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AB-1734 Local Government: Surplus Land Act: exemptions. (2023-2024)

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Assembly Bill No. 1734

CHAPTER 769

An act to add and repeal Section 54222.3.1 of the Government Code, relating to local government.

[Approved by Governor October 11, 2023. Filed with Secretary of State October 11, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1734, Jones-Sawyer. Local Government: Surplus Land Act: exemptions.

Existing law requires land to be declared surplus land or exempt surplus land, as supported by written findings, before a local agency takes any action to dispose of it consistent with the agency's policies or procedures. Existing law sets forth procedures for the disposal of surplus land, including, but not limited to, specified notice requirements, and provides that these procedures do not apply to exempt surplus land.

This bill, until January 1, 2034, would specify that land disposed of by a city with a population exceeding 2,500,000 for certain purposes, including low barrier navigation centers, supportive housing, transitional housing for youth and young adults, or affordable housing, as described, is not subject to the above-described requirements, if the city meets certain prescribed requirements and specified construction or development work meets prescribed requirements. The bill would require a city that disposes of land pursuant to these provisions to include prescribed information in a specified annual report. The bill would make a local agency that disposes of land in violation of these provisions liable for a civil penalty, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 54222.3.1 is added to the Government Code, to read:

54222.3.1. (a) Subject to subdivisions (b) to (g), inclusive, this article shall not apply to the disposal of land by a city with a population exceeding 2,500,000 for use for any of the following purposes:

(1) A Low Barrier Navigation Center, as defined in Section 65660.

(2) Supportive housing, as defined in Section 50675.14 of the Health and Safety Code.

(3) Transitional housing, as defined in subdivision (j) of Section 65582, for youth and young adults. For purposes of this paragraph, "youth and young adults" means persons between 12 and 24 years of age, inclusive, and includes persons who are pregnant and parenting.

(4) Affordable housing. For purposes of this paragraph, "affordable housing" means a housing development with 100 percent of all units in the development, but exclusive of a manager's unit or units, sold or rented to lower income households, as defined

by Section 50079.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee, except that up to 20 percent of the units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee.

(b) Before land described in subdivision (a) is disposed of the city shall meet both of the following requirements:

(1) The city shall have a housing element that is compliant with law, including, but not limited to, Chapter 3 (commencing with Section 65100) of Division 1 of Title 7, as determined by the Department of Housing and Community Development.

(2) The city shall be designated prohousing pursuant to subdivision (c) of Section 65589.9.

(c) (1) If a city disposes of land pursuant to this section and the development is not in its entirety a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, construction and rehabilitation work on the land shall meet all of the following conditions:

(A) All construction workers employed in the execution of the development shall be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(B) The project sponsor shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work for those portions of the development that are not a public work.

(C) All contractors and subcontractors for those portions of the development that are not a public work shall comply with both of the following:

(i) Pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(ii) Maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section. This clause does not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(2) (A) The obligation of the contractors and subcontractors to pay prevailing wages pursuant to this subdivision may be enforced by any of the following:

(i) The Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development.

(ii) An underpaid worker through an administrative complaint or civil action.

(iii) A joint labor-management committee through a civil action under Section 1771.2 of the Labor Code.

(B) If a civil wage and penalty assessment is issued pursuant to this paragraph, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(C) This paragraph does not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(3) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing does not apply to those portions of the development that are not a public work if otherwise provided in a bona fide collective bargaining agreement covering the worker.

(4) The requirement of this subdivision to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(d) A city may dispose of land pursuant to this section for a project involving construction or rehabilitation of 40 or more housing units only if the work will be subject to a project labor agreement. For purposes of this subdivision, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code. This subdivision does not apply to projects for the construction or rehabilitation of low barrier navigation centers pursuant to paragraph (1) of subdivision (a).

(e) The city shall include in the annual report required by paragraph (2) of subdivision (a) of Section 65400 the status of a development of land disposed of pursuant to this section, including, but not limited to, all of the following information:

(1) The total square footage of the residential and nonresidential development.

(2) The total square footage of low barrier navigation centers.

(3) The number of residential units and beds that have been permitted.

(4) The percentage of the residential units that have been permitted that are restricted for persons and families of low or moderate income, or lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(f) (1) The Department of Housing and Community Development may request additional information from the city regarding land disposed of pursuant to this section.

(2) Notwithstanding subdivision (g), a city that responds to the Department of Housing and Community Development pursuant to this subdivision shall not be liable for a civil penalty if the city is not notified by the Department of Housing and Community Development that the proposed disposal would violate this section within 30 days of receiving the requested information. A city shall have 60 days to cure or correct an alleged violation before an action may be brought to enforce this section, unless the city disposes of the land before curing or correcting the alleged violation, or the department deems the alleged violation not to be a violation in fewer than 60 days.

(g) (1) If the city disposes of land in violation of this section, the city shall be liable for a civil penalty calculated as follows:

(A) For a first violation, 30 percent of the greater of the final sale price or the fair market value of the land at the time of disposition, or in the case of a lease, the discounted net present value of the fair market value of the lease as of the date the lease was entered into.

(B) For a second or subsequent violation, 50 percent of the greater of the final sale price or the fair market value of the land at the time of disposition, or in the case of a lease, the discounted net present value of the fair market value of the lease as of the date the lease was entered into.

(2) For purposes of paragraph (1), fair market value shall be determined by an independent appraisal of the land or lease, as applicable.

(3) An action to enforce paragraph (1) may be brought by any of the following:

(A) An entity identified in subdivisions (a) to (e), inclusive, of Section 54222.

(B) A person who would have been eligible to apply for residency in affordable housing had the city not violated this section.

(C) A housing organization, as that term is defined in Section 65589.5.

(D) A beneficially interested person or entity.

(E) The Department of Housing and Community Development.

(4) A penalty assessed pursuant to this subdivision shall, except as otherwise provided, be deposited into a local housing trust fund. The city may elect to instead deposit the penalty moneys into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund. Penalties shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The city shall commit and expend the penalty moneys deposited into the local housing trust fund within five years of deposit for the sole purpose of financing newly constructed housing units that are affordable to extremely low, very low, or low-income households.

(5) Five years after deposit of the penalty moneys into the local housing trust fund, if the funds have not been expended, the funds shall revert to the state and be deposited in the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund for the sole purpose of financing newly constructed housing units located in the same jurisdiction as the surplus land and that are affordable to extremely low, very low, or low-income households. Expenditure of any penalty moneys deposited into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund pursuant to this subdivision shall be subject to appropriation by the Legislature.

(h) This section shall not be construed to impose or affect any requirement applicable to disposals of land under any other provision of this article, including, but not limited to, any requirement for notice.

(i) This section shall remain in effect only until January 1, 2034, and as of that date is repealed.