

AMENDED IN SENATE APRIL 27, 2021

AMENDED IN SENATE APRIL 13, 2021

AMENDED IN SENATE MARCH 22, 2021

AMENDED IN SENATE FEBRUARY 24, 2021

SENATE BILL

No. 10

Introduced by Senator Wiener
(Principal coauthors: Senators Atkins and Caballero)
(Principal coauthor: Assembly Member Robert Rivas)

December 7, 2020

An act to add Section 4752 to the Civil Code, and to add Section 65913.5 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 10, as amended, Wiener. Planning and zoning: housing development: density.

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 requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

Existing law, the Davis-Stirling Common Interest Development Act, governs the management and operation of common interest developments. Existing law makes void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets specified standards.

This bill would, notwithstanding any local restrictions on adopting zoning ordinances, authorize a local government to adopt an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined. In this regard, the bill would require the Department of Housing and Community Development, in consultation with the Office of Planning and Research, to determine jobs-rich areas and publish a map of those areas every 5 years, commencing January 1, 2023, based on specified criteria. The bill would specify that an ordinance adopted under these provisions, and any resolution to amend the jurisdiction's General Plan, ordinance, or other local regulation adopted to be consistent with that ordinance, is not a project for purposes of the California Environmental Quality Act. The bill would impose specified requirements on a zoning ordinance adopted under these provisions, including a requirement that the zoning ordinance clearly demarcate the areas that are subject to the ordinance and that the legislative body make a finding that the ordinance is consistent with the city or county's obligation to affirmatively further fair housing. The bill would prohibit a legislative body that adopts a zoning ordinance pursuant to these provisions from subsequently reducing the density of any parcel subject to the ordinance.

This bill would make void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that effectively prohibits or unreasonably restricts a use or density authorized by an ordinance adopted pursuant to the provisions described above. The bill would provide that it does not apply to provisions that impose

reasonable restrictions, as defined, that do not make the implementation of an above-described ordinance infeasible.

This 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. Section 4752 is added to the Civil Code, to read:

2 4752. (a) Any covenant, restriction, or condition contained in
3 any deed, contract, security instrument, or other instrument
4 affecting the transfer or sale of any interest in a planned
5 development, and any provision of a governing document, is void
6 and unenforceable if it effectively prohibits or unreasonably
7 restricts a use or density authorized by an ordinance adopted
8 pursuant to Section 65913.5 of the Government Code.

9 (b) This section does not apply to provisions that impose
10 reasonable restrictions that do not make the implementation of
11 Section 65913.5 of the Government Code infeasible. For purposes
12 of this subdivision, “reasonable restrictions” means restrictions
13 that do not unreasonably increase the cost to construct, effectively
14 prohibit the construction of, or extinguish the ability to otherwise
15 construct residential housing in a manner authorized by an
16 ordinance adopted pursuant to Section 65913.5 of the Government
17 Code.

18 (c) The Legislature finds and declares that ensuring the adequate
19 production of affordable housing is a matter of statewide concern
20 and that this section serves a significant and legitimate public
21 purpose by eliminating potential restrictions that could inhibit the
22 production of affordable housing.

23 SEC. 2. Section 65913.5 is added to the Government Code, to
24 read:

25 65913.5. (a) (1) Notwithstanding any local restrictions on
26 adopting zoning ordinances enacted by the jurisdiction, including
27 restrictions enacted by a local voter initiative, that limit the
28 legislative body’s ability to adopt zoning ordinances, a local
29 government may adopt an ordinance to zone a parcel for up to 10
30 units of residential density per parcel, at a height specified by the

1 local government in the ordinance, if the parcel is located in one
2 of the following:

- 3 (A) A transit-rich area.
- 4 (B) A jobs-rich area.
- 5 (C) An urban infill site.

6 (2) An ordinance adopted in accordance with this subdivision,
7 and any resolution to amend the jurisdiction's General Plan,
8 ordinance, or other local regulation adopted to be consistent with
9 that zoning ordinance, shall not constitute a "project" for purposes
10 of Division 13 (commencing with Section 21000) of the Public
11 Resources Code.

