


Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date:                      Sept. 4, 2007	Department ID Number:              AD 07-18

**CITY OF HUNTINGTON BEACH  
REQUEST FOR COUNCIL ACTION**

**SUBMITTED TO:**      Honorable Mayor and City Council Members

**SUBMITTED BY:**      Jill Hardy, Council Member, Chair on behalf of Intergovernmental Relations  
Committee Members Councilman Don Hansen and Councilman Keith Bohr

**PREPARED BY:**      Patricia Dapkus, Department Analyst, Senior 

**SUBJECT:**              APPROVE A CITY COUNCIL POSITION ON LEGISLATION PENDING  
BEFORE THE FEDERAL, STATE, OR REGIONAL GOVERNMENTS AS  
RECOMMENDED BY THE CITY COUNCIL INTERGOVERNMENTAL  
RELATIONS COMMITTEE (IRC)



Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** Approve a City Council position as recommended by the City Council Intergovernmental Relations Committee (IRC) on legislation pending before a federal, state, or regional government, thereby authorizing the Mayor to communicate the city's position to the elected members of the federal or state legislature, or regional body.

**Funding Source:**      N/A

**Recommended Action:**      Motion to:

- OPPOSE AB 414 (Jones) - Local Planning: Housing** as amended on 07-10-07

**Alternative Action(s):**

Do not take action on the above bill or take an alternative position.

F-1

# REQUEST FOR COUNCIL ACTION

MEETING DATE: Sept. 4, 2007

DEPARTMENT ID NUMBER: AD 07-17

## Analysis:

### 1. AB 414 (Jones) - Local Planning: Housing

AB 414 imposes the same conditions to all local agencies—regardless of size, circumstance, or performance—as to how to count sites for housing designated on nonresidential land.

This bill would make infill zoning more difficult, particularly in built out communities that do not know which parcels may actually become available for housing during the planning period. Rather than call out specific parcels that could become available cities use overlay zones in order to encourage and create housing as parcels become available. AB 414 would require cities to pre-zone nonvacant lands or commercial areas before they become available.

It also creates an exception for mixed use buildings, but not mixed use zoning. A vibrant mixed use neighborhood consists of more than just buildings that have restaurants on the ground floor and apartments above; they have a mix of housing-only buildings, commercial-only buildings, and shared-use buildings. The challenge in creating these areas is giving the market the flexibility to determine where each type of use will fit in. AB 414's parcel-by-parcel approach would discourage development in mixed use developments.

Finally, AB 414 would create a disincentive for mixed use zoning since local agencies would only get credit for one housing unit for every two that they zone in mixed and multi-use zones. With this kind of disincentive, local agencies are less likely to create mixed use zones precisely at the time when issues like climate change suggest we should be doing more.

The Intergovernmental Relations Committee is recommending that the City Council take a position opposing AB 414.

Environmental Status: NA

## Strategic Goal:

1. Opposition to AB 414 meets the strategic goal under City Services of providing quality public services with the highest professional standards to meet community expectations and needs, assuring that the city is sufficiently staffed and equipped overall.

## Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	AB 414 (Jones) - <u>Local Planning: Housing</u>

F1. 3

# ATTACHMENT 1

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## AB 414 Assembly Bill - AMENDED

BILL NUMBER: AB 414 AMENDED  
BILL TEXT

AMENDED IN SENATE JULY 10, 2007  
AMENDED IN SENATE JUNE 26, 2007  
AMENDED IN ASSEMBLY APRIL 19, 2007

INTRODUCED BY Assembly Member Jones

FEBRUARY 16, 2007

An act to amend Sections 65583.2 and 65863 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 414, as amended, Jones. Local planning: residential development.

(1) The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and an inventory of land suitable for residential development in meeting the jurisdiction's share of the regional housing need. For purposes of this assessment, existing law specifies that "land suitable for residential development" includes, among other things, vacant sites zoned for nonresidential use that allows residential development.

This bill would limit, as specified, the manner in which a jurisdiction utilizes, in identifying land suitable for residential development to meet the jurisdiction's share of the regional housing need, vacant sites zoned for nonresidential use that allows residential development and for which the applicable zoning and development standards allow substantially all of the site to be developed without residential use.

(2) The Planning and Zoning Law also prohibits a city, county, or city and county from reducing, or requiring or permitting the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined, unless the city, county, or city and county makes certain written findings.

This bill would redefine "lower residential density" for purposes of the above prohibition.

~~This bill would redefine a "lower residential density" below which the city, county, or city and county would be required to make the above described written findings.~~

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65583.2 of the Government Code is amended to read:

65583.2. (a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the following:

F1.4

## AB 414 Assembly Bill - AMENDED

(1) Vacant sites zoned for residential use.

