

AMENDED IN ASSEMBLY JULY 14, 2017

AMENDED IN SENATE MAY 10, 2017

AMENDED IN SENATE APRIL 18, 2017

AMENDED IN SENATE MARCH 29, 2017

AMENDED IN SENATE MARCH 20, 2017

SENATE BILL

No. 540

**Introduced by Senator Roth
(Coauthor: Senator Atkins)**

February 16, 2017

An act to add Article 10.10 (commencing with Section 65620) to Chapter 3 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Roth. Workforce Housing Opportunity Zone.

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 provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a

significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would authorize a local government, as defined, to establish a Workforce Housing Opportunity Zone by preparing an EIR pursuant to CEQA and adopting a specific plan that is required to include text and a diagram or diagrams containing specified information. The bill would require a local government that proposes to adopt a Workforce Housing Opportunity Zone to hold public hearings on the specific plan. The bill would authorize a local government, after a specific plan is adopted and the zone is formed, to impose a specific plan fee upon all persons seeking governmental approvals within the zone. The bill would require a local government to comply with certain requirements when amending the specific plan for the zone, including seeking a new EIR. The bill would authorize a local government to apply for a *grant or no-interest-loan loan, or both*, from the Department of Housing and Community Development to support its efforts to develop a specific plan and accompanying EIR within the zone. The bill, upon appropriation by the Legislature, would authorize a transfer from the ~~Controller~~ *Treasurer* to the Department of Housing and Community Development for purposes of issuing ~~loans~~ *grants or loans, or both*, pursuant to these provisions.

The bill would require a local government, for a period of 5 years after the plan is adopted, to approve a development that satisfies certain criteria, unless the local government makes certain findings regarding the site. The bill would provide that, after the zone is adopted, a lead agency is not required to prepare an EIR or negative declaration for a housing development that occurs within the zone if specified criteria are met. The bill would require a local government to approve a housing development located within the zone that is consistent with the plan and meets specific criteria within 60 days after the application for that development is deemed complete.

The Planning and Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs.

This bill would require a local government that has formed a Workforce Housing Opportunity Zone to include within this report the number of housing units approved within a zone that complies with specified criteria.

The bill would declare that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Increasing the supply of affordable housing requires a
4 commitment by both the state and local government agencies.
5 Local government agencies can make this commitment by setting
6 the land use stage for development of workforce housing through
7 advanced planning and environmental review. The state can make
8 this commitment by contributing financial assistance for advanced
9 planning and matching local agencies' financial contributions to
10 promote and encourage affordable housing.
- 11 (b) Providing incentives for local agencies to create Workforce
12 Housing Opportunity Zones in areas that need additional housing
13 close to employment centers and available transit supports the
14 attainment of the state's housing and greenhouse gas reduction
15 goals. Limitations on the amount of property tax revenues produced
16 by housing, particularly affordable housing, mean there is often
17 an imbalance between the revenue produced and the cost of
18 infrastructure and services needed by the housing.
- 19 (c) Providing additional certainty in the housing development
20 approval process requires advanced planning, which, among other
21 elements, identifies standards and criteria by which development
22 will proceed and standards for the mitigation of the environmental
23 impacts of the housing development. The purpose of creating a
24 Workforce Housing Opportunity Zone is to conduct this type of
25 advanced planning, so that housing and other development within
26 the zone can proceed on the affected parcels in an expedited
27 manner. A state-administered revolving loan fund will support
28 these advanced planning efforts.

1 SEC. 2. Article 10.10 (commencing with Section 65620) is
2 added to Chapter 3 of Division 1 of Title 7 of the Government
3 Code, to read:

4

5 Article 10.10. Workforce Housing Opportunity Zone

6

7 65620. For purposes of this article, the following terms shall
8 have the following meanings:

9 (a) “Housing development” or “development” means new or
10 substantially rehabilitated residential dwelling units constructed
11 within a Workforce Housing Opportunity Zone. A residential
12 project may include commercial development limited to the first
13 floor of the structure and occupying not more than 50 percent of
14 the square foot area of the structure in which it is located.
15 Development within a zone shall be consistent with the general
16 use designation, density, building intensity, and applicable policies
17 specified for the area in either a sustainable communities strategy
18 or an alternative planning strategy, for which the State Air
19 Resources Board, pursuant to subparagraph (H) of paragraph (2)
20 of subdivision (b) of Section 65080, has accepted a metropolitan
21 planning organization’s determination that the sustainable
22 communities strategy or the alternative planning strategy would,
23 if implemented, achieve the greenhouse gas emission reduction
24 targets.

