

AMENDED IN SENATE JULY 10, 2007

AMENDED IN SENATE JUNE 26, 2007

AMENDED IN ASSEMBLY APRIL 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 414

Introduced by Assembly Member Jones

February 16, 2007

An act to amend Sections 65583.2 and 65863 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 414, as amended, Jones. Local planning: residential development.

(1) The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and an inventory of land suitable for residential development in meeting the jurisdiction's share of the regional housing need. For purposes of this assessment, existing law specifies that "land suitable for residential development" includes, among other things, vacant sites zoned for nonresidential use that allows residential development.

This bill would limit, as specified, the manner in which a jurisdiction utilizes, in identifying land suitable for residential development to meet the jurisdiction's share of the regional housing need, vacant sites zoned for nonresidential use that allows residential development and for which the applicable zoning and development standards allow substantially all of the site to be developed without residential use.

(2) The Planning and Zoning Law also prohibits a city, county, or city and county from reducing, or requiring or permitting the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined, unless the city, county, or city and county makes certain written findings.

This bill would redefine “lower residential density” for purposes of the above prohibition.

~~This bill would redefine a “lower residential density” below which the city, county, or city and county would be required to make the above described written findings.~~

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

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

1 SECTION 1. Section 65583.2 of the Government Code is
2 amended to read:
3 65583.2. (a) A city’s or county’s inventory of land suitable
4 for residential development pursuant to paragraph (3) of
5 subdivision (a) of Section 65583 shall be used to identify sites that
6 can be developed for housing within the planning period and that
7 are sufficient to provide for the jurisdiction’s share of the regional
8 housing need for all income levels pursuant to Section 65584. As
9 used in this section, “land suitable for residential development”
10 includes all of the following:
11 (1) Vacant sites zoned for residential use.
12 (2) Vacant sites zoned for nonresidential use that allows
13 residential development, subject to the limitations set forth in
14 subdivision (j).
15 (3) Residentially zoned sites that are capable of being developed
16 at a higher density.
17 (4) Sites zoned for nonresidential use that can be redeveloped
18 for, and as necessary, rezoned for, residential use.
19 (b) The inventory of land shall include all of the following:
20 (1) A listing of properties by parcel number or other unique
21 reference.
22 (2) The size of each property listed pursuant to paragraph (1),
23 and the general plan designation and zoning of each property.
24 (3) For nonvacant sites, a description of the existing use of each
25 property.

1 (4) A general description of any environmental constraints to
2 the development of housing within the jurisdiction, the
3 documentation for which has been made available to the
4 jurisdiction. This information need not be identified on a
5 site-specific basis.

6 (5) A general description of existing or planned water, sewer,
7 and other dry utilities supply, including the availability and access
8 to distribution facilities. This information need not be identified
9 on a site-specific basis.

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

13 (7) A map that shows the location of the sites included in the
14 inventory, such as the land use map from the jurisdiction's general
15 plan for reference purposes only.

16 (c) Based on the information provided in subdivision (b), a city
17 or county shall determine whether each site in the inventory can
18 accommodate some portion of its share of the regional housing
19 need by income level during the planning period, as determined
20 pursuant to Section 65584. The analysis shall determine whether
21 the inventory can provide for a variety of types of housing,
22 including multifamily rental housing, factory-built housing,
23 mobilehomes, housing for agricultural employees, 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 regulations requiring the development of
32 a 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 (4) of
38 subdivision (a) of Section 65583.

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 incorporated cities within nonmetropolitan counties and
 12 for nonmetropolitan counties that have micropolitan areas: sites
 13 allowing at least 15 units per acre.
 14 (ii) For unincorporated areas in all nonmetropolitan counties
 15 not included in clause (i): sites allowing at least 10 units per acre.
 16 (iii) For suburban jurisdictions: sites allowing at least 20 units
 17 per acre.
 18 (iv) For jurisdictions in metropolitan counties: sites allowing
 19 at least 30 units per acre.
 20 (d) For purposes of this section, metropolitan counties,
 21 nonmetropolitan counties, and nonmetropolitan counties with
 22 micropolitan areas are as determined by the United States Census
 23 Bureau. Nonmetropolitan counties with micropolitan areas include
 24 the following counties: Del Norte, Humboldt, Lake Mendocino,
 25 Nevada, Tehama, and Tuolumne and such other counties as may
 26 be determined by the United States Census Bureau to be
 27 nonmetropolitan counties with micropolitan areas in the future.
 28 (e) A jurisdiction is considered suburban if the jurisdiction does
 29 not meet the requirements of clauses (i) and (ii) of subparagraph
 30 (B) of paragraph (3) of subdivision (c) and is located in a
 31 Metropolitan Statistical Area (MSA) of less than 2,000,000 in
 32 population, unless that jurisdiction’s population is greater than
 33 100,000, in which case it is considered metropolitan. Counties,
 34 not including the City and County of San Francisco, will be
 35 considered suburban unless they are in a MSA of 2,000,000 or
 36 greater in population in which case they are considered
 37 metropolitan.
 38 (f) A jurisdiction is considered metropolitan if the jurisdiction
 39 does not meet the requirements for “suburban area” above and is
 40 located in a MSA of 2,000,000 or greater in population, unless

