

AMENDED IN SENATE MARCH 24, 2020

SENATE BILL

No. 1138

Introduced by Senator Wiener
(Coauthor: Assembly Member Wicks)

February 19, 2020

An act to amend Sections 65583 and 65588 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1138, as amended, Wiener. Housing element: emergency shelters: rezoning of sites.

(1) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city that includes a housing element. Existing law requires that the housing element identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and to make adequate provision for the existing and projected needs of all economic segments of a community.

This bill would revise the requirements of the housing element, as described above, in connection with identifying zones or zoning designations that allow residential use, including mixed use, where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. If an emergency shelter zoning designation where residential use is a permitted use is unfeasible, the bill would permit a local government to designate zones for emergency shelters in a nonresidential zone if the local government demonstrates that the zone is connected to amenities and services, as specified, that serve homeless people. The bill would delete language regarding

emergency shelter standards structured in relation to residential and commercial developments and instead require that emergency shelters only be subject to specified written, objective standards. If a local government applies written, objective standards pursuant to these provisions, the bill would require the local government to attach and analyze the standards in its housing element. The bill would require that zones where emergency shelters are allowed include sites that meet at least one of certain prescribed standards. The bill would also require that the number of people experiencing homelessness that can be accommodated on each identified site under these provisions be demonstrated by calculating a minimum of 200 square feet per person.

(2) The Planning and Zoning Law requires that the housing element include, among other things, an inventory of land suitable and available for residential development. If the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, as provided, existing law requires that the local government rezone sites within specified time periods. If the local government fails to adopt a housing element within 120 days of the applicable statutory deadline, existing law requires that the local government complete this rezoning no later than 3 years and 120 days from the statutory deadline for the adoption of the housing element.

This bill, for the 6th and each subsequent revision of the housing element, would instead require that a local government that fails to adopt a housing element that the Department of Housing and Community Development has found to be in substantial compliance with state law within 120 days of the statutory deadline to complete the this rezoning no later than one year from the statutory deadline for the adoption of the housing element.

(3) By increasing the duties of local planning officials, this bill would impose a state-mandated local program.

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:

SECTION 1. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

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

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

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

(3) An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and

1 demonstrated potential for redevelopment during the planning
2 period to meet the locality's housing need for a designated income
3 level, and an analysis of the relationship of zoning and public
4 facilities and services to these sites.

5 (4) (A) The identification of one or more zones or zoning
6 designations that allow residential use, including mixed-use areas,
7 where emergency shelters are allowed as a permitted use without
8 a conditional use or other discretionary permit. If a zoning district
9 or designation is not possible or feasible where residential use is
10 a permitted use, a local government may, instead, designate zones
11 for emergency shelters in a nonresidential zone if the local
12 government demonstrates that the zone is connected to amenities
13 and services that serve people experiencing homelessness.
14 "Connected to amenities and services" includes, but is not limited
15 to, offering free transportation to services or offering services
16 onsite. Shelters shall include other interim interventions, including,
17 but not limited to, navigation centers, bridge housing, and respite
18 or recuperative care. The identified zone or zones shall include
19 sufficient capacity to accommodate the need for emergency shelter
20 identified in paragraph (7), except that each local government shall
21 identify a zone or zones that can accommodate at least one
22 year-round emergency shelter. If the local government cannot
23 identify a zone or zones with sufficient capacity, the local
24 government shall include a program to amend its zoning ordinance
25 to meet the requirements of this paragraph within one year of the
26 adoption of the housing element. The local government may
27 identify additional zones where emergency shelters are permitted
28 with a conditional use permit. The local government shall also
29 demonstrate that existing or proposed permit processing,
30 development, and management standards that apply to emergency
31 shelters are objective and encourage and facilitate the development
32 of, or conversion to, emergency shelters.

33 (B) Emergency shelters shall only be subject to the following
34 written, objective standards:

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

37 (ii) Sufficient parking to accommodate all staff working in the
38 emergency shelter, provided that the standards do not require more
39 parking for emergency shelters than other residential or commercial
40 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.

