

AMENDED IN SENATE JUNE 29, 2020

AMENDED IN SENATE JUNE 10, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

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

AB 1063, as amended, Petrie-Norris. ~~Healthcare coverage; waivers. Planning and Zoning Law; housing elements; accessory dwelling units; adequate site substitutes.~~

(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.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

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

3 65583.1. (a) (1) The Department of Housing and Community
4 Development, in evaluating a proposed or adopted housing element
5 for substantial compliance with this article, ~~may~~ shall allow a city
6 or county to identify adequate sites, as required pursuant to Section
7 65583, by a variety of methods, including, but not limited to,
8 redesignation of property to a more intense land use category and
9 increasing the density allowed within one or more categories. ~~The~~

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

28 (B) For purposes of this paragraph, the department shall
29 determine the affordability of a potential accessory dwelling unit
30 or a junior accessory dwelling unit by taking into account the city's
31 or county's need for accessory dwelling units and a junior

1 *accessory dwelling units in the city or county, the resources or*
2 *incentives available for their development, and any other relevant*
3 *factors justified by the city or county. The department shall*
4 *presume that very low and low-income renter households would*
5 *occupy accessory units in a proportion greater than or equal to*
6 *the proportion of very low and low-income renter households to*
7 *all renter households in the city or county, as determined by the*
8 *most recently available data from the United States Department*
9 *of Housing and Urban Development’s Comprehensive Housing*
10 *Affordability Strategy database.*

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

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

26 ~~Any~~

27 (2) *Any city, city and county, or county using this subdivision*
28 *shall address the progress in meeting this section in the reports*
29 *provided pursuant to paragraph (1) of subdivision (b) of Section*
30 *65400.*

31 (c) (1) The Department of Housing and Community
32 Development may allow a city or county to substitute the provision
33 of units for up to ~~25~~ 50 percent of the ~~community’s~~ city’s or
34 county’s obligation to identify adequate sites for any income
35 category in its housing element pursuant to paragraph (1) of
36 subdivision (c) of Section 65583 ~~where the community~~ *if the city*
37 *or county includes in its housing element a program committing*
38 ~~the local government to provide that either commits the city or~~
39 *county to provide, or requires a private entity to provide,* units in
40 that income category within the city or county that will be made

1 available through the provision of committed assistance during
 2 the planning period covered by the element to low- and very low
 3 income households at affordable housing costs or affordable rents,
 4 as defined in Sections 50052.5 and 50053 of the Health and Safety
 5 Code, and which meet the requirements of ~~paragraph (2).~~
 6 *paragraph (2), (3), or (4)*. Except as otherwise provided in this
 7 subdivision, the ~~community~~ *city or county* may substitute one
 8 dwelling unit for one dwelling unit site in the applicable income
 9 category. The program shall do all of the following:

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

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

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

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

22 ~~(A)~~

23 ~~(2) Units that qualify for inclusion in the housing element~~
 24 ~~program described in paragraph (1) if the units are to be~~
 25 ~~substantially rehabilitated with committed assistance from the city~~
 26 ~~or county and would constitute a net increase in the community's~~
 27 ~~city's or county's stock of housing affordable to low- and very low~~
 28 ~~income households. For purposes of this subparagraph, paragraph,~~
 29 ~~a unit is not eligible to be "substantially rehabilitated" unless all~~
 30 ~~of the following requirements are met:~~

31 ~~(i)~~

32 ~~(A) At the time the unit is identified for substantial rehabilitation,~~
 33 ~~(I) the local government has determined the city or county has~~
 34 ~~done all of the following:~~

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

37 ~~(ii) Committed to provide relocation assistance pursuant to~~
 38 ~~Chapter 16 (commencing with Section 7260) of Division 7 of Title~~
 39 ~~1 to any occupants temporarily or permanently displaced by the~~
 40 ~~rehabilitation or code enforcement activity, or the relocation is~~

1 otherwise provided prior to displacement either as a condition of
 2 receivership, or provided by the property owner or the local
 3 government pursuant to Article 2.5 (commencing with Section
 4 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
 5 Safety Code, or as otherwise provided by local ordinance; provided
 6 the assistance includes not less than the equivalent of four months’
 7 rent and moving expenses and comparable replacement housing
 8 consistent with the moving expenses and comparable replacement
 9 housing required pursuant to Section ~~7260, (III) the local~~
 10 ~~government requires~~ 7260.

