

AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY MAY 29, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1359

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

February 22, 2013

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 or rehabilitating 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. *Existing law requires fees to be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.*

This bill would *require fees to instead be paid on the date of the final inspection or issuance of the certificate of occupancy, whichever occurs first. The bill would* authorize fees paid pursuant to the act to also be used for the purpose of developing or rehabilitating park or recreational facilities 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,

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

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

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

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

38 (B) Notwithstanding subparagraph (A), fees may be used for
39 the purpose of developing new or rehabilitating existing park or
40 recreational facilities in a neighborhood other than the

1 neighborhood in which the subdivision for which fees were paid
2 as a condition to the approval of a tentative map or parcel map is
3 located, if all of the following requirements are met:

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

7 (ii) The neighborhood in which the subdivision for which the
8 fees were paid has a park area per 1,000 members of the
9 neighborhood population ratio that meets or exceeds the ratio
10 calculated pursuant to subparagraph (A) of paragraph (2), *but in*
11 *no event is less than three acres per 1,000 persons.*

12 (iii) The legislative body holds a public hearing before using
13 the fees pursuant to this subparagraph. ~~If the distance between the~~
14 ~~neighborhoods described in clauses (i) and (ii) is greater than two~~
15 ~~miles, the legislative~~

16 (iv) ~~The legislative body shall make~~ *makes* a finding supported
17 by substantial evidence that it is reasonably foreseeable that future
18 inhabitants of the subdivision for which the fee is imposed will
19 use the proposed park and recreational facilities *in the*
20 *neighborhood where the fees are used.*

21 (4) (A) The legislative body has adopted a general plan or
22 specific plan containing policies and standards for parks and
23 recreational facilities, and the park and recreational facilities are
24 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 land
38 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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