(2) Vacant sites zoned for nonresidential use that allows residential development, subject to the limitations set forth in subdivision (j).

(3) Residentially zoned sites that are capable of being developed at a higher density.

(4) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for, residential use.

(b) The inventory of land shall include all of the following:

(1) A listing of properties by parcel number or other unique reference.

(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

(3) For nonvacant sites, a description of the existing use of each property.

(4) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

(5) A general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities. This information need not be identified on a site-specific basis.

(6) Sites identified as available for housing for above-moderate income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulations requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (4) of subdivision (a) of Section 65583.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

F1.5

(ii) For unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.

(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.

(iv) For jurisdictions in metropolitan counties: sites allowing at least 30 units per acre.

(d) For purposes of this section, metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau. Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake Mendocino, Nevada, Tehama, and Tuolumne and such other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction is considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a MSA of 2,000,000 or greater in population in which case they are considered metropolitan.

(f) A jurisdiction is considered metropolitan if the jurisdiction does not meet the requirements for "suburban area" above and is located in a MSA of 2,000,000 or greater in population, unless that jurisdiction's population is less than 25,000 in which case it is considered suburban.

(g) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c) and at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted.

(i) For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use 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 Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not

**F1.6**

constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(j) In making the determination required by subdivision (c), the following limitations apply to sites described in ~~paragraph (2)~~ paragraphs (2) and (4) of subdivision (a) for which the applicable zoning or development standards allow substantially all of the site to be developed without residential uses:

(1) In determining the total housing unit capacity ~~pursuant to this section~~ on these sites, only one-half of the total residential development capacity shall be counted.

~~(2) Any determination that a portion of a jurisdiction's share of the regional housing need for lower income households pursuant to Section 65584 can be accommodated on these sites shall be based upon the proportion of the jurisdiction's share of the regional housing need for lower income households that was met on these sites in the prior planning period, except that no more than 30 percent of the jurisdiction's share of the regional housing need for lower income households may be allocated to these sites.~~

(2) Any determination that a portion of a jurisdiction's share of the regional housing need pursuant to Section 65584 can be accommodated on these sites shall be based upon all of the following:

(A) The proportion of the jurisdiction's share of the regional housing need that was met on these sites in the prior planning period.

(B) Recent development activity.

(C) Whether residential units are permitted by right.

(D) The degree to which the development standards and processing requirements facilitate residential uses.

(E) The resources or incentives available for the residential development of these sites.

(F) Any other relevant factors as determined by the department, including market trends and demand.

(3) No more than 50 percent of the jurisdiction's share of the regional housing need for lower income households may be allocated to these sites.

~~(3)~~

(4) For sites designated as mixed-use, these limitations do not apply. For the purposes of this paragraph "mixed-use" means a site on which both residential and nonresidential uses are permitted, and on which an exclusively nonresidential use is not permitted.

SEC. 2. Section 65863 of the Government Code is amended to read:

65863. (a) Each city, county, or city and county shall ensure that its housing element inventory described in paragraph (3) of subdivision (a) of Section 65583 or its housing element program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1), and (2) of subdivision (h), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional

F1.7

housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff or petitioner who proposed the housing development, reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(g) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

(h) (1) If the local jurisdiction has adopted a housing element for the current planning period that is in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3, for purposes of this section, "lower residential density" means the following:

(A) For sites on which the zoning designation permits residential use and that are identified in the local jurisdiction's housing element inventory described in paragraph (3) of subdivision (a) of Section 65583, approval of fewer units on the site than were projected by the jurisdiction to be accommodated on the site pursuant to subdivision (c) of Section 65583.2.

(B) For sites that have been or will be rezoned pursuant to the local jurisdiction's housing element program described in paragraph (1) of subdivision (c) of Section 65583, approval of fewer units for the site than were projected to be developed on the site in the housing element program.

(2) (A) If the local jurisdiction has not adopted a housing element for the current planning period within 90 days of the deadline established by Section 65588 for purposes of this section, or the adopted housing element is not in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 within 180 days of the deadline established by Section 65588, "lower residential density" means either of the following:

(i) For residentially-zoned sites, a density that is lower than 80 percent of the maximum allowable residential density for that parcel.

(ii) For sites on which residential and nonresidential uses are

permitted, approval of a use that would result in the development of fewer than 80 percent of the ~~maximum residential units permitted on the site~~ number of residential units that would be allowed under the maximum residential density for the site

(B) For the purposes of this paragraph, if the council of governments fails to complete a final housing need allocation pursuant to the deadlines established by Section 65584.05, the deadline for adoption of the housing element and determining substantial compliance shall be extended by a time period equal to the delay incurred by the council of governments in completing the final housing need allocation.