

AMENDED IN ASSEMBLY JANUARY 16, 2020

AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 2, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 725

Introduced by Assembly Member Wicks
(Coauthors: Senators Skinner and Wiener)

February 19, 2019

An act to amend Section 65583.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 725, as amended, Wicks. General plans: housing element: *moderate-income and above moderate-income housing*: suburban and metropolitan jurisdictions.

The Planning and Zoning Law requires a city or county to adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. That law requires that the housing element include, among other things, an inventory of land suitable for residential development, 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 determined pursuant to specified law.

This bill would require that at least ~~50% of a suburban or~~ 25% of a metropolitan jurisdiction's share of the regional housing need for ~~above moderate-income housing~~ be allocated to sites with zoning that allows at least ~~2~~, 2 *units of housing*, but no more than ~~20 units~~ 35 *units per acre* of housing. ~~The bill would provide that specified remedies available~~

~~to the court in an action challenging the validity of a general plan do not apply to housing on site identified pursuant to these provisions. The bill would require that at least 25% of a metropolitan jurisdiction's share of the regional housing need for above moderate-income housing be allocated to sites with zoning that allows at least 2 units of housing, but no more than 35 units per acre of housing.~~ The bill would exclude unincorporated areas from this prohibition and would include related legislative findings. By imposing additional requirements on the manner in which a city or county may satisfy its regional housing need, 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:

1 SECTION 1. It is the intent of the Legislature, in enacting this
2 measure, to do both of the following:

3 (a) Encourage multifamily and infill development, while still
4 allowing single family home development.

5 (b) Increase housing production and contribute to overall
6 housing stock.

7 SEC. 2. Section 65583.2 of the Government Code, as amended
8 by Section 15.5 of Chapter 664 of the Statutes of 2019, is amended
9 to read:

10 65583.2. (a) A city's or county's inventory of land suitable
11 for residential development pursuant to paragraph (3) of
12 subdivision (a) of Section 65583 shall be used to identify sites
13 throughout the community, consistent with paragraph (9) of
14 subdivision (c) of Section 65583, that can be developed for housing
15 within the planning period and that are sufficient to provide for
16 the jurisdiction's share of the regional housing need for all income
17 levels pursuant to Section 65584. As used in this section, "land
18 suitable for residential development" includes all of the sites that
19 meet the following standards set forth in subdivisions (c) and (g):

20 (1) Vacant sites zoned for residential use.

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

3 (3) Residentially zoned sites that are capable of being developed
4 at a higher density, including sites owned or leased by a city,
5 county, or city and county.

6 (4) Sites zoned for nonresidential use that can be redeveloped
7 for residential use, and for which the housing element includes a
8 program to rezone the site, as necessary, rezoned for, to permit
9 residential use, including sites owned or leased by a city, county,
10 or city and county.

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

12 (1) A listing of properties by assessor parcel number.

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

15 (3) For nonvacant sites, a description of the existing use of each
16 property. If a site subject to this paragraph is owned by the city or
17 county, the description shall also include whether there are any
18 plans to dispose of the property during the planning period and
19 how the city or county will comply with Article 8 (commencing
20 with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title
21 5.

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

27 (5) (A) A description of existing or planned water, sewer, and
28 other dry utilities supply, including the availability and access to
29 distribution facilities.

30 (B) Parcels included in the inventory must have sufficient water,
31 sewer, and dry utilities supply available and accessible to support
32 housing development or be included in an existing general plan
33 program or other mandatory program or plan, including a program
34 or plan of a public or private entity providing water or sewer
35 service, to secure sufficient water, sewer, and dry utilities supply
36 to support housing development. This paragraph does not impose
37 any additional duty on the city or county to construct, finance, or
38 otherwise provide water, sewer, or dry utilities to parcels included
39 in the inventory.

