

AMENDED IN SENATE MARCH 9, 2020

**SENATE BILL**

**No. 902**

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**Introduced by Senator Wiener**

January 30, 2020

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An act to ~~amend Section 65400 of~~ *add Section 65913.3* to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 902, as amended, Wiener. ~~General plan.~~ *Planning and zoning: neighborhood multifamily project: use by right: density.*

~~Existing law, 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. That law requires the planning agency of a city or county to provide by April 1 of each year an annual report to, among other entities, the Department of Housing and Community Development. The law requires that the annual report include, among other specified information, the number of housing development applications received and the number of units approved and disapproved in the prior year.~~

~~This bill would additionally require the planning agency include in the annual report whether the city or county is a party to a court action related to a violation of state housing law, and the disposition of that action. By requiring a planning agency to include additional information in its annual report, the bill would impose a state-mandated local program.~~

*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, until January 1, 2026, authorizes a development proponent to submit an application for a multifamily housing development that satisfies specified planning objective standards to be subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit.*

*This bill would provide that a neighborhood multifamily project is a use by right in zones where residential uses are permitted if the project is not located in a very high fire severity zone, does not demolish sound rental housing or housing that has been placed on a national or state historic register, follows specified local objective criteria, and meets specified density requirements. The bill would define use by right to mean that the local government's review of the housing development may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a project for purposes of the California Environmental Quality Act (CEQA).*

*This bill would additionally authorize a local government to pass an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site. The bill would specify that an ordinance adopted under these provisions is not a project for purposes of CEQA.*

*CEQA requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on*

*the environment. CEQA does not apply to the approval of ministerial projects.*

*By requiring local planning officials to approve housing developments as a use by right under certain circumstances, this bill would expand the above-described exemption from CEQA for the ministerial approval of projects.*

*By adding to the duties of local planning officials, this bill would impose a state-mandated local program.*

*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.*

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. Section 65913.3 is added to the Government Code,  
2     to read:

3     65913.3. (a) A neighborhood multifamily project shall be a  
4     use by right in zones where residential uses are permitted, if the  
5     proposed housing development satisfies all of the following  
6     requirements:

7     (1) The project is not located in a very high fire hazard severity  
8     zone.

9     (2) The project does not demolish sound rental housing or  
10    housing that has been placed on a national or state historic  
11    register.

12    (3) The project follows all local objective criteria related to  
13    local impact fees, local height and setback limits, and local  
14    demolition standards.

15    (4) The project meets, and does not exceed, one of the following  
16    densities:

17    (A) Two residential units per parcel in unincorporated areas  
18    or in cities with a population of 10,000 or fewer people.

1 (B) Three residential units per parcel in cities with a population  
2 between 10,000 and 50,000 people.

3 (C) Four residential units per parcel in cities with a population  
4 of 50,000 or more people.

5 (b) (1) A local government may pass an ordinance,  
6 notwithstanding any local restrictions on adopting zoning  
7 ordinances enacted by the jurisdiction, including restrictions  
8 enacted by a local voter initiative, that limit the legislative body's  
9 ability to adopt zoning ordinances, to zone any parcel for up to  
10 10 units of residential density per parcel, at a height specified by  
11 the local government in the ordinance, if the parcel is located in  
12 one of the following:

13 (A) A transit-rich area.

14 (B) A jobs-rich area.

15 (C) An urban infill site.

16 (2) An ordinance adopted in accordance with this subdivision  
17 shall not constitute a "project" for purposes of Division 13  
18 (commencing with Section 21000) of the Public Resources Code.

19 (c) For purposes of this section:

20 (1) "High-quality bus corridor" means a corridor with fixed  
21 route bus service that meets all of the following criteria:

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

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

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

31 (2) (A) "Jobs-rich area" means an area identified by the  
32 Department of Housing and Community Development in  
33 consultation with the Office of Planning and Research that is high  
34 opportunity and either is jobs rich or would enable shorter  
35 commute distances based on whether, in a regional analysis, the  
36 tract meets both of the following:

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

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

1 (iii) New housing sited in the tract would enable residents to  
2 live near more jobs than is typical for tracts in the region.