25 (b) “Local government” means a city, county, or city and county,
26 whether chartered or general.

27 (c) “Workforce Housing Opportunity Zone” or “zone” means
28 an area of contiguous or noncontiguous parcels identified on a city
29 or county’s inventory of land suitable for residential development
30 pursuant to paragraph (3) of subdivision (a) of Section 65583
31 established pursuant to Section 65621.

32 65621. (a) A local government may establish a Workforce
33 Housing Opportunity Zone by preparing an environmental impact
34 report pursuant to Division 13 (commencing with Section 21000)
35 of the Public Resources Code to identify and mitigate, to the extent
36 feasible, environmental impacts resulting from the establishment
37 of that zone, and by adopting a specific plan that shall include text
38 and a diagram or diagrams that specify all of the following in
39 detail:

1 (1) The distribution and location of a minimum of 100 units to
2 a maximum of 1,500 residential dwelling units. A local government
3 may not include more than 50 percent of the number of units in
4 its regional housing needs allocation in a Workforce Housing
5 Opportunity Zone. If a local government whose regional housing
6 needs allocation is less than one hundred units chooses to establish
7 a Workforce Housing Opportunity Zone, then it shall include its
8 entire allocation in the zone.

9 (2) The proposed distribution, location, and extent and intensity
10 of major components of public and private transportation, sewage,
11 water, drainage, solid waste, disposal, energy, and other essential
12 facilities needed to support the construction of the residential
13 dwelling units. Essential facilities may include improvements
14 needed to K-12 schools that serve areas within the zone.

15 (3) The following mitigation measures that will apply to all
16 development constructed within the zone in addition to any and
17 all mitigation measures identified in the environmental impact
18 report prepared for the specific plan:

19 (A) Traffic mitigation measures.

20 (B) Water quality and other public utility mitigation measures,
21 including sewage, drainage, solid waste disposal, and energy.

22 (C) Natural resource protection mitigation measures.

23 (4) Density ranges for multifamily housing for which the
24 minimum densities shall not be less than those deemed appropriate
25 to accommodate housing for lower income households as set forth
26 in subparagraph (B) of paragraph (3) of subdivision (c) of Section
27 65583.2, and a density range for single-family attached or detached
28 housing for which minimum densities shall not be less than 10
29 units to the acre. A density range shall provide the minimum
30 dwelling units per acre and the maximum dwelling units per acre.

31 (5) Uniformly applied development policies or standards that
32 will apply to all development constructed within the zone,
33 including, for example, parking ordinances, public access
34 requirements, grading ordinances, hillside development ordinances,
35 flood plain ordinances, habitat protection or conservation
36 ordinances, view protection ordinances, and requirements for
37 reducing greenhouse gas emissions.

38 (6) The manner in which funding will be provided for the
39 infrastructure and services necessary for the development within

1 the zone, which may include an Enhanced Infrastructure Financing
2 District or a Community Revitalization and Investment Authority.

3 (7) Design review standards.

4 (b) Before beginning the formal environmental evaluation of
5 the specific plan, the planning commission and the legislative body
6 of the local government shall each hold a public hearing to hear
7 oral, and receive written, comments about a draft of the specific
8 plan. There shall be a minimum of 30 days between the public
9 hearings. The planning commission may recommend modifications
10 of the draft to the legislative body. At the conclusion of the public
11 hearing, the legislative body of the local government shall direct
12 that formal environmental evaluation of the specific plan proceed
13 in accordance with the modified draft.

14 (c) (1) If the local government has a planning commission
15 authorized by local ordinance or resolution to review and
16 recommend action on a proposed general plan, the commission
17 shall hold at least one public hearing before approving a
18 recommendation on the adoption of a specific plan pursuant to this
19 subdivision. The local government shall provide the notice of the
20 hearing pursuant to Section 65090 and paragraphs (1) and (3) of
21 subdivision (a) of Section 65091.