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

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

8 (c) Based on the information provided in subdivision (b), a city
9 or county shall determine whether each site in the inventory can
10 accommodate the development of some portion of its share of the
11 regional housing need by income level during the planning period,
12 as determined pursuant to Section 65584. The inventory shall
13 specify for each site the number of units that can realistically be
14 accommodated on that site and whether the site is adequate to
15 accommodate lower income housing, moderate-income housing,
16 or above moderate-income housing. A nonvacant site identified
17 pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing
18 element and a vacant site that has been included in two or more
19 consecutive planning periods that was not approved to develop a
20 portion of the locality's housing need shall not be deemed adequate
21 to accommodate a portion of the housing need for lower income
22 households that must be accommodated in the current housing
23 element planning period unless the site is zoned at residential
24 densities consistent with paragraph (3) of this subdivision and the
25 site is subject to a program in the housing element requiring
26 rezoning within three years of the beginning of the planning period
27 to allow residential use by right for housing developments in which
28 at least 20 percent of the units are affordable to lower income
29 households. An unincorporated area in a nonmetropolitan county
30 pursuant to clause (ii) of subparagraph (B) of paragraph (3) shall
31 not be subject to the requirements of this subdivision to allow
32 residential use by right. The analysis shall determine whether the
33 inventory can provide for a variety of types of housing, including
34 multifamily rental housing, factory-built housing, mobilehomes,
35 housing for agricultural employees, supportive housing,
36 single-room occupancy units, emergency shelters, and transitional
37 housing. The city or county shall determine the number of housing
38 units that can be accommodated on each site as follows:

39 (1) If local law or regulations require the development of a site
40 at a minimum density, the department shall accept the planning

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

7 (2) The number of units calculated pursuant to paragraph (1)
8 shall be adjusted as necessary, based on the land use controls and
9 site improvements requirement identified in paragraph (5) of
10 subdivision (a) of Section 65583, the realistic development capacity
11 for the site, typical densities of existing or approved residential
12 developments at a similar affordability level in that jurisdiction,
13 and on the current or planned availability and accessibility of
14 sufficient water, sewer, and dry utilities.

15 (A) A site smaller than half an acre shall not be deemed adequate
16 to accommodate lower income housing need unless the locality
17 can demonstrate that sites of equivalent size were successfully
18 developed during the prior planning period for an equivalent
19 number of lower income housing units as projected for the site or
20 unless the locality provides other evidence to the department that
21 the site is adequate to accommodate lower income housing.

22 (B) A site larger than 10 acres shall not be deemed adequate to
23 accommodate lower income housing need unless the locality can
24 demonstrate that sites of equivalent size were successfully
25 developed during the prior planning period for an equivalent
26 number of lower income housing units as projected for the site or
27 unless the locality provides other evidence to the department that
28 the site can be developed as lower income housing. For purposes
29 of this subparagraph, “site” means that portion of a parcel or parcels
30 designated to accommodate lower income housing needs pursuant
31 to this subdivision.

32 (C) A site may be presumed to be realistic for development to
33 accommodate lower income housing need if, at the time of the
34 adoption of the housing element, a development affordable to
35 lower income households has been proposed and approved for
36 development on the site.

