



AB 2348—2004 Amendments to Housing Element Law

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AB 2348 (Stats. 2004, c. 724, §§ 1, 2 & 3) amended California's Housing Element law (Government Code §§65580-65589.8¹) to clarify significant aspects of this important local planning obligation. The amendments are focused primarily on the requirements to inventory sites and to identify additional sites necessary to accommodate the community's regional housing need allocation (RHNA—"Fair Share") for lower income housing.

A. Inventory of Land and Analysis of Zoning & Public Facilities. (§65583(a)(3) & §65583.2)

The law now clearly states that the inventory of land and suitable sites required by §65583(a)(3) must be site specific. §65583.2 was added to the law and provides that the inventory include:

- Vacant sites zoned for residential use
- Vacant sites zoned for nonresidential use that allows residential use
- Sites zoned for residential use that can be developed at higher density
- Sites zoned for nonresidential development that can be redeveloped for, and as necessary, rezoned for, residential use

The inventory must include the following site information:

- A list of sites by parcel number or other "unique reference"
- The size of each site

- For nonvacant sites, a description of the existing use
- A description of any environmental constraints to housing development, for which documentation is available to the local government (need not be site specific)
- A description of existing or planned water, sewer, and dry utilities supply, including the availability and access to distribution facilities. This need not be site specific, but must be sufficient to determine whether a site is served or will be served by infrastructure
- Sites identified for housing for above-moderate income households in areas not served by public sewer
- A map that shows the location of the sites included in the inventory

For nonvacant sites included in the inventory, the analysis must specify the residential development potential during the housing element planning period and provide an explanation of the methodology used to determine the potential. The methodology must consider: 1) the extent to which existing uses may impede additional residential development, 2) development trends, 3) market conditions and 4) incentives or standards to encourage additional residential development. (§65583.2(f))

B. Determination of the Sufficiency of the Inventory to Accommodate the RHNA. (§65583.2(c)—(g))

Based on the inventory, the locality must determine for *each site* in the inventory whether it can accommodate some portion of the

jurisdiction's share of the RHNA *by income category* during the planning period. The number of units developable on each site is determined as follows:

- **Site Capacity:** Determined by any applicable local minimum density requirement, *or* if minimum density is not required, the locality must calculate capacity and show how the site can accommodate the stated capacity.
- **Adjusted Capacity:** The determination must be *adjusted downward* if land use controls, development standards or site improvement requirements would preclude the development of that number of units.

• **Sites Suitable for Low Income Households:** For each site determined suitable for very low or low-income housing, the capacity determination must either:

1) Provide an analysis demonstrating how the adopted zoning densities can accommodate housing affordable to these households (assessing market demand, financial feasibility and historical development patterns), *or*

2) Use the following default assumptions:

- 15 units/acre—cities within nonmetropolitan counties; nonmetropolitan counties with metropolitan areas
- 10 units/acre—unincorporated areas in all nonmetropolitan counties not included in the 15 units/acre category
- 20 units/acre—suburban jurisdictions
- 30 units/acre—jurisdictions in metropolitan counties

§65583.2(c). (§65583.2(d), (e) & (f) define metropolitan and nonmetropolitan counties and cities, micropolitan counties, and suburban jurisdiction.)

C. Program of Action to Make Sites Available During the Planning Period. (§65583(c)(1) & §65583.2(h) & (i))

The requirement that the element’s action program identify adequate sites has been re-characterized as an obligation to “identify actions to make sites available....” (§65583(c)(1)). The actions must identify sufficient sites “to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory....”

D. “By Right” Sites For Lower-Income Household RHNA. (§65583(c)(1)(A), §65583.2(h)).

This obligation has been clarified by the addition of §65583.2. Where the inventory reveals insufficient sites to accommodate the RHNA needs for all income levels, the program section must provide sites developable “by right” at multifamily densities during the planning period to accommodate the entire shortfall of RHNA sites adequate for housing affordable to very low and low-income households. (§65583.2(h))

The definition of “Use By Right” (for both *multifamily* housing and *farmworker* housing) has been moved to §65583.2 and clarified. It means the local government’s review of the use “may not require a conditional use permit, planned unit development permit, or other discretionary local govern-

ment review or approval that would constitute a ‘project’ for purposes of [CEQA].” (§65583.2(i)) “Use by right” need not exempt a project from design review, and design review is deemed not to constitute a project under CEQA. In other words, if a site is subject to discretionary review other than that limited to design, it cannot qualify as a site developable by right.

To qualify as “use by right” sites, the sites also must be zoned with *minimum* density and development standards that permit at least: 1) 16 units per acre for cities in nonmetropolitan counties and nonmetropolitan counties with micropolitan areas, and 2) 20 units per acre for suburban jurisdictions and jurisdictions in metropolitan counties. §65583.2(h) At least 50% of the sites designated for very low-income or low-income housing need must be sites zoned for exclusively for residential use.

E. Changes to §65583.1 Allowing Communities to Count Some Rehab Units Towards Their Obligation to Make Sites Available.

§65583.1 allows jurisdictions to count certain *substantially* rehabilitated units for up to 25% of its obligation to make sites available to accommodate the RHNA. Units cannot be counted unless, among other things, the element includes a program demonstrating that displaced tenants will be provided with any relocation assistance required by California Relocation Assistance law (§7260 *et seq.*), the units have been found unfit for human habitation for 120 days, and the units will be affordable to lower income households for at least 20 years (or, ten years if the locality only wants to count them as 1/3 of a unit). AB

2348 changes these three requirements.

First, the local government must now commit to providing displaced tenants not eligible for relocation assistance under §7260 with the minimum assistance provided pursuant to Health & Safety Code 17975 *et seq.*, but in no case less than four months rent and moving expenses and comparable replacement housing. Second, the legislation removed the 120 day period from the requirement that the units be found unfit for habitation. Finally, AB 2348 deleted the ten year affordability/ 1/3 unit credit option. (*See* §65583.1(c)(2)(A)(i))

¹ All citations are to the Government Code.