22 (2) The legislative body of the local government shall hold at
23 least two public hearings to consider the planning commission's
24 recommendation and any and all public testimony. There shall be
25 a minimum of 30 days between the public hearings to allow
26 sufficient time to modify the plan in response to the public
27 testimony as directed by the legislative body. The local government
28 shall provide the notice of the hearing pursuant to Section 65090
29 and paragraphs (1) and (3) of subdivision (a) of Section 65091.

30 (d) The local government shall provide notice of the public
31 hearings required by subdivisions (b) and (c) pursuant to Section
32 65091, including notice to *local agencies*, owners of real property
33 within the ~~zone~~ *zone*, and each owner of real property within 300
34 feet of the real property within the zone.

35 (e) The legislative body of the local government, after adopting
36 the plan, may impose a specific plan fee upon persons seeking
37 government approvals within a zone. The fees shall be established
38 to defray the cost of preparation, adoption, and administration of
39 the plan, including costs incurred pursuant to Division 13
40 (commencing with Section 21000) of the Public Resources Code.

1 As nearly as can be estimated, the fee charged shall be a prorated
2 amount in accordance with the applicant's relative benefit derived
3 from the plan. The local government shall *only* use the fees to
4 offset its costs and to reimburse funds borrowed from the
5 Department of Housing and Community Development pursuant
6 to Section 65624.

7 65622. (a) Before a date that is no later than five years from
8 the date the local government has adopted the specified plan, the
9 local government shall complete the analysis required by Section
10 21166 of the Public Resources Code and shall consider whether
11 any amendments are required to the specific plan for the zone. The
12 local government shall amend the specific plan to take into account
13 new information about a physical condition on a parcel within the
14 zone that affects the development capacity of the parcel pursuant
15 to the specific plan.

16 (b) The local government shall hold a public hearing noticed in
17 accordance with the requirements of Section 65091 to consider
18 amendments and readoption of the specific plan. The amendment
19 or readoption of the specific plan shall begin a new five-year period
20 for purposes of Section 65623.

21 65623. (a) (1) Except as provided in paragraph (2), for a period
22 of five years from the adoption of the specific plan pursuant to
23 Section 65621, a local government shall approve a development
24 that satisfies all of the criteria listed in paragraphs (3) to (7),
25 inclusive, of subdivision (a) of Section 65621 in effect at the time
26 the application for the development is deemed complete.

27 (2) If the local government finds, based upon substantial
28 evidence in the record of the public hearing on the project, that a
29 physical condition of the site of the development that was not
30 known at the time the specific plan was prepared would have a
31 specific, adverse impact upon the public health or safety, then the
32 local government shall either: (A) approve the project subject to
33 a condition that satisfactorily mitigates or avoids the impact, or
34 (B) deny the project if the cost of complying with the condition
35 renders the project unaffordable for the intended residents of low,
36 moderate, or middle income and approval would cause more than
37 50 percent of the total units in the zone to be sold or rented to
38 persons and families of above moderate income in violation of
39 paragraph (3) of subdivision (c).

1 (b) As used in this subdivision, “specific, adverse impact” means
2 a significant, quantifiable, direct, and unavoidable impact, based
3 on objective, identified written public health or safety standards,
4 policies, or conditions as they existed on the date the application
5 was deemed complete.

6 (c) After the adoption of the zone pursuant to Section 65621, a
7 lead agency is not required to prepare an environmental impact
8 report or negative environmental declaration for a housing
9 development that satisfies all of the following criteria:

10 (1) The development is located on land within a Workforce
11 Housing Opportunity Zone.

12 (2) The development is consistent with the plan adopted pursuant
13 to subdivision (a) of Section 65621, including the density ranges
14 established pursuant to paragraph (4) of subdivision (a) of Section
15 65621. If a development is not consistent with the elements and
16 standards in the plan, then the provisions of this section shall not
17 apply and the city or county shall consider the application as it
18 would an application for development that is not within the zone,
19 including the preparation of an environmental impact report or a
20 negative declaration for the housing development.

