ASSEMBLY BILL No. 1063

Introduced by Assembly Member Petrie-Norris

February 21, 2019

An act to add Section 100523 to the Government Code, relating to healthcare coverage. Amend Sections 65583.1 and 65583.2 of, and to add Section 65585.5 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST


(1) The Planning and Zoning Law requires that the housing element of a city’s or county’s general plan 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 law requires the Department of Housing and Community Development to determine the existing and projected need for housing for each region, as specified. The law also requires that the housing element include an inventory of land suitable for residential development and requires that inventory to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the city’s or county’s share of the regional housing need. Existing law requires the planning agency of a city or county to submit a draft element or draft amendment to the department prior to adoption,
as specified. Existing law requires the department to determine whether the draft element or draft amendment substantially complies with the provisions of the Planning and Zoning Law relating to housing elements.

Existing law authorizes the department, in evaluating a proposed or adopted housing element for substantial compliance with the provisions of the Planning and Zoning Law relating to housing elements, to allow a city or county to identify adequate sites by a variety of methods, as specified. Existing law authorizes the department to allow a city or county to identify sites for accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, those units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department.

This bill would, instead, require the department, in making that evaluation, to allow a city or county to identify adequate sites by a variety of methods, as specified. The bill would require the department to allow a city or county to identify sites for potential accessory dwelling units based on existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. If the combination of potential accessory dwelling units and junior accessory dwelling units constitutes greater than 50% of the units identified to meet the city’s or county’s share of the regional need for affordable housing for lower income households, the bill would require the housing element to provide supplementary policies, programs, and actions that further encourage or incentivize the development of accessory dwelling units and junior accessory dwelling units for lower income households. The bill would require the department to determine the affordability of a potential accessory dwelling unit or a junior accessory dwelling unit by taking into account relevant factors justified by the city or county, as specified. The bill would require the department to presume that very low and low-income renter households would occupy accessory units in a proportion greater than or equal to the proportion of very low and low-income renter households to all renter households in the city or county, as specified.

Existing law authorizes the department to allow a city or county to substitute the provision of units for up to 25% of the city’s or county’s obligation to identify adequate sites for any income category if the city or county includes in its housing element a program committing the
city or county to provide qualifying units in that income category within
the city or county that will be made available through the provision of
committed assistance, as specified. Under existing law, units qualify
for inclusion in the program providing committed assistance if the units,
among other requirements, are located either on foreclosed property
or in a multifamily rental or ownership housing complex of 3 or more
units, and have long-term affordability covenants and restrictions that
require the units to be affordable to persons of low- or very low income
for not less than 55 years. Under existing law, units also qualify for
inclusion in the program if the units, among other requirements, have
long-term affordability covenants and restrictions that require the unit
to be affordable to, and reserved for occupancy by, persons of the same
or lower income group as the current occupants for a period of at least
40 years, and the city or county finds that the units are eligible, and
are reasonably expected, to change from housing affordable to low-
and very low income households to any other use during the next 5
years due to specified events.

This bill, instead, would authorize the department to allow a city or
county to substitute the provision of units for up to 50% of the city’s or
county’s obligation to identify adequate sites for any income category
if the city or county includes in its housing element a program that
either commits the city or county to provide, or requires a private entity
to provide, specified units in that income category within the city or
county that will be made available through the provision of committed
assistance, as specified. The bill would revise the qualifications for
inclusion in the program for both types of units described above by
reducing the minimum period of time for the affordability covenants
and restrictions to 20 years unless a longer period is required by other
supplementary financial assistance. The bill would also revise the qualifications for the latter type of units by extending the period of time
within which the city or county is required to find the units are eligible,
and are reasonably expected, to change to another use to 10 years.

Existing law requires a city or county that has included in its housing
element a qualified program providing units with committed assistance
to provide a progress report to the legislative body and to the
department in the 3rd year of the planning period, as specified. If the
city or county has not entered into an enforceable agreement of
committed assistance for all units specified in those programs by July
1 of the 3rd year of the planning period, existing law requires the city
or county to adopt an amended housing element identifying additional
adequate sites sufficient to accommodate the number of units for which committed assistance was not provided not later than July 1 of the 4th year of the planning period.

This bill would instead require the city or county to provide that report in the 5th year of the planning period. If the city or county has not entered into that agreement of committed assistance by July 1 of the 5th year of the planning period, the bill would require the city or county to adopt that amended housing element not later than July 1 of the 6th year of the planning period.

Under existing law, the above-described provisions governing the substitution of adequate site identification with the provision of units do not apply to a city or county that, during the current or immediately prior planning period, has not met any of its share of the regional need for affordable housing for low- and very low income households.

This bill would remove that exclusion.

