

**Introduced by Committee on Housing and Land Use
(Senators Lee (Chair), Costa, Kopp, Monteith, and
Vasconcellos)**

January 5, 1998

An act to amend Sections 65850, 65915, and 66021 of, and to add Sections 65850.3 and 66413.5 to, the Government Code, relating to housing and land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, as introduced, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1998.

(1) Existing law generally regulates land use, housing, and redevelopment.

This bill would enact the Housing and Land Use Omnibus Act of 1998 and would state legislative intent to combine several minor statutory changes relating to housing, land use, and related topics into a single measure, and would make related findings and declarations.

(2) Existing law provides that a final subdivision map approved by a board of supervisors shall govern any area later annexed to a city, and that a city's procedures and regulations shall apply to an annexed area that is subject to a tentative subdivision map.

This bill would require a newly incorporated city to approve a final map, as prescribed, for any area included in that city that was the subject of a tentative map or vesting tentative map approved by a board of supervisors, thereby imposing a state-mandated local program.

(3) The bill would make other technical, nonsubstantive changes to existing law relating to housing and land use for organizational reasons or to conform obsolete references to current law.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) This act shall be known and may be
2 cited as the Housing and Land Use Omnibus Act of 1998.

3 (b) The Legislature finds and declares that
4 Californians desire their government to be run efficiently
5 and economically, and that public officials should avoid
6 waste and duplication whenever possible. The
7 Legislature further finds and declares that it desires to
8 control its own operating costs by reducing the number
9 of separate bills affecting housing, land use, and related
10 topics. Therefore, it is the intent of the Legislature in
11 enacting this act to combine several minor,
12 noncontroversial statutory changes relating to housing,
13 land use, and related topics into a single measure.

14 SEC. 2. Section 65850 of the Government Code is
15 amended to read:

16 65850. The legislative body of any county or city may,
17 pursuant to this chapter, adopt ordinances that do any of
18 the following:

19 (a) Regulate the use of buildings, structures, and land
20 as between industry, business, residences, open space,
21 including agriculture, recreation, enjoyment of scenic
22 beauty, use of natural resources, and other purposes.

23 (b) Regulate signs and billboards.

24 (c) Regulate all of the following:



1 (1) The location, height, bulk, number of stories, and
2 size of buildings and structures.

3 (2) The size and use of lots, yards, courts, and other
4 open spaces.

5 (3) The percentage of a lot which may be occupied by
6 a building or structure.

7 (4) The intensity of land use.

8 (d) Establish requirements for offstreet parking and
9 loading.

10 (e) Establish and maintain building setback lines.

11 (f) Create civic districts around civic centers, public
12 parks, public buildings, or public grounds, and establish
13 regulations for those civic districts.

14 ~~(g) (1) Regulate, pursuant to a content neutral~~
15 ~~zoning ordinance, the time, place, and manner of~~
16 ~~operation of sexually oriented businesses, when the~~
17 ~~ordinance is designed to serve a substantial governmental~~
18 ~~interest, does not unreasonably limit alternative avenues~~
19 ~~of communication, and is based on narrow, objective, and~~
20 ~~definite standards. The legislative body is entitled to rely~~
21 ~~on the experiences of other counties and cities and on the~~
22 ~~findings of court cases in establishing the reasonableness~~
23 ~~of the ordinance and its relevance to the specific~~
24 ~~problems it addresses, including the harmful secondary~~
25 ~~effects the business may have on the community and its~~
26 ~~proximity to churches, schools, residences,~~
27 ~~establishments dispensing alcohol, and other sexually~~
28 ~~oriented businesses.~~

29 ~~(2) For purposes of this section, a sexually oriented~~
30 ~~business is one whose primary purpose is the sale or~~
31 ~~display of matter that, because of its sexually explicit~~
32 ~~nature, may, pursuant to state law or local regulatory~~
33 ~~authority, be offered only to persons over the age of 18.~~