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

1 (A) Provide an analysis demonstrating how the adopted densities
 2 accommodate this need. The analysis shall include, but is not
 3 limited to, factors such as market demand, financial feasibility, or
 4 information based on development project experience within a
 5 zone or zones that provide housing for lower income households.
 6 (B) The following densities shall be deemed appropriate to
 7 accommodate housing for lower income households:
 8 (i) For an incorporated city within a nonmetropolitan county
 9 and for a nonmetropolitan county that has a micropolitan area:
 10 sites allowing at least 15 units per acre.
 11 (ii) For an unincorporated area in a nonmetropolitan county not
 12 included in clause (i): sites allowing at least 10 units per acre.
 13 (iii) For a suburban jurisdiction: sites allowing at least 20 units
 14 per acre.
 15 (iv) For a jurisdiction in a metropolitan county: sites allowing
 16 at least 30 units per acre.
 17 (4) (A) For a ~~suburban or metropolitan jurisdiction, at least 50~~
 18 *metropolitan jurisdiction:*
 19 (i) *At least 25 percent of the jurisdiction’s share of the regional*
 20 *housing need for above moderate-income housing shall be allocated*
 21 *to sites with zoning that allows at least two, 2 units of housing,*
 22 *but not more than 20, 35 units per acre of housing. A*
 23 (ii) *At least 25 percent of the jurisdiction’s share of the regional*
 24 *housing need for above moderate-income housing shall be*
 25 *allocated to sites with zoning that allows at least 2 units of housing,*
 26 *but not more than 35 units per acre of housing.*
 27 (iii) A project proponent may propose, and a jurisdiction may
 28 approve, a single-family detached home on a site identified
 29 pursuant to this paragraph and zoned for at least two units.
 30 (B) The allocation of *moderate-income and* above
 31 moderate-income housing to sites pursuant to this paragraph shall
 32 not be a basis for the jurisdiction to do either of the following:
 33 (i) Deny a project that does not comply with the allocation.
 34 (ii) Impose a price minimum, price maximum, price control, or
 35 any other exaction or condition of approval ~~in lieu~~ *in lieu* thereof.
 36 *This clause does not prohibit a jurisdiction from imposing any*
 37 *price minimum, price maximum, price control, exaction, or*
 38 *condition in lieu thereof, pursuant to any other law.*

1 (iii) *The provisions of this subparagraph do not constitute a*
2 *change in, but are declaratory of, existing law with regard to the*
3 *allocation of sites pursuant to this section.*

4 ~~(C) The remedies provided in paragraphs (1), (2), and (3) of~~
5 ~~subdivision (a) of Section 65755 shall not apply to any housing~~
6 ~~development project on a site allocated pursuant to this paragraph.~~

7 ~~(D)~~

8 (C) This paragraph does not apply to an unincorporated area,
9 regardless of whether it is located within a suburban or
10 metropolitan jurisdiction. *area.*

11 ~~(E)~~

12 (D) For purposes of this paragraph:

13 (i) “Housing development project” has the same meaning as
14 defined in paragraph (2) of subdivision (h) of Section 65589.5.

15 (ii) “Unit of housing” does not include an accessory dwelling
16 unit or junior accessory dwelling unit.

17 (iii) “Site” may mean more than one parcel that includes
18 owner-occupied or rental housing.

19 (d) For purposes of this section, a metropolitan county,
20 nonmetropolitan county, and nonmetropolitan county with a
21 micropolitan area shall be as determined by the United States
22 Census Bureau. A nonmetropolitan county with a micropolitan
23 area includes the following counties: Del Norte, Humboldt, Lake,
24 Mendocino, Nevada, Tehama, and Tuolumne and other counties
25 as may be determined by the United States Census Bureau to be
26 nonmetropolitan counties with micropolitan areas in the future.

27 (e) (1) Except as provided in paragraph (2), a jurisdiction shall
28 be considered suburban if the jurisdiction does not meet the
29 requirements of clauses (i) and (ii) of subparagraph (B) of
30 paragraph (3) of subdivision (c) and is located in a Metropolitan
31 Statistical Area (MSA) of less than 2,000,000 in population, unless
32 that jurisdiction’s population is greater than 100,000, in which
33 case it shall be considered metropolitan. A county, not including
34 the City and County of San Francisco, shall be considered suburban
35 unless the county is in an MSA of 2,000,000 or greater in
36 population in which case the county shall be considered
37 metropolitan.

38 (2) (A) (i) Notwithstanding paragraph (1), if a county that is
39 in the San Francisco-Oakland-Fremont California MSA has a
40 population of less than 400,000, that county shall be considered

1 suburban. If this county includes an incorporated city that has a
2 population of less than 100,000, this city shall also be considered
3 suburban. This paragraph shall apply to a housing element revision
4 cycle, as described in subparagraph (A) of paragraph (3) of
5 subdivision (e) of Section 65588, that is in effect from July 1,
6 2014, to December 31, 2028, inclusive.