(2) The Planning and Zoning Law also requires the inventory of land suitable for residential development in the housing element to include, among other things, a description of the existing use of each property on nonvacant sites. Existing law requires the city or county to specify the additional development potential for each nonvacant site within the planning period and to provide an explanation of the methodology to determine that potential. If a city or county relies on nonvacant sites to accommodate 50% or more of its housing need for lower income households, existing law requires that methodology to demonstrate that the existing use does not constitute an impediment to additional development during the period covered by the housing element. Existing law requires an existing use to be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.

This bill would deem certain conditions to be substantial evidence that an existing use is likely to be discontinued during the planning period.

(3) The Planning and Zoning Law requires a planning agency to submit its draft housing element or amendment to the housing element and, after adoption by the legislative body, a copy of the adopted housing element or amendment to the Department of Housing and Community Development for review. If the department finds that the housing element or amendment does not substantially comply with specified law, existing law requires the department to notify the city, county, or city and county, and authorizes the department to notify the
Attorney General, that the city, county, or city and county is in violation of state law. Existing law authorizes the Attorney General, in an action relating to housing element compliance pursuant to a notice or referral from the department, to request that the court issue an order or judgment directing the jurisdiction to bring its housing element in substantial compliance and authorizes the court to impose fines and order specified other remedies under certain circumstances.

This bill, for the 6th and each subsequent revision of the housing element, if an affected local government has submitted the revision of its housing element to the voters for approval before the applicable due date but the voters have not yet voted on the housing element revision, would exempt that local government from the above-described fines or other penalties for failure to adopt its housing element by the applicable due date. The bill, for the 6th and each subsequent revision of the housing element, if the affected local government has submitted the applicable revision of its housing element to the voters for approval before the applicable due date and the voters have rejected the housing element, would similarly exempt the affected local government from the above-described fines or penalties for failure to adopt its housing element by the applicable due date, but would authorize the court in an action brought by the Attorney General to order specified remedies under which the agent of the court may take all governmental actions necessary to bring the jurisdiction’s housing element into substantial compliance in order to remedy identified deficiencies. The bill would define “affected local government” for these purposes to mean a local government that is subject to a requirement that the adoption or amendment of the housing element be approved by the voters of that local government and that has submitted a draft of the applicable proposed revision of its housing element to the department.

Existing federal law, the Patient Protection and Affordable Care Act (PPACA), requires each state to establish an American Health Benefit Exchange to facilitate the purchase of qualified health benefit plans by qualified individuals and qualified small employers. PPACA authorizes a state to apply to the United States Department of Health and Human Services for a state innovation waiver of any or all PPACA requirements, if certain criteria are met, including that the state has enacted a law that provides for state actions under a waiver. Existing state law creates the California Health Benefit Exchange, also known as Covered California, to facilitate the enrollment of qualified individuals and qualified small employers in qualified health plans as required under PPACA.
This bill would require express statutory authority to request a state innovation waiver from the United States Department of Health and Human Services. The bill would also make related findings and declarations.


The people of the State of California do enact as follows:

SECTION 1. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) (1) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may shall allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The

(2) (A) The department may shall also allow a city or county to identify sites for potential accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. If the combination of potential accessory dwelling units and junior accessory dwelling units constitutes greater than 50 percent of the units identified to meet the city’s or county’s share of the regional need for affordable housing for lower income households, the housing element shall provide supplementary policies, programs, and actions that further encourage or incentivize the development of accessory dwelling units and junior accessory dwelling units for lower income households.

(B) For purposes of this paragraph, the department shall determine the affordability of a potential accessory dwelling unit or a junior accessory dwelling unit by taking into account the city’s or county’s need for accessory dwelling units and a junior
accessory dwelling units in the city or county, the resources or incentives available for their development, and any other relevant factors justified by the city or county. The department shall presume that very low and low-income renter households would occupy accessory units in a proportion greater than or equal to the proportion of very low and low-income renter households to all renter households in the city or county, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database.

(3) Nothing in this section subdivision reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) (1) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

(2) Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 50 percent of the community’s obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made
available through the provision of committed assistance during
the planning period covered by the element to low- and very low
income households at affordable housing costs or affordable rents,
as defined in Sections 50052.5 and 50053 of the Health and Safety
Code, and which meet the requirements of paragraph (2).

Except as otherwise provided in this subdivision, the community city or county may substitute one
dwelling unit for one dwelling unit site in the applicable income
category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed
assistance and dedicate a specific portion of the funds from those
sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both
low- and very low income households and demonstrate that the
amount of dedicated funds is sufficient to develop the units at
affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of
paragraph (2), (3), or (4).