21 (3) At least 30 percent of the total units constructed or
22 substantially rehabilitated in the zone will be sold or rented to
23 persons and families of moderate income, as defined by Section
24 50093 of the Health and Safety Code, or persons and families of
25 middle income, as defined in Section 65008; at least 15 percent
26 of the total units constructed or substantially rehabilitated in the
27 zone will be sold or rented to lower income households, as defined
28 by Section 50079.5 of the Health and Safety Code; and at least 5
29 percent of the total units constructed or substantially rehabilitated
30 in the zone will be restricted for a term of 55 years for very low
31 income households, as defined by Section 50105 of the Health and
32 Safety Code. No more than 50 percent of the total units constructed
33 or substantially rehabilitated in the zone shall be sold or rented to
34 persons and families of above moderate income.

35 The developer shall provide sufficient legal commitments to
36 ensure continued availability of units for very low, low- moderate-,
37 or middle-income households in accordance with the provisions
38 of this subdivision for 55 years for rental units and 45 years for
39 owner-occupied units.

1 (4) The development has incorporated each of the mitigation
2 measures adopted pursuant to paragraph (3) of subdivision (a) of
3 Section 65621 and deemed applicable by the city, county, or city
4 and county.

5 (5) The development has incorporated each of the uniformly
6 applied development standards adopted pursuant to paragraph (5)
7 of subdivision (a) of Section 65621 and deemed applicable by the
8 city, county, or city and county.

9 (6) The development complies with the design review standards
10 adopted pursuant to paragraph (7) of subdivision (a) of Section
11 65621 and deemed applicable by the city, county, or city and
12 county.

13 (7) The development has incorporated each of the mitigation
14 measures adopted as part of the environmental impact report for
15 the specific plan and deemed applicable by the city, county, or city
16 and county.

17 (8) A development that is affordable to persons and families
18 whose income exceeds the income limit for persons and families
19 of moderate income shall include no less than 10 percent of the
20 units for lower income households at affordable housing cost, as
21 defined by Section 50052.5 of the Health and Safety Code, unless
22 the locality has adopted a local ordinance that requires greater than
23 10 percent of the units, in which case that ordinance applies.

24 (9) *The development proponent has certified that one of the*
25 *following is true:*

26 (A) *The entirety of the project is a public work for purposes of*
27 *Chapter 1 (commencing with Section 1720) of Part 7 of Division*
28 *2 of the Labor Code.*

29 (B) *If the project is not in its entirety a public work, that all*
30 *construction workers employed in the execution of the project will*
31 *be paid at least the general prevailing rate of per diem wages for*
32 *the type of work and geographic area, as determined by the*
33 *Director of Industrial Relations pursuant to Sections 1773 and*
34 *1773.9 of the Labor Code, except that apprentices registered in*
35 *programs approved by the Chief of the Division of Apprenticeship*
36 *Standards may be paid at least the applicable apprentice prevailing*
37 *rate. If the development is subject to this subparagraph, then for*
38 *those portions of the project that are not public work all of the*
39 *following shall apply:*

