

Introduced by Senator Huff

February 1, 2010

An act to amend Section 65583 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 926, as introduced, Huff. Land use: housing element.

The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that analyzes existing and projected housing needs and includes a statement of goals, qualified objectives, policies, financial resources, and scheduled programs for the maintenance, preservation, improvement, and development of housing.

This bill would make several technical, nonsubstance changes to these provisions of law.

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

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

1 SECTION 1. Section 65583 of the Government Code is
2 amended to read:
3 65583. The housing element shall consist of an identification
4 and analysis of existing and projected housing needs and a
5 statement of goals, policies, quantified objectives, financial
6 resources, and scheduled programs for the preservation,
7 improvement, and development of housing. The housing element
8 shall identify adequate sites for housing, including rental housing,

1 factory-built housing, mobilehomes, and emergency shelters, and
2 shall make adequate provision for the existing and projected needs
3 of all economic segments of the community. The element shall
4 contain all of the following:

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

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

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

29 (3) An inventory of land suitable for residential development,
30 including vacant sites and sites having *the* potential for
31 redevelopment, and an analysis of the relationship of zoning and
32 public facilities and services to these sites.

33 (4) (A) The identification of a zone or zones where emergency
34 shelters are allowed as a permitted use without a conditional use
35 or other discretionary permit. The identified zone or zones shall
36 include sufficient capacity to accommodate the need for emergency
37 shelter identified in paragraph (7), except that each local
38 government shall identify a zone or zones that can accommodate
39 at least one year-round emergency shelter. If the local government
40 cannot identify a zone or zones with *the* sufficient capacity, the

1 local government shall include a program to amend its zoning
2 ordinance to meet the requirements of this paragraph within one
3 year of the adoption of the housing element. The local government
4 may identify additional zones where emergency shelters are
5 permitted with a conditional use permit. The local government
6 shall also demonstrate that existing or proposed permit processing,
7 development, and management standards are objective and
8 encourage and facilitate the development of, or conversion to,
9 emergency shelters. Emergency shelters may only be subject to
10 those development and management standards that apply to
11 residential or commercial development within the same zone except
12 that a local government may apply written, objective standards
13 that include all of the following:

14 (i) The maximum number of beds or persons permitted to be
15 served nightly by the facility.

16 (ii) Off-street parking based upon demonstrated need, provided
17 that the standards do not require more parking for emergency
18 shelters than for other residential or commercial uses within the
19 same zone.

20 (iii) The size and location of exterior and interior onsite waiting
21 and client intake areas.

22 (iv) The provision of onsite management.

23 (v) The proximity to other emergency shelters, provided that
24 emergency shelters are not required to be more than 300 feet apart.

25 (vi) The length of stay.

26 (vii) Lighting.

27 (viii) Security during hours that the emergency shelter is in
28 operation.

29 (B) The permit processing, development, and management
30 standards applied under this paragraph shall not be deemed to be
31 discretionary acts within the meaning of the California
32 Environmental Quality Act (Division 13 (commencing with Section
33 21000) of the Public Resources Code).

34 (C) A local government that can demonstrate to the satisfaction
35 of the department the existence of one or more emergency shelters
36 either within its jurisdiction or pursuant to a multijurisdictional
37 agreement that can accommodate that jurisdiction's need for
38 emergency shelter identified in paragraph (7) may comply with
39 the zoning requirements of subparagraph (A) by identifying a zone

1 or zones where new emergency shelters are allowed with a
2 conditional use permit.

3 (D) A local government with an existing ordinance or ordinances
4 that comply with this paragraph shall not be required to take
5 additional action to identify zones for emergency shelters. The
6 housing element must only describe how existing ordinances,
7 policies, and standards are consistent with the requirements of this
8 paragraph.

9 (5) An analysis of *the* potential and actual governmental
10 constraints upon the maintenance, improvement, or development
11 of housing for all income levels, including the types of housing
12 identified in paragraph (1) of subdivision (c), and for persons with
13 disabilities as identified in the analysis pursuant to paragraph (7),
14 including land use controls, building codes and their enforcement,
15 site improvements, fees and other exactions required of developers,
16 and local processing and permit procedures. The analysis shall
17 also demonstrate local efforts to remove governmental constraints
18 that hinder the locality from meeting its share of the regional
19 housing need in accordance with Section 65584 and from meeting
20 the need for housing for persons with disabilities, supportive
21 housing, transitional housing, and emergency shelters identified
22 pursuant to paragraph (7). Transitional housing and supportive
23 housing shall be considered a residential use of property, and shall
24 be subject only to those restrictions that apply to other residential
25 dwellings of the same type in the same zone.