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

11 (B) A jurisdiction that is classified as suburban pursuant to this
12 paragraph shall report to the Assembly Committee on Housing
13 and Community Development, the Senate Committee on Housing,
14 and the Department of Housing and Community Development
15 regarding its progress in developing low- and very low income
16 housing consistent with the requirements of Section 65400. The
17 report shall be provided three times: once, on or before December
18 31, 2019, which report shall address the initial four years of the
19 housing element cycle, a second time, on or before December 31,
20 2023, which report shall address the subsequent four years of the
21 housing element cycle, and a third time, on or before December
22 31, 2027, which report shall address the subsequent four years of
23 the housing element cycle and the cycle as a whole. The reports
24 shall be provided consistent with the requirements of Section 9795.

25 (f) A jurisdiction shall be considered metropolitan if the
26 jurisdiction does not meet the requirements for "suburban area"
27 above and is located in an MSA of 2,000,000 or greater in
28 population, unless that jurisdiction's population is less than 25,000
29 in which case it shall be considered suburban.

30 (g) (1) For sites described in paragraph (3) of subdivision (b),
31 the city or county shall specify the additional development potential
32 for each site within the planning period and shall provide an
33 explanation of the methodology used to determine the development
34 potential. The methodology shall consider factors including the
35 extent to which existing uses may constitute an impediment to
36 additional residential development, the city's or county's past
37 experience with converting existing uses to higher density
38 residential development, the current market demand for the existing
39 use, an analysis of any existing leases or other contracts that would
40 perpetuate the existing use or prevent redevelopment of the site

1 for additional residential development, development trends, market
2 conditions, and regulatory or other incentives or standards to
3 encourage additional residential development on these sites.

4 (2) In addition to the analysis required in paragraph (1), when
5 a city or county is relying on nonvacant sites described in paragraph
6 (3) of subdivision (b) to accommodate 50 percent or more of its
7 housing need for lower income households, the methodology used
8 to determine additional development potential shall demonstrate
9 that the existing use identified pursuant to paragraph (3) of
10 subdivision (b) does not constitute an impediment to additional
11 residential development during the period covered by the housing
12 element. An existing use shall be presumed to impede additional
13 residential development, absent findings based on substantial
14 evidence that the use is likely to be discontinued during the
15 planning period.

16 (3) Notwithstanding any other law, and in addition to the
17 requirements in paragraphs (1) and (2), sites that currently have
18 residential uses, or within the past five years have had residential
19 uses that have been vacated or demolished, that are or were subject
20 to a recorded covenant, ordinance, or law that restricts rents to
21 levels affordable to persons and families of low or very low
22 income, subject to any other form of rent or price control through
23 a public entity's valid exercise of its police power, or occupied by
24 low- or very low income households, shall be subject to a policy
25 requiring the replacement of all those units affordable to the same
26 or lower income level as a condition of any development on the
27 site. Replacement requirements shall be consistent with those set
28 forth in paragraph (3) of subdivision (c) of Section 65915.

29 (h) The program required by subparagraph (A) of paragraph (1)
30 of subdivision (c) of Section 65583 shall accommodate 100 percent
31 of the need for housing for very low and low-income households
32 allocated pursuant to Section 65584 for which site capacity has
33 not been identified in the inventory of sites pursuant to paragraph
34 (3) of subdivision (a) on sites that shall be zoned to permit
35 owner-occupied and rental multifamily residential use by right for
36 developments in which at least 20 percent of the units are
37 affordable to lower income households during the planning period.
38 These sites shall be zoned with minimum density and development
39 standards that permit at least 16 units per site at a density of at
40 least 16 units per acre in jurisdictions described in clause (i) of

