

AMENDED IN SENATE APRIL 12, 2021

SENATE BILL

No. 478

Introduced by Senator Wiener

February 17, 2021

An act to amend Section 65585 of, and to add Section 65913.11 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 478, as amended, Wiener. Planning and Zoning Law: housing development projects.

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. The law also requires the Department of Housing and Community Development to notify the city, county, or city and county, and authorizes the department to notify the Attorney General, that the city, county, or city and county is in violation of state law if the department finds that the housing element or an amendment to that element, or any specified action or failure to act, does not substantially comply with the law as it pertains to housing elements or that any local government has taken an action in violation of certain housing laws.

This bill would prohibit a local agency, as defined, ~~from imposing specified standards, including a minimum lot size that exceeds an unspecified number of square feet on parcels zoned for at least 2, but not more than 4, units or a minimum lot size that exceeds an unspecified number of square feet on parcels zoned for at least 5, but not more than 10, units; from imposing a floor-to-area ratio standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to~~

10 units. The bill would prohibit a local agency from imposing a lot coverage requirement that would preclude a housing development project from achieving the floor-to-area ratios described above. The bill would prohibit a local agency from denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size. The bill would only apply to housing development projects that meet specified requirements, including, among other things, that the project be located in a multifamily residential zone or a mixed-use zone, as specified. The bill would additionally require the department to identify violations by a local government of these provisions, as described above.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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) The State of California is suffering from extremely high~~
- 4 ~~home prices, rents, and levels of homelessness caused in part by~~
- 5 ~~the lack of proper planning at the local level for the appropriate~~
- 6 ~~amount of housing.~~
- 7 ~~(b) It is the intent of the Legislature to ensure proper planning~~
- 8 ~~occurs at the local level by requiring the Department of Housing~~
- 9 ~~and Community Development to review the plans and programs~~
- 10 ~~of any city county where the amount of housing produced falls~~
- 11 ~~below a specified percentage of their regional housing needs~~
- 12 ~~allocation and to recommend amendments to local housing~~
- 13 ~~elements as necessary.~~
- 14 ~~SEC. 2.~~
- 15 ~~SECTION 1.~~ Section 65585 of the Government Code is
- 16 ~~amended to read:~~
- 17 65585. (a) In the preparation of its housing element, each city
- 18 and county shall consider the guidelines adopted by the department
- 19 pursuant to Section 50459 of the Health and Safety Code. Those

1 guidelines shall be advisory to each city or county in the
2 preparation of its housing element.

3 (b) (1) At least 90 days prior to adoption of its housing element,
4 or at least 60 days prior to the adoption of an amendment to this
5 element, the planning agency shall submit a draft element or draft
6 amendment to the department.

7 (2) The planning agency staff shall collect and compile the
8 public comments regarding the housing element received by the
9 city, county, or city and county, and provide these comments to
10 each member of the legislative body before it adopts the housing
11 element.

12 (3) The department shall review the draft and report its written
13 findings to the planning agency within 90 days of its receipt of the
14 draft in the case of an adoption or within 60 days of its receipt in
15 the case of a draft amendment.

16 (c) In the preparation of its findings, the department may consult
17 with any public agency, group, or person. The department shall
18 receive and consider any written comments from any public
19 agency, group, or person regarding the draft or adopted element
20 or amendment under review.

21 (d) In its written findings, the department shall determine
22 whether the draft element or draft amendment substantially
23 complies with this article.

24 (e) Prior to the adoption of its draft element or draft amendment,
25 the legislative body shall consider the findings made by the
26 department. If the department's findings are not available within
27 the time limits set by this section, the legislative body may act
28 without them.

29 (f) If the department finds that the draft element or draft
30 amendment does not substantially comply with this article, the
31 legislative body shall take one of the following actions:

32 (1) Change the draft element or draft amendment to substantially
33 comply with this article.

34 (2) Adopt the draft element or draft amendment without changes.
35 The legislative body shall include in its resolution of adoption
36 written findings which explain the reasons the legislative body
37 believes that the draft element or draft amendment substantially
38 complies with this article despite the findings of the department.

1 (g) Promptly following the adoption of its element or
2 amendment, the planning agency shall submit a copy to the
3 department.

4 (h) The department shall, within 90 days, review adopted
5 housing elements or amendments and report its findings to the
6 planning agency.

7 (i) (1) (A) The department shall review any action or failure
8 to act by the city, county, or city and county that it determines is
9 inconsistent with an adopted housing element or Section 65583,
10 including any failure to implement any program actions included
11 in the housing element pursuant to Section 65583. The department
12 shall issue written findings to the city, county, or city and county
13 as to whether the action or failure to act substantially complies
14 with this article, and provide a reasonable time no longer than 30
15 days for the city, county, or city and county to respond to the
16 findings before taking any other action authorized by this section,
17 including the action authorized by subparagraph (B).

18 (B) If the department finds that the action or failure to act by
19 the city, county, or city and county does not substantially comply
20 with this article, and if it has issued findings pursuant to this section
21 that an amendment to the housing element substantially complies
22 with this article, the department may revoke its findings until it
23 determines that the city, county, or city and county has come into
24 compliance with this article.