3 (iv) New housing sited in the tract would enable shorter  
4 commute distances for residents, relative to existing commute  
5 patterns and jobs-housing fit.

6 (B) The Department of Housing and Community Development  
7 shall, commencing on January 1, 2022, publish and update, every  
8 five years thereafter, a map of the state showing the areas identified  
9 by the department as “jobs-rich areas.”

10 (3) (A) “Sound rental housing” means any of the following:

11 (i) Housing that is subject to a recorded covenant, ordinance,  
12 or law that restricts rents to levels affordable to persons and  
13 families of moderate, low, or very low income.

14 (ii) Housing that is subject to any form of rent or price control  
15 through a public entity’s valid exercise of its police power.

16 (iii) (I) Housing occupied by tenants within the seven years  
17 preceding the date of the application, including housing that has  
18 been demolished or that tenants have vacated before the  
19 application for a development permit.

20 (II) For purposes of this clause, “tenant” means a person who  
21 does not own the property where they reside, including residential  
22 situations that are any of the following:

23 (ia) Residential real property rented by the person under a  
24 long-term lease.

25 (ib) A single-room occupancy unit.

26 (ic) An accessory dwelling unit that is not subject to, or does  
27 not have a valid permit in accordance with, an ordinance adopted  
28 by a local agency pursuant to Section 65852.2.

29 (id) A residential motel.

30 (ie) A mobilehome park, as governed under the Mobilehome  
31 Residency Law (Chapter 2.5 (commencing with Section 798) of  
32 Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational  
33 Vehicle Park Occupancy Law (Chapter 2.6 (commencing with  
34 Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code),  
35 the Mobilehome Parks Act (Part 2.1 (commencing with Section  
36 18200) of Division 13 of the Health and Safety Code), or the  
37 Special Occupancy Parks Act (Part 2.3 (commencing with Section  
38 18860) of Division 13 of the Health and Safety Code).

39 (if) Any other type of residential property that is not owned by  
40 the person or a member of the person’s household, for which the

1 *person or a member of the person’s household provides payments*  
2 *on a regular schedule in exchange for the right to occupy the*  
3 *residential property.*

4 *(iv) A parcel or parcels on which an owner of residential real*  
5 *property has exercised their rights under Chapter 12.75*  
6 *(commencing with Section 7060) of Division 7 of Title 1 to*  
7 *withdraw accommodations from rent or lease within 15 years*  
8 *before the date that the development proponent submits an*  
9 *application pursuant to a streamlined, ministerial approval*  
10 *process.*

11 *(B) “Sound rental housing” shall not mean housing that the*  
12 *local agency has deemed uninhabitable due to fire, flood,*  
13 *earthquake, or other natural disaster.*

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

17 *(5) “Urban infill site” means a site that satisfies all of the*  
18 *following:*

19 *(A) A site that is a legal parcel or parcels located in a city if,*  
20 *and only if, the city boundaries include some portion of either an*  
21 *urbanized area or urban cluster, as designated by the United States*  
22 *Census Bureau, or, for unincorporated areas, a legal parcel or*  
23 *parcels wholly within the boundaries of an urbanized area or*  
24 *urban cluster, as designated by the United States Census Bureau.*

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

29 *(C) A site that is zoned for residential use or residential*  
30 *mixed-use development, or has a general plan designation that*  
31 *allows residential use or a mix of residential and nonresidential*  
32 *uses, with at least two-thirds of the square footage of the*  
33 *development designated for residential use.*

34 *(6) (A) “Use by right” means that the local government’s*  
35 *review of the housing development may not require a conditional*  
36 *use permit, planned unit development permit, or other discretionary*  
37 *local government review or approval that would constitute a*  
38 *“project” for purposes of Division 13 (commencing with Section*  
39 *21000) of the Public Resources Code. Any subdivision of the sites*  
40 *shall be subject to all laws, including, but not limited to, the local*

1 government ordinance implementing the Subdivision Map Act  
2 (Division 2 (commencing with Section 66410)).