1 subparagraph (B) of paragraph (3) of subdivision (c), shall be at
 2 least 20 units per acre in jurisdictions described in clauses (iii) and
 3 (iv) of subparagraph (B) of paragraph (3) of subdivision (c) and
 4 shall meet the standards set forth in subparagraph (B) of paragraph
 5 (5) of subdivision (b). At least 50 percent of the very low and
 6 low-income housing need shall be accommodated on sites
 7 designated for residential use and for which nonresidential uses
 8 or mixed uses are not permitted, except that a city or county may
 9 accommodate all of the very low and low-income housing need
 10 on sites designated for mixed use if those sites allow 100 percent
 11 residential use and require that residential use occupy 50 percent
 12 of the total floor area of a mixed-use project.

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

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

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

34 (l) This section shall remain in effect only until December 31,
 35 2028, and as of that date is repealed.

36 SEC. 3. Section 65583.2 of the Government Code, as amended
 37 by Section 16.5 of Chapter 664 of the Statutes of 2019, is amended
 38 to read:

39 65583.2. (a) A city’s or county’s inventory of land suitable
 40 for residential development pursuant to paragraph (3) of

1 subdivision (a) of Section 65583 shall be used to identify sites
2 throughout the community, consistent with paragraph (9) of
3 subdivision (c) of Section 65583, that can be developed for housing
4 within the planning period and that are sufficient to provide for
5 the jurisdiction’s share of the regional housing need for all income
6 levels pursuant to Section 65584. As used in this section, “land
7 suitable for residential development” includes all of the following
8 sites that meet the standards set forth in subdivisions (c) and (g):

9 (1) Vacant sites zoned for residential use.

10 (2) Vacant sites zoned for nonresidential use that allows
11 residential development.

12 (3) Residentially zoned sites that are capable of being developed
13 at a higher density, and sites owned or leased by a city, county, or
14 city and county.

15 (4) Sites zoned for nonresidential use that can be redeveloped
16 for residential use, and for which the housing element includes a
17 program to rezone the site, as necessary, to permit residential use,
18 including sites owned or leased by a city, county, or city and
19 county.

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

21 (1) A listing of properties by assessor parcel number.

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

24 (3) For nonvacant sites, a description of the existing use of each
25 property. If a site subject to this paragraph is owned by the city or
26 county, the description shall also include whether there are any
27 plans to dispose of the property during the planning period and
28 how the city or county will comply with Article 8 (commencing
29 with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title
30 5.

31 (4) A general description of any environmental constraints to
32 the development of housing within the jurisdiction, the
33 documentation for which has been made available to the
34 jurisdiction. This information need not be identified on a
35 site-specific basis.

36 (5) (A) A description of existing or planned water, sewer, and
37 other dry utilities supply, including the availability and access to
38 distribution facilities.

39 (B) Parcels included in the inventory must have sufficient water,
40 sewer, and dry utilities supply available and accessible to support

1 housing development or be included in an existing general plan
2 program or other mandatory program or plan, including a program
3 or plan of a public or private entity providing water or sewer
4 service, to secure sufficient water, sewer, and dry utilities supply
5 to support housing development. This paragraph does not impose
6 any additional duty on the city or county to construct, finance, or
7 otherwise provide water, sewer, or dry utilities to parcels included
8 in the inventory.

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

13 (7) A map that shows the location of the sites included in the
14 inventory, such as the land use map from the jurisdiction's general
15 plan for reference purposes only.