25 (2) The department may consult with any local government,
26 public agency, group, or person, and shall receive and consider
27 any written comments from any public agency, group, or person,
28 regarding the action or failure to act by the city, county, or city
29 and county described in paragraph (1), in determining whether the
30 housing element substantially complies with this article.

31 (j) The department shall notify the city, county, or city and
32 county and may notify the office of the Attorney General that the
33 city, county, or city and county is in violation of state law if the
34 department finds that the housing element or an amendment to this
35 element, or any action or failure to act described in subdivision
36 (i), does not substantially comply with this article or that any local
37 government has taken an action in violation of the following:

38 (1) Housing Accountability Act (Section 65589.5).

39 (2) Section 65863.

(3) Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7.

(4) Section 65008.

(5) Section 65913.11.

(k) Commencing July 1, 2019, prior to the Attorney General bringing any suit for a violation of the provisions identified in subdivision (j) related to housing element compliance and seeking remedies available pursuant to this subdivision, the department shall offer the jurisdiction the opportunity for two meetings in person or via telephone to discuss the violation, and shall provide the jurisdiction written findings regarding the violation. This paragraph does not affect any action filed prior to the effective date of this section. The requirements set forth in this subdivision do not apply to any suits brought for a violation or violations of paragraphs (1), (3), and (4) of subdivision (j).

(l) In any action or special proceeding brought by the Attorney General relating to housing element compliance pursuant to a notice or referral under subdivision (j), the Attorney General may request, upon a finding of the court that the housing element does not substantially comply with the requirements of this article pursuant to this section, that the court issue an order or judgment directing the jurisdiction to bring its housing element into substantial compliance with the requirements of this article. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If a court determines that the housing element of the jurisdiction substantially complies with this article, it shall have the same force and effect, for purposes of eligibility for any financial assistance that requires a housing element in substantial compliance and for purposes of any incentives provided under Section 65589.9, as a determination by the department that the housing element substantially complies with this article.

(1) If the jurisdiction has not complied with the order or judgment after twelve months, the court shall conduct a status conference. Following the status conference, upon a determination that the jurisdiction failed to comply with the order or judgment compelling substantial compliance with the requirements of this article, the court shall impose fines on the jurisdiction, which shall be deposited into the Building Homes and Jobs Trust Fund. Any fine levied pursuant to this paragraph shall be in a minimum amount of ten thousand dollars (\$10,000) per month, but shall not

1 exceed one hundred thousand dollars (\$100,000) per month, except
2 as provided in paragraphs (2) and (3). In the event that the
3 jurisdiction fails to pay fines imposed by the court in full and on
4 time, the court may require the Controller to intercept any available
5 state and local funds and direct such funds to the Building Homes
6 and Jobs Trust Fund to correct the jurisdiction's failure to pay.
7 The intercept of the funds by the Controller for this purpose shall
8 not violate any provision of the California Constitution.

9 (2) If the jurisdiction has not complied with the order or
10 judgment after three months following the imposition of fees
11 described in paragraph (1), the court shall conduct a status
12 conference. Following the status conference, if the court finds that
13 the fees imposed pursuant to paragraph (1) are insufficient to bring
14 the jurisdiction into compliance with the order or judgment, the
15 court may multiply the fine determined pursuant to paragraph (1)
16 by a factor of three. In the event that the jurisdiction fails to pay
17 fines imposed by the court in full and on time, the court may
18 require the Controller to intercept any available state and local
19 funds and direct such funds to the Building Homes and Jobs Trust
20 Fund to correct the jurisdiction's failure to pay. The intercept of
21 the funds by the Controller for this purpose shall not violate any
22 provision of the California Constitution.

23 (3) If the jurisdiction has not complied with the order or
24 judgment six months following the imposition of fees described
25 in paragraph (1), the court shall conduct a status conference. Upon
26 a determination that the jurisdiction failed to comply with the order
27 or judgment, the court may impose the following:

28 (A) If the court finds that the fees imposed pursuant to
29 paragraphs (1) and (2) are insufficient to bring the jurisdiction into
30 compliance with the order or judgment, the court may multiply
31 the fine determined pursuant to paragraph (1) by a factor of six.
32 In the event that the jurisdiction fails to pay fines imposed by the
33 court in full and on time, the court may require the Controller to
34 intercept any available state and local funds and direct such funds
35 to the Building Homes and Jobs Trust Fund to correct the
36 jurisdiction's failure to pay. The intercept of the funds by the
37 Controller for this purpose shall not violate any provision of the
38 California Constitution.

39 (B) The court may order remedies available pursuant to Section
40 564 of the Code of Civil Procedure, under which the agent of the

1 court may take all governmental actions necessary to bring the
2 jurisdiction's housing element into substantial compliance pursuant
3 to this article in order to remedy identified deficiencies. The court
4 shall determine whether the housing element of the jurisdiction
5 substantially complies with this article and, once the court makes
6 that determination, it shall have the same force and effect, for all
7 purposes, as the department's determination that the housing
8 element substantially complies with this article. An agent appointed
9 pursuant to this paragraph shall have expertise in planning in
10 California.