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

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

19 ~~(ii)~~

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

25 ~~(iii)~~

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

30 ~~(B)~~

31 (3) Units ~~that are~~ *qualify for inclusion in the housing element*
 32 *program described in paragraph (1) if the units meet all of the*
 33 *following requirements:*

34 (A) *The units are located* either on foreclosed property or in a
 35 multifamily rental or ownership housing complex of three or more
 36 ~~units, are units.~~

37 (B) *The units are* converted with committed assistance ~~from the~~
 38 ~~city or county~~ from nonaffordable to affordable by acquisition of
 39 the unit or the purchase of affordability covenants and restrictions
 40 for the unit, ~~are not acquired by eminent domain, and constitute a~~

1 ~~net increase in the community's stock of housing affordable to~~
 2 ~~low- and very low income households.~~ *domain.* For purposes of
 3 this subparagraph, a unit is not converted by acquisition or the
 4 purchase of affordability covenants unless all of the following
 5 occur:

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

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

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

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

15 (iii) At the time the unit is identified for acquisition the unit is
 16 not occupied by low- or very low income households or if the
 17 acquired unit is occupied, the local government *or the private*
 18 *entity providing the committed assistance* has committed to provide
 19 relocation assistance prior to displacement, if any, pursuant to
 20 Chapter 16 (commencing with Section 7260) of Division 7 of Title
 21 1 to any occupants displaced by the conversion, or the relocation
 22 is otherwise provided prior to displacement; provided the assistance
 23 includes not less than the equivalent of four months' rent and
 24 moving expenses and comparable replacement housing consistent
 25 with the moving expenses and comparable replacement housing
 26 required pursuant to Section 7260.

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

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

34 (vi) For units located in multifamily ownership housing
 35 complexes with three or more units, or on or after January 1, 2015,
 36 on foreclosed properties, at least an equal number of
 37 new-construction multifamily rental units affordable to lower
 38 income households have been constructed in the city or county
 39 within the same planning period as the number of ownership units
 40 to be converted.

1 (C) *The units would constitute a net increase in the city's or*
2 *county's stock of housing affordable to low- and very low income*
3 *households.*

4 ~~(C)~~

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

12 ~~(i)~~

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

19 ~~(ii)~~

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

22 ~~(iii)~~

23 (C) The city or county finds, after a public hearing, that the unit
24 is eligible, and is reasonably expected, to change from housing
25 affordable to low- and very low income households to any other
26 use during the next ~~five~~ 10 years due to termination of subsidy
27 contracts, mortgage prepayment, or expiration of restrictions on
28 use.

29 ~~(iv)~~

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

32 ~~(v)~~

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

36 ~~(3) This subdivision does not apply to any city or county that,~~
37 ~~during the current or immediately prior planning period, as defined~~
38 ~~by Section 65588, has not met any of its share of the regional need~~
39 ~~for affordable housing, as defined in Section 65584, for low- and~~
40 ~~very low income households. A~~

1 (5) A city or county shall document ~~for any housing unit that~~
2 *for which* a building permit has been issued and all development
3 and permit fees have been paid ~~or the~~ *and any housing unit that*
4 is eligible to be lawfully occupied.

5 ~~(4)~~

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

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

19 ~~(5) For purposes of this subdivision, “net~~

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

25 ~~(6) For purposes of this subdivision, “the~~

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

31 (7) In the ~~third~~ *fifth* year of the planning period, as defined by
32 Section 65588, in the report required pursuant to Section 65400,
33 each city or county that has included in its housing element a
34 program to provide units pursuant to ~~subparagraph (A), (B), or (C)~~
35 ~~of paragraph (2) (2), (3), or (4) shall report in writing to the~~
36 legislative body, and to the department within 30 days of making
37 its report to the legislative body, on its progress in providing units
38 pursuant to this subdivision. The report shall identify the specific
39 units for which committed assistance has been provided or which
40 have been made available to low- and very low income households,