(2) Only units that comply with subparagraph (A), (B), or (C)
qualify for inclusion in the housing element program described in
paragraph (1), as follows:

(A) Units that qualify for inclusion in the housing element
program described in paragraph (1) if the units are to be
substantially rehabilitated with committed assistance from the city
or county and would constitute a net increase in the community’s
city’s or county’s stock of housing affordable to low- and very low
income households. For purposes of this subparagraph, paragraph,
a unit is not eligible to be “substantially rehabilitated” unless all
of the following requirements are met:

(1) At the time the unit is identified for substantial rehabilitation,
the local government has determined the city or county has
done all of the following:

(i) Determined that the unit is at imminent risk of loss to the
housing stock, (ii) the local government has committed stock.

(ii) Committed to provide relocation assistance pursuant to
Chapter 16 (commencing with Section 7260) of Division 7 of Title

otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months’ rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260. (III) The local government requires 7260.

(iii) Required that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV)

(iv) At the time the unit is identified for substantial rehabilitation, the unit has been found by the local government city or county or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(B) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation.

(iii) (C) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) (3) Units qualify for inclusion in the housing element program described in paragraph (1) if the units meet all of the following requirements:

(A) The units are located either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units.

(B) The units are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a
net increase in the community’s stock of housing affordable to low- and very low-income households. domain. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available for rent at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government or the private entity providing the committed assistance has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months’ rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years. 20 years, unless a longer period is required by another supplementary financial assistance program.

(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.
(C) The units would constitute a net increase in the city’s or county’s stock of housing affordable to low- and very low income households.

(4) Units that qualify for inclusion in the housing element program described in paragraph (1) if the units will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(A) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 years, 20 years, unless a longer period is required by another supplementary financial assistance program.

(B) The unit is within an “assisted housing development,” as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(C) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(D) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(E) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households.
(5) A city or county shall document for any housing unit that for which a building permit has been issued and all development and permit fees have been paid or the and any housing unit that is eligible to be lawfully occupied.

(4)

(6) For purposes of this subdivision, “committed the following terms have the following meanings:

(A) “Committed assistance” means that assistance for which the city or county enters county, or a private entity pursuant to the city’s or county’s inclusionary housing requirement, has entered into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement during the planning period. “Committed assistance” does not include tenant-based rental assistance.

(5) For purposes of this subdivision, “net

(B) “Net increase” includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) (2), (3), or (4) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, “the

(C) “The time the unit is identified” means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the third fifth year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) (2), (3), or (4) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low-and very low income households,
and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third fifth year of the planning period, the city or county, or a private entity pursuant to the city’s or county’s inclusionary housing requirement, has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), (3), or (4), the city or county shall, not later than July 1 of the fourth sixth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) (2), (3), or (4) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.

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

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

(1) Vacant sites zoned for residential use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A site may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.
(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

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

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

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

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

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

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

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

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

(2) (A) (i) Notwithstanding paragraph (1), if a county that is in the San Francisco-Oakland-Fremont California MSA has a
population of less than 400,000, that county shall be considered suburban. If this county includes an incorporated city that has a population of less than 100,000, this city shall also be considered suburban. This paragraph shall apply to a housing element revision cycle, as described in subparagraph (A) of paragraph (3) of subdivision (e) of Section 65588, that is in effect from July 1, 2014, to December 31, 2028, inclusive.

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

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

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

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

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

(A) The existing improvement-to-land-value ratio is less than 1.0 for commercial and multifamily properties or less than 0.5 for single-family properties according to the most recent available property assessment roll.

(B) The site is designated a Moderate Resource area, High Resource area, or Highest Resource area in the most recent Tax Credit Allocation Committee Opportunity Map.

(C) Zoning for the site allows residential development by-right that meets both of the following requirements:

(i) Have at least 100 percent more floor area than existing structures on the site.

(ii) At least 20 percent of the units are affordable to lower income households.

(D) The use of nonvacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

(3) Notwithstanding any other law, and in addition to the requirements in paragraphs (1) and (2), sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low
income, subject to any other form of rent or price control through
a public entity’s valid exercise of its police power, or occupied by
low or very low income households, shall be subject to a policy
requiring the replacement of all those units affordable to the same
or lower income level as a condition of any development on the
site. Replacement requirements shall be consistent with those set
forth in paragraph (3) of subdivision (c) of Section 65915.
(h) The program required by subparagraph (A) of paragraph (1)
of subdivision (c) of Section 65583 shall accommodate 100 percent
of the need for housing for very low and low-income households
allocated pursuant to Section 65584 for which site capacity has
not been identified in the inventory of sites pursuant to paragraph
(3) of subdivision (a) on sites that shall be zoned to permit
owner-occupied and rental multifamily residential use by right for
developments in which at least 20 percent of the units are
affordable to lower income households during the planning period.
These sites shall be zoned with minimum density and development
standards that permit at least 16 units per site at a density of at
least 16 units per acre in jurisdictions described in clause (i) of
subparagraph (B) of paragraph (3) of subdivision (c), shall be at
least 20 units per acre in jurisdictions described in clauses (iii) and
(iv) of subparagraph (B) of paragraph (3) of subdivision (c) and
shall meet the standards set forth in subparagraph (B) of paragraph
(5) of subdivision (b). At least 50 percent of the very low and
low-income housing need shall be accommodated on sites
designated for residential use and for which nonresidential uses
or mixed uses are not permitted, except that a city or county may
accommodate all of the very low and low-income housing need
on sites designated for mixed uses if those sites allow 100 percent
residential use and require that residential use occupy 50 percent
of the total floor area of a mixed-use project.
(i) For purposes of this section and Section 65583, the phrase
“use by right” shall mean that the local government’s review of
the owner-occupied or multifamily residential use may not require
a conditional use permit, planned unit development permit, or other
discretionary local government review or approval that would
constitute a “project” for purposes of Division 13 (commencing
with Section 21000) of the Public Resources Code. Any subdivision
of the sites shall be subject to all laws, including, but not limited
to, the local government ordinance implementing the Subdivision

