *the housing element* programs included pursuant to
21 Section 65583 to achieve the goals and objectives *on or before the*
22 *dates specified in the housing element*, including programs to zone
23 or rezone land *within the first year of the planning period*, and (2)
24 timely adopt a housing element with an inventory described in
25 paragraph (3) of subdivision (a) of Section 65583 and a program
26 to make sites available pursuant to paragraph (1) of subdivision
27 (c) of Section 65583, which can accommodate the jurisdiction's
28 share of the regional housing need.

29 *SEC. 6.5. Section 65585 of the Government Code is amended*
30 *to read:*

31 65585. (a) In the preparation of its housing element, each city
32 and county shall consider the guidelines adopted by the department
33 pursuant to Section 50459 of the Health and Safety Code. Those
34 guidelines shall be advisory to each city or county in the
35 preparation of its housing element.

36 (b) At least 90 days prior to adoption of its housing element, or
37 at least 60 days prior to the adoption of an amendment to this
38 element, the planning agency shall submit a draft element or draft
39 amendment to the department. The department shall review the
40 draft and report its written findings to the planning agency within

1 90 days of its receipt of the draft in the case of an adoption or
2 within 60 days of its receipt in the case of a draft amendment.

3 (c) In the preparation of its findings, the department may consult
4 with any public agency, group, or person. The department shall
5 receive and consider any written comments from any public
6 agency, group, or person regarding the draft or adopted element
7 or amendment under review.

8 (d) In its written findings, the department shall determine
9 whether the draft element or draft amendment substantially
10 complies with the requirements of this article.

11 (e) Prior to the adoption of its draft element or draft amendment,
12 the legislative body shall consider the findings made by the
13 department. If the department's findings are not available within
14 the time limits set by this section, the legislative body may act
15 without them.

16 (f) If the department finds that the draft element or draft
17 amendment does not substantially comply with the requirements
18 of this article, the legislative body shall take one of the following
19 actions:

20 (1) Change the draft element or draft amendment to substantially
21 comply with the requirements of this article.

22 (2) Adopt the draft element or draft amendment without changes.
23 The legislative body shall include in its resolution of adoption
24 written findings which explain the reasons the legislative body
25 believes that the draft element or draft amendment substantially
26 complies with the requirements of this article despite the findings
27 of the department.

28 (g) Promptly following the adoption of its element or
29 amendment, the planning agency shall submit a copy to the
30 department.

31 (h) The department shall, within 90 days, review adopted
32 housing elements or amendments and report its findings to the
33 planning agency.

34 (i) *Within one year after the date for the revision of the housing
35 element prescribed in Section 65588, the city or county shall submit
36 to the department written documentation of the jurisdiction's
37 actions to comply with paragraph (1) of subdivision (c) of Section
38 65583 and Section 65584.09 by the deadlines specified in those
39 sections. The department shall review the submission and report
40 its written findings to the jurisdiction within 30 days after its*

1 receipt of the submission. In the preparation of its findings, the
2 department may consult with any public agency, group, or person.
3 The department shall receive and consider any written comments
4 from any public agency, group, or person regarding the
5 jurisdiction's actions. In its written findings, the department shall
6 determine whether the jurisdiction has substantially complied with
7 the requirements of paragraph (1) of subdivision (c) of Section
8 65583 and Section 65584.09. If the department finds that the
9 jurisdiction has failed to substantially comply, the written findings
10 shall state the basis for the findings and shall notify the jurisdiction
11 that its housing element does not substantially comply with the
12 requirements of this article.

13 (j) In any action filed to challenge the validity of a housing
14 element, the inconsistency of an action or omission with the
15 housing element, the failure of the jurisdiction to implement action
16 in the program section of the housing element on or before the
17 date specified in the program, or the failure of the jurisdiction to
18 substantially comply with paragraph (1) of subdivision (c) of
19 Section 65583 or Section 65584.09, it is the intent of the
20 Legislature that the department's guidelines and findings be given
21 substantial deference and weight by the courts with regard to the
22 meaning of this article and any findings of noncompliance with
23 this article.

24 SEC. 7. Section 65588 of the Government Code is repealed.

25 SEC. 8. Section 65588 is added to the Government Code, to
26 read:

27 65588. (a) Each local government shall review its housing
28 element as frequently as appropriate to evaluate all of the
29 following:

30 (1) The effectiveness of the element including a review of the
31 results of goals, objectives, policies, and programs from the prior
32 planning period and an analysis of any difference between what
33 was planned from the prior planning period and what was actually
34 achieved.

35 (2) The appropriateness of the goals, objectives, policies, and
36 programs of the updated element based on the analysis of the
37 review of the results of the prior planning period. The goals,
38 objectives, policies, and programs of the element should be revised
39 to reflect the results of this review.