1 and it shall adequately document how each unit complies with this
2 subdivision. If, by July 1 of the ~~third~~ *fifth* year of the planning
3 period, the city or ~~county~~ *county*, or a private entity pursuant to
4 *the city's or county's inclusionary housing requirement*, has not
5 entered into an enforceable agreement of committed assistance for
6 all units specified in the programs adopted pursuant to
7 ~~subparagraph (A), (B), or (C)~~ of paragraph (2), (3), or (4), the city
8 or county shall, not later than July 1 of the ~~fourth~~ *sixth* year of the
9 planning period, adopt an amended housing element in accordance
10 with Section 65585, identifying additional adequate sites pursuant
11 to paragraph (1) of subdivision (c) of Section 65583 sufficient to
12 accommodate the number of units for which committed assistance
13 was not provided. If a city or county does not amend its housing
14 element to identify adequate sites to address any shortfall, or fails
15 to complete the rehabilitation, acquisition, purchase of affordability
16 covenants, or the preservation of any housing unit within two years
17 after committed assistance was provided to that unit, it shall be
18 prohibited from identifying units pursuant to ~~subparagraph (A),~~
19 ~~(B), or (C)~~ of paragraph ~~(2)~~ (2), (3), or (4) in the housing element
20 that it adopts for the next planning period, as defined in Section
21 65588, above the number of units actually provided or preserved
22 due to committed assistance.

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

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

34 65583.2. (a) A city's or county's inventory of land suitable
35 for residential development pursuant to paragraph (3) of
36 subdivision (a) of Section 65583 shall be used to identify sites
37 throughout the community, consistent with paragraph (9) of
38 subdivision (c) of Section 65583, that can be developed for housing
39 within the planning period and that are sufficient to provide for
40 the jurisdiction's share of the regional housing need for all income

1 levels pursuant to Section 65584. As used in this section, “land
2 suitable for residential development” includes all of the sites that
3 meet the following standards set forth in subdivisions (c) and (g):
4 (1) Vacant sites zoned for residential use.
5 (2) Vacant sites zoned for nonresidential use that allows
6 residential development.
7 (3) Residentially zoned sites that are capable of being developed
8 at a higher density, including sites owned or leased by a city,
9 county, or city and county.
10 (4) Sites zoned for nonresidential use that can be redeveloped
11 for residential use, and for which the housing element includes a
12 program to rezone the site, as necessary, rezoned for, to permit
13 residential use, including sites owned or leased by a city, county,
14 or city and county.
15 (b) The inventory of land shall include all of the following:
16 (1) A listing of properties by assessor parcel number.
17 (2) The size of each property listed pursuant to paragraph (1),
18 and the general plan designation and zoning of each property.
19 (3) For nonvacant sites, a description of the existing use of each
20 property. If a site subject to this paragraph is owned by the city or
21 county, the description shall also include whether there are any
22 plans to dispose of the property during the planning period and
23 how the city or county will comply with Article 8 (commencing
24 with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title
25 5.
26 (4) A general description of any environmental constraints to
27 the development of housing within the jurisdiction, the
28 documentation for which has been made available to the
29 jurisdiction. This information need not be identified on a
30 site-specific basis.
31 (5) (A) A description of existing or planned water, sewer, and
32 other dry utilities supply, including the availability and access to
33 distribution facilities.
34 (B) Parcels included in the inventory must have sufficient water,
35 sewer, and dry utilities supply available and accessible to support
36 housing development or be included in an existing general plan
37 program or other mandatory program or plan, including a program
38 or plan of a public or private entity providing water or sewer
39 service, to secure sufficient water, sewer, and dry utilities supply
40 to support housing development. This paragraph does not impose

1 any additional duty on the city or county to construct, finance, or
2 otherwise provide water, sewer, or dry utilities to parcels included
3 in the inventory.

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

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

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

1 housing. The city or county shall determine the number of housing
2 units that can be accommodated on each site as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (2) (A) (i) Notwithstanding paragraph (1), if a county that is
40 in the San Francisco-Oakland-Fremont California MSA has a

1 population of less than 400,000, that county shall be considered
2 suburban. If this county includes an incorporated city that has a
3 population of less than 100,000, this city shall also be considered
4 suburban. This paragraph shall apply to a housing element revision
5 cycle, as described in subparagraph (A) of paragraph (3) of
6 subdivision (e) of Section 65588, that is in effect from July 1,
7 2014, to December 31, 2028, inclusive.

