

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1397 (Low) – As Introduced February 17, 2017

SUBJECT: Local planning: housing element: inventory of land for residential development

SUMMARY: Makes a number of changes to housing element law by revising what may be included in a locality's inventory of land suitable for residential development. Specifically, **this bill:**

- 1) Makes legislative findings and declarations that designating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's housing need for all income levels is essential to achieving the state's housing goals and the purposes of state housing element law.
- 2) Provides that a locality must determine whether each site in the inventory of land suitable for residential development has a realistic and demonstrated potential for redevelopment that can meet a portion of the locality's share of the Regional Housing Needs Allocation (RHNA) by income level during the planning period.
- 3) Provides that, in a locality's housing element, sites listed in the inventory of land suitable for residential development must meet the following requirements:
 - a) The inventory shall specify for each site the number of units at each income level that can realistically be accommodated on that site. The locality shall determine the number of housing units that can be accommodated on each site, and the number of units calculated shall be adjusted as necessary, based on, among other things, the realistic development capacity for the site, and on the availability and accessibility of sufficient water, sewer, and dry utilities within three years of the beginning of the planning period.
 - b) Requires parcels included in the inventory to have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development within three years of the beginning of the planning period.
 - c) A residential or nonresidential zoned site identified in a prior housing element that was not developed to accommodate a portion of the locality's housing need shall not be deemed adequate to accommodate a portion of the housing need for lower income households in the current housing element planning period unless:
 - i. The site has been zoned at densities deemed appropriate to accommodate the lower income RHNA; and

- ii. The site is subject to a program in the element requiring rezoning to allow residential use by right for developments that are 100% affordable to lower income households within two years of the beginning of the planning period.
- d) The capacity of a site zoned for development at densities that exceed the maximum density of existing or approved multifamily residential development shall be calculated at default densities unless a development at a greater density has been proposed and approved for development on the site.
- e) A site smaller than one acre shall not be deemed realistic for development to accommodate lower income housing need unless a development affordable to lower income households has been proposed and approved for development on the site, unless subject to a program in the element requiring consolidation with a suitable adjacent site for development at greater than one acre within two years of the beginning of the planning period, or unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site.
- f) A site larger than 10 acres shall not be deemed realistic for development to accommodate lower income housing need unless a development affordable to lower income households has been proposed and approved for development on the site, or unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site.
- g) Nonvacant sites shall not be deemed realistic for development to accommodate lower income housing need unless a development affordable to lower income households has been proposed and approved for development on the site, or unless subject to a program in the housing element requiring the site to be rezoned at default densities and to allow residential use by right for developments that are 100% affordable to lower income households.
- h) For nonvacant sites, the locality 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.
 - i. The methodology shall demonstrate that the existing use does not constitute an impediment to additional residential development during the period covered by the