

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN SENATE JUNE 23, 2016

AMENDED IN ASSEMBLY JUNE 1, 2016

AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2208**

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**Introduced by Assembly Member Santiago  
(Coauthor: Assembly Member Steinorth)**

February 18, 2016

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An act to amend Section 65583.2 of the Government Code, ~~and to amend Section 50459 of the Health and Safety Code~~, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2208, as amended, Santiago. Local planning: housing element: inventory of land for residential development.

Existing law, the Planning and Zoning Law, requires a city or county to adopt a comprehensive, long-term general plan for the physical development of the city or the county and of any land outside its boundaries that bears relation to its planning. That law requires the general plan to contain specified mandatory elements, including a housing element. Existing law requires the housing element to contain an inventory of land suitable for residential development, as defined, and requires that inventory to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels.

This bill would revise the definition of land suitable for residential development to include *the airspace* above sites owned or leased by a city, county, or city and county. By imposing new duties upon local agencies with respect to the housing element of the general plan, this bill would impose a state-mandated local program.

~~This bill would also require, until December 31, 2023, the department to provide guidance to local governments to properly survey, detail, and account for sites listed pursuant to a requirement that the city or county consider the above-described guidelines for the preparation of housing elements. The bill would require the department to provide this guidance for purposes of the requirement that a city's or county's inventory of land suitable for residential development be used to identify sites that can be developed and provide for the jurisdiction's share of the regional housing need for all income levels, as specified.~~

~~Existing law authorizes the Department of Housing and Community Development to adopt and, from time to time, revise guidelines for the preparation of housing elements and a document that meets specified requirements.~~

~~This bill would require the department to adopt and revise, as necessary, these guidelines:~~

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 65583.2 of the Government Code, as
- 2 amended by Section 232 of Chapter 303 of the Statutes of 2015,
- 3 is amended to read:
- 4 65583.2. (a) A city's or county's inventory of land suitable
- 5 for residential development pursuant to paragraph (3) of
- 6 subdivision (a) of Section 65583 shall be used to identify sites that
- 7 can be developed for housing within the planning period and that
- 8 are sufficient to provide for the jurisdiction's share of the regional
- 9 housing need for all income levels pursuant to Section 65584. As

1 used in this section, “land suitable for residential development”  
2 includes all of the following:

3 (1) Vacant sites zoned for residential use.

4 (2) Vacant sites zoned for nonresidential use that allows  
5 residential development.

6 (3) Residentially zoned sites that are capable of being developed  
7 at a higher density, including *the airspace* above sites owned or  
8 leased by a city, county, or city and county.

9 (4) Sites zoned for nonresidential use that can be redeveloped  
10 for, and as necessary, rezoned for, residential use, including above  
11 sites owned or leased by a city, county, or city and county.

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

13 (1) A listing of properties by parcel number or other unique  
14 reference.

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

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

19 (4) A general description of any environmental constraints to  
20 the development of housing within the jurisdiction, the  
21 documentation for which has been made available to the  
22 jurisdiction. This information need not be identified on a  
23 site-specific basis.

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

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

32 (7) A map that shows the location of the sites included in the  
33 inventory, such as the land use map from the jurisdiction’s general  
34 plan, for reference purposes only.

35 (c) Based on the information provided in subdivision (b), a city  
36 or county shall determine whether each site in the inventory can  
37 accommodate some portion of its share of the regional housing  
38 need by income level during the planning period, as determined  
39 pursuant to Section 65584. The analysis shall determine whether  
40 the inventory can provide for a variety of types of housing,

1 including multifamily rental housing, factory-built housing,  
 2 mobilehomes, housing for agricultural employees, emergency  
 3 shelters, and transitional housing. The city or county shall  
 4 determine the number of housing units that can be accommodated  
 5 on each site as follows:

6 (1) If local law or regulations require the development of a site  
 7 at a minimum density, the department shall accept the planning  
 8 agency’s calculation of the total housing unit capacity on that site  
 9 based on the established minimum density. If the city or county  
 10 does not adopt a law or regulations requiring the development of  
 11 a site at a minimum density, then it shall demonstrate how the  
 12 number of units determined for that site pursuant to this subdivision  
 13 will be accommodated.

14 (2) The number of units calculated pursuant to paragraph (1)  
 15 shall be adjusted as necessary, based on the land use controls and  
 16 site improvements requirement identified in paragraph (5) of  
 17 subdivision (a) of Section 65583.

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

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

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

28 (i) For an incorporated city within a nonmetropolitan county  
 29 and for a nonmetropolitan county that has a micropolitan area:  
 30 sites allowing at least 15 units per acre.

31 (ii) For an unincorporated area in a nonmetropolitan county not  
 32 included in clause (i): sites allowing at least 10 units per acre.