26 (6) An analysis of *the* potential and actual nongovernmental
27 constraints upon the maintenance, improvement, or development
28 of housing for all income levels, including the availability of
29 financing, the price of land, and the cost of construction.

30 (7) An analysis of any special housing needs, ~~such as~~ *including*,
31 *but not limited to*, those of the elderly, persons with disabilities,
32 large families, farmworkers, families with female heads of
33 households, and families and persons in need of emergency shelter.
34 The need for emergency shelter shall be assessed based on annual
35 and seasonal need. The need for emergency shelter may be reduced
36 by the number of supportive housing units that are identified in an
37 adopted 10-year plan to end chronic homelessness and that are
38 either vacant or for which funding has been identified to allow
39 construction during the planning period.

1 (8) An analysis of opportunities for energy conservation with
2 respect to residential development. Cities and counties are
3 encouraged to include weatherization and energy efficiency
4 improvements as part of publicly subsidized housing rehabilitation
5 projects. This may include energy efficiency measures that
6 encompass the building envelope, its heating and cooling systems,
7 and its electrical system.

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

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

30 (B) The analysis shall estimate the total cost of producing new
31 rental housing that is comparable in size and rent levels, to replace
32 the units that could change from low-income use, and an estimated
33 cost of preserving the assisted housing developments. This cost
34 analysis for replacement housing may be done aggregately for
35 each five-year period and does not have to contain a
36 project-by-project cost estimate.

37 (C) The analysis shall identify public and private nonprofit
38 corporations known to the local government which have legal and
39 managerial capacity to acquire and manage these housing
40 developments.

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

13 (b) (1) A statement of the community's goals, quantified
14 objectives, and policies relative to the maintenance, preservation,
15 improvement, and development of housing.

16 (2) It is recognized that the total housing needs identified
17 pursuant to subdivision (a) may exceed available resources and
18 the community's ability to satisfy this need within the content of
19 the general plan requirements outlined in Article 5 (commencing
20 with Section 65300). Under these circumstances, the quantified
21 objectives need not be identical to the total housing needs. The
22 quantified objectives shall establish the maximum number of
23 housing units by income category, including extremely low income,
24 that can be constructed, rehabilitated, and conserved over a
25 five-year time period.

26 (c) A program which sets forth a schedule of actions during the
27 planning period, each with a timeline for implementation, which
28 may recognize that certain programs are ongoing, such that there
29 will be beneficial impacts of the programs within the planning
30 period, that the local government is undertaking or intends to
31 undertake to implement the policies and achieve the goals and
32 objectives of the housing element through the administration of
33 land use and development controls, the provision of regulatory
34 concessions and incentives, and the utilization of appropriate
35 federal and state financing and subsidy programs when available
36 and the utilization of moneys in a low- and moderate-income
37 housing fund of an agency if the locality has established a
38 redevelopment project area pursuant to the Community
39 Redevelopment Law (Division 24 (commencing with Section
40 33000) of the Health and Safety Code). In order to make adequate

1 provision for the housing needs of all economic segments of the
2 community, the program shall do all of the following:

3 (1) Identify actions that will be taken to make sites available
4 during the planning period of the general plan with appropriate
5 zoning and development standards and with services and facilities
6 to accommodate that portion of the city's or county's share of the
7 regional housing need for each income level that could not be
8 accommodated on sites identified in the inventory completed
9 pursuant to paragraph (3) of subdivision (a) without rezoning, and
10 to comply with the requirements of Section 65584.09. Sites shall
11 be identified as needed to facilitate and encourage the development
12 of a variety of types of housing for all income levels, including
13 multifamily rental housing, factory-built housing, mobilehomes,
14 housing for agricultural employees, supportive housing,
15 single-room occupancy units, emergency shelters, and transitional
16 housing.

