

AMENDED IN SENATE JUNE 27, 2012

AMENDED IN ASSEMBLY MAY 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 542

Introduced by Assembly Member Allen

February 16, 2011

An act to amend Section 65583.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 542, as amended, Allen. Land use: housing element: regional housing need.

The Planning and Zoning Law requires a city or county to prepare and adopt a comprehensive, long-term general plan, and requires the general plan to include specified, mandatory elements, including a housing element. That law requires the housing element, in turn, to contain, among other items, an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of those needs. That law requires that assessment and inventory, in turn, to contain an inventory of land suitable for residential development.

That law requires a city or county to determine whether each site in the inventory of land suitable for residential development can accommodate some portion of the city's or county's share of the regional housing need by income level, as specified, and the number of housing units that can be accommodated on each site. ~~That law requires specified densities to be deemed~~ *That law requires a city or county to prepare an analysis of how the adopted densities accommodate the regional housing need for lower income households in accordance with certain*

requirements, unless the adopted density is deemed to be appropriate to accommodate housing for lower income households.

~~This bill would require densities less than those specified to be deemed appropriate to accommodate housing for lower income households, if the site is zoned to allow a minimum residential density of 10 units per acre, is located close to jobs and within one mile of a grocery store or elementary school, and is either owned by the county, is set aside for affordable housing development, and will be provided for the development of affordable housing at no cost to the developer, or the county has committed to providing subsidies of at least 15% of the total development cost per unit for the construction of affordable housing on the side during the planning period, as specified~~ *modify the requirements that a city or county must meet in preparing the analysis demonstrating how the adopted densities accommodate the regional housing need for lower income households, as specified.*

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 65583.2 of the Government Code is
- 2 amended to read:
- 3 65583.2. (a) A city’s or county’s inventory of land suitable
- 4 for residential development pursuant to paragraph (3) of
- 5 subdivision (a) of Section 65583 shall be used to identify sites that
- 6 can be developed for housing within the planning period and that
- 7 are sufficient to provide for the jurisdiction’s share of the regional
- 8 housing need for all income levels pursuant to Section 65584. As
- 9 used in this section, “land suitable for residential development”
- 10 includes all of the following:
- 11 (1) Vacant sites zoned for residential use.
- 12 (2) Vacant sites zoned for nonresidential use that allows
- 13 residential development.
- 14 (3) Residentially zoned sites that are capable of being developed
- 15 at a higher density.
- 16 (4) Sites zoned for nonresidential use that can be redeveloped
- 17 for, and as necessary, rezoned for, residential use.
- 18 (b) The inventory of land shall include all of the following:
- 19 (1) A listing of properties by parcel number or other unique
- 20 reference.

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

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

5 (4) A general description of any environmental constraints to
6 the development of housing within the jurisdiction, the
7 documentation for which has been made available to the
8 jurisdiction. This information need not be identified on a
9 site-specific basis.

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

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

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

21 (c) (1) Based on the information provided in subdivision (b),
22 a city or county shall determine whether each site in the inventory
23 can accommodate some portion of its share of the regional housing
24 need by income level during the planning period, as determined
25 pursuant to Section 65584. The analysis shall determine whether
26 the inventory can provide for a variety of types of housing,
27 including multifamily rental housing, factory-built housing,
28 mobilehomes, housing for agricultural employees, emergency
29 shelters, and transitional housing. The city or county shall
30 determine the number of housing units that can be accommodated
31 on each site as follows:

32 (1)

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

1 ~~(2)~~
 2 (B) The number of units calculated pursuant to ~~paragraph (1)~~
 3 ~~subparagraph (A)~~ shall be adjusted as necessary, based on the land
 4 use controls and site ~~improvements requirement~~ *improvement*
 5 *requirements* identified in paragraph (5) of subdivision (a) of
 6 Section 65583.

7 (2) *A city or county shall provide an analysis demonstrating*
 8 *how the adopted densities on the sites designated for lower income*
 9 *housing accommodate the need for housing affordable to lower*
 10 *income households in either of the following ways:*

11 (A) *The analysis shall be based on substantial evidence and*
 12 *include one or both of the following:*

13 (i) *An analysis demonstrating the financial feasibility of newly*
 14 *constructing unsubsidized, market-rate housing that is affordable*
 15 *to low-income and very low income households at the adopted*
 16 *densities.*

17 (ii) *An analysis demonstrating that the total development cost*
 18 *per unit of newly constructing housing affordable to lower income*
 19 *households at the adopted densities does not exceed the total*
 20 *development cost per unit of newly constructing housing affordable*
 21 *to lower income households at the densities specified in*
 22 *subparagraph (B) and that the adopted densities do not reduce*
 23 *the ability of housing developments affordable to lower income*
 24 *households to obtain subsidies to meet all anticipated funding*
 25 *gaps. For the purposes of this subparagraph, “total development*
 26 *cost” shall include, but not be limited to, land, costs of*
 27 *construction, utility extensions, architectural, engineering, and*
 28 *similar professional services, fees imposed by public agencies,*
 29 *taxes, and construction financing costs.*

30 ~~(3) For the number of units calculated to accommodate its share~~
 31 ~~of the regional housing need for lower income households pursuant~~
 32 ~~to paragraph (2), a city or county shall do either of the following:~~

33 (A) ~~Provide an analysis demonstrating how the adopted densities~~
 34 ~~accommodate this need. The analysis shall include, but is not~~
 35 ~~limited to, factors such as market demand, financial feasibility, or~~
 36 ~~information based on development project experience within a~~
 37 ~~zone or zones that provide housing for lower income households.~~

38 (B) The following densities shall be deemed appropriate to
 39 accommodate housing for lower income households:

- 1 (i) For incorporated cities within nonmetropolitan counties and
2 for nonmetropolitan counties that have micropolitan areas: sites
3 allowing at least 15 units per acre.
- 4 (ii) For unincorporated areas in all nonmetropolitan counties
5 not included in clause (i): sites allowing at least 10 units per acre.
- 6 (iii) For suburban jurisdictions: sites allowing at least 20 units
7 per acre.
- 8 (iv) For jurisdictions in metropolitan counties: sites allowing
9 at least 30 units per acre.
- 10 ~~(4) (A) Notwithstanding subparagraph (B) of paragraph (3), a~~
11 ~~site within the unincorporated area of a county shall be deemed~~
12 ~~appropriate to accommodate housing for lower income households~~
13 ~~if all of the following criteria apply:~~
- 14 (i) ~~Either of the following has occurred:~~
- 15 (I) ~~The site is owned by the county, is set aside for affordable~~
16 ~~housing, and the land will be provided for the development of~~
17 ~~affordable housing at no cost to the developer.~~
- 18 (II) ~~The county has committed to providing subsidies of at least~~
19 ~~15 percent of the total development cost per unit for the~~
20 ~~construction of affordable housing on the site during the planning~~
21 ~~period.~~
- 22 (ii) ~~The site is zoned to allow a minimum residential density of~~
23 ~~10 units per acre.~~
- 24 (iii) ~~The site is located close to jobs and within one mile of a~~
25 ~~grocery store or an elementary school.~~
- 26 (B) ~~If, by the end of the second year of the planning period, the~~
27 ~~county has not entered into an enforceable agreement to provide~~
28 ~~committed assistance, as defined by paragraph (4) of subdivision~~
29 ~~(e) of Section 65583.1, for the development of affordable units on~~
30 ~~a site included in a county's housing element pursuant to this~~
31 ~~paragraph, the county shall, not later than July 1 of the fourth year~~
32 ~~of the planning period, identify additional adequate sites pursuant~~
33 ~~to paragraph (1) of subdivision (e) of Section 65583 sufficient to~~
34 ~~accommodate the number of units for which committed assistance~~
35 ~~was not provided.~~
- 36 (d) For purposes of this section, metropolitan counties,
37 nonmetropolitan counties, and nonmetropolitan counties with
38 micropolitan areas are as determined by the United States Census
39 Bureau. Nonmetropolitan counties with micropolitan areas include
40 the following counties: Del Norte, Humboldt, Lake, Mendocino,

1 Nevada, Tehama, and Tuolumne and such other counties as may
2 be determined by the United States Census Bureau to be
3 nonmetropolitan counties with micropolitan areas in the future.

4 (e) A jurisdiction is considered suburban if the jurisdiction does
5 not meet the requirements of clauses (i) and (ii) of subparagraph
6 (B) of paragraph ~~(3)~~ (2) of subdivision (c) and is located in a
7 Metropolitan Statistical Area (MSA) of less than 2,000,000 in
8 population, unless that jurisdiction's population is greater than
9 100,000, in which case it is considered metropolitan. Counties,
10 not including the City and County of San Francisco, will be
11 considered suburban unless they are in a MSA of 2,000,000 or
12 greater in population in which case they are considered
13 metropolitan.

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

19 (g) For sites described in paragraph (3) of subdivision (b), the
20 city or county shall specify the additional development potential
21 for each site within the planning period and shall provide an
22 explanation of the methodology used to determine the development
23 potential. The methodology shall consider factors including the
24 extent to which existing uses may constitute an impediment to
25 additional residential development, development trends, market
26 conditions, and regulatory or other incentives or standards to
27 encourage additional residential development on these sites.

28 (h) The program required by subparagraph (A) of paragraph (1)
29 of subdivision (c) of Section 65583 shall accommodate 100 percent
30 of the need for housing for very low and low-income households
31 allocated pursuant to Section 65584 for which site capacity has
32 not been identified in the inventory of sites pursuant to paragraph
33 (3) of subdivision (a) on sites that shall be zoned to permit
34 owner-occupied and rental multifamily residential use by right
35 during the planning period. These sites shall be zoned with
36 minimum density and development standards that permit at least
37 16 units per site at a density of at least 16 units per acre in
38 jurisdictions described in clause (i) of subparagraph (B) of
39 paragraph ~~(3)~~ (2) of subdivision (c) and at least 20 units per acre
40 in jurisdictions described in clauses (iii) and (iv) of subparagraph

1 (B) of paragraph ~~(3)~~ (2) of subdivision (c). At least 50 percent of
2 the very low and low-income housing need shall be accommodated
3 on sites designated for residential use and for which nonresidential
4 uses or mixed uses are not permitted.

5 (i) For purposes of this section and Section 65583, the phrase
6 “use by right” shall mean that the local government’s review of
7 the owner-occupied or multifamily residential use may not require
8 a conditional use permit, planned unit development permit, or other
9 discretionary local government review or approval that would
10 constitute a “project” for purposes of Division 13 (commencing
11 with Section 21000) of the Public Resources Code. Any subdivision
12 of the sites shall be subject to all laws, including, but not limited
13 to, the local government ordinance implementing the Subdivision
14 Map Act. A local ordinance may provide that “use by right” does
15 not exempt the use from design review. However, that design
16 review shall not constitute a “project” for purposes of Division 13
17 (commencing with Section 21000) of the Public Resources Code.
18 Use by right for all rental multifamily residential housing shall be
19 provided in accordance with subdivision (f) of Section 65589.5.