1 that jurisdiction’s population is less than 25,000 in which case it
2 is considered suburban.

3 (g) For sites described in paragraph (3) of subdivision (b), the
4 city or county shall specify the additional development potential
5 for each site within the planning period and shall provide an
6 explanation of the methodology used to determine the development
7 potential. The methodology shall consider factors including the
8 extent to which existing uses may constitute an impediment to
9 additional residential development, development trends, market
10 conditions, and regulatory or other incentives or standards to
11 encourage additional residential development on these sites.

12 (h) The program required by subparagraph (A) of paragraph (1)
13 of subdivision (c) of Section 65583 shall accommodate 100 percent
14 of the need for housing for very low and low-income households
15 allocated pursuant to Section 65584 for which site capacity has
16 not been identified in the inventory of sites pursuant to paragraph
17 (3) of subdivision (a) on sites that shall be zoned to permit
18 owner-occupied and rental multifamily residential use by right
19 during the planning period. These sites shall be zoned with
20 minimum density and development standards that permit at least
21 16 units per site at a density of at least 16 units per acre in
22 jurisdictions described in clause (i) of subparagraph (B) of
23 paragraph (3) of subdivision (c) and at least 20 units per acre in
24 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)
25 of paragraph (3) of subdivision (c). At least 50 percent of the very
26 low and low-income housing need shall be accommodated on sites
27 designated for residential use and for which nonresidential uses
28 or mixed-uses are not permitted.

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

1 (commencing with Section 21000) of the Public Resources Code.
 2 Use by right for all rental multifamily residential housing shall be
 3 provided in accordance with subdivision (f) of Section 65589.5.

4 (j) In making the determination required by subdivision (c), the
 5 following limitations apply to sites described in ~~paragraph (2)~~
 6 *paragraphs (2) and (4)* of subdivision (a) for which the applicable
 7 zoning or development standards allow substantially all of the site
 8 to be developed without residential uses:

9 (1) In determining the total housing unit capacity ~~pursuant to~~
 10 ~~this section~~ on these sites, only one-half of the total residential
 11 development capacity shall be counted.

12 ~~(2) Any determination that a portion of a jurisdiction's share of~~
 13 ~~the regional housing need for lower income households pursuant~~
 14 ~~to Section 65584 can be accommodated on these sites shall be~~
 15 ~~based upon the proportion of the jurisdiction's share of the regional~~
 16 ~~housing need for lower income households that was met on these~~
 17 ~~sites in the prior planning period, except that no more than 30~~
 18 ~~percent of the jurisdiction's share of the regional housing need for~~
 19 ~~lower income households may be allocated to these sites.~~

20 (2) *Any determination that a portion of a jurisdiction's share*
 21 *of the regional housing need pursuant to Section 65584 can be*
 22 *accommodated on these sites shall be based upon all of the*
 23 *following:*

24 (A) *The proportion of the jurisdiction's share of the regional*
 25 *housing need that was met on these sites in the prior planning*
 26 *period.*

27 (B) *Recent development activity.*

28 (C) *Whether residential units are permitted by right.*

29 (D) *The degree to which the development standards and*
 30 *processing requirements facilitate residential uses.*

31 (E) *The resources or incentives available for the residential*
 32 *development of these sites.*

33 (F) *Any other relevant factors as determined by the department,*
 34 *including market trends and demand.*

35 (3) *No more than 50 percent of the jurisdiction's share of the*
 36 *regional housing need for lower income households may be*
 37 *allocated to these sites.*

38 ~~(3)~~

39 (4) For sites designated as mixed-use, these limitations do not
 40 apply. For the purposes of this paragraph "mixed-use" means a

1 site on which both residential and nonresidential uses are permitted,
2 and on which an exclusively nonresidential use is not permitted.

3 SEC. 2. Section 65863 of the Government Code is amended
4 to read:

5 65863. (a) Each city, county, or city and county shall ensure
6 that its housing element inventory described in paragraph (3) of
7 subdivision (a) of Section 65583 or its housing element program
8 to make sites available pursuant to paragraph (1) of subdivision
9 (c) of Section 65583 can accommodate its share of the regional
10 housing need pursuant to Section 65584, throughout the planning
11 period.