16 (c) Based on the information provided in subdivision (b), a city
17 or county shall determine whether each site in the inventory can
18 accommodate the development of some portion of its share of the
19 regional housing need by income level during the planning period,
20 as determined pursuant to Section 65584. The inventory shall
21 specify for each site the number of units that can realistically be
22 accommodated on that site and whether the site is adequate to
23 accommodate lower income housing, moderate-income housing,
24 or above moderate-income housing. A nonvacant site identified
25 pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing
26 element and a vacant site that has been included in two or more
27 consecutive planning periods that was not approved to develop a
28 portion of the locality's housing need shall not be deemed adequate
29 to accommodate a portion of the housing need for lower income
30 households that must be accommodated in the current housing
31 element planning period unless the site is zoned at residential
32 densities consistent with paragraph (3) of this subdivision and the
33 site is subject to a program in the housing element requiring
34 rezoning within three years of the beginning of the planning period
35 to allow residential use by right for housing developments in which
36 at least 20 percent of the units are affordable to lower income
37 households. A city that is an unincorporated area in a
38 nonmetropolitan county pursuant to clause (ii) of subparagraph
39 (B) of paragraph (3) shall not be subject to the requirements of
40 this subdivision to allow residential use by right. The analysis shall

1 determine whether the inventory can provide for a variety of types
2 of housing, including multifamily rental housing, factory-built
3 housing, mobilehomes, housing for agricultural employees,
4 supportive housing, single-room occupancy units, emergency
5 shelters, and transitional housing. The city or county shall
6 determine the number of housing units that can be accommodated
7 on each site as follows:

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

16 (2) The number of units calculated pursuant to paragraph (1)
17 shall be adjusted as necessary, based on the land use controls and
18 site improvements requirement identified in paragraph (5) of
19 subdivision (a) of Section 65583, the realistic development capacity
20 for the site, typical densities of existing or approved residential
21 developments at a similar affordability level in that jurisdiction,
22 and on the current or planned availability and accessibility of
23 sufficient water, sewer, and dry utilities.

24 (A) A site smaller than half an acre shall not be deemed adequate
25 to accommodate lower income housing need unless the locality
26 can demonstrate that sites of equivalent size were successfully
27 developed during the prior planning period for an equivalent
28 number of lower income housing units as projected for the site or
29 unless the locality provides other evidence to the department that
30 the site is adequate to accommodate lower income housing.

31 (B) A site larger than 10 acres shall not be deemed adequate to
32 accommodate lower income housing need unless the locality can
33 demonstrate that sites of equivalent size were successfully
34 developed during the prior planning period for an equivalent
35 number of lower income housing units as projected for the site or
36 unless the locality provides other evidence to the department that
37 the site can be developed as lower income housing. For purposes
38 of this subparagraph, "site" means that portion of a parcel or parcels
39 designated to accommodate lower income housing needs pursuant
40 to this subdivision.

1 (C) A site may be presumed to be realistic for development to
 2 accommodate lower income housing need if, at the time of the
 3 adoption of the housing element, a development affordable to
 4 lower income households has been proposed and approved for
 5 development on the site.

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

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

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

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

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

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

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

25 (4) (A) For a ~~suburban or metropolitan jurisdiction, at least~~50
 26 *metropolitan jurisdiction:*

27 (i) *At least 25 percent of the jurisdiction's share of the regional*
 28 *housing need for above moderate-income housing shall be allocated*
 29 *to sites with zoning that allows at least two, 2 units of housing,*
 30 *but not more than 20, units of housing. A 35 units per acre of*
 31 *housing.*

32 (ii) *At least 25 percent of the jurisdiction's share of the regional*
 33 *housing need for above moderate-income housing shall be*
 34 *allocated to sites with zoning that allows at least 2 units of housing,*
 35 *but not more than 35 units per acre of housing.*

36 (iii) A project proponent may propose, and a jurisdiction may
 37 approve, a single-family detached home on a site identified
 38 pursuant to this paragraph and zoned for at least two units.

