

AMENDED IN SENATE AUGUST 22, 2017
AMENDED IN SENATE JUNE 20, 2017
AMENDED IN ASSEMBLY MAY 10, 2017
AMENDED IN ASSEMBLY APRIL 18, 2017
AMENDED IN ASSEMBLY MARCH 28, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 890

**Introduced by Assembly Member Medina
(Coauthor: Assembly Member Gonzalez Fletcher)**

February 16, 2017

An act to amend Section 65867.5 of, and to add Sections 65363 and 65850.10 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 890, as amended, Medina. Land use: planning and zoning: initiatives.

(1) The California Constitution authorizes the electors of each city and county to exercise the powers of initiative and referendum under procedures provided by the Legislature. The Planning and Zoning Law requires a county or city to prepare and adopt a comprehensive, long-term general plan for the physical development of the county or city. After the legislative body has adopted a general plan, that law authorizes the preparation of specific plans by the planning agency for the systematic implementation of the general plan for all or part of the area covered by the general plan. The Planning and Zoning Law provides

for the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities.

This bill would require that the city council of a city or the board of supervisors of a county have exclusive authority to adopt or amend a general plan, specific plan, *or zoning ordinance, or any other similar document*, that would convert any discretionary land use approval necessary for a project to ministerial approval; change the land use or zoning designation of a parcel or parcels to a more intensive designation; ~~or allow~~ *authorize* more intensive land uses within an existing land use designation or zoning designation. The bill would specify that it would not apply to ~~ordinances that increase residential density that meet certain requirements and a legislative act that meets specified conditions~~, would not affect the referendum ~~powers or powers~~, *and would not affect* the power of a city council or board of supervisors to submit a ballot measure to the ~~voters~~. *voters under 2 circumstances set out in the bill.*

(2) Under the Planning Zone Law, a city, county, or city and county may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property. Existing law prohibits a city, county, or city and county from approving a development agreement unless the legislative body of that city or county finds that the agreement is consistent with the general plan and any applicable specific plan.

This bill would also prohibit a development agreement described above from being approved or amended by an ordinance adopted through the initiative process. *The bill would state that this prohibition applies to a charter city.*

(3) The bill would include findings that the changes proposed by this bill addresses a matter of statewide concern, and therefore shall apply to all cities and counties, including charter cities.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Legislative actions that change required discretionary
- 4 approvals for local land use development projects *into ministerial*
- 5 *approvals* or that establish more intensive land uses may
- 6 significantly impact the environment.

(b) In order to perform its substantive mandate to prevent significant environmental impacts under Section 21002 of the Public Resources Code, a local government needs discretionary authority over legislative actions that change required discretionary approvals for local land use development projects *into ministerial approvals* or that establish more intensive land uses.

(c) It is the intent of the Legislature to prevent an initiative that allows for more intensive land uses than were previously analyzed and mitigated under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources ~~Code~~ *Code*), *except as provided in the act*.

(d) It is the intent of the Legislature to prevent a project applicant from avoiding enforceable environmental review by using the initiative process to remove the local government's discretionary authority over the project.

(e) *It is the intent of the Legislature to preserve the use of the initiative process in order to encourage affordable residential development, along with other secondary community benefits, and to protect the environment through use of techniques that include, but are not limited to, urban growth boundaries, urban limit lines, and agricultural and open-space protection measures.*

(f) *It is the intent of the Legislature to exclusively delegate existing authority and not to grant any new authority to a local city council or board of supervisors.*

~~(e)~~

(g) It is the intent of the Legislature to clarify that development agreements, which are negotiated contractual agreements between a legislative body and an individual or entity, are unsuitable for the initiative process.

~~(f)~~

(h) This act addresses a matter of statewide concern and therefore shall apply equally to all cities and counties, including charter cities.

SEC. 2. Section 65363 is added to the Government Code, to read:

65363. (a) (1) A city council of a city or a board of supervisors of a county shall have exclusive authority to adopt or amend the general plan, or to adopt or amend a specific plan pursuant to Article 8 (commencing with Section ~~65450~~), ~~or any other similar document, 65450~~) that would do one of the following:

- 1 ~~(1)~~
2 (A) Convert any discretionary land use approval necessary for
3 a project, as defined in Section 65931, to a ministerial approval.
4 ~~(2)~~
5 (B) Change the land use designation on a parcel or parcels to a
6 more intensive land use designation.
7 ~~(3) Allow~~
8 (C) *Authorize* more intensive land uses within an existing land
9 use designation.
10 (2) *For purposes of determining what constitutes a more*
11 *intensive land use designation in subparagraphs (B) and (C) of*
12 *paragraph (1), industrial uses are considered to be the most*
13 *intensive land use designation, followed by commercial uses, office*
14 *uses, residential uses, and then agricultural or open-space uses.*
15 *For uses not specifically enumerated in the preceding sentence,*
16 *the intensity of use shall be determined based on the specified use*
17 *to which its impacts are most closely analogous. “More intensive*
18 *land use” also includes, but is not limited to, increases in height*
19 *or density for residential uses, increases in floor area ratio or*
20 *square footage for mixed-use and commercial uses, and changes*
21 *from light to heavy industrial uses. The change in uses must have*
22 *the potential for resulting in either a direct physical change in the*
23 *environment or a reasonably foreseeable indirect physical change*
24 *in the environment.*
25 (b) This section does not apply to any ordinance that increases
26 ~~residential densities in order to encourage or accommodate~~
27 ~~affordable housing units.~~ legislative action that does the following:
28 (1) *Has the primary purpose or effect of either:*
29 (A) *Increasing residential densities or building heights in order*
30 *to incentivize or accommodate the construction or funding of*
31 *affordable housing units.*
32 (B) *Requiring a percentage of new residential construction to*
33 *be affordable households earning at or below moderate income*
34 *levels.*
35 (2) *Prohibits or otherwise mandates denial of any previously*
36 *permissible land use.*
37 (3) *Establishes an urban growth boundary or urban limit line.*
38 (4) *Any other legislative action that does not come within the*
39 *express terms of subdivision (a).*

(c) This section does not affect the referendum powers over any ordinance or resolution.

(d) This section does not affect the authority of ~~the legislative body of a local agency to a city council or a board of supervisors~~ to submit a ballot measure to the voters for either an advisory vote or for final approval, under either of the following circumstances:

(1) Voter approval is required pursuant to any provision of state or local law.

(2) The city council or the board of supervisors conditionally approves a measure and exercises its discretion to submit the measure to the voters for either an advisory vote or for final approval.

(e) Notwithstanding Section 65700, this section shall apply to a charter city.

SEC. 3. Section 65850.10 is added to the Government Code, to read:

65850.10. (a) (1) A city council of a city or a board of supervisors of a county shall have exclusive authority to adopt or amend a zoning ordinance or any other similar document that would do one of the following:

~~(1)~~

(A) Convert any discretionary land use approval necessary for a project, as defined in Section 65931, to a ministerial approval.

~~(2)~~

(B) Change the zoning classification on a parcel or parcels to a more intensive classification.

~~(3) Allow~~

(C) Authorize more intensive land uses within an existing zoning district.

(2) For purposes of determining what constitutes a more intensive land use designation in subparagraphs (B) and (C) of paragraph (1), industrial uses are considered to be the most intensive land use designation, followed by commercial uses, office uses, residential uses, and then agricultural or open-space uses. For uses not specifically enumerated in the preceding sentence, the intensity of use shall be determined based on the specified use to which its impacts are most closely analogous. "More intensive land use" also includes, but is not limited to, increases in height or density for residential uses, increases in floor area ratio or square footage for mixed-use and commercial uses, and changes

1 *from light to heavy industrial uses. The change in uses must have*
2 *the potential for resulting in either a direct physical change in the*
3 *environment or a reasonably foreseeable indirect physical change*
4 *in the environment.*

5 (b) This section does not apply to any ordinance that increases
6 ~~residential densities in order to encourage or accommodate~~
7 ~~affordable housing units.~~ legislative action that does the following:

8 (1) *Has the primary purpose or effect of either:*

9 (A) *Increasing residential densities or building heights in order*
10 *to incentivize or accommodate the construction or funding of*
11 *affordable housing units.*

12 (B) *Requiring a percentage of new residential construction to*
13 *be affordable households earning at or below moderate income*
14 *levels.*

15 (2) *Prohibits or otherwise mandates denial of any previously*
16 *permissible land use.*

17 (3) *Establishes an urban growth boundary or urban limit line.*

18 (4) *Any other legislative action that does not come within the*
19 *express terms of subdivision (a).*

20 (c) This section does not affect the referendum powers over any
21 ordinance or resolution.

22 (d) This section does not affect the authority of the legislative
23 ~~body of a local agency a city council or a board of supervisors to~~
24 ~~submit a ballot measure to the voters for either an advisory vote~~
25 ~~or for final approval.~~ under either of the following circumstances:

26 (1) *Voter approval is required pursuant to any provision of state*
27 *or local law.*

28 (2) *The city council or the board of supervisors conditionally*
29 *approves a measure and exercises its discretion to submit the*
30 *measure to the voters for either an advisory vote or for final*
31 *approval.*

32 (e) Notwithstanding Section 65803, this section shall apply to
33 a charter city.

34 SEC. 4. Section 65867.5 of the Government Code is amended
35 to read:

36 65867.5. (a) A development agreement is a legislative act that
37 shall be approved by ordinance and is subject to referendum.

38 (b) A development agreement cannot be approved or amended
39 by an ordinance adopted through the initiative process. *This*
40 *subdivision shall apply to a charter city.*

1 (c) A development agreement shall not be approved unless the
2 legislative body finds that the agreement is consistent with the
3 general plan and any applicable specific plan.

4 (d) A development agreement that includes a subdivision, as
5 defined in Section 66473.7, shall not be approved unless the
6 agreement provides that any tentative map prepared for the
7 subdivision will comply with Section 66473.7.

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