17 (A) Where the inventory of sites, pursuant to paragraph (3) of
18 subdivision (a), does not identify adequate sites to accommodate
19 the need for groups of all household income levels pursuant to
20 Section 65584, rezoning of those sites, including adoption of
21 minimum density and development standards, for jurisdictions
22 with an eight-year housing element planning period pursuant to
23 Section 65588, shall be completed no later than three years after
24 either the date the housing element is adopted pursuant to
25 subdivision (f) of Section 65585 or the date that is 90 days after
26 receipt of comments from the department pursuant to subdivision
27 (b) of Section 65585, whichever is earlier, unless the deadline is
28 extended pursuant to subdivision (f). Notwithstanding the
29 foregoing, for a local government that fails to adopt a housing
30 element within 120 days of the statutory deadline in Section 65588
31 for adoption of the housing element, rezoning of those sites,
32 including adoption of minimum density and development standards,
33 shall be completed no later than three years and 120 days from the
34 statutory deadline in Section 65588 for adoption of the housing
35 element.

36 (B) Where the inventory of sites, pursuant to paragraph (3) of
37 subdivision (a), does not identify adequate sites to accommodate
38 the need for groups of all household income levels pursuant to
39 Section 65584, the program shall identify sites that can be
40 developed for housing within the planning period pursuant to

1 subdivision (h) of Section 65583.2. The identification of sites shall
2 include all components specified in subdivision (b) of Section
3 65583.2.

4 (C) Where the inventory of sites pursuant to paragraph (3) of
5 subdivision (a) does not identify adequate sites to accommodate
6 the need for farmworker housing, the program shall provide for
7 sufficient sites to meet the need with zoning that permits
8 farmworker housing use by right, including density and
9 development standards that could accommodate and facilitate the
10 feasibility of the development of farmworker housing for low- and
11 very low income households.

12 (2) Assist in the development of adequate housing to meet the
13 needs of extremely low, very low, low-, and moderate-income
14 households.

15 (3) Address and, where appropriate and legally possible, remove
16 governmental constraints to the maintenance, improvement, and
17 development of housing, including housing for all income levels
18 and housing for persons with disabilities. The program shall remove
19 constraints to, and provide reasonable accommodations for housing
20 designed for, intended for occupancy by, or with supportive
21 services for, persons with disabilities.

22 (4) Conserve and improve the condition of the existing
23 affordable housing stock, which may include addressing ways to
24 mitigate the loss of dwelling units demolished by public or private
25 action.

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

29 (6) Preserve for lower income households the assisted housing
30 developments identified pursuant to paragraph (9) of subdivision
31 (a). The program for preservation of the assisted housing
32 developments shall utilize, to the extent necessary, all available
33 federal, state, and local financing and subsidy programs identified
34 in paragraph (9) of subdivision (a), except where a community has
35 other urgent needs for which alternative funding sources are not
36 available. The program may include strategies that involve local
37 regulation and technical assistance.

38 (7) The program shall include an identification of the agencies
39 and officials responsible for the implementation of the various
40 actions and the means by which consistency will be achieved with

1 other general plan elements and community goals. The local
2 government shall make a diligent effort to achieve public
3 participation of all economic segments of the community in the
4 development of the housing element, and the program shall
5 describe this effort.

6 (d) (1) A local government may satisfy all or part of its
7 requirement to identify a zone or zones suitable for the
8 development of emergency shelters pursuant to paragraph (4) of
9 subdivision (a) by adopting and implementing a multijurisdictional
10 agreement, with a maximum of two other adjacent communities,
11 that requires the participating jurisdictions to develop at least one
12 year-round emergency shelter within two years of the beginning
13 of the planning period.

14 (2) The agreement shall allocate a portion of the new shelter
15 capacity to each jurisdiction as credit towards its emergency shelter
16 need, and each jurisdiction shall describe how the capacity was
17 allocated as part of its housing element.

18 (3) Each member jurisdiction of a multijurisdictional agreement
19 shall describe in its housing element all of the following:

20 (A) How the joint facility will meet the jurisdiction's emergency
21 shelter need.

22 (B) The jurisdiction's contribution to the facility for both the
23 development and ongoing operation and management of the
24 facility.

25 (C) The amount and source of the funding that the jurisdiction
26 contributes to the facility.

27 (4) The aggregate capacity claimed by the participating
28 jurisdictions in their housing elements shall not exceed the actual
29 capacity of the shelter.

30 (e) Except as otherwise provided in this article, amendments to
31 this article that alter the required content of a housing element
32 shall apply to both of the following:

33 (1) A housing element or housing element amendment prepared
34 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
35 when a city, county, or city and county submits a draft to the
36 department for review pursuant to Section 65585 more than 90
37 days after the effective date of the amendment to this section.