34 ~~(3) This subdivision shall not be construed to preempt~~
35 ~~the legislative body of any city or county from regulating~~
36 ~~a sexually oriented business, or similar establishment in~~
37 ~~the manner, and to the extent permitted by the United~~
38 ~~States Constitution and the California Constitution.~~

39 SEC. 3. Section 65850.3 is added to the Government
40 Code, to read:



1 65850.3. (a) The legislative body of any county or city
2 may regulate, pursuant to a content neutral zoning
3 ordinance, the time, place, and manner of operation of
4 sexually oriented businesses, when the ordinance is
5 designed to serve a substantial governmental interest,
6 does not unreasonably limit alternative avenues of
7 communication, and is based on narrow, objective, and
8 definite standards. The legislative body is entitled to rely
9 on the experiences of other counties and cities and on the
10 findings of court cases in establishing the reasonableness
11 of the ordinance and its relevance to the specific
12 problems it addresses, including the harmful secondary
13 effects the business may have on the community and its
14 proximity to churches, schools, residences,
15 establishments dispensing alcohol, and other sexually
16 oriented businesses.

17 (b) For purposes of this section, a sexually oriented
18 business is one whose primary purpose is the sale or
19 display of matter that, because of its sexually explicit
20 nature, may, pursuant to state law or local regulatory
21 authority, be offered only to persons over the age of 18
22 years.

23 (c) This section shall not be construed to preempt the
24 legislative body of any city or county from regulating a
25 sexually oriented business, or similar establishment in the
26 manner and to the extent permitted by the United States
27 Constitution and the California Constitution.

28 SEC. 4. Section 65915 of the Government Code is
29 amended to read:

30 65915. (a) When a developer of housing proposes a
31 housing development within the jurisdiction of the local
32 government, the city, county, or city and county shall
33 provide the developer incentives for the production of
34 lower income housing units within the development if
35 the developer meets the requirements set forth in
36 subdivisions (b) and (c). The city, county, or city and
37 county shall adopt an ordinance which shall specify the
38 method of providing developer incentives.

39 (b) When a developer of housing agrees or proposes to
40 construct at least (1) 20 percent of the total units of a



1 housing development for lower income households, as
2 defined in Section 50079.5 of the Health and Safety Code,
3 or (2) 10 percent of the total units of a housing
4 development for very low income households, as defined
5 in Section 50105 of the Health and Safety Code, or (3) 50
6 percent of the total dwelling units of a housing
7 development for qualifying residents, as defined in
8 Section ~~51.2~~ 51.3 of the Civil Code, a city, county, or city
9 and county shall either (1) grant a density bonus and at
10 least one of the concessions or incentives identified in
11 subdivision (h) unless the city, county, or city and county
12 makes a written finding that the additional concession or
13 incentive is not required in order to provide for
14 affordable housing costs as defined in Section 50052.5 of
15 the Health and Safety Code or for rents for the targeted
16 units to be set as specified in subdivision (c), or (2)
17 provide other incentives of equivalent financial value
18 based upon the land cost per dwelling unit.

19 (c) A developer shall agree to and the city, county, or
20 city and county shall ensure continued affordability of all
21 lower income density bonus units for 30 years or a longer
22 period of time if required by the construction or
23 mortgage financing assistance program, mortgage
24 insurance program, or rental subsidy program. Those
25 units targeted for lower income households, as defined in
26 Section 50079.5 of the Health and Safety Code, shall be
27 affordable at a rent that does not exceed 30 percent of 60
28 percent of area median income. Those units targeted for
29 very low income households, as defined in Section 50105
30 of the Health and Safety Code, shall be affordable at a rent
31 that does not exceed 30 percent of 50 percent of area
32 median income. If a city, county, or city and county does
33 not grant at least one additional concession or incentive
34 pursuant to paragraph (1) of subdivision (b), the
35 developer shall agree to and the city, county, or city and
36 county shall ensure continued affordability for 10 years of
37 all lower income housing units receiving a density bonus.