12 (b) No city, county, or city and county shall, by administrative,
13 quasi-judicial, legislative, or other action, reduce, or require or
14 permit the reduction of, the residential density for any parcel to,
15 or allow development of any parcel at, a lower residential density,
16 as defined in paragraphs (1), and (2) of subdivision (h), unless the
17 city, county, or city and county makes written findings supported
18 by substantial evidence of both of the following:

19 (1) The reduction is consistent with the adopted general plan,
20 including the housing element.

21 (2) The remaining sites identified in the housing element are
22 adequate to accommodate the jurisdiction's share of the regional
23 housing need pursuant to Section 65584.

24 (c) If a reduction in residential density for any parcel would
25 result in the remaining sites in the housing element not being
26 adequate to accommodate the jurisdiction's share of the regional
27 housing need pursuant to Section 65584, the jurisdiction may
28 reduce the density on that parcel if it identifies sufficient additional,
29 adequate, and available sites with an equal or greater residential
30 density in the jurisdiction so that there is no net loss of residential
31 unit capacity.

32 (d) The requirements of this section shall be in addition to any
33 other law that may restrict or limit the reduction of residential
34 density.

35 (e) If a court finds that an action of a city, county, or city and
36 county is in violation of this section, the court shall award to the
37 plaintiff or petitioner who proposed the housing development,
38 reasonable attorney's fees and costs of suit, except under
39 extraordinary circumstances in which the court finds that awarding
40 fees would not further the purposes of this section or the court

1 finds that the action was frivolous. This subdivision shall remain
2 operative only until January 1, 2007, and as of that date is no longer
3 operative, unless a later enacted statute that is enacted before
4 January 1, 2007, deletes or extends that date.

5 (f) This section requires that a city, county, or city and county
6 be solely responsible for compliance with this section, unless a
7 project applicant requests in his or her initial application, as
8 submitted, a density that would result in the remaining sites in the
9 housing element not being adequate to accommodate the
10 jurisdiction's share of the regional housing need pursuant to Section
11 65584. In that case, the city, county, or city and county may require
12 the project applicant to comply with this section. The submission
13 of an application for purposes of this subdivision does not depend
14 on the application being deemed complete or being accepted by
15 the city, county, or city and county.

16 (g) This section shall not be construed to apply to parcels that,
17 prior to January 1, 2003, were either (1) subject to a development
18 agreement, or (2) parcels for which an application for a subdivision
19 map had been submitted.

20 (h) (1) If the local jurisdiction has adopted a housing element
21 for the current planning period that is in substantial compliance
22 with Article 10.6 (commencing with Section 65580) of Chapter
23 3, for purposes of this section, "lower residential density" means
24 the following:

25 (A) For sites on which the zoning designation permits residential
26 use and that are identified in the local jurisdiction's housing
27 element inventory described in paragraph (3) of subdivision (a) of
28 Section 65583, approval of fewer units on the site than were
29 projected by the jurisdiction to be accommodated on the site
30 pursuant to subdivision (c) of Section 65583.2.

31 (B) For sites that have been or will be rezoned pursuant to the
32 local jurisdiction's housing element program described in
33 paragraph (1) of subdivision (c) of Section 65583, approval of
34 fewer units for the site than were projected to be developed on the
35 site in the housing element program.

36 (2) (A) If the local jurisdiction has not adopted a housing
37 element for the current planning period within 90 days of the
38 deadline established by Section 65588 for purposes of this section,
39 or the adopted housing element is not in substantial compliance
40 with Article 10.6 (commencing with Section 65580) of Chapter 3

1 within 180 days of the deadline established by Section 65588,
2 “lower residential density” means either of the following:

3 (i) For residentially-zoned sites, a density that is lower than 80
4 percent of the maximum allowable residential density for that
5 parcel.

6 (ii) For sites on which residential and nonresidential uses are
7 permitted, approval of a use that would result in the development
8 of fewer than 80 percent of the ~~maximum residential units~~
9 ~~permitted on the site~~ *number of residential units that would be*
10 *allowed under the maximum residential density for the site.*

11 (B) For the purposes of this paragraph, if the council of
12 governments fails to complete a final housing need allocation
13 pursuant to the deadlines established by Section 65584.05, the
14 deadline for adoption of the housing element and determining
15 substantial compliance shall be extended by a time period equal
16 to the delay incurred by the council of governments in completing
17 the final housing need allocation.

O