

Introduced by Senator BatesJanuary 21, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 895, as introduced, Bates. Land use: housing element.

Existing law, 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.

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, as
2 amended by Section 3 of Chapter 188 of the Statutes of 2015, is
3 amended to read:
4 65583. The housing element shall consist of an identification
5 and analysis of existing and projected housing needs and a
6 statement of goals, policies, quantified objectives, financial
7 resources, and scheduled programs for the preservation,
8 improvement, and development of housing. The housing element
9 shall identify adequate sites for housing, including rental housing,
10 factory-built housing, mobilehomes, and emergency shelters, and
11 shall make adequate provision for the existing and projected needs
12 of all economic segments of the community. The element shall
13 contain all of the following:

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

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

21 (2) An analysis and documentation of household characteristics,
22 including level of payment compared to ability to pay, housing
23 characteristics, including overcrowding, and housing stock
24 condition.

25 (3) An inventory of land suitable for residential development,
26 including vacant sites and sites having potential for redevelopment,
27 and an analysis of the relationship of zoning and public facilities
28 and services to these sites.

29 (4) (A) ~~The~~ An identification of a zone or zones where
30 emergency shelters are allowed as a permitted use without a
31 conditional use or other discretionary permit. The identified zone
32 or zones shall include sufficient capacity to accommodate the need
33 for emergency shelter identified in paragraph (7), except that each
34 local government shall identify a zone or zones that can
35 accommodate at least one year-round emergency shelter. If the
36 local government cannot identify a zone or zones with sufficient
37 capacity, the local government shall include a program to amend
38 its zoning ordinance to meet the requirements of this paragraph
39 within one year of the adoption of the housing element. The local
40 government may identify additional zones where emergency

shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

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

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

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

(iv) The provision of onsite management.

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

(vi) The length of stay.

(vii) Lighting.

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

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

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The

1 housing element must only describe how existing ordinances,
2 policies, and standards are consistent with the requirements of this
3 paragraph.

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

21 (6) An analysis of potential and actual nongovernmental
22 constraints upon the maintenance, improvement, or development
23 of housing for all income levels, including the availability of
24 financing, the price of land, and the cost of construction.

25 (7) An analysis of any special housing needs, such as those of
26 the elderly; persons with disabilities, including a developmental
27 disability, as defined in Section 4512 of the Welfare and
28 Institutions Code; large families; farmworkers; families with female
29 heads of households; and families and persons in need of
30 emergency shelter. The need for emergency shelter shall be
31 assessed based on annual and seasonal need. The need for
32 emergency shelter may be reduced by the number of supportive
33 housing units that are identified in an adopted 10-year plan to end
34 chronic homelessness and that are either vacant or for which
35 funding has been identified to allow construction during the
36 planning period. An analysis of special housing needs by a city or
37 county may include an analysis of the need for frequent user
38 coordinated care housing services.

39 (8) An analysis of opportunities for energy conservation with
40 respect to residential development. Cities and counties are

1 encouraged to include weatherization and energy efficiency
2 improvements as part of publicly subsidized housing rehabilitation
3 projects. This may include energy efficiency measures that
4 encompass the building envelope, its heating and cooling systems,
5 and its electrical system.

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

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

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

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

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

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

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

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

Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

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

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

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be

1 developed for housing within the planning period pursuant to
2 subdivision (h) of Section 65583.2. The identification of sites shall
3 include all components specified in subdivision (b) of Section
4 65583.2.

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

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

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

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

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

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

39 (7) Include an identification of the agencies and officials
40 responsible for the implementation of the various actions and the

1 means by which consistency will be achieved with other general
2 plan elements and community goals.

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

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

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

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

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

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

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

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

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

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

39 (2) Any housing element or housing element amendment
40 prepared pursuant to subdivision (e) of Section 65588 or Section

1 65584.02, when the city, county, or city and county fails to submit
2 the first draft to the department before the due date specified in
3 Section 65588 or 65584.02.

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

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

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

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

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

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

1 subparagraph. Any subdivision of sites shall be subject to the
2 Subdivision Map Act (Division 2 (commencing with Section
3 66410)). Design review shall not constitute a “project” for purposes
4 of Division 13 (commencing with Section 21000) of the Public
5 Resources Code.

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

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

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

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

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

- 1 Health and Safety Code, respectively, for the period required by
- 2 the applicable financing.
- 3 (h) An action to enforce the program actions of the housing
- 4 element shall be brought pursuant to Section 1085 of the Code of
- 5 Civil Procedure.