38 (d) A developer may submit to a city, county, or city
39 and county a preliminary proposal for the development
40 of housing pursuant to this section prior to the submittal



1 of any formal requests for general plan amendments,
2 zoning amendments, or subdivision map approvals. The
3 city, county, or city and county shall, within 90 days of
4 receipt of a written proposal, notify the housing
5 developer in writing of the procedures under which it
6 will comply with this section. The city, county, or city and
7 county shall establish procedures for carrying out this
8 section, which shall include legislative body approval of
9 the means of compliance with this section. The city,
10 county, or city and county shall also establish procedures
11 for waiving or modifying development and zoning
12 standards which would otherwise inhibit the utilization of
13 the density bonus on specific sites. These procedures shall
14 include, but not be limited to, such items as minimum lot
15 size, side yard setbacks, and placement of public works
16 improvements.

17 (e) The housing developer shall show that the waiver
18 or modification is necessary to make the housing units
19 economically feasible.

20 (f) For the purposes of this chapter, “density bonus”
21 means a density increase of at least 25 percent over the
22 otherwise maximum allowable residential density under
23 the applicable zoning ordinance and land use element of
24 the general plan as of the date of application by the
25 developer to the city, county, or city and county. The
26 density bonus shall not be included when determining
27 the number of housing units which is equal to 10 or 20
28 percent of the total. The density bonus shall apply to
29 housing developments consisting of five or more dwelling
30 units.

31 (g) “Housing development,” as used in this section,
32 means one or more groups of projects for residential units
33 constructed in the planned development of a city, county,
34 or city and county. For purposes of calculating a density
35 bonus, the residential units do not have to be based upon
36 individual subdivision maps or parcels. The density bonus
37 shall be permitted in geographic areas of the housing
38 development other than the areas where the units for the
39 lower income households are located.



1 (h) For purposes of this chapter, concession or
2 incentive means any of the following:

3 (1) A reduction in site development standards or a
4 modification of zoning code requirements or
5 architectural design requirements which exceed the
6 minimum building standards approved by the ~~State~~
7 *California* Building Standards Commission as provided in
8 Part 2.5 (commencing with Section 18901) of Division 13
9 of the Health and Safety Code, including, but not limited
10 to, a reduction in setback and square footage
11 requirements and in the ratio of vehicular parking spaces
12 that would otherwise be required.

13 (2) Approval of mixed use zoning in conjunction with
14 the housing project if commercial, office, industrial, or
15 other land uses will reduce the cost of the housing
16 development and if the commercial, office, industrial, or
17 other land uses are compatible with the housing project
18 and the existing or planned development in the area
19 where the proposed housing project will be located.

20 (3) Other regulatory incentives or concessions
21 proposed by the developer or the city, county, or city and
22 county which result in identifiable cost reductions.

23 This subdivision does not limit or require the provision
24 of direct financial incentives for the housing
25 development, including the provision of publicly owned
26 land, by the city, county, or city and county, or the waiver
27 of fees or dedication requirements.

28 (i) If a developer agrees to construct both 20 percent
29 of the total units for lower income households and 10
30 percent of the total units for very low income households,
31 the developer is entitled to only one density bonus and at
32 least one additional concession or incentive identified in
33 Section 65913.4 under this section although the city, city
34 and county, or county may, at its discretion, grant more
35 than one density bonus.

36 SEC. 5. Section 66021 of the Government Code is
37 amended to read:

38 66021. (a) Any party on whom a fee, tax, assessment,
39 dedication, reservation, or other exaction has been
40 imposed, the payment or performance of which is



1 required to obtain governmental approval of a
2 development, as defined by Section 65927, or
3 development project, may protest, ~~as provided in~~
4 ~~Sections 66020 and 66475.4,~~ the establishment or
5 imposition of the fee, tax, assessment, dedication,
6 reservation, or other exaction. ~~If a party files a protest~~
7 ~~under both Sections 66020 and 66475.4, Section 66475.4~~
8 ~~shall prevail over as provided in Section 66020 to the~~
9 ~~extent of any conflict between those two sections.~~

10 (b) The protest procedures of subdivision (a) do not
11 apply to the protest of any tax or assessment (1) levied
12 pursuant to a principal act which contains protest
13 procedures, or (2) that is pledged to secure payment of
14 the principal of, or interest on, bonds or other public
15 indebtedness.