1 (b) The housing element shall be updated every five years. As
2 part of the five-year update, the city council or board of supervisors
3 shall make any necessary amendments to ensure that there are sites
4 designated and zoned pursuant to Section 65583.3 to accommodate
5 the jurisdiction's housing need for the next 10-year period, as
6 determined pursuant to Section 65584.

7 (c) Notwithstanding subdivision (b) or the date of adoption of
8 the housing element previously in existence, each local government
9 shall revise its housing element according to the following
10 schedule:

11 (1) Local governments within the regional jurisdiction of the
12 Southern California Association of Governments: ____.

13 (2) Local governments within the regional jurisdiction of the
14 Association of Bay Area Governments: ____.

15 (3) Local governments within the regional jurisdiction of the
16 Council of Fresno County Governments, the Kern County Council
17 of Governments, and the Sacramento Area Council of
18 Governments: ____.

19 (4) Local governments within the regional jurisdiction of the
20 Association of Monterey Bay Area Governments: ____.

21 (5) Local governments within the regional jurisdiction of the
22 San Diego Association of Governments: ____.

23 (6) All other local governments: ____.

24 SEC. 9. Section 65588.2 is added to the Government Code, to
25 read:

26 65588.2. All deadlines specified in this article are mandatory,
27 not directory.

28 SEC. 10. Section 65588.3 is added to the Government Code,
29 to read:

30 65588.3. Nothing in this article shall be interpreted to affect
31 existing law with respect to the planning, use, or development of
32 areas outside the sites designated and zoned pursuant to subdivision
33 (a) of Section 65583.3 or to establish any presumption regarding
34 the appropriate designation or use of those areas.

35 SEC. 11. Section 65860 of the Government Code is amended
36 to read:

37 65860. (a) County or city zoning ordinances shall be consistent
38 with the general plan of the county or city by the *mandatory* date
39 of the next housing element update *required under Section 65588*,
40 and thereafter. This *update* deadline is mandatory, not directory.

1 A zoning ordinance shall be consistent with a city or county general
2 plan only if all of the following conditions are met:

3 (1) The city or county has officially adopted ~~such a plan~~ *the*
4 *plan and all mandatory elements thereof.*

5 (2) The various land uses authorized by the ordinance are
6 compatible with the objectives, policies, general land uses, and
7 programs specified in the plan.

8 (3) In the case of residential uses, the zoning allows development
9 at the density range specified in the ~~housing element~~ *general plan*
10 without the need for any additional land use approval that is
11 legislative or quasi-legislative in nature.

12 (b) Any resident or property owner within a city or a county,
13 as the case may be, may bring an action or proceeding in the
14 superior court to enforce compliance with subdivision (a). Any
15 action or proceeding brought pursuant to this section shall be
16 governed by Chapter 2 (commencing with Section 1084) of Title
17 1 of Part 3 of the Code of Civil Procedure. No action or proceeding
18 shall be maintained pursuant to this section by any person unless
19 the action or proceeding is commenced and service is made on the
20 legislative body within 90 days of the enactment of any new zoning
21 ordinance or the amendment of any existing zoning ordinance,
22 except that a property owner may, at any time, bring an action to
23 require that the zoning on its property be made consistent with the
24 ~~general plan. The petitioner in an action brought to enforce~~
25 ~~compliance with subdivision (a) shall be entitled to reasonable~~
26 ~~attorney's fees if the petitioner is the prevailing party.~~ *general*
27 *plan.*

28 (c) In the event that a zoning ordinance becomes inconsistent
29 with a general plan by reason of amendment to the plan, or to any
30 element of the plan, the zoning ordinance shall be amended within
31 a reasonable time so that it is consistent with the general plan as
32 amended.

33 ~~(d) With respect to properties identified for residential use in~~
34 ~~the land use element of a general plan that are not identified as~~
35 ~~sites in the housing element, a resident or property owner may~~
36 ~~bring an action or proceeding to require that the zoning on the~~
37 ~~property be made consistent with the land use element.~~

38 (e) Notwithstanding Section 65803, this section has statewide
39 implications and thereby shall apply to a charter city, charter

1 county, and charter city and county as well as general law cities
2 and counties.

3 SEC. 12. In connection with enacting the health or safety
4 findings requirements of Article 10.6 (commencing with Section
5 65580) of Chapter 3 of Division 1 of Title 7 of the Government
6 Code, the Legislature finds and declares that the Court of Appeal
7 opinion in *Mira Development Corporation of San Diego v. City*
8 *of San Diego* (1988) 205 Cal.App.3d 1201, is inconsistent with
9 the Legislature’s intent that (a) the phrase “health or safety” be
10 construed narrowly and (b) that substantial evidence in support of
11 a health or safety finding be of ponderable legal significance,
12 reasonable in nature, credible, and of solid value in light of all of
13 the evidence in the record.

14 SEC. 13. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 a local agency or school district has the authority to levy service
17 charges, fees, or assessments sufficient to pay for the program or
18 level of service mandated by this act, within the meaning of Section
19 17556 of the Government Code.

O