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AB-1886 Housing Element Law: substantial compliance: Housing Accountability Act. (2023-2024)

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Assembly Bill No. 1886

CHAPTER 267

An act to add Sections 65585.03 and 65589.55 to the Government Code, relating to land use.

[Approved by Governor September 19, 2024. Filed with Secretary of State September 19, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1886, Alvarez. Housing Element Law: substantial compliance: Housing Accountability Act.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law, commonly referred to as the Housing Element Law, prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development to review and determine whether the housing element substantially complies with the Housing Element Law, as specified. If the department finds that a draft housing element or amendment does not substantially comply with the Housing Element Law, existing law requires the legislative body of the city or county to either (A) change the draft element or amendment to substantially comply with the Housing Element Law or (B) adopt the draft housing element or amendment without changes and make specified findings as to why the draft element or amendment substantially complies with the Housing Element Law despite the findings of the department.

This bill would provide that a housing element or amendment is considered substantially compliant with the Housing Element Law when the local agency has adopted a housing element or amendment, the department or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance with the Housing Element Law, and the department's compliance findings have not been superseded by subsequent contrary findings by the department or by a decision of a court of competent jurisdiction or the court's decision has not been overturned or superseded by a subsequent court decision or by statute. The bill would provide that these provisions are declaratory of existing law and do not alter the interpretation of the terms "substantially complies" or "substantial compliance" as set forth in Section 44 of Chapter 1009 of the Statutes of 1984.

(2) Existing law, the Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes written findings as to one of certain sets of conditions, as specified. One set of conditions is that (A) the jurisdiction has adopted a housing element that is in substantial compliance with the Housing Element Law, and (B) the jurisdiction has met or exceeded its share of the regional housing need allocation for the planning period for the income category proposed for the housing development project.

Existing law subjects a housing development project only to the ordinances, policies, and standards adopted and in effect when a preliminary application was submitted, except as specified.

This bill would require a housing element or amendment to be considered in substantial compliance with the Housing Element Law only if the element or amendment was determined to be in substantial compliance when a preliminary application or

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

SECTION 1. Section 65585.03 is added to the Government Code, to read:

65585.03. A housing element or amendment shall be considered to be in substantial compliance with this article when the local agency adopts the housing element or amendment for the current planning period in accordance with Section 65585 and either of the following apply:

(a) The department finds that the adopted housing element or amendment is in substantial compliance with this article and the department's compliance findings have not been superseded by subsequent contrary findings by the department or by a decision of a court of competent jurisdiction.

(b) A court of competent jurisdiction determines that the adopted housing element or amendment substantially complies with this article and the court's decision has not been overturned or superseded by a subsequent court decision or by statute.

SEC. 2. Section 65589.55 is added to the Government Code, to read:

65589.55. (a) For purposes of a local agency's approval, conditional approval, or disapproval of a housing development project pursuant to subdivision (d) of Section 65589.5, a housing element or amendment shall be considered in substantial compliance with this article only if the element or amendment was in substantial compliance, as determined by the department or a court of competent jurisdiction, when a preliminary application, including all of the information required by subdivision (a) of Section 65941.1, was submitted or, if a preliminary application was not submitted, when a complete application pursuant to Section 65943 was submitted.

(b) This section does not constitute a change in, but is declaratory of, existing law.

SEC. 3. In Section 65585.03 of the Government Code, as added by Section 1 of this act, it is the intent of the Legislature to confirm that local agencies cannot self-certify housing element compliance and to ratify the regulatory interpretation expressed in the March 16, 2023, memorandum from the Department of Housing and Community Development to planning directors and interested parties, which states, "where a jurisdiction submits an 'adopted' housing element before submitting an initial draft or before considering HCD's findings on an initial draft, HCD will consider the 'adopted' to be an initial draft for purposes of both HCD's review and the jurisdiction's statutory compliance," and "a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance. In addition, a jurisdiction is 'in compliance' as of the date of HCD's letter finding the adopted element in substantial compliance. Any other letters are not a finding of substantial compliance." In this respect, Section 65585.03 of the Government Code, as added by Section 1 of this act, does not constitute a change in, but is declaratory of, existing law.

SEC. 4. It is the intent of the Legislature that Section 65585.03 of the Government Code, as added by Section 1 of this act, does not alter the interpretation of the terms "substantially complies" or "substantial compliance" as set forth in Section 44 of Chapter 1009 of the Statutes of 1984.