

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Torres

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as introduced, Torres. Land use: general plan: housing element.

The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. That law requires the housing element to identify the existing and projected housing needs of all economic segments of the community.

This bill would make technical, nonsubstantive changes to that 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 *housing* element
4 shall 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 existing and projected needs shall include
14 the locality's share of the regional housing need in accordance
15 with Section 65584. Local agencies shall calculate the subset of
16 very low income households allotted under Section 65584 that
17 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 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 potential for redevelopment,
31 and an analysis of the relationship of zoning and public facilities
32 and services to these sites.

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

1 capacity, the local government shall include a program to amend
2 its zoning ordinance to meet the requirements of this paragraph
3 within one year of the adoption of the housing element. The local
4 government may identify additional zones where emergency
5 shelters are permitted with a conditional use permit. The local
6 government shall also demonstrate that existing or proposed permit
7 processing, development, and management standards are objective
8 and 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 potential and actual governmental constraints
10 upon the maintenance, improvement, or development of housing
11 for all income levels, including the types of housing identified in
12 paragraph (1) of subdivision (c), and for persons with disabilities
13 as identified in the analysis pursuant to paragraph (7), including
14 land use controls, building codes and their enforcement, site
15 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 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 those of
31 the elderly; persons with disabilities, including a developmental
32 disability, as defined in Section 4512 of the Welfare and
33 Institutions Code; large families; farmworkers; families with female
34 heads of households; and families and persons in need of
35 emergency shelter. The need for emergency shelter shall be
36 assessed based on annual and seasonal need. The need for
37 emergency shelter may be reduced by the number of supportive
38 housing units that are identified in an adopted 10-year plan to end
39 chronic homelessness and that are either vacant or for which

1 funding has been identified to allow construction during the
2 planning period.

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

10 (9) An analysis of existing assisted housing developments that
11 are eligible to change from low-income housing uses during the
12 next 10 years due to termination of subsidy contracts, mortgage
13 prepayment, or expiration of restrictions on use. “Assisted housing
14 developments,” for the purpose of this section, shall mean
15 multifamily rental housing that receives governmental assistance
16 under federal programs listed in subdivision (a) of Section
17 65863.10, state and local multifamily revenue bond programs,
18 local redevelopment programs, the federal Community
19 Development Block Grant Program, or local in-lieu fees. “Assisted
20 housing developments” shall also include multifamily rental units
21 that were developed pursuant to a local inclusionary housing
22 program or used to qualify for a density bonus pursuant to Section
23 ~~65916~~ 65915.

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

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

39 (C) The analysis shall identify public and private nonprofit
40 corporations known to the local government ~~which~~ that have legal

1 and managerial capacity to acquire and manage these housing
2 developments.

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

16 (b) (1) A statement of the community’s goals, quantified
17 objectives, and policies relative to the maintenance, preservation,
18 improvement, and development of housing.

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

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

1 area pursuant to the Community Redevelopment Law (Division
2 24 (commencing with Section 33000) of the Health and Safety
3 Code). In order to make adequate provision for the housing needs
4 of all economic segments of the community, the program shall do
5 all of the following:

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

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

39 (B) ~~Where~~ *If* the inventory of sites, pursuant to paragraph (3)
40 of subdivision (a), does not identify adequate sites to accommodate

1 the need for groups of all household income levels pursuant to
 2 Section 65584, *then* the program shall identify sites that can be
 3 developed for housing within the planning period pursuant to
 4 subdivision (h) of Section 65583.2. The identification of sites shall
 5 include all components specified in subdivision (b) of Section
 6 65583.2.

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

15 (2) Assist in the development of adequate housing to meet the
 16 needs of extremely low, very low, low-, and moderate-income
 17 households.

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

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

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

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

1 (7) Include an identification of the agencies and officials
2 responsible for the implementation of the various actions and the
3 means by which consistency will be achieved with other general
4 plan elements and community goals.

5 (8) Include a diligent effort by the local government to achieve
6 public participation of all economic segments of the community
7 in the development of the housing element, and the program shall
8 describe this effort.

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

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

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

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

25 (B) The jurisdiction's contribution to the facility for both the
26 development and ongoing operation and management of the
27 facility.

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

30 (4) The aggregate capacity claimed by the participating
31 jurisdictions in their housing elements shall not exceed the actual
32 capacity of the shelter.

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

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

1 (2) Any housing element or housing element amendment
 2 prepared pursuant to subdivision (e) of Section 65588 or Section
 3 65584.02, when the city, county, or city and county fails to submit
 4 the first draft to the department before the due date specified in
 5 Section 65588 or 65584.02.

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

14 (1) The local government has been unable to complete the
 15 rezoning because of the action or inaction beyond the control of
 16 the local government of any other state, federal, or local agency.

17 (2) The local government is unable to complete the rezoning
 18 because of infrastructure deficiencies due to fiscal or regulatory
 19 constraints.

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

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

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

1 plan and zoning standards and criteria, including design review
2 standards, described in the program action required by that
3 subparagraph. Any subdivision of sites shall be subject to the
4 Subdivision Map Act (Division 2 (commencing with Section
5 66410)). Design review shall not constitute a “project” for purposes
6 of Division 13 (commencing with Section 21000) of the Public
7 Resources Code.

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

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

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

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

36 (4) For purposes of this subdivision, “housing development
37 project” means a project to construct residential units for which
38 the project developer provides sufficient legal commitments to the
39 appropriate local agency to ensure the continued availability and
40 use of at least 49 percent of the housing units for very low, low-,

1 and moderate-income households with an affordable housing cost
2 or affordable rent, as defined in Section 50052.5 or 50053 of the
3 Health and Safety Code, respectively, for the period required by
4 the applicable financing.

5 (h) An action to enforce the program actions of the housing
6 element shall be brought pursuant to Section 1085 of the Code of
7 Civil Procedure.

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