11 (4) This subdivision does not limit a court's discretion to apply
12 any and all remedies in an action or special proceeding for a
13 violation of any law identified in subdivision (j).

14 (m) In determining the application of the remedies available
15 under subdivision (l), the court shall consider whether there are
16 any mitigating circumstances delaying the jurisdiction from coming
17 into compliance with state housing law. The court may consider
18 whether a city, county, or city and county is making a good faith
19 effort to come into substantial compliance or is facing substantial
20 undue hardships.

21 (n) The office of the Attorney General may seek all remedies
22 available under law including those set forth in this section.

23 ~~SEC. 3.~~

24 ~~SEC. 2.~~ Section 65913.11 is added to the Government Code,
25 to read:

26 65913.11. (a) With respect to a housing development project
27 ~~consisting of at least two, but not more than 10, units, that meets~~
28 ~~the requirements of subdivision (b),~~ a local agency shall not do
29 any of the following:

30 ~~(1) (A) Impose a floor-to-area ratio standard that is less than~~
31 ~~1.5.~~

32 ~~(B) This paragraph shall not be construed to affect a local~~
33 ~~agency's ability to impose building height standards it deems~~
34 ~~appropriate or to affect a local agency's ability to impose setbacks.~~

35 ~~(2) Impose a minimum lot size standard that exceeds _____~~
36 ~~square feet on parcels zoned for at least two, but not more than~~
37 ~~four, units.~~

38 ~~(3) Impose a minimum lot size standard that exceeds _____~~
39 ~~square feet on parcels zoned for at least five, but not more than~~
40 ~~10, units.~~

1 (1) For a housing development project consisting of three to
2 seven units, impose a floor-to-area ratio standard that is less than
3 1.0.

4 (2) For a housing development project consisting of 8 to 10
5 units, impose a floor-to-area ratio standard that is less than 1.25.

6 (3) Deny a housing development project located on an existing
7 legal parcel solely on the basis that the lot area of the proposed
8 lot does not meet the local agency's requirements for minimum
9 lot size.

10 (b) To be eligible for the provisions in subdivision (a), a housing
11 development project shall meet all of the following conditions:

12 (1) The project consists of at least 3, but not more than 10, units.

13 (2) The project is located in a multifamily residential zone or
14 a mixed-use zone, as designated by the local agency, and is not
15 located in either of the following:

16 (A) Within a single-family zone.

17 (B) Within a historic district or property included on the State
18 Historic Resources Inventory, as defined in Section 5020.1 of the
19 Public Resources Code, or within a site that is designated or listed
20 as a city or county landmark or historic property or district
21 pursuant to a city or county ordinance.

22 (3) The project is located on a legal parcel or parcels located
23 in a city if, and only if, the city boundaries include some portion
24 of either an urbanized area or urban cluster, as designated by the
25 United States Census Bureau, or, for unincorporated areas, a legal
26 parcel or parcels wholly within the boundaries of an urbanized
27 area or urban cluster, as designated by the United States Census
28 Bureau.

29 (c) (1) This section shall not be construed to prohibit a local
30 agency from imposing any zoning or design standards, including,
31 but not limited to, building height and setbacks, on a housing
32 development project that meets the requirements of subdivision
33 (b), other than zoning or design standards that establish
34 floor-to-area ratios or lot size requirements that expressly conflict
35 with the standards in subdivision (a).

36 (2) Notwithstanding paragraph (1), a local agency may not
37 impose a lot coverage requirement that would preclude a housing
38 development project that meets the requirements established in
39 subdivision (b) from achieving the floor-to-area ratio allowed in
40 subdivision (a).

1 ~~(b)~~

2 (d) As used in this section:

3 (1) “Housing development project” means a housing
4 development project as defined in paragraph (2) of subdivision (h)
5 of Section 65589.5.

6 (2) “Local agency” means a county, city, or city and county,
7 including a charter city, or city and county.

8 (3) “Unit” means a unit of housing, ~~including~~ *but shall not*
9 *include* an accessory dwelling unit or a junior accessory dwelling
10 unit.

11 ~~(e) For the purposes of this section, the addition of an accessory~~
12 ~~dwelling unit, a junior accessory dwelling unit, or any other~~
13 ~~additional unit to an existing unit shall be considered at least a~~
14 ~~two-unit project. The protections of this section shall apply to both~~
15 ~~the existing and proposed homes.~~

16 *SEC. 3. The Legislature finds and declares that missing middle*
17 *housing is naturally affordable, and therefore, the development of*
18 *missing middle housing is a matter of statewide concern and is*
19 *not a municipal affair as that term is used in Section 5 of Article*
20 *XI of the California Constitution. Therefore, Section 1 of this act*
21 *amending Section 65585 of, and Section 2 of this act adding Section*
22 *65913.11 to, the Government Code apply to all cities, including*
23 *charter cities.*