38 (2) Any housing element or housing element amendment
39 prepared pursuant to subdivision (e) of Section 65588 or Section
40 65584.02, when the city, county, or city and county fails to submit

1 the first draft to the department before the due date specified in
2 Section 65588 or 65584.02.

3 (f) The deadline for completing required rezoning pursuant to
4 subparagraph (A) of paragraph (1) of subdivision (c) shall be
5 extended by one year if the local government has completed the
6 rezoning at densities sufficient to accommodate at least 75 percent
7 of the units for low- and very low income households and if the
8 legislative body at the conclusion of a public hearing determines,
9 based upon substantial evidence, that any of the following
10 circumstances exist:

11 (1) The local government has been unable to complete the
12 rezoning because of the action or inaction beyond the control of
13 the local government of any other state federal or local agency.

14 (2) The local government is unable to complete the rezoning
15 because of infrastructure deficiencies due to fiscal or regulatory
16 constraints.

17 (3) The local government must undertake a major revision to
18 its general plan in order to accommodate the housing related
19 policies of a sustainable communities strategy or an alternative
20 planning strategy adopted pursuant to Section 65080.

21 The resolution and the findings shall be transmitted to the
22 department together with a detailed budget and schedule for
23 preparation and adoption of the required rezonings, including plans
24 for citizen participation and expected interim action. The schedule
25 shall provide for adoption of the required rezoning within one year
26 of the adoption of the resolution.

27 (g) (1) If a local government fails to complete the rezoning by
28 the deadline provided in subparagraph (A) of paragraph (1) of
29 subdivision (c), as it may be extended pursuant to subdivision (f),
30 except as provided in paragraph (2), a local government may not
31 disapprove a housing development project, nor require a
32 conditional use permit, planned unit development permit, or other
33 locally imposed discretionary permit, or impose a condition that
34 would render the project infeasible, if the housing development
35 project (A) is proposed to be located on a site required to be
36 rezoned pursuant to the program action required by that
37 subparagraph; and (B) complies with applicable, objective general
38 plan and zoning standards and criteria, including design review
39 standards, described in the program action required by that
40 subparagraph. Any subdivision of sites shall be subject to the

1 Subdivision Map Act. Design review shall not constitute a “project”
2 for purposes of Division 13 (commencing with Section 21000) of
3 the Public Resources Code.

4 (2) A local government may disapprove a housing development
5 described in paragraph (1) if it makes written findings supported
6 by substantial evidence on the record that both of the following
7 conditions exist:

8 (A) The housing development project would have a specific,
9 adverse impact upon the public health or safety unless the project
10 is disapproved or approved upon the condition that the project be
11 developed at a lower density. As used in this paragraph, a “specific,
12 adverse impact” means a significant, quantifiable, direct, and
13 unavoidable impact, based on objective, identified written public
14 health or safety standards, policies, or conditions as they existed
15 on the date the application was deemed complete.

16 (B) There is no feasible method to satisfactorily mitigate or
17 avoid the adverse impact identified pursuant to paragraph (1), other
18 than the disapproval of the housing development project or the
19 approval of the project upon the condition that it be developed at
20 a lower density.

21 (3) The applicant or any interested person may bring an action
22 to enforce this subdivision. If a court finds that the local agency
23 disapproved a project or conditioned its approval in violation of
24 this subdivision, the court shall issue an order or judgment
25 compelling compliance within 60 days. The court shall retain
26 jurisdiction to ensure that its order or judgment is carried out. If
27 the court determines that its order or judgment has not been carried
28 out within 60 days, the court may issue further orders to ensure
29 that the purposes and policies of this subdivision are fulfilled. In
30 any such action, the city, county, or city and county shall bear the
31 burden of proof.

32 (4) For purposes of this subdivision, “housing development
33 project” means a project to construct residential units for which
34 the project developer provides sufficient legal commitments to the
35 appropriate local agency to ensure the continued availability and
36 use of at least 49 percent of the housing units for very low, low-,
37 and moderate-income households with an affordable housing cost
38 or affordable rent, as defined in Section 50052.5 or 50053 of the
39 Health and Safety Code, respectively, for the period required by
40 the applicable financing.

- 1 (h) An action to enforce the program actions of the housing
- 2 element shall be brought pursuant to Section 1085 of the Code of
- 3 Civil Procedure.

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