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

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

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

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

1 perpetuate the existing use or prevent redevelopment of the site
2 for additional residential development, development trends, market
3 conditions, and regulatory or other incentives or standards to
4 encourage additional residential development on these sites.

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

19 (A) *The existing improvement-to-land-value ratio is less than*
20 *1.0 for commercial and multifamily properties or less than 0.5 for*
21 *single-family properties according to the most recent available*
22 *property assessment roll.*

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

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

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

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

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

35 (3) Notwithstanding any other law, and in addition to the
36 requirements in paragraphs (1) and (2), sites that currently have
37 residential uses, or within the past five years have had residential
38 uses that have been vacated or demolished, that are or were subject
39 to a recorded covenant, ordinance, or law that restricts rents to
40 levels affordable to persons and families of low or very low

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

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

32 (i) For purposes of this section and Section 65583, the phrase
33 "use by right" shall mean that the local government's review of
34 the owner-occupied or multifamily residential use may not require
35 a conditional use permit, planned unit development permit, or other
36 discretionary local government review or approval that would
37 constitute a "project" for purposes of Division 13 (commencing
38 with Section 21000) of the Public Resources Code. Any subdivision
39 of the sites shall be subject to all laws, including, but not limited
40 to, the local government ordinance implementing the Subdivision

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

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

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

13 (l) This section shall remain in effect only until December 31,
14 2028, and as of that date is repealed.

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

18 65583.2. (a) A city’s or county’s inventory of land suitable
19 for residential development pursuant to paragraph (3) of
20 subdivision (a) of Section 65583 shall be used to identify sites
21 throughout the community, consistent with paragraph (9) of
22 subdivision (c) of Section 65583, that can be developed for housing
23 within the planning period and that are sufficient to provide for
24 the jurisdiction’s share of the regional housing need for all income
25 levels pursuant to Section 65584. As used in this section, “land
26 suitable for residential development” includes all of the following
27 sites that meet the standards set forth in subdivisions (c) and (g):

28 (1) Vacant sites zoned for residential use.

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

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

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

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

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

- 1 (2) The size of each property listed pursuant to paragraph (1),
2 and the general plan designation and zoning of each property.
- 3 (3) For nonvacant sites, a description of the existing use of each
4 property. If a site subject to this paragraph is owned by the city or
5 county, the description shall also include whether there are any
6 plans to dispose of the property during the planning period and
7 how the city or county will comply with Article 8 (commencing
8 with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title
9 5.
- 10 (4) A general description of any environmental constraints to
11 the development of housing within the jurisdiction, the
12 documentation for which has been made available to the
13 jurisdiction. This information need not be identified on a
14 site-specific basis.
- 15 (5) (A) A description of existing or planned water, sewer, and
16 other dry utilities supply, including the availability and access to
17 distribution facilities.
- 18 (B) Parcels included in the inventory must have sufficient water,
19 sewer, and dry utilities supply available and accessible to support
20 housing development or be included in an existing general plan
21 program or other mandatory program or plan, including a program
22 or plan of a public or private entity providing water or sewer
23 service, to secure sufficient water, sewer, and dry utilities supply
24 to support housing development. This paragraph does not impose
25 any additional duty on the city or county to construct, finance, or
26 otherwise provide water, sewer, or dry utilities to parcels included
27 in the inventory.
- 28 (6) Sites identified as available for housing for above
29 moderate-income households in areas not served by public sewer
30 systems. This information need not be identified on a site-specific
31 basis.
- 32 (7) A map that shows the location of the sites included in the
33 inventory, such as the land use map from the jurisdiction's general
34 plan for reference purposes only.
- 35 (c) Based on the information provided in subdivision (b), a city
36 or county shall determine whether each site in the inventory can
37 accommodate the development of some portion of its share of the
38 regional housing need by income level during the planning period,
39 as determined pursuant to Section 65584. The inventory shall
40 specify for each site the number of units that can realistically be

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

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

35 (2) The number of units calculated pursuant to paragraph (1)
36 shall be adjusted as necessary, based on the land use controls and
37 site improvements requirement identified in paragraph (5) of
38 subdivision (a) of Section 65583, the realistic development capacity
39 for the site, typical densities of existing or approved residential
40 developments at a similar affordability level in that jurisdiction,

1 and on the current or planned availability and accessibility of
2 sufficient water, sewer, and dry utilities.