(C) If a local government applies written, objective standards pursuant to subparagraph (B), the local government shall attach and analyze the standards in its housing element.

(D) 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).

(E) 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.

(F) 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 housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(G) A zone or zones where emergency shelters are allowed, as described in subparagraph (A), shall include sites that meet at least one of the following standards:

(i) Vacant sites zoned for residential use.

(ii) Vacant sites zoned for nonresidential use that allow residential development. Vacant sites in a nonresidential zoning designation may be included if the local government can demonstrate how the zone is connected to amenities and services that serve people experiencing homelessness.

(iii) A nonvacant site, provided that a description is provided regarding the current use of each property at the time it is identified and an analysis is provided indicating how the site is adequate and available for use as a shelter in the current planning period, while meeting all of the state and local health, safety, habitability, and building requirements necessary for any other residential development. If a nonvacant site is identified, the analysis required by this clause shall indicate the current existing use of the site and what factors indicate that the existing use will be terminated during the planning period.

(H) The number of people experiencing homelessness that can be accommodated on each identified site shall be demonstrated by calculating a minimum of 200 square feet per person.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7).

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between

1 the locality's planning for the development of housing for all
2 income levels and the construction of that housing.

3 (7) An analysis of any special housing needs, such as those of
4 the elderly; persons with disabilities, including a developmental
5 disability, as defined in Section 4512 of the Welfare and
6 Institutions Code; large families; farmworkers; families with female
7 heads of households; and families and persons in need of
8 emergency shelter. The need for emergency shelter shall be
9 assessed based on the capacity necessary to accommodate the most
10 recent homeless point-in-time count conducted before the start of
11 the planning period, the need for emergency shelter based on
12 number of beds available on a year-round and seasonal basis, the
13 number of shelter beds that go unused on an average monthly basis
14 within a one-year period, and the percentage of those in emergency
15 shelters that move to permanent housing solutions. The need for
16 emergency shelter may be reduced by the number of supportive
17 housing units that are identified in an adopted 10-year plan to end
18 chronic homelessness and that are either vacant or for which
19 funding has been identified to allow construction during the
20 planning period. An analysis of special housing needs by a city or
21 county may include an analysis of the need for frequent user
22 coordinated care housing services.

23 (8) An analysis of opportunities for energy conservation with
24 respect to residential development. Cities and counties are
25 encouraged to include weatherization and energy efficiency
26 improvements as part of publicly subsidized housing rehabilitation
27 projects. This may include energy efficiency measures that
28 encompass the building envelope, its heating and cooling systems,
29 and its electrical system.

30 (9) An analysis of existing assisted housing developments that
31 are eligible to change from low-income housing uses during the
32 next 10 years due to termination of subsidy contracts, mortgage
33 prepayment, or expiration of restrictions on use. "Assisted housing
34 developments," for the purpose of this section, shall mean
35 multifamily rental housing that receives governmental assistance
36 under federal programs listed in subdivision (a) of Section
37 65863.10, state and local multifamily revenue bond programs,
38 local redevelopment programs, the federal Community
39 Development Block Grant Program, or local in-lieu fees. "Assisted
40 housing developments" shall also include multifamily rental units

1 that were developed pursuant to a local inclusionary housing
2 program or used to qualify for a density bonus pursuant to Section
3 65916.

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

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

19 (C) The analysis shall identify public and private nonprofit
20 corporations known to the local government that have legal and
21 managerial capacity to acquire and manage these housing
22 developments.

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

35 ~~(E) A zone or zones where emergency shelters are allowed, as~~
36 ~~described in subparagraph (A) of paragraph (4), shall include sites~~
37 ~~that meet at least one of the following standards:~~

38 ~~(i) Vacant sites zoned for residential use.~~

39 ~~(ii) Vacant sites zoned for nonresidential use that allow~~
40 ~~residential development. Vacant sites in a nonresidential zoning~~

1 designation may be included if the local government can
2 demonstrate how the zone is connected to amenities and services
3 that serve people experiencing homelessness.