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Map Act. A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

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

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

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

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

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

(1) Vacant sites zoned for residential use.

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

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

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

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

(1) A listing of properties by assessor parcel number.
(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction’s population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in population in which case the county shall be considered metropolitan.

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

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

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

(A) The existing improvement-to-land-value ratio is less than 1.0 for commercial and multifamily properties or less than 0.5 for single-family properties according to the most recent available property assessment roll.

(B) The site is designated a Moderate Resource area, High Resource area, or Highest Resource area in the most recent Tax Credit Allocation Committee Opportunity Map.

(C) Zoning for the site allows residential development by-right that meets both of the following requirements:

(i) Have at least 100 percent more floor area than existing structures on the site.

(ii) At least 20 percent of the units are affordable to lower income households.

(D) The use of nonvacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

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

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

(i) For purposes of this section and Section 65583, the phrase
“use by right” shall mean that the local government’s review of
the owner-occupied or multifamily residential use may not require
a conditional use permit, planned unit development permit, or other
discretionary local government review or approval that would
constitute a “project” for purposes of Division 13 (commencing
with Section 21000) of the Public Resources Code. Any subdivision
of the sites shall be subject to all laws, including, but not limited
to, the local government ordinance implementing the Subdivision
Map Act. A local ordinance may provide that “use by right” does
not exempt the use from design review. However, that design
review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

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

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

SEC. 4. Section 65585.5 is added to the Government Code, to read:

65585.5. (a) For purposes of this section, “affected local government” means a local government for which both of the following apply:

(1) The local government is subject to a requirement that the adoption or amendment of its housing element be approved by the voters of the local government, including, but not limited to, a requirement imposed by a charter adopted pursuant to Section 3 of Article XI of the California Constitution.

(2) The planning agency of the local government has submitted a draft of the proposed revision of its housing element for the applicable planning period to the department pursuant to Section 65585.

(b) Notwithstanding any other law, for the sixth and each subsequent revision of the housing element, both of the following shall apply:

(1) If an affected local government has submitted the applicable revision of its housing element to the voters for approval before the due date for its housing element pursuant to Section 65588, but the voters have not yet voted on the housing element revision, the affected local government shall not be subject to any fines or other penalties pursuant to Section 65585 for failure to adopt its housing element by the applicable due date pursuant to Section 65588. This paragraph shall only apply to an affected local government until the date of the election at which the housing element is submitted to the voters of the affected local government.

(2) If an affected local government has submitted the applicable revision of its housing element to the voters for approval before the due date for its housing element pursuant to Section 65588 and the voters have rejected the housing element, the affected local government shall not be subject to any fines or other penalties
pursuant to Section 65585 for failure to adopt its housing element
by the applicable date pursuant to Section 65588. However, in an
action brought by the Attorney General pursuant to Section 65585
against an affected local government described in this paragraph,
the court may order remedies available pursuant to Section 564
of the Code of Civil Procedure, under which the agent of the court
may take all governmental actions necessary to bring the
jurisdiction’s housing element into substantial compliance pursuant
to this article in order to remedy identified deficiencies.

SECTION 1.—Section 100523 is added to the Government Code,
to read:

100523. (a) The Legislature finds and declares that the goal
of the state innovation waiver of Section 1332 of the federal act
is to enable states to pursue alternative coverage approaches in the
individual and small group markets that are consistent with the
federal act.

(b) The Legislature also finds and declares that if the state
proposes an innovative strategy to offer coverage in the individual
and small group markets, that strategy shall provide coverage that
would be as accessible, comprehensive, and affordable as coverage
available pursuant to the federal act, that would cover a number
of state residents comparable to the number who would have been
covered under the federal act with coverage that is equally or more
comprehensive and equally or more affordable, and that would
not increase the federal deficit:

(c) A waiver shall not be requested from the United States
Department of Health and Human Services pursuant to Section
1332 of the federal act without express statutory authority.