- 1 (i) *The development proponent shall ensure that the prevailing*
2 *wage requirement is included in all contracts for the performance*
3 *of the work.*
- 4 (ii) *Contractors and subcontractors shall pay to all construction*
5 *workers employed in the execution of the work at least the general*
6 *prevailing rate of per diem wages, except that apprentices*
7 *registered in programs approved by the Chief of the Division of*
8 *Apprenticeship Standards may be paid at least the applicable*
9 *apprentice rate.*
- 10 (iii) *Except as provided in clause (v), all contractors and*
11 *subcontractors shall maintain and verify payroll records pursuant*
12 *to Section 1776 of the Labor Code and make those records*
13 *available for inspection and copying as provided in that section.*
- 14 (iv) *Except as provided in clause (v), the obligation of the*
15 *contractors and subcontractors to pay prevailing wages may be*
16 *enforced by the Labor Commissioner through the issuance of a*
17 *civil wage and penalty assessment pursuant to Section 1741 of the*
18 *Labor Code, which may be reviewed pursuant to Section 1742 of*
19 *the Labor Code, within 18 months after the completion of the*
20 *project, or by an underpaid worker through an administrative*
21 *complaint or civil action, or by a joint labor-management*
22 *committee through a civil action under Section 1771.2 of the Labor*
23 *Code. If a civil wage and penalty assessment is issued, the*
24 *contractor, subcontractor, and surety on a bond or bonds issued*
25 *to secure the payment of wages covered by the assessment shall*
26 *be liable for liquidated damages pursuant to Section 1742.1 of the*
27 *Labor Code.*
- 28 (v) *Clauses (iii) and (iv) shall not apply if all contractors and*
29 *subcontractors performing work on the project are subject to a*
30 *project labor agreement that requires the payment of prevailing*
31 *wages to all construction workers employed in the execution of*
32 *the project and provides for enforcement of that obligation through*
33 *an arbitration procedure. For purposes of this clause, “project*
34 *labor agreement” has the same meaning as set forth in paragraph*
35 *(1) of subdivision (b) of Section 2500 of the Public Contract Code.*
- 36 (vi) *Notwithstanding subdivision (c) of Section 1773.1 of the*
37 *Labor Code, the requirement that employer payments not reduce*
38 *the obligation to pay the hourly straight time or overtime wages*
39 *found to be prevailing shall not apply if otherwise provided in a*
40 *bona fide collective bargaining agreement covering the worker.*

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

5 (d) (1) Notice that a local government has received an
6 application for a housing development within a Workforce Housing
7 Opportunity Zone shall be posted on the local government's Web
8 site and mailed or delivered within 10 days of receiving the
9 application to any person who has filed a written request for notice
10 with either the clerk of the governing body or with any other person
11 designated by the governing body to receive these requests.

12 (2) A local government shall approve a housing development
13 proposed within the zone that is consistent with the plan and
14 satisfies each of the criteria in subdivision (c) within 60 days of
15 the date the application is deemed complete pursuant to the Permit
16 Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

17 (e) The approval of a development that does not include a
18 majority of the units that will be sold or rented to persons and
19 families of lower income, as defined in Section 50079.5 of the
20 Health and Safety Code, shall expire three years from the date of
21 the approval, if construction has not begun on the housing units
22 in the development. A local government may grant one extension
23 for an additional three-year period upon a determination that good
24 cause exists for the delay in commencing construction. A local
25 government shall not consider the same or substantially similar
26 project on the same parcel of property if the development expires
27 pursuant to this subdivision.

28 65624. (a) A local government may submit an application to
29 the Department of Housing and Community Development for a
30 *grant or no-interest-loan loan, or both*, to support the local
31 government's efforts to develop a specific plan and accompanying
32 environmental impact report within a Workforce Housing
33 Opportunity Zone established pursuant to this article. Upon
34 appropriation by the Legislature, moneys shall be disbursed from
35 the ~~Controller~~ *Treasurer* to the Department of Housing and
36 Community Development for the purpose of issuing ~~loans~~ *grants*
37 *or loans, or both*, pursuant to this subdivision.

38 (b) *The Department of Housing and Community Development*
39 *may adopt, amend, or repeal guidelines, that shall include public*
40 *comment, to implement the grant or loan program authorized by*

1 *this article. The guidelines shall not be subject to the requirements*
2 *of the Administrative Procedure Act (Chapter 3.5 (commencing*
3 *with Section 11340) of Part of Division 3 of Title 2 of the*
4 *Government Code).*

5 (b)

6 (c) A local government shall explain as part of its application,
7 to the satisfaction of the Department of Housing and Community
8 Development, the source of funding that will be used to repay ~~the~~
9 a loan. A local government may include as one source of funding
10 a fee imposed on a developer within the zone as provided in
11 subdivision (e) of Section 65621.

12 65625. A local government shall include within its annual
13 report provided pursuant to Section 65400 the number of housing
14 units approved within a zone that comply with the criteria in
15 subdivision (c) of Section 65623 during the previous fiscal year.

16 SEC. 3. The Legislature finds and declares that ensuring access
17 to affordable housing is a matter of statewide concern, and not a
18 municipal affair.