

ASSEMBLY BILL

No. 2069

Introduced by Assembly Member Jones

February 19, 2008

An act to amend Section 65863 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 2069, as introduced, Jones. Local planning: residential development.

The Planning and Zoning Law 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, as specified, for purposes of the above prohibition.

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 65863 of the Government Code is
2 amended to read:
3 65863. (a) Each city, county, or city and county shall ensure
4 that its housing element inventory described in paragraph (3) of
5 subdivision (a) of Section 65583 or its housing element program
6 to make sites available pursuant to paragraph (1) of subdivision
7 (c) of Section 65583 can accommodate its share of the regional

1 housing need pursuant to Section 65584, throughout the planning
2 period.

3 (b) No city, county, or city and county shall, by administrative,
4 quasi-judicial, legislative, or other action, reduce, or require or
5 permit the reduction of, the residential density for any parcel to,
6 or allow development of any parcel at, a lower residential density,
7 as defined in paragraphs (1); and (2) of subdivision (h), unless the
8 city, county, or city and county makes written findings supported
9 by substantial evidence of both of the following:

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

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

15 (c) If a reduction in residential density for any parcel would
16 result in the remaining sites in the housing element not being
17 adequate to accommodate the jurisdiction's share of the regional
18 housing need pursuant to Section 65584, the jurisdiction may
19 reduce the density on that parcel if it identifies sufficient additional,
20 adequate, and available sites with an equal or greater residential
21 density in the jurisdiction so that there is no net loss of residential
22 unit capacity.

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

26 (e) If a court finds that an action of a city, county, or city and
27 county is in violation of this section, the court shall award to the
28 plaintiff or petitioner who proposed the housing development,
29 reasonable attorney's fees and costs of suit, except under
30 extraordinary circumstances in which the court finds that awarding
31 fees would not further the purposes of this section or the court
32 finds that the action was frivolous. This subdivision shall remain
33 operative only until January 1, 2007, and as of that date is no longer
34 operative, unless a later enacted statute that is enacted before
35 January 1, 2007, deletes or extends that date.

36 (f) This section requires that a city, county, or city and county
37 be solely responsible for compliance with this section, unless a
38 project applicant requests in his or her initial application, as
39 submitted, a density that would result in the remaining sites in the
40 housing element not being adequate to accommodate the

1 jurisdiction’s share of the regional housing need pursuant to Section
2 65584. In that case, the city, county, or city and county may require
3 the project applicant to comply with this section. The submission
4 of an application for purposes of this subdivision does not depend
5 on the application being deemed complete or being accepted by
6 the city, county, or city and county.

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

11 (h) (1) If the local jurisdiction has adopted a housing element
12 for the current planning period that is in substantial compliance
13 with Article 10.6 (commencing with Section 65580) of Chapter
14 3, for purposes of this section, “lower residential density” means
15 the following:

16 (A) For sites ~~zoned for~~ *on which the zoning designation permits*
17 residential use and *that are* identified in the local ~~jurisdiction’s~~
18 *jurisdiction’s* housing element inventory described in paragraph
19 (3) of subdivision (a) of Section 65583, ~~a density below the density~~
20 ~~used in the inventory to determine the total housing unit capacity~~
21 *approval of fewer units on the site than were projected by the*
22 *jurisdiction to be accommodated on the site pursuant to subdivision*
23 *(c) of Section 65583.2.*

24 (B) For sites that have been or will be rezoned pursuant to the
25 local jurisdiction’s housing element program described in
26 paragraph (1) of subdivision (c) of Section 65583, ~~a density below~~
27 ~~the density used to determine the housing unit capacity of the~~
28 ~~rezoned site~~ *approval of fewer units for the site than were projected*
29 *to be developed on the site in the housing element program.*

30 (2) (A) If the local jurisdiction has not adopted a housing
31 element for the current planning period within 90 days of the
32 deadline established by Section 65588 ~~for purposes of this section,~~
33 or the adopted housing element is not in substantial compliance
34 with Article 10.6 (commencing with Section 65580) of Chapter 3
35 within 180 days of the deadline established by Section 65588,
36 “lower residential density” means *any of the following:*

37 (i) *For residentially zoned sites,* a density that is lower than 80
38 percent of the maximum allowable residential density for that
39 parcel. ~~For the purposes of this paragraph, if~~

1 (ii) For sites on which residential and nonresidential uses are
2 permitted, approval of a use that would result in the development
3 of fewer than 80 percent of the number of residential units that
4 would be allowed under the maximum residential density for the
5 site.

6 (B) If the council of governments fails to complete a final
7 housing need allocation pursuant to the deadlines established by
8 Section 65584.05, then for purposes of this section, the deadline
9 ~~for adoption of the housing element and determining substantial~~
10 ~~compliance pursuant to Section 65588~~ shall be extended by a time
11 period equal to the number of days of delay incurred by the council
12 of governments in completing the final housing need allocation.