33 (iii) For a suburban jurisdiction: sites allowing at least 20 units  
 34 per acre.

35 (iv) For a jurisdiction in a metropolitan county: sites allowing  
 36 at least 30 units per acre.

37 (d) For purposes of this section, a metropolitan county,  
 38 nonmetropolitan county, and nonmetropolitan county with a  
 39 micropolitan area shall be as determined by the United States  
 40 Census Bureau. A nonmetropolitan county with a micropolitan

1 area includes the following counties: Del Norte, Humboldt, Lake,  
2 Mendocino, Nevada, Tehama, and Tuolumne and other counties  
3 as may be determined by the United States Census Bureau to be  
4 nonmetropolitan counties with micropolitan areas in the future.

5 (e) (1) Except as provided in paragraph (2), a jurisdiction shall  
6 be considered suburban if the jurisdiction does not meet the  
7 requirements of clauses (i) and (ii) of subparagraph (B) of  
8 paragraph (3) of subdivision (c) and is located in a Metropolitan  
9 Statistical Area (MSA) of less than 2,000,000 in population, unless  
10 that jurisdiction's population is greater than 100,000, in which  
11 case it shall be considered metropolitan. A county, not including  
12 the City and County of San Francisco, shall be considered suburban  
13 unless the county is in an MSA of 2,000,000 or greater in  
14 population in which case the county shall be considered  
15 metropolitan.

16 (2) (A) (i) Notwithstanding paragraph (1), if a county that is  
17 in the San Francisco-Oakland-Fremont California MSA has a  
18 population of less than 400,000, that county shall be considered  
19 suburban. If this county includes an incorporated city that has a  
20 population of less than 100,000, this city shall also be considered  
21 suburban. This paragraph shall apply to a housing element revision  
22 cycle, as described in subparagraph (A) of paragraph (3) of  
23 subdivision (e) of Section 65588, that is in effect from July 1,  
24 2014, to December 31, 2023, inclusive.

25 (ii) A county subject to this subparagraph shall utilize the sum  
26 existing in the county's housing trust fund as of June 30, 2013, for  
27 the development and preservation of housing affordable to low- and  
28 very low income households.

29 (B) A jurisdiction that is classified as suburban pursuant to this  
30 paragraph shall report to the Assembly Committee on Housing  
31 and Community Development, the Senate Committee on  
32 Transportation and Housing, and the Department of Housing and  
33 Community Development regarding its progress in developing  
34 low- and very low income housing consistent with the requirements  
35 of Section 65400. The report shall be provided twice: once, on or  
36 before December 31, 2019, which report shall address the initial  
37 four years of the housing element cycle, and a second time, on or  
38 before December 31, 2023, which report shall address the  
39 subsequent four years of the housing element cycle and the cycle

1 as a whole. The reports shall be provided consistent with the  
2 requirements of Section 9795.

3 (f) A jurisdiction shall be considered metropolitan if the  
4 jurisdiction does not meet the requirements for “suburban area”  
5 above and is located in an MSA of 2,000,000 or greater in  
6 population, unless that jurisdiction’s population is less than 25,000  
7 in which case it shall be considered suburban.

8 (g) For sites described in paragraph (3) of subdivision (b), the  
9 city or county shall specify the additional development potential  
10 for each site within the planning period and shall provide an  
11 explanation of the methodology used to determine the development  
12 potential. The methodology shall consider factors including the  
13 extent to which existing uses may constitute an impediment to  
14 additional residential development, development trends, market  
15 conditions, and regulatory or other incentives or standards to  
16 encourage additional residential development on these sites.

17 (h) The program required by subparagraph (A) of paragraph (1)  
18 of subdivision (c) of Section 65583 shall accommodate 100 percent  
19 of the need for housing for very low and low-income households  
20 allocated pursuant to Section 65584 for which site capacity has  
21 not been identified in the inventory of sites pursuant to paragraph  
22 (3) of subdivision (a) on sites that shall be zoned to permit  
23 owner-occupied and rental multifamily residential use by right  
24 during the planning period. These sites shall be zoned with  
25 minimum density and development standards that permit at least  
26 16 units per site at a density of at least 16 units per acre in  
27 jurisdictions described in clause (i) of subparagraph (B) of  
28 paragraph (3) of subdivision (c) and at least 20 units per acre in  
29 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)  
30 of paragraph (3) of subdivision (c). At least 50 percent of the very  
31 low and low-income housing need shall be accommodated on sites  
32 designated for residential use and for which nonresidential uses  
33 or mixed-uses are not permitted, except that a city or county may  
34 accommodate all of the very low and low-income housing need  
35 on sites designated for mixed uses if those sites allow 100 percent  
36 residential use and require that residential use occupy 50 percent  
37 of the total floor area of a mixed-use project.