4 (iii) A nonvacant site, provided that a description is provided
5 regarding the current use of each property at the time it is identified
6 and an analysis is provided indicating how the site is adequate and
7 available for use as a shelter in the current planning period, while
8 meeting all of the state and local health, safety, habitability, and
9 building requirements necessary for any other residential
10 development.

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

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

24 (c) A program that sets forth a schedule of actions during the
25 planning period, each with a timeline for implementation, that may
26 recognize that certain programs are ongoing, such that there will
27 be beneficial impacts of the programs within the planning period,
28 that the local government is undertaking or intends to undertake
29 to implement the policies and achieve the goals and objectives of
30 the housing element through the administration of land use and
31 development controls, the provision of regulatory concessions and
32 incentives, the utilization of appropriate federal and state financing
33 and subsidy programs when available, and the utilization of moneys
34 in a low- and moderate-income housing fund of an agency if the
35 locality has established a redevelopment project area pursuant to
36 the Community Redevelopment Law (Division 24 (commencing
37 with Section 33000) of the Health and Safety Code). In order to
38 make adequate provision for the housing needs of all economic
39 segments of the community, the program shall do all of the
40 following:

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

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

35 (B) Where the inventory of sites, pursuant to paragraph (3) of
36 subdivision (a), does not identify adequate sites to accommodate
37 the need for groups of all household income levels pursuant to
38 Section 65584, the program shall identify sites that can be
39 developed for housing within the planning period pursuant to

subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in Section 65583.2.

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

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

(3) Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. Supportive housing, as defined in Section 65650, shall be a use by right in all zones where multifamily and mixed uses are permitted, as provided in Article 11 (commencing with Section 65650).

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

(5) Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law.

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

(7) Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2.

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

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

(10) (A) Affirmatively further fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2. The program shall include an assessment of fair housing in the jurisdiction that shall include all of the following components:

(i) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity.

(ii) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.

(iii) An assessment of the contributing factors for the fair housing issues identified under clause (ii).

1 (iv) An identification of the jurisdiction's fair housing priorities
2 and goals, giving highest priority to those factors identified in
3 clause (iii) that limit or deny fair housing choice or access to
4 opportunity, or negatively impact fair housing or civil rights
5 compliance, and identifying the metrics and milestones for
6 determining what fair housing results will be achieved.

7 (v) Strategies and actions to implement those priorities and
8 goals, which may include, but are not limited to, enhancing
9 mobility strategies and encouraging development of new affordable
10 housing in areas of opportunity, as well as place-based strategies
11 to encourage community revitalization, including preservation of
12 existing affordable housing, and protecting existing residents from
13 displacement.

14 (B) A jurisdiction that completes or revises an assessment of
15 fair housing pursuant to Subpart A (commencing with Section
16 5.150) of Part 5 of Subtitle A of Title 24 of the Code of Federal
17 Regulations, as published in Volume 80 of the Federal Register,
18 Number 136, page 42272, dated July 16, 2015, or an analysis of
19 impediments to fair housing choice in accordance with the
20 requirements of Section 91.225 of Title 24 of the Code of Federal
21 Regulations in effect before August 17, 2015, may incorporate
22 relevant portions of that assessment or revised assessment of fair
23 housing or analysis or revised analysis of impediments to fair
24 housing into its housing element.

25 (C) The requirements of this paragraph shall apply to housing
26 elements due to be revised pursuant to Section 65588 on or after
27 January 1, 2021.

28 (d) (1) A local government may satisfy all or part of its
29 requirement to identify a zone or zones suitable for the
30 development of emergency shelters pursuant to paragraph (4) of
31 subdivision (a) by adopting and implementing a multijurisdictional
32 agreement, with a maximum of two other adjacent communities,
33 that requires the participating jurisdictions to develop at least one
34 year-round emergency shelter within two years of the beginning
35 of the planning period.

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

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

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

5 (B) The jurisdiction's contribution to the facility for both the
6 development and ongoing operation and management of the
7 facility.

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

10 (4) The aggregate capacity claimed by the participating
11 jurisdictions in their housing elements shall not exceed the actual
12 capacity of the shelter.