1 (B) The allocation of *moderate-income and* above
2 moderate-income housing to sites pursuant to this paragraph shall
3 not be a basis for the jurisdiction to do either of the following:

- 4 (i) Deny a project that does not comply with the allocation.
- 5 (ii) Impose a price minimum, price maximum, price control, or
6 any other exaction or condition of approval ~~in lieu~~ *in lieu* thereof.
7 *This clause does not prohibit a jurisdiction from imposing any*
8 *price minimum, price maximum, price control, exaction, or*
9 *condition in lieu thereof, pursuant to any other law.*
- 10 (iii) *The provisions of this subparagraph do not constitute a*
11 *change in, but are declaratory of, existing law with regard to the*
12 *allocation of sites pursuant to this section.*

13 ~~(C) The remedies provided in paragraphs (1), (2), and (3) of~~
14 ~~subdivision (a) of Section 65755 shall not apply to any housing~~
15 ~~development project on a site allocated pursuant to this paragraph.~~

16 ~~(D)~~
17 (C) This paragraph does not apply to an unincorporated area,
18 regardless of whether it is located within a suburban or
19 metropolitan jurisdiction. *area.*

20 ~~(E)~~
21 (D) For purposes of this paragraph:

- 22 (i) “Housing development project” has the same meaning as
23 defined in paragraph (2) of subdivision (h) of Section 65589.5.
- 24 (ii) “Unit of housing” does not include an accessory dwelling
25 unit or junior accessory dwelling unit.
- 26 (iii) “Site” may mean more than one parcel that includes
27 owner-occupied or rental housing.

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

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

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

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

11 (g) (1) For sites described in paragraph (3) of subdivision (b),
12 the city or county shall specify the additional development potential
13 for each site within the planning period and shall provide an
14 explanation of the methodology used to determine the development
15 potential. The methodology shall consider factors including the
16 extent to which existing uses may constitute an impediment to
17 additional residential development, the city’s or county’s past
18 experience with converting existing uses to higher density
19 residential development, the current market demand for the existing
20 use, an analysis of any existing leases or other contracts that would
21 perpetuate the existing use or prevent redevelopment of the site
22 for additional residential development, development trends, market
23 conditions, and regulatory or other incentives or standards to
24 encourage additional residential development on these sites.

25 (2) In addition to the analysis required in paragraph (1), when
26 a city or county is relying on nonvacant sites described in paragraph
27 (3) of subdivision (b) to accommodate 50 percent or more of its
28 housing need for lower income households, the methodology used
29 to determine additional development potential shall demonstrate
30 that the existing use identified pursuant to paragraph (3) of
31 subdivision (b) does not constitute an impediment to additional
32 residential development during the period covered by the housing
33 element. An existing use shall be presumed to impede additional
34 residential development, absent findings based on substantial
35 evidence that the use is likely to be discontinued during the
36 planning period.

37 (3) Notwithstanding any other law, and in addition to the
38 requirements in paragraphs (1) and (2), sites that currently have
39 residential uses, or within the past five years have had residential
40 uses that have been vacated or demolished, that are or were subject

1 to a recorded covenant, ordinance, or law that restricts rents to
2 levels affordable to persons and families of low or very low
3 income, subject to any other form of rent or price control through
4 a public entity’s valid exercise of its police power, or occupied by
5 low- or very low income households, shall be subject to a policy
6 requiring the replacement of all those units affordable to the same
7 or lower income level as a condition of any development on the
8 site. Replacement requirements shall be consistent with those set
9 forth in paragraph (3) of subdivision (c) of Section 65915.

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

34 (i) For purposes of this section and Section 65583, the phrase
35 “use by right” shall mean that the local government’s review of
36 the owner-occupied or multifamily residential use may not require
37 a conditional use permit, planned unit development permit, or other
38 discretionary local government review or approval that would
39 constitute a “project” for purposes of Division 13 (commencing
40 with Section 21000) of the Public Resources Code. Any subdivision

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

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

12 (k) This section shall become operative on December 31, 2028.

13 SEC. 4. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 a local agency or school district has the authority to levy service
16 charges, fees, or assessments sufficient to pay for the program or
17 level of service mandated by this act, within the meaning of Section
18 17556 of the Government Code.