3 (B) A local ordinance may provide that “use by right” does not  
4 exempt the housing development from design review. However,  
5 that design review shall not constitute a “project” for purposes  
6 of Division 13 (commencing with Section 21000) of the Public  
7 Resources Code.

8 (7) “Very high fire hazard severity zone” means a very high  
9 fire hazard severity zone as determined by the Department of  
10 Forestry and Fire Protection pursuant to Section 51178, or within  
11 a high or very high fire hazard severity zone as indicated on maps  
12 adopted by the Department of Forestry and Fire Protection  
13 pursuant to Section 4202 of the Public Resources Code.

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

19 SEC. 2. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 a local agency or school district has the authority to levy service  
22 charges, fees, or assessments sufficient to pay for the program or  
23 level of service mandated by this act, within the meaning of Section  
24 17556 of the Government Code.

25 SECTION 1. ~~Section 65400 of the Government Code, as~~  
26 ~~amended by Section 1 of Chapter 844 of the Statutes of 2019, is~~  
27 ~~amended to read:~~

28 ~~65400. (a) After the legislative body has adopted all or part~~  
29 ~~of a general plan, the planning agency shall do both of the~~  
30 ~~following:~~

31 ~~(1) Investigate and make recommendations to the legislative~~  
32 ~~body regarding reasonable and practical means for implementing~~  
33 ~~the general plan or element of the general plan, so that it will serve~~  
34 ~~as an effective guide for orderly growth and development,~~  
35 ~~preservation and conservation of open-space land and natural~~  
36 ~~resources, and the efficient expenditure of public funds relating to~~  
37 ~~the subjects addressed in the general plan.~~

38 ~~(2) Provide by April 1 of each year an annual report to the~~  
39 ~~legislative body, the Office of Planning and Research, and the~~

1 Department of Housing and Community Development that includes  
2 all of the following:

3 (A) The status of the plan and progress in its implementation.

4 (B) The progress in meeting its share of regional housing needs  
5 determined pursuant to Section 65584 and local efforts to remove  
6 governmental constraints to the maintenance, improvement, and  
7 development of housing pursuant to paragraph (3) of subdivision  
8 (c) of Section 65583.

9 The housing element portion of the annual report, as required  
10 by this paragraph, shall be prepared through the use of standards,  
11 forms, and definitions adopted by the Department of Housing and  
12 Community Development. The department may review, adopt,  
13 amend, and repeal the standards, forms, or definitions, to  
14 implement this article. Any standards, forms, or definitions adopted  
15 to implement this article shall not be subject to Chapter 3.5  
16 (commencing with Section 11340) of Part 1 of Division 3 of Title  
17 2. Before and after adoption of the forms, the housing element  
18 portion of the annual report shall include a section that describes  
19 the actions taken by the local government towards completion of  
20 the programs and status of the local government's compliance with  
21 the deadlines in its housing element. That report shall be considered  
22 at an annual public meeting before the legislative body where  
23 members of the public shall be allowed to provide oral testimony  
24 and written comments.

25 The report may include the number of units that have been  
26 substantially rehabilitated, converted from nonaffordable to  
27 affordable by acquisition, and preserved consistent with the  
28 standards set forth in paragraph (2) of subdivision (c) of Section  
29 65583.1. The report shall document how the units meet the  
30 standards set forth in that subdivision.

31 (C) The number of housing development applications received  
32 in the prior year.

33 (D) The number of units included in all development  
34 applications in the prior year.

35 (E) The number of units approved and disapproved in the prior  
36 year.

37 (F) The degree to which its approved general plan complies  
38 with the guidelines developed and adopted pursuant to Section  
39 65040.2 and the date of the last revision to the general plan.