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

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

21 (2) Any housing element or housing element amendment
22 prepared pursuant to subdivision (e) of Section 65588 or Section
23 65584.02, when the city, county, or city and county fails to submit
24 the first draft to the department before the due date specified in
25 Section 65588 or 65584.02.

26 (f) The deadline for completing required rezoning pursuant to
27 subparagraph (A) of paragraph (1) of subdivision (c) shall be
28 extended by one year if the local government has completed the
29 rezoning at densities sufficient to accommodate at least 75 percent
30 of the units for low- and very low income households and if the
31 legislative body at the conclusion of a public hearing determines,
32 based upon substantial evidence, that any of the following
33 circumstances exist:

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

37 (2) The local government is unable to complete the rezoning
38 because of infrastructure deficiencies due to fiscal or regulatory
39 constraints.

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

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

(g) (1) If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)). Design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

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

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

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

6 (3) The applicant or any interested person may bring an action
7 to enforce this subdivision. If a court finds that the local agency
8 disapproved a project or conditioned its approval in violation of
9 this subdivision, the court shall issue an order or judgment
10 compelling compliance within 60 days. The court shall retain
11 jurisdiction to ensure that its order or judgment is carried out. If
12 the court determines that its order or judgment has not been carried
13 out within 60 days, the court may issue further orders to ensure
14 that the purposes and policies of this subdivision are fulfilled. In
15 any such action, the city, county, or city and county shall bear the
16 burden of proof.

17 (4) For purposes of this subdivision, “housing development
18 project” means a project to construct residential units for which
19 the project developer provides sufficient legal commitments to the
20 appropriate local agency to ensure the continued availability and
21 use of at least 49 percent of the housing units for very low, low-,
22 and moderate-income households with an affordable housing cost
23 or affordable rent, as defined in Section 50052.5 or 50053 of the
24 Health and Safety Code, respectively, for the period required by
25 the applicable financing.

26 (h) An action to enforce the program actions of the housing
27 element shall be brought pursuant to Section 1085 of the Code of
28 Civil Procedure.

29 SEC. 2. Section 65588 of the Government Code is amended
30 to read:

31 65588. (a) Each local government shall review its housing
32 element as frequently as appropriate to evaluate all of the
33 following:

34 (1) The appropriateness of the housing goals, objectives, and
35 policies in contributing to the attainment of the state housing goal.

36 (2) The effectiveness of the housing element in attainment of
37 the community’s housing goals and objectives.

38 (3) The progress of the city, county, or city and county in
39 implementation of the housing element.

1 (4) The effectiveness of the housing element goals, policies,
2 and related actions to meet the community's needs, pursuant to
3 paragraph (7) of subdivision (a) of Section 65583.

4 (b) The housing element shall be revised as appropriate, but no
5 less often than required by subdivision (e), to reflect the results of
6 this periodic review. Nothing in this section shall be construed to
7 excuse the obligations of the local government to adopt a revised
8 housing element in accordance with the schedule specified in this
9 section.

10 (c) The review and revision of housing elements required by
11 this section shall take into account any low- or moderate-income
12 housing provided or required pursuant to Section 65590.

13 (d) The review pursuant to subdivision (c) shall include, but
14 need not be limited to, the following:

15 (1) The number of new housing units approved for construction
16 within the coastal zone after January 1, 1982.

17 (2) The number of housing units for persons and families of
18 low or moderate income, as defined in Section 50093 of the Health
19 and Safety Code, required to be provided in new housing
20 developments either within the coastal zone or within three miles
21 of the coastal zone pursuant to Section 65590.

22 (3) The number of existing residential dwelling units occupied
23 by persons and families of low or moderate income, as defined in
24 Section 50093 of the Health and Safety Code, that have been
25 authorized to be demolished or converted since January 1, 1982,
26 in the coastal zone.

27 (4) The number of residential dwelling units for persons and
28 families of low or moderate income, as defined in Section 50093
29 of the Health and Safety Code, that have been required for
30 replacement or authorized to be converted or demolished as
31 identified in paragraph (3). The location of the replacement units,
32 either onsite, elsewhere within the locality's jurisdiction within
33 the coastal zone, or within three miles of the coastal zone within
34 the locality's jurisdiction, shall be designated in the review.

