

AMENDED IN ASSEMBLY MAY 29, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1359**

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**Introduced by Assembly Member Roger Hernández  
(Coauthor: Assembly Member Ammiano)**

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1359, as amended, 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 *for which the land was dedicated or fees were paid*. 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 in a neighborhood other than the neighborhood in which the subdivision for which fees were paid as a condition to the approval of a tentative map or parcel map is located, if certain requirements are met. 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

1 neighborhood and community park area, as calculated pursuant to  
2 this subdivision, exceeds that limit, in which case the legislative  
3 body may adopt the calculated amount as a higher standard not to  
4 exceed five acres per 1,000 persons residing within a subdivision  
5 subject to this section.

6 (A) The park area per 1,000 members of the population of the  
7 city, county, or local public agency shall be derived from the ratio  
8 that the amount of neighborhood and community park acreage  
9 bears to the total population of the city, county, or local public  
10 agency as shown in the most recent available federal census. The  
11 amount of neighborhood and community park acreage shall be the  
12 actual acreage of existing neighborhood and community parks of  
13 the city, county, or local public agency as shown on its records,  
14 plans, recreational element, maps, or reports as of the date of the  
15 most recent available federal census.

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

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

33 (B) ~~(i) Notwithstanding subparagraph (A), fees may be used~~  
34 ~~for the purpose of developing new or rehabilitating existing~~  
35 ~~neighborhood or community park or recreational facilities to serve~~  
36 ~~the subdivision or subdivisions in the city or county with the~~  
37 ~~greatest need. The legislative body shall hold a public hearing~~  
38 ~~before using fees as provided in this subparagraph. in a~~  
39 ~~neighborhood other than the neighborhood in which the subdivision~~  
40 ~~for which fees were paid as a condition to the approval of a~~

1 tentative map or parcel map is located, if all of the following  
 2 requirements are met:

3 (i) The neighborhood in which the fees are to be expended has  
 4 fewer than three acres of park area per 1,000 members of the  
 5 neighborhood population.

6 (ii) The neighborhood in which the subdivision for which the  
 7 fees were paid has a park area per 1,000 members of the  
 8 neighborhood population ratio that meets or exceeds the ratio  
 9 calculated pursuant to subparagraph (A) of paragraph (2).

10 (iii) The legislative body holds a public hearing before using  
 11 the fees pursuant to this subparagraph. If the distance between  
 12 the neighborhoods described in clauses (i) and (ii) is greater than  
 13 two miles, the legislative body shall make a finding supported by  
 14 substantial evidence that it is reasonably foreseeable that future  
 15 inhabitants of the subdivision for which the fee is imposed will use  
 16 the proposed park and recreational facilities.

17 ~~(ii) For purposes of this paragraph, “subdivision or subdivisions~~  
 18 ~~of the city or county with greatest need” includes a subdivision~~  
 19 ~~with fewer than three acres of park area per 1,000 members of a~~  
 20 ~~city, county, or local public agency.~~

21 (4) (A) The legislative body has adopted a general plan or  
 22 specific plan containing policies and standards for parks and  
 23 ~~recreation~~ recreational facilities, and the park and recreational  
 24 facilities are in accordance with definite principles and standards.

25 (B) *The principles and standards provide for consistency*  
 26 *between the calculation of the existing neighborhood and*  
 27 *community park area inventory pursuant to subparagraph (A) of*  
 28 *paragraph (2) and the criteria and procedures that the local agency*  
 29 *applies to a determination regarding the suitability of land offered*  
 30 *for dedication and credits for private open space. Consistency is*  
 31 *not provided where the local agency refuses to do any of the*  
 32 *following:*

33 (i) *Accept an area in complete or partial satisfaction of the land*  
 34 *dedication requirement on the basis that it is unsuitable for park*  
 35 *and recreational uses, if the area is substantially similar to areas*  
 36 *included in the park area inventory.*

37 (ii) *Accept an area in complete or partial satisfaction of the*  
 38 *land dedication requirement on the basis that the type of use the*  
 39 *subdivider proposes is not an appropriate park and recreational*

1 *use, if the use is substantially similar to uses on areas included in*  
2 *the park area inventory.*

3 *(iii) Provide more than the minimum required credit pursuant*  
4 *to subdivision (e) on the basis that the active recreational uses*  
5 *proposed by the subdivider are not appropriate park and*  
6 *recreational uses, if the recreational uses are substantially similar*  
7 *to uses on areas included in the park area inventory.*

8 (5) The amount and location of land to be dedicated or the fees  
9 to be paid shall bear a reasonable relationship to the use of the  
10 park and recreational facilities by the future inhabitants of the  
11 subdivision.

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

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

31 (7) Only the payment of fees may be required in subdivisions  
32 containing 50 parcels or less, except that when a condominium  
33 project, stock cooperative, or community apartment project, as  
34 those terms are defined in Sections 4105, 4125, and 4190 of the  
35 Civil Code, exceeds 50 dwelling units, dedication of land may be  
36 required notwithstanding that the number of parcels may be less  
37 than 50.

38 (8) Subdivisions containing less than five parcels and not used  
39 for residential purposes shall be exempted from the requirements  
40 of this section. However, in that event, a condition may be placed

1 on the approval of a parcel map that if a building permit is  
2 requested for construction of a residential structure or structures  
3 on one or more of the parcels within four years, the fee may be  
4 required to be paid by the owner of each parcel as a condition of  
5 the issuance of the permit.

6 (9) If the subdivider provides park and recreational  
7 improvements to the dedicated land, the value of the improvements  
8 together with any equipment located thereon shall be a credit  
9 against the payment of fees or dedication of land required by the  
10 ordinance.

11 (b) Land or fees required under this section shall be conveyed  
12 or paid directly to the local public agency which provides park  
13 and recreational services on a communitywide level and to the  
14 area within which the proposed development will be located, if  
15 that agency elects to accept the land or fee. The local agency  
16 accepting the land or funds shall develop the land or use the funds  
17 in the manner provided in this section.

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

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

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

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

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

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