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

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

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

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

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

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

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

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

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

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

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

13 (e) A jurisdiction shall be considered suburban if the jurisdiction
14 does not meet the requirements of clauses (i) and (ii) of
15 subparagraph (B) of paragraph (3) of subdivision (c) and is located
16 in a Metropolitan Statistical Area (MSA) of less than 2,000,000
17 in population, unless that jurisdiction's population is greater than
18 100,000, in which case it shall be considered metropolitan. A
19 county, not including the City and County of San Francisco, shall
20 be considered suburban unless the county is in an MSA of
21 2,000,000 or greater in population in which case the county shall
22 be considered metropolitan.

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

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

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

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

17 (A) *The existing improvement-to-land-value ratio is less than*
18 *1.0 for commercial and multifamily properties or less than 0.5 for*
19 *single-family properties according to the most recent available*
20 *property assessment roll.*

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

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

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

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

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

33 (3) Notwithstanding any other law, and in addition to the
34 requirements in paragraphs (1) and (2), sites that currently have
35 residential uses, or within the past five years have had residential
36 uses that have been vacated or demolished, that are or were subject
37 to a recorded covenant, ordinance, or law that restricts rents to
38 levels affordable to persons and families of low or very low
39 income, subject to any other form of rent or price control through
40 a public entity's valid exercise of its police power, or occupied by

1 low or very low income households, shall be subject to a policy
2 requiring the replacement of all those units affordable to the same
3 or lower income level as a condition of any development on the
4 site. Replacement requirements shall be consistent with those set
5 forth in paragraph (3) of subdivision (c) of Section 65915.

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

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

1 review shall not constitute a “project” for purposes of Division 13
 2 (commencing with Section 21000) of the Public Resources Code.
 3 Use by right for all rental multifamily residential housing shall be
 4 provided in accordance with subdivision (f) of Section 65589.5.

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

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

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

11 *65585.5. (a) For purposes of this section, “affected local*
 12 *government” means a local government for which both of the*
 13 *following apply:*

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

19 *(2) The planning agency of the local government has submitted*
 20 *a draft of the proposed revision of its housing element for the*
 21 *applicable planning period to the department pursuant to Section*
 22 *65585.*

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

26 *(1) If an affected local government has submitted the applicable*
 27 *revision of its housing element to the voters for approval before*
 28 *the due date for its housing element pursuant to Section 65588,*
 29 *but the voters have not yet voted on the housing element revision,*
 30 *the affected local government shall not be subject to any fines or*
 31 *other penalties pursuant to Section 65585 for failure to adopt its*
 32 *housing element by the applicable due date pursuant to Section*
 33 *65588. This paragraph shall only apply to an affected local*
 34 *government until the date of the election at which the housing*
 35 *element is submitted to the voters of the affected local government.*

36 *(2) If an affected local government has submitted the applicable*
 37 *revision of its housing element to the voters for approval before*
 38 *the due date for its housing element pursuant to Section 65588*
 39 *and the voters have rejected the housing element, the affected local*
 40 *government shall not be subject to any fines or other penalties*

1 *pursuant to Section 65585 for failure to adopt its housing element*
2 *by the applicable date pursuant to Section 65588. However, in an*
3 *action brought by the Attorney General pursuant to Section 65585*
4 *against an affected local government described in this paragraph,*
5 *the court may order remedies available pursuant to Section 564*
6 *of the Code of Civil Procedure, under which the agent of the court*
7 *may take all governmental actions necessary to bring the*
8 *jurisdiction's housing element into substantial compliance pursuant*
9 *to this article in order to remedy identified deficiencies.*

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

12 ~~100523. (a) The Legislature finds and declares that the goal~~
13 ~~of the state innovation waiver of Section 1332 of the federal act~~
14 ~~is to enable states to pursue alternative coverage approaches in the~~
15 ~~individual and small group markets that are consistent with the~~
16 ~~federal act.~~

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

26 ~~(c) A waiver shall not be requested from the United States~~
27 ~~Department of Health and Human Services pursuant to Section~~
28 ~~1332 of the federal act without express statutory authority.~~