35 (e) Each city, county, and city and county shall revise its housing
36 element according to the following schedule:

37 (1) (A) Local governments within the regional jurisdiction of
38 the Southern California Association of Governments: June 30,
39 2006, for the fourth revision.

1 (B) Local governments within the regional jurisdiction of the
2 Association of Bay Area Governments: June 30, 2007, for the
3 fourth revision.

4 (C) Local governments within the regional jurisdiction of the
5 Council of Fresno County Governments, the Kern County Council
6 of Governments, and the Sacramento Area Council of
7 Governments: June 30, 2002, for the third revision, and June 30,
8 2008, for the fourth revision.

9 (D) Local governments within the regional jurisdiction of the
10 Association of Monterey Bay Area Governments: December 31,
11 2002, for the third revision, and June 30, 2009, for the fourth
12 revision.

13 (E) Local governments within the regional jurisdiction of the
14 San Diego Association of Governments: June 30, 2005, for the
15 fourth revision.

16 (F) All other local governments: December 31, 2003, for the
17 third revision, and June 30, 2009, for the fourth revision.

18 (2) (A) All local governments within a metropolitan planning
19 organization in a region classified as nonattainment for one or
20 more pollutants regulated by the federal Clean Air Act (42 U.S.C.
21 Sec. 7506), except those within the regional jurisdiction of the San
22 Diego Association of Governments, shall adopt the fifth revision
23 of the housing element no later than 18 months after adoption of
24 the first regional transportation plan to be adopted after September
25 30, 2010.

26 (B) (i) All local governments within the regional jurisdiction
27 of the San Diego Association of Governments shall adopt the fifth
28 revision of the housing element no later than 18 months after
29 adoption of the first regional transportation plan update to be
30 adopted after September 30, 2010.

31 (ii) Before or concurrent with the adoption of the fifth revision
32 of the housing element, each local government within the regional
33 jurisdiction of the San Diego Association of Governments shall
34 identify adequate sites in its inventory pursuant to Section 65583.2
35 or rezone adequate sites to accommodate a prorated portion of its
36 share of the regional housing need for the projection period
37 representing the period from July 1, 2010, to the deadline for
38 housing element adoption described in clause (i).

39 (I) For the fifth revision, a local government within the
40 jurisdiction of the San Diego Association of Governments that has

1 not adopted a housing element for the fourth revision by January
2 1, 2009, shall revise its housing element not less than every four
3 years, beginning on the date described in clause (i), in accordance
4 with paragraph (4), unless the local government does both of the
5 following:

6 (ia) Adopts a housing element for the fourth revision no later
7 than March 31, 2010, that is in substantial compliance with this
8 article.

9 (ib) Completes any rezoning contained in the housing element
10 program for the fourth revision by June 30, 2010.

11 (II) A local government within the jurisdiction of the San Diego
12 Association of Governments shall adopt the sixth revision of the
13 housing element on or before April 30, 2021, using the final
14 housing allocation adopted by the San Diego Association of
15 Governments on or before November 1, 2019, although such action
16 will not be carried out concurrently with adoption of an updated
17 regional transportation plan and sustainable communities strategy.

18 (III) All local governments within the jurisdiction of the San
19 Diego Association of Governments shall adopt the seventh revision
20 of the housing element no later than 18 months after the San Diego
21 Association of Governments adopts its first regional transportation
22 plan update in 2029.

23 (IV) For the eighth and subsequent revisions, a local government
24 within the jurisdiction of the San Diego Association of
25 Governments shall be subject to the dates described in clause (i),
26 in accordance with paragraph (4).

27 (C) All local governments within the regional jurisdiction of a
28 metropolitan planning organization or a regional transportation
29 planning agency that has made an election pursuant to
30 subparagraph (L) of paragraph (2) of subdivision (b) of Section
31 65080 by June 1, 2009, shall adopt the fifth revision of the housing
32 element no later than 18 months after adoption of the first regional
33 transportation plan update following the election.

34 (D) All other local governments shall adopt the fifth revision
35 of the housing element five years after the date specified in
36 paragraph (1).