16 SEC. 6. Section 66413.5 is added to the Government
17 Code, to read:

18 66413.5. (a) When any area in a subdivision or
19 proposed subdivision as to which a tentative map meeting
20 the criteria of this section has been approved by a board
21 of supervisors is incorporated into a newly incorporated
22 city, the newly incorporated city shall approve the final
23 map if it meets all of the conditions of the tentative map,
24 the requirements and conditions for approval of the final
25 map as provided in Article 4 (commencing with Section
26 66456) of Chapter 3, and other requirements of this
27 division, and complies with the county's subdivision
28 ordinance.

29 (b) When any area in a subdivision or proposed
30 subdivision as to which a vesting tentative map meeting
31 the criteria of this section has been approved by a board
32 of supervisors is incorporated into a newly incorporated
33 city, the newly incorporated city shall approve the final
34 map and shall give effect to the vesting tentative map as
35 provided in Chapter 4.5 (commencing with Section
36 66498.1) if the final map meets all of the conditions of the
37 vesting tentative map, the requirements and conditions
38 for approval of the final map as provided in Article 4
39 (commencing with Section 66456) of Chapter 3, Chapter
40 4.5 (commencing with Section 66498.1), and other



1 requirements of this division, and complies with the
2 county's subdivision ordinance.

3 (c) Notwithstanding subdivisions (a) and (b), the
4 newly incorporated city may condition or deny a permit,
5 approval, extension, or entitlement if it determines any
6 of the following:

7 (1) A failure to do so would place the residents of the
8 subdivision or the immediate community, or both, in a
9 condition dangerous to their health or safety, or both.

10 (2) The condition or denial is required in order to
11 comply with state or federal law.

12 (d) The rights conferred by this section shall expire if
13 a final map is not approved prior to the expiration of the
14 tentative map or of the vesting tentative map. If the final
15 map is approved, the rights conferred by this section shall
16 be subject to the periods of time set forth in Section
17 66452.6, but shall not exceed eight years from the date of
18 incorporation unless an applicant and the newly
19 incorporated city mutually agree to a longer period
20 provided by this division.

21 (e) An approved tentative map or vesting tentative
22 map shall not limit a newly incorporated city from
23 imposing reasonable conditions on subsequent required
24 approvals or permits necessary for the development, and
25 authorized by the ordinance, policies, and standards
26 described in Section 66474.2.

27 (f) Except as otherwise provided in subdivision (g) or
28 (h), this section applies to any approved tentative map or
29 approved vesting tentative map that meets both of the
30 following requirements:

31 (1) The application for the tentative map or the
32 vesting tentative map is submitted prior to the date that
33 the first signature was affixed to the petition for
34 incorporation pursuant to Section 56704, regardless of the
35 validity of the first signature, or the adoption of the
36 resolution pursuant to Section 56800, whichever occurs
37 first.

38 (2) The county approves the tentative map or the
39 vesting tentative map prior to the date of the election on
40 the question of incorporation.



1 (g) This section does not apply to any territory for
2 which the effective date of the incorporation is prior to
3 January 1, 1999.

4 (h) This section does not apply to any subdivision
5 subject to Section 66427.1, and it is not the intent of the
6 Legislature to influence or affect any litigation pending
7 on December 31, 1998.

8 SEC. 7. No reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because a local agency or school district has
11 the authority to levy service charges, fees, or assessments
12 sufficient to pay for the program or level of service
13 mandated by this act, within the meaning of Section 17556
14 of the Government Code.

15 Notwithstanding Section 17580 of the Government
16 Code, unless otherwise specified, the provisions of this act
17 shall become operative on the same date that the act
18 takes effect pursuant to the California Constitution.

