

ASSEMBLY BILL

No. 1359

Introduced by Assembly Member Roger Hernández

February 22, 2013

An act to amend Section 66477 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1359, as introduced, Roger Hernández. Quimby Act: use of fees.

The Quimby Act, which is within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or impose fees for park or recreational purposes as a condition to the approval of a tentative or parcel subdivision map if specified requirements are met. One of these requirements is that the dedicated land or fees, or combination thereof, shall be used only for the purposes of developing new, or rehabilitating existing, neighborhood or community park or recreational facilities to serve the subdivision. The act provides that the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide 3 acres of park area per 1,000 persons residing within a subdivision subject to the act, except as specified.

This bill would authorize fees paid pursuant to the act to also be used for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision or subdivisions in the city or county with the greatest need, as defined. The bill would require the legislative body to hold a public hearing before using fees as prescribed in the bill. This bill also would authorize the use of joint or shared use agreements to facilitate access to park or recreational facilities for residents in specified areas.

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 66477 of the Government Code, as
2 amended by Section 61 of Chapter 181 of the Statutes of 2012, is
3 amended to read:

4 66477. (a) The legislative body of a city or county may, by
5 ordinance, require the dedication of land or impose a requirement
6 of the payment of fees in lieu thereof, or a combination of both,
7 for park or recreational purposes as a condition to the approval of
8 a tentative map or parcel map, if all of the following requirements
9 are met:

10 (1) The ordinance has been in effect for a period of 30 days
11 prior to the filing of the tentative map of the subdivision or parcel
12 map.

13 (2) The ordinance includes definite standards for determining
14 the proportion of a subdivision to be dedicated and the amount of
15 any fee to be paid in lieu thereof. The amount of land dedicated
16 or fees paid shall be based upon the residential density, which shall
17 be determined on the basis of the approved or conditionally
18 approved tentative map or parcel map and the average number of
19 persons per household. There shall be a rebuttable presumption
20 that the average number of persons per household by units in a
21 structure is the same as that disclosed by the most recent available
22 federal census or a census taken pursuant to Chapter 17
23 (commencing with Section 40200) of Part 2 of Division 3 of Title
24 4. However, the dedication of land, or the payment of fees, or both,
25 shall not exceed the proportionate amount necessary to provide
26 three acres of park area per 1,000 persons residing within a
27 subdivision subject to this section, unless the amount of existing
28 neighborhood and community park area, as calculated pursuant to
29 this subdivision, exceeds that limit, in which case the legislative
30 body may adopt the calculated amount as a higher standard not to
31 exceed five acres per 1,000 persons residing within a subdivision
32 subject to this section.

33 (A) The park area per 1,000 members of the population of the
34 city, county, or local public agency shall be derived from the ratio
35 that the amount of neighborhood and community park acreage

1 bears to the total population of the city, county, or local public
2 agency as shown in the most recent available federal census. The
3 amount of neighborhood and community park acreage shall be the
4 actual acreage of existing neighborhood and community parks of
5 the city, county, or local public agency as shown on its records,
6 plans, recreational element, maps, or reports as of the date of the
7 most recent available federal census.

8 (B) For cities incorporated after the date of the most recent
9 available federal census, the park area per 1,000 members of the
10 population of the city shall be derived from the ratio that the
11 amount of neighborhood and community park acreage shown on
12 the records, maps, or reports of the county in which the newly
13 incorporated city is located bears to the total population of the new
14 city as determined pursuant to Section 11005 of the Revenue and
15 Taxation Code. In making any subsequent calculations pursuant
16 to this section, the county in which the newly incorporated city is
17 located shall not include the figures pertaining to the new city
18 which were calculated pursuant to this paragraph. Fees shall be
19 payable at the time of the recording of the final map or parcel map
20 or at a later time as may be prescribed by local ordinance.