37 (3) Subsequent revisions of the housing element shall be due
38 as follows:

39 (A) For local governments described in subparagraphs (A), (B),
40 and (C) of paragraph (2), 18 months after adoption of every second

1 regional transportation plan update, provided that the deadline for
2 adoption is no more than eight years later than the deadline for
3 adoption of the previous eight-year housing element, or as
4 otherwise provided in law.

5 (B) For all other local governments, at five-year intervals after
6 the date specified in subparagraph (D) of paragraph (2).

7 (C) If a metropolitan planning organization or a regional
8 transportation planning agency subject to the five-year revision
9 interval in subparagraph (B) makes an election pursuant to
10 subparagraph (M) of paragraph (2) of subdivision (b) of Section
11 65080 after June 1, 2009, all local governments within the regional
12 jurisdiction of that entity shall adopt the next housing element
13 revision no later than 18 months after adoption of the first regional
14 transportation plan update following the election. Subsequent
15 revisions shall be due 18 months after adoption of every second
16 regional transportation plan update, provided that the deadline for
17 adoption is no more than eight years later than the deadline for
18 adoption of the previous eight-year housing element.

19 (4) (A) For the adoption of the fifth revision, a local government
20 that does not adopt a housing element within 120 days of the
21 applicable deadline described in subparagraph (A), (B), or (C) of
22 paragraph (2) or subparagraph (A) or (C) of paragraph (3) shall
23 revise its housing element not less than every four years until the
24 local government has adopted at least two consecutive revisions
25 by the statutory deadline.

26 (B) If necessary, the local government shall adopt three
27 consecutive four-year revisions by the statutory deadline to ensure
28 that when the local government adopts its next housing element
29 covering an eight-year planning period, it does so at the deadline
30 for adoption for other local governments within the region also
31 covering an eight-year planning period.

32 (C) The deadline for adoption of every second four-year revision
33 shall be the same as the deadline for adoption for other local
34 governments within the region.

35 (D) For the adoption of the sixth revision and each subsequent
36 revision, a local government that does not adopt a housing element
37 that the department has found to be in substantial compliance with
38 state law within 120 days of the applicable deadline described in
39 subparagraph (A), (B), or (C) of paragraph (2) or subparagraph
40 (A) or (C) of paragraph (3) shall comply with subparagraph (A)

of paragraph (1) of subdivision (c) of Section ~~65585~~ 65583 within one year of the statutory deadline to revise the housing element.

(5) The metropolitan planning organization or a regional transportation planning agency for a region that has an eight-year revision interval pursuant to paragraph (3) shall notify the department and the Department of Transportation in writing of the estimated adoption date for its next regional transportation plan update at least 12 months before the estimated adoption date. The Department of Transportation shall maintain and publish on its internet website a current schedule of the estimated regional transportation plan adoption dates. The department shall maintain and publish on its internet website a current schedule of the estimated and actual housing element due dates. Each council of governments shall publish on its internet website the estimated and actual housing element due dates, as published by the department, for the jurisdictions within its region and shall send notice of these dates to interested parties. For purposes of determining the existing and projected need for housing within a region pursuant to Sections 65584 to 65584.07, inclusive, the date of the next scheduled revision of the housing element shall be deemed to be the estimated adoption date of the regional transportation plan update described in the notice provided to the Department of Transportation plus 18 months.

(6) The new projection period shall begin on the date of December 31 or June 30 that most closely precedes the end of the previous projection period.

(f) For purposes of this article, the following terms have the following meanings:

(1) “Planning period” shall be the time period between the due date for one housing element and the due date for the next housing element for each revision according to the applicable schedule described in paragraphs (2) and (3) of subdivision (e).

(2) “Projection period” shall be the time period for which the regional housing need is calculated.

(g) For purposes of this section, “regional transportation plan update” shall mean a regional transportation plan adopted to satisfy the requirements of subdivision (d) of Section 65080.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service

- 1 charges, fees, or assessments sufficient to pay for the program or
- 2 level of service mandated by this act, within the meaning of Section
- 3 17556 of the Government Code.

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