

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN SENATE AUGUST 27, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 602

Introduced by Assembly Member ~~Evans~~ Feuer
(Principal coauthor: Senator Steinberg)

February 25, 2009

An act to amend Section 65009 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as amended, ~~Evans~~ Feuer. Land use and planning: cause of actions: time limitations.

Existing law, 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 after an action to adopt, amend, or revise a housing element pursuant to existing law.

The bill would declare the intent of the Legislature that its provisions modify a specified court ~~decision~~ *opinion*.

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 ~~decision~~ *opinion* in
3 Urban Habitat Program v. City of Pleasanton (2008) 164
4 Cal.App.4th 1561, *with respect to the interpretation of Section*
5 *65009 of the Government 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
20 affordable housing, open-space and recreational opportunities, and
21 other related public benefits, can prevent the completion of needed
22 developments even though the projects have received required
23 governmental approvals.

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

27 (b) (1) In an action or proceeding to attack, review, set aside,
28 void, or annul a finding, determination, or decision of a public
29 agency made pursuant to this title at a properly noticed public
30 hearing, the issues raised shall be limited to those raised in the
31 public hearing or in written correspondence delivered to the public
32 agency prior to, or at, the public hearing, except where the court
33 finds either of the following:

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

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

5 (2) If a public agency desires the provisions of this subdivision
6 to apply to a matter, it shall include in any public notice issued
7 pursuant to this title a notice substantially stating all of the
8 following: “If you challenge the (nature of the proposed action)
9 in court, you may be limited to raising only those issues you or
10 someone else raised at the public hearing described in this notice,
11 or in written correspondence delivered to the (public entity
12 conducting the hearing) at, or prior to, the public hearing.”

13 (3) The application of this subdivision to causes of action
14 brought pursuant to subdivision (d) applies only to the final action
15 taken in response to the notice to the city or clerk of the board of
16 supervisors. If no final action is taken, then the issue raised in the
17 cause of action brought pursuant to subdivision (d) shall be limited
18 to those matters presented at a properly noticed public hearing or
19 to those matters specified in the notice given to the city or clerk
20 of the board of supervisors pursuant to subdivision (d), or both.

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

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

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

34 (C) To determine the reasonableness, legality, or validity of any
35 decision to adopt or amend any regulation attached to a specific
36 plan.

37 (D) To attack, review, set aside, void, or annul the decision of
38 a legislative body to adopt, amend, or modify a development
39 agreement. An action or proceeding to attack, review, set aside,
40 void, or annul the decisions of a legislative body to adopt, amend,

1 or modify a development agreement shall only extend to the
2 specific portion of the development agreement that is the subject
3 of the adoption, amendment, or modification. This paragraph
4 applies to development agreements, amendments, and
5 modifications adopted on or after January 1, 1996.

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

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

13 (2) In the case of an action or proceeding challenging the
14 adoption or revision of a housing element pursuant to this
15 subdivision, the action or proceeding may, in addition, be
16 maintained if it is commenced and service is made on the
17 legislative body within 60 days following the date that the
18 Department of Housing and Community Development reports its
19 findings pursuant to subdivision (h) of Section 65585.

20 (d) (1) An action or proceeding shall be commenced and the
21 legislative body served within one year after the accrual of the
22 cause of action as provided in this subdivision, if the action or
23 proceeding meets both of the following requirements:

24 (A) It is brought in support of or to encourage or facilitate the
25 development of housing that would increase the community's
26 supply of housing affordable to persons and families with low or
27 moderate incomes, as defined in Section 50079.5 of the Health
28 and Safety Code, or with very low incomes, as defined in Section
29 50105 of the Health and Safety Code, or middle-income
30 households, as defined in Section 65008 of this code. This
31 subdivision is not intended to require that the action or proceeding
32 be brought in support of or to encourage or facilitate a specific
33 housing development project.

34 (B) It is brought with respect to actions taken pursuant to Article
35 10.6 (commencing with Section 65580) of Chapter 3, pursuant to
36 Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to
37 Chapter 4.2 (commencing with Section 65913).

38 (2) A cause of action brought pursuant to this subdivision shall
39 not be maintained until 60 days have expired following notice to
40 the city or clerk of the board of supervisors by the party bringing

1 the cause of action, or his or her representative, specifying the
2 deficiencies of the general plan, specific plan, or zoning ordinance.
3 A cause of action brought pursuant to this subdivision shall accrue
4 60 days after notice is filed or the legislative body takes a final
5 action in response to the notice, whichever occurs first. This notice
6 may be filed at any time after an action described in Article 10.6
7 (commencing with Section 65580) of Chapter 3 to adopt, amend,
8 or revise a housing element. A notice or cause of action brought
9 by one party pursuant to this subdivision shall not bar filing of a
10 notice and initiation of a cause of action by any other party.

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

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

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

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