12 (3) Paragraph (1) shall not apply to parcels located within a very
13 high fire hazard severity zone, as determined by the Department
14 of Forestry and Fire Protection pursuant to Section 51178, or within
15 a high or very high fire hazard severity zone as indicated on maps
16 adopted by the Department of Forestry and Fire Protection pursuant
17 to Section 4202 of the Public Resources Code. This paragraph
18 does not apply to ~~parcels excluded from the specified hazard zones~~
19 ~~by a local agency pursuant to subdivision (b) of Section 51179, or~~
20 sites that have adopted fire hazard mitigation measures pursuant
21 to existing building standards or state fire mitigation measures
22 applicable to the development.

23 (b) A legislative body shall comply with all of the following
24 when adopting a zoning ordinance pursuant to subdivision (a):

25 (1) The zoning ordinance shall include a declaration that the
26 zoning ordinance is adopted pursuant to this section.

27 (2) The zoning ordinance shall clearly demarcate the areas that
28 are zoned pursuant to this section.

29 (3) The legislative body shall make a finding that the increased
30 density authorized by the ordinance is consistent with the city or
31 county's obligation to affirmatively further fair housing pursuant
32 to Section 8899.50.

33 (c) A legislative body that adopts a zoning ordinance pursuant
34 to this section shall not subsequently reduce the density of any
35 parcel subject to the ordinance.

36 (d) A housing development project, as defined in subdivision
37 (h) of Section 65589.5, that is proposed on a parcel subject to an
38 ordinance adopted under this section shall be subject to the
39 protections established in Section 65589.5.

40 (e) For purposes of this section:

1 (1) “High-quality bus corridor” means a corridor with fixed
2 route bus service that meets all of the following criteria:

3 (A) It has average service intervals of no more than 15 minutes
4 during the three peak hours between 6 a.m. to 10 a.m., inclusive,
5 and the three peak hours between 3 p.m. and 7 p.m., inclusive, on
6 Monday through Friday.

7 (B) It has average service intervals of no more than 20 minutes
8 during the hours of 6 a.m. to 10 a.m., inclusive, on Monday through
9 Friday.

10 (C) It has average intervals of no more than 30 minutes during
11 the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.

12 (2) (A) “Jobs-rich area” means an area identified by the
13 Department of Housing and Community Development in
14 consultation with the Office of Planning and Research and other
15 necessary stakeholders that is high opportunity and either is jobs
16 rich or would enable shorter commute distances based on whether,
17 in a regional analysis, the tract meets both of the following:

18 (i) The tract is high opportunity, meaning its characteristics are
19 associated with positive educational and economic outcomes for
20 households of all income levels residing in the tract.

21 (ii) The tract meets either of the following criteria:

22 (I) New housing sited in the tract would enable residents to live
23 near more jobs than is typical for tracts in the region.

24 (II) New housing sited in the tract would enable shorter commute
25 distances for residents, relative to existing commute patterns and
26 jobs-housing fit.

27 (B) The Department of Housing and Community Development
28 shall, commencing on January 1, 2023, publish and update, every
29 five years thereafter, a map of the state showing the areas identified
30 by the department as “jobs-rich areas.” The department shall begin
31 with the most current version of the Department of Housing and
32 Community Development and California Tax Credit Allocation
33 Committee Opportunity Maps and update the methodology as it
34 determines is appropriate to advance the goals of subparagraph
35 (A).

36 (3) “Transit-rich area” means a parcel within one-half mile of
37 a major transit stop, as defined in Section 21064.3 of the Public
38 Resources Code, or a parcel on a high-quality bus corridor.

39 (4) “Urban infill site” means a site that satisfies all of the
40 following:

1 (A) A site that is a legal parcel or parcels located in a city if,
2 and only if, the city boundaries include some portion of either an
3 urbanized area or urban cluster, as designated by the United States
4 Census Bureau, or, for unincorporated areas, a legal parcel or
5 parcels wholly within the boundaries of an urbanized area or urban
6 cluster, as designated by the United States Census Bureau.

7 (B) A site in which at least 75 percent of the perimeter of the
8 site adjoins parcels that are developed with urban uses. For the
9 purposes of this section, parcels that are only separated by a street
10 or highway shall be considered to be adjoined.

11 (C) A site that is zoned for residential use or residential
12 mixed-use development, or has a general plan designation that
13 allows residential use or a mix of residential and nonresidential
14 uses, with at least two-thirds of the square footage of the
15 development designated for residential use.

16 (f) The Legislature finds and declares that ensuring the adequate
17 production of affordable housing is a matter of statewide concern
18 and is not a municipal affair as that term is used in Section 5 of
19 Article XI of the California Constitution. Therefore, this section
20 applies to all cities, including charter cities.