38 (i) For purposes of this section and Section 65583, the phrase  
39 “use by right” shall mean that the local government’s review of  
40 the owner-occupied or multifamily residential use may not require

1 a conditional use permit, planned unit development permit, or other  
2 discretionary local government review or approval that would  
3 constitute a “project” for purposes of Division 13 (commencing  
4 with Section 21000) of the Public Resources Code. Any subdivision  
5 of the sites shall be subject to all laws, including, but not limited  
6 to, the local government ordinance implementing the Subdivision  
7 Map Act. A local ordinance may provide that “use by right” does  
8 not exempt the use from design review. However, that design  
9 review shall not constitute a “project” for purposes of Division 13  
10 (commencing with Section 21000) of the Public Resources Code.  
11 Use by right for all rental multifamily residential housing shall be  
12 provided in accordance with subdivision (f) of Section 65589.5.

13 (j) Notwithstanding any other provision of this section, within  
14 one-half mile of a Sonoma-Marín Area Rail Transit station, housing  
15 density requirements in place on June 30, 2014, shall apply.

16 (k) For purposes of subdivisions (a) and (b), the department  
17 shall provide guidance to local governments to properly survey,  
18 detail, and account for sites listed pursuant to Section 65585.

19 (l) This section shall remain in effect only until December 31,  
20 2023, and as of that date is repealed, unless a later enacted statute,  
21 that is enacted before December 31, 2023, deletes or extends that  
22 date.

23 SEC. 2. Section 65583.2 of the Government Code, as added  
24 by Section 2.5 of Chapter 875 of the Statutes of 2014, is amended  
25 to read:

26 65583.2. (a) A city’s or county’s inventory of land suitable  
27 for residential development pursuant to paragraph (3) of  
28 subdivision (a) of Section 65583 shall be used to identify sites that  
29 can be developed for housing within the planning period and that  
30 are sufficient to provide for the jurisdiction’s share of the regional  
31 housing need for all income levels pursuant to Section 65584. As  
32 used in this section, “land suitable for residential development”  
33 includes all of the following:

- 34 (1) Vacant sites zoned for residential use.
- 35 (2) Vacant sites zoned for nonresidential use that allows  
36 residential development.
- 37 (3) Residentially zoned sites that are capable of being developed  
38 at a higher density, including *the airspace* above sites owned or  
39 leased by a city, county, or city and county.

1 (4) Sites zoned for nonresidential use that can be redeveloped  
2 for, and, as necessary, rezoned for, residential use, including above  
3 sites owned or leased by a city, county, or city and county.

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

5 (1) A listing of properties by parcel number or other unique  
6 reference.

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

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

11 (4) A general description of any environmental constraints to  
12 the development of housing within the jurisdiction, the  
13 documentation for which has been made available to the  
14 jurisdiction. This information need not be identified on a  
15 site-specific basis.

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

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

24 (7) A map that shows the location of the sites included in the  
25 inventory, such as the land use map from the jurisdiction’s general  
26 plan for reference purposes only.

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

38 (1) If local law or regulations require the development of a site  
39 at a minimum density, the department shall accept the planning  
40 agency’s calculation of the total housing unit capacity on that site

1 based on the established minimum density. If the city or county  
2 does not adopt a law or regulations requiring the development of  
3 a site at a minimum density, then it shall demonstrate how the  
4 number of units determined for that site pursuant to this subdivision  
5 will be accommodated.

6 (2) The number of units calculated pursuant to paragraph (1)  
7 shall be adjusted as necessary, based on the land use controls and  
8 site improvements requirement identified in paragraph (5) of  
9 subdivision (a) of Section 65583.

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

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

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

20 (i) For an incorporated city within a nonmetropolitan county  
21 and for a nonmetropolitan county that has a micropolitan area:  
22 sites allowing at least 15 units per acre.

23 (ii) For an unincorporated area in a nonmetropolitan county not  
24 included in clause (i): sites allowing at least 10 units per acre.

25 (iii) For a suburban jurisdiction: sites allowing at least 20 units  
26 per acre.

27 (iv) For a jurisdiction in a metropolitan county: sites allowing  
28 at least 30 units per acre.

29 (d) For purposes of this section, a metropolitan county,  
30 nonmetropolitan county, and nonmetropolitan county with a  
31 micropolitan area shall be as determined by the United States  
32 Census Bureau. A nonmetropolitan county with a micropolitan  
33 area includes the following counties: Del Norte, Humboldt, Lake,  
34 Mendocino, Nevada, Tehama, and Tuolumne and other counties  
35 as may be determined by the United States Census Bureau to be  
36 nonmetropolitan counties with micropolitan areas in the future.