21 (3) (A) The land, fees, or combination thereof are to be used
22 only for the purpose of developing new or rehabilitating existing
23 neighborhood or community park or recreational facilities to serve
24 the subdivision, *except as provided in subparagraph (B).*

25 (B) (i) *Notwithstanding subparagraph (A), fees may be used*
26 *for the purpose of developing new or rehabilitating existing*
27 *neighborhood or community park or recreational facilities to serve*
28 *the subdivision or subdivisions in the city or county with the*
29 *greatest need. The legislative body shall hold a public hearing*
30 *before using fees as provided in this subparagraph.*

31 (ii) *For purposes of this paragraph, “subdivision or subdivisions*
32 *of the city or county with greatest need” includes a subdivision*
33 *with fewer than three acres of park area per 1,000 members of a*
34 *city, county, or local public agency.*

35 (4) The legislative body has adopted a general plan or specific
36 plan containing policies and standards for parks and recreation
37 facilities, and the park and recreational facilities are in accordance
38 with definite principles and standards.

39 (5) The amount and location of land to be dedicated or the fees
40 to be paid shall bear a reasonable relationship to the use of the

1 park and recreational facilities by the future inhabitants of the
2 subdivision.

3 (6) (A) The city, county, or other local public agency to which
4 the land or fees are conveyed or paid shall develop a schedule
5 specifying how, when, and where it will use the land or fees, or
6 both, to develop park or recreational facilities to serve the residents
7 of the subdivision. Any fees collected under the ordinance shall
8 be committed within five years after the payment of the fees or
9 the issuance of building permits on one-half of the lots created by
10 the subdivision, whichever occurs later. If the fees are not
11 committed, they, without any deductions, shall be distributed and
12 paid to the then record owners of the subdivision in the same
13 proportion that the size of their lot bears to the total area of all lots
14 within the subdivision.

15 (B) *The city, county, or other local agency to which the land or*
16 *fees are conveyed or paid may enter into a joint or shared use*
17 *agreement with one or more other public districts in the*
18 *jurisdiction, including, but not limited to, a school district or*
19 *community college district, in order to provide access to park or*
20 *recreational facilities to residents of subdivisions with fewer than*
21 *three acres of park area per 1,000 members of the population.*

22 (7) Only the payment of fees may be required in subdivisions
23 containing 50 parcels or less, except that when a condominium
24 project, stock cooperative, or community apartment project, as
25 those terms are defined in Sections 4105, 4125, and 4190 of the
26 Civil Code, exceeds 50 dwelling units, dedication of land may be
27 required notwithstanding that the number of parcels may be less
28 than 50.

29 (8) Subdivisions containing less than five parcels and not used
30 for residential purposes shall be exempted from the requirements
31 of this section. However, in that event, a condition may be placed
32 on the approval of a parcel map that if a building permit is
33 requested for construction of a residential structure or structures
34 on one or more of the parcels within four years, the fee may be
35 required to be paid by the owner of each parcel as a condition of
36 the issuance of the permit.

37 (9) If the subdivider provides park and recreational
38 improvements to the dedicated land, the value of the improvements
39 together with any equipment located thereon shall be a credit

1 against the payment of fees or dedication of land required by the
2 ordinance.

3 (b) Land or fees required under this section shall be conveyed
4 or paid directly to the local public agency which provides park
5 and recreational services on a communitywide level and to the
6 area within which the proposed development will be located, if
7 that agency elects to accept the land or fee. The local agency
8 accepting the land or funds shall develop the land or use the funds
9 in the manner provided in this section.

10 (c) If park and recreational services and facilities are provided
11 by a public agency other than a city or county, the amount and
12 location of land to be dedicated or fees to be paid shall, subject to
13 paragraph (2) of subdivision (a), be jointly determined by the city
14 or county having jurisdiction and that other public agency.

15 (d) This section does not apply to commercial or industrial
16 subdivisions or to condominium projects or stock cooperatives
17 that consist of the subdivision of airspace in an existing apartment
18 building that is more than five years old when no new dwelling
19 units are added.

20 (e) Common interest developments, as defined in Section 1351
21 of the Civil Code, shall be eligible to receive a credit, as determined
22 by the legislative body, against the amount of land required to be
23 dedicated, or the amount of the fee imposed, pursuant to this
24 section, for the value of private open space within the development
25 which is usable for active recreational uses.

26 (f) Park and recreation purposes shall include land and facilities
27 for the activity of “recreational community gardening,” which
28 activity consists of the cultivation by persons other than, or in
29 addition to, the owner of the land, of plant material not for sale.

30 (g) This section shall be known, and may be cited, as the
31 Quimby Act.