1 ~~(G) A listing of sites rezoned to accommodate that portion of~~  
2 ~~the city's or county's share of the regional housing need for each~~  
3 ~~income level that could not be accommodated on sites identified~~  
4 ~~in the inventory required by paragraph (1) of subdivision (c) of~~  
5 ~~Section 65583 and Section 65584.09. The listing of sites shall also~~  
6 ~~include any additional sites that may have been required to be~~  
7 ~~identified by Section 65863.~~

8 ~~(H) The number of net new units of housing, including both~~  
9 ~~rental housing and for-sale housing and any units that the County~~  
10 ~~of Napa or the City of Napa may report pursuant to an agreement~~  
11 ~~entered into pursuant to Section 65584.08, that have been issued~~  
12 ~~a completed entitlement, a building permit, or a certificate of~~  
13 ~~occupancy, thus far in the housing element cycle, and the income~~  
14 ~~category, by area median income category, that each unit of~~  
15 ~~housing satisfies. That production report shall, for each income~~  
16 ~~category described in this subparagraph, distinguish between the~~  
17 ~~number of rental housing units and the number of for-sale units~~  
18 ~~that satisfy each income category. The production report shall~~  
19 ~~include, for each entitlement, building permit, or certificate of~~  
20 ~~occupancy, a unique site identifier that must include the assessor's~~  
21 ~~parcel number, but may include street address, or other identifiers.~~

22 ~~(I) The number of applications submitted pursuant to subdivision~~  
23 ~~(a) of Section 65913.4, the location and the total number of~~  
24 ~~developments approved pursuant to subdivision (b) of Section~~  
25 ~~65913.4, the total number of building permits issued pursuant to~~  
26 ~~subdivision (b) of Section 65913.4, the total number of units~~  
27 ~~including both rental housing and for-sale housing by area median~~  
28 ~~income category constructed using the process provided for in~~  
29 ~~subdivision (b) of Section 65913.4.~~

30 ~~(J) If the city or county has received funding pursuant to the~~  
31 ~~Local Government Planning Support Grants Program (Chapter 3.1~~  
32 ~~(commencing with Section 50515) of Part 2 of Division 31 of the~~  
33 ~~Health and Safety Code), the information required pursuant to~~  
34 ~~subdivision (a) of Section 50515.04 of the Health and Safety Code.~~

35 ~~(K) Whether the city or county is a party to a court action related~~  
36 ~~to a violation of state housing law, and the disposition of that~~  
37 ~~action, including, but not limited to, any of the following:~~

- 38 ~~(i) The Housing Accountability Act (Section 65589.5).~~
- 39 ~~(ii) Housing element law (Article 10.6 (commencing with~~
- 40 ~~Section 65580) of Chapter 3).~~

1 (iii) Density bonus law (Chapter 4.3 (commencing with Section  
2 65915)).

3 (iv) Section 65913.4.

4 (v) Section 65583.

5 (vi) The Housing Crisis Act of 2019 (Chapter 12 (commencing  
6 with Section 66300)).

7 (L) The Department of Housing and Community Development  
8 shall post a report submitted pursuant to this paragraph on its  
9 internet website within a reasonable time of receiving the report.

10 (b) If a court finds, upon a motion to that effect, that a city,  
11 county, or city and county failed to submit, within 60 days of the  
12 deadline established in this section, the housing element portion  
13 of the report required pursuant to subparagraph (B) of paragraph  
14 (2) of subdivision (a) that substantially complies with the  
15 requirements of this section, the court shall issue an order or  
16 judgment compelling compliance with this section within 60 days.  
17 If the city, county, or city and county fails to comply with the  
18 court's order within 60 days, the plaintiff or petitioner may move  
19 for sanctions, and the court may, upon that motion, grant  
20 appropriate sanctions. The court shall retain jurisdiction to ensure  
21 that its order or judgment is carried out. If the court determines  
22 that its order or judgment is not carried out within 60 days, the  
23 court may issue further orders as provided by law to ensure that  
24 the purposes and policies of this section are fulfilled. This  
25 subdivision applies to proceedings initiated on or after the first  
26 day of October following the adoption of forms and definitions by  
27 the Department of Housing and Community Development pursuant  
28 to paragraph (2) of subdivision (a), but no sooner than six months  
29 following that adoption.

30 SEC. 2. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 a local agency or school district has the authority to levy service  
33 charges, fees, or assessments sufficient to pay for the program or  
34 level of service mandated by this act, within the meaning of Section  
35 17556 of the Government Code.