37 (e) A jurisdiction shall be considered suburban if the jurisdiction  
38 does not meet the requirements of clauses (i) and (ii) of  
39 subparagraph (B) of paragraph (3) of subdivision (c) and is located  
40 in a Metropolitan Statistical Area (MSA) of less than 2,000,000

1 in population, unless that jurisdiction’s population is greater than  
2 100,000, in which case it shall be considered metropolitan. A  
3 county, not including the City and County of San Francisco, shall  
4 be considered suburban unless the county is in an MSA of  
5 2,000,000 or greater in population in which case the county shall  
6 be considered metropolitan.

7 (f) A jurisdiction shall be considered metropolitan if the  
8 jurisdiction does not meet the requirements for “suburban area”  
9 above and is located in an MSA of 2,000,000 or greater in  
10 population, unless that jurisdiction’s population is less than 25,000  
11 in which case it shall be considered suburban.

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

21 (h) The program required by subparagraph (A) of paragraph (1)  
22 of subdivision (c) of Section 65583 shall accommodate 100 percent  
23 of the need for housing for very low and low-income households  
24 allocated pursuant to Section 65584 for which site capacity has  
25 not been identified in the inventory of sites pursuant to paragraph  
26 (3) of subdivision (a) on sites that shall be zoned to permit  
27 owner-occupied and rental multifamily residential use by right  
28 during the planning period. These sites shall be zoned with  
29 minimum density and development standards that permit at least  
30 16 units per site at a density of at least 16 units per acre in  
31 jurisdictions described in clause (i) of subparagraph (B) of  
32 paragraph (3) of subdivision (c) and at least 20 units per acre in  
33 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)  
34 of paragraph (3) of subdivision (c). At least 50 percent of the very  
35 low and low-income housing need shall be accommodated on sites  
36 designated for residential use and for which nonresidential uses  
37 or mixed-uses are not permitted, except that a city or county may  
38 accommodate all of the very low and low-income housing need  
39 on sites designated for mixed uses if those sites allow 100 percent

1 residential use and require that residential use occupy 50 percent  
2 of the total floor area of a mixed-use project.

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

18 (j) *For purposes of subdivisions (a) and (b), the department*  
19 *shall provide guidance to local governments to properly survey,*  
20 *detail, and account for sites listed pursuant to Section 65585.*

21 (k) This section shall become operative on December 31, 2023.

22 ~~SEC. 3. Section 50459 of the Health and Safety Code is~~  
23 ~~amended to read:~~

24 ~~50459. (a) The department shall adopt, and revise, as~~  
25 ~~necessary, guidelines for any of the following:~~

26 ~~(1) The preparation of housing elements required by Section~~  
27 ~~65302 and Article 10.6 (commencing with Section 65580) of~~  
28 ~~Chapter 3 of Division 1 of Title 7 of the Government Code.~~

29 ~~(2) The preparation of a document that meets both of the~~  
30 ~~following sets of requirements:~~

31 ~~(A) Requirements for housing elements pursuant to Section~~  
32 ~~65302 and Article 10.6 (commencing with Section 65580) of~~  
33 ~~Chapter 3 of Division 1 of Title 7 of the Government Code.~~

34 ~~(B) Requirements for the Consolidated Submissions for~~  
35 ~~Community Planning and Development Programs required by Part~~  
36 ~~91 of Title 24 of the Code of Federal Regulations.~~

37 ~~(b) The department shall review housing elements and~~  
38 ~~amendments for substantial compliance with Article 10.6~~  
39 ~~(commencing with Section 65580) of Chapter 3 of Division 1 of~~

1 Title 7 of the Government Code and report its findings pursuant  
2 to Section 65585 of the Government Code.

3 (e) ~~On or before April 1, 1995, and annually thereafter, the~~  
4 ~~department shall report to the Legislature on the status of housing~~  
5 ~~elements and the extent to which they comply with the~~  
6 ~~requirements of Article 10.6 (commencing with Section 65580)~~  
7 ~~of Chapter 3 of Division 1 of Title 7 of the Government Code. The~~  
8 ~~department shall also make this report available to any other public~~  
9 ~~agency, group, or person who requests a copy.~~

10 (d) ~~The department may, in connection with any loan or grant~~  
11 ~~application submitted to the agency, require submission to the~~  
12 ~~department for review of any housing element and any local~~  
13 ~~housing assistance plan adopted pursuant to the Housing and~~  
14 ~~Community Development Act of 1974 (Public Law 93-383).~~

15 ~~SEC. 4.~~

16 *SEC. 3.* No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 a local agency or school district has the authority to levy service  
19 charges, fees, or assessments sufficient to pay for the program or  
20 level of service mandated by this act, within the meaning of Section  
21 17556 of the Government Code.