

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1220

Introduced by Assembly Member Alejo
(Principal coauthor: Senator Steinberg)
(Coauthors: Assembly Members Atkins and Cedillo)

February 18, 2011

An act to amend Sections 65009, 65589.3, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1220, as amended, Alejo. Land use and planning: cause of actions: time limitations.

(1) The Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action, if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time within 5 3 years after a specified action pursuant to existing law. The bill would declare the intent of the Legislature that its provisions modify a specified court opinion. The bill would also provide that in that specified action or proceeding, no remedy pursuant to specified provisions of law

abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to a tentative map application or a developer, as prescribed.

(2) The Planning and Zoning law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide that in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

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. It is the intent of the Legislature in enacting
2 Section 2 of this act to modify the court’s opinion in *Urban Habitat*
3 *Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, with
4 respect to the interpretation of Section 65009 of the Government
5 Code.

6 SEC. 2. Section 65009 of the Government Code is amended
7 to read:

8 65009. (a) (1) The Legislature finds and declares that there
9 currently is a housing crisis in California and it is essential to
10 reduce delays and restraints upon expeditiously completing housing
11 projects.

12 (2) The Legislature further finds and declares that a legal action
13 or proceeding challenging a decision of a city, county, or city and
14 county has a chilling effect on the confidence with which property
15 owners and local governments can proceed with projects. Legal
16 actions or proceedings filed to attack, review, set aside, void, or
17 annul a decision of a city, county, or city and county pursuant to
18 this division, including, but not limited to, the implementation of
19 general plan goals and policies that provide incentives for

1 affordable housing, open-space and recreational opportunities, and
2 other related public benefits, can prevent the completion of needed
3 developments even though the projects have received required
4 governmental approvals.

5 (3) The purpose of this section is to provide certainty for
6 property owners and local governments regarding decisions made
7 pursuant to this division.

8 (b) (1) In an action or proceeding to attack, review, set aside,
9 void, or annul a finding, determination, or decision of a public
10 agency made pursuant to this title at a properly noticed public
11 hearing, the issues raised shall be limited to those raised in the
12 public hearing or in written correspondence delivered to the public
13 agency prior to, or at, the public hearing, except where the court
14 finds either of the following:

15 (A) The issue could not have been raised at the public hearing
16 by persons exercising reasonable diligence.

17 (B) The body conducting the public hearing prevented the issue
18 from being raised at the public hearing.

19 (2) If a public agency desires the provisions of this subdivision
20 to apply to a matter, it shall include in any public notice issued
21 pursuant to this title a notice substantially stating all of the
22 following: “If you challenge the (nature of the proposed action)
23 in court, you may be limited to raising only those issues you or
24 someone else raised at the public hearing described in this notice,
25 or in written correspondence delivered to the (public entity
26 conducting the hearing) at, or prior to, the public hearing.”

27 (3) The application of this subdivision to causes of action
28 brought pursuant to subdivision (d) applies only to the final action
29 taken in response to the notice to the city or clerk of the board of
30 supervisors. If no final action is taken, then the issue raised in the
31 cause of action brought pursuant to subdivision (d) shall be limited
32 to those matters presented at a properly noticed public hearing or
33 to those matters specified in the notice given to the city or clerk
34 of the board of supervisors pursuant to subdivision (d), or both.

35 (c) (1) Except as provided in subdivision (d), no action or
36 proceeding shall be maintained in any of the following cases by
37 any person unless the action or proceeding is commenced and
38 service is made on the legislative body within 90 days after the
39 legislative body’s decision:

1 (A) To attack, review, set aside, void, or annul the decision of
2 a legislative body to adopt or amend a general or specific plan.
3 This paragraph does not apply where an action is brought based
4 upon the complete absence of a general plan or a mandatory
5 element thereof, but does apply to an action attacking a general
6 plan or mandatory element thereof on the basis that it is inadequate.

7 (B) To attack, review, set aside, void, or annul the decision of
8 a legislative body to adopt or amend a zoning ordinance.

9 (C) To determine the reasonableness, legality, or validity of any
10 decision to adopt or amend any regulation attached to a specific
11 plan.

12 (D) To attack, review, set aside, void, or annul the decision of
13 a legislative body to adopt, amend, or modify a development
14 agreement. An action or proceeding to attack, review, set aside,
15 void, or annul the decisions of a legislative body to adopt, amend,
16 or modify a development agreement shall only extend to the
17 specific portion of the development agreement that is the subject
18 of the adoption, amendment, or modification. This paragraph
19 applies to development agreements, amendments, and
20 modifications adopted on or after January 1, 1996.

21 (E) To attack, review, set aside, void, or annul any decision on
22 the matters listed in Sections 65901 and 65903, or to determine
23 the reasonableness, legality, or validity of any condition attached
24 to a variance, conditional use permit, or any other permit.

25 (F) Concerning any of the proceedings, acts, or determinations
26 taken, done, or made prior to any of the decisions listed in
27 subparagraphs (A), (B), (C), (D), and (E).

28 (2) In the case of an action or proceeding challenging the
29 adoption or revision of a housing element pursuant to this
30 subdivision, the action or proceeding may, in addition, be
31 maintained if it is commenced and service is made on the
32 legislative body within 60 days following the date that the
33 Department of Housing and Community Development reports its
34 findings pursuant to subdivision (h) of Section 65585.

35 (d) (1) An action or proceeding shall be commenced and the
36 legislative body served within one year after the accrual of the
37 cause of action as provided in this subdivision, ~~except that in no~~
38 ~~case shall the action or proceeding be commenced more than five~~
39 ~~years after an action described in subparagraph (B), if the action~~

1 *if the action* or proceeding meets both of the following
2 requirements:

3 (A) It is brought in support of or to encourage or facilitate the
4 development of housing that would increase the community's
5 supply of housing affordable to persons and families with low or
6 moderate incomes, as defined in Section 50079.5 of the Health
7 and Safety Code, or with very low incomes, as defined in Section
8 50105 of the Health and Safety Code, or middle-income
9 households, as defined in Section 65008 of this code. This
10 subdivision is not intended to require that the action or proceeding
11 be brought in support of or to encourage or facilitate a specific
12 housing development project.

13 (B) It is brought with respect to actions taken pursuant to Article
14 10.6 (commencing with Section 65580) of Chapter 3, Section
15 65863.6, or Chapter 4.2 (commencing with Section 65913), or to
16 challenge the adequacy of an ordinance adopted pursuant to Section
17 65915.

18 (2) A cause of action brought pursuant to this subdivision shall
19 not be maintained until 60 days have expired following notice to
20 the city or clerk of the board of supervisors by the party bringing
21 the cause of action, or his or her representative, specifying the
22 deficiencies of the general plan, specific plan, or zoning ordinance.
23 A cause of action brought pursuant to this subdivision shall accrue
24 60 days after notice is filed or the legislative body takes a final
25 action in response to the notice, whichever occurs first. This notice
26 may be filed at any time within ~~five~~ *three* years after an action
27 described in subparagraph (B) of paragraph (1). A notice or cause
28 of action brought by one party pursuant to this subdivision shall
29 not bar filing of a notice and initiation of a cause of action by any
30 other party.

31 (3) After the adoption of a housing element covering the current
32 planning period, no action shall be filed pursuant to this subdivision
33 to challenge a housing element covering a prior planning period.

34 (e) Upon the expiration of the time limits provided for in this
35 section, all persons are barred from any further action or
36 proceeding.

37 (f) Notwithstanding Sections 65700 and 65803, or any other
38 provision of law, this section shall apply to charter cities.

1 (g) Except as provided in subdivision (d), this section shall not
2 affect any law prescribing or authorizing a shorter period of
3 limitation than that specified herein.

4 (h) Except as provided in paragraph (4) of subdivision (c), this
5 section shall be applicable to those decisions of the legislative
6 body of a city, county, or city and county made pursuant to this
7 division on or after January 1, 1984.

8 SEC. 3. Section 65589.3 of the Government Code is amended
9 to read:

10 65589.3. (a) In any action filed on or after January 1, 1991,
11 taken to challenge the validity of a housing element, there shall
12 be a rebuttable presumption of the validity of the element or
13 amendment if, pursuant to Section 65585, the department has found
14 that the element or amendment substantially complies with the
15 requirements of this article.

16 (b) In any action brought against a city, county, or city and
17 county to challenge the adequacy of a housing element, if a court
18 finds that the adopted housing element or amended housing element
19 for the current planning period substantially complies with all of
20 the requirements of this article, including, but not limited to, the
21 requirements for public participation set forth in paragraph (7) of
22 subdivision (c) of Section 65583, the element or amendment shall
23 be deemed to satisfy any condition of a state-administered housing
24 grant program requiring a department finding that the housing
25 element substantially complies with the requirements of this article.

26 SEC. 4. Section 65755 of the Government Code is amended
27 to read:

28 65755. (a) The court shall include, in the order or judgment
29 rendered pursuant to Section 65754, one or more of the following
30 provisions for any or all types or classes of developments or any
31 or all geographic segments of the city, county, or city and county
32 until the city, county, or city and county has substantially complied
33 with the requirements of Article 5 (commencing with Section
34 65300):

35 (1) Suspend the authority of the city, county, or city and county
36 pursuant to Division 13 (commencing with Section 17910) of the
37 Health and Safety Code, to issue building permits, or any category
38 of building permits, and all other related permits, except that the
39 city, county, or city and county shall continue to function as an
40 enforcement agency for review of permit applications for

1 appropriate codes and standards compliance, prior to the issuance
2 of building permits and other related permits for residential housing
3 for that city, county, or city and county.

4 (2) Suspend the authority of the city, county, or city and county,
5 pursuant to Chapter 4 (commencing with Section 65800) to grant
6 any and all categories of zoning changes, variances, or both.

7 (3) Suspend the authority of the city, county, or city and county,
8 pursuant to Division 2 (commencing with Section 66410), to grant
9 subdivision map approvals for any and all categories of subdivision
10 map approvals.

11 (4) Mandate the approval of all applications for building permits,
12 or other related construction permits, for residential housing where
13 a final subdivision map, parcel map, or plot plan has been approved
14 for the project, where the approval will not impact on the ability
15 of the city, county, or city and county to properly adopt and
16 implement an adequate housing element, and where the permit
17 application conforms to all code requirements and other applicable
18 provisions of law except those zoning laws held to be invalid by
19 the final court order, and changes to the zoning ordinances adopted
20 after such final court order which were enacted for the purpose of
21 preventing the construction of a specific residential development.

22 (5) Mandate the approval of any or all final subdivision maps
23 for residential housing projects which have previously received a
24 tentative map approval from the city, county, or city and county
25 pursuant to Division 2 (commencing with Section 66410) when
26 the final map conforms to the approved tentative map, the tentative
27 map has not expired, and where approval will not impact on the
28 ability of the city, county, or city and county to properly adopt and
29 implement an adequate housing element.

30 (6) Mandate that notwithstanding the provisions of Sections
31 66473.5 and 66474, any tentative subdivision map for a residential
32 housing project shall be approved if all of the following
33 requirements are met:

34 (A) The approval of the map will not significantly impair the
35 ability of the city, county, or city and county to adopt and
36 implement those elements or portions thereof of the general plan
37 which have been held to be inadequate.

38 (B) The map complies with all of the provisions of Division 2
39 (commencing with Section 66410), except those parts which would

1 require disapproval of the project due to the inadequacy of the
2 general plan.

3 (C) The approval of the map will not affect the ability of the
4 city, county, or city and county to adopt and implement an adequate
5 housing element.

6 (D) The map is consistent with the portions of the general plan
7 not found inadequate and the proposed revisions, if applicable, to
8 the part of the plan held inadequate.

9 (b) Any order or judgment of a court which includes the
10 remedies described in paragraphs (1), (2), or (3) of subdivision (a)
11 shall exclude from the operation of that order or judgment any
12 action, program, or project required by law to be consistent with
13 a general or specific plan if the court finds that the approval or
14 undertaking of the action, program, or project complies with both
15 of the following requirements:

16 (1) That it will not significantly impair the ability of the city,
17 county, or city and county to adopt or amend all or part of the
18 applicable plan as may be necessary to make the plan substantially
19 comply with the requirements of Article 5 (commencing with
20 Section 65300) in the case of a general plan, or Article 8
21 (commencing with Section 65450) in the case of a specific plan.

22 (2) That it is consistent with those portions of the plan
23 challenged in the action or proceeding and found by the court to
24 substantially comply with applicable provisions of law.

25 The party seeking exclusion from any order or judgment of a
26 court pursuant to this subdivision shall have the burden of showing
27 that the action, program, or project complies with paragraphs (1)
28 and (2).

29 (c) Notwithstanding Section 65754.4 or subdivisions (a) and
30 (b), in any action or proceeding brought pursuant to subdivision
31 (d) of Section 65009, no remedy pursuant to this section or
32 injunction pursuant to Section 65754.5 shall abrogate, impair, or
33 otherwise interfere with the full exercise of the rights and
34 protections granted to (1) an applicant for a tentative map pursuant
35 to Section 66474.2, or (2) a developer pursuant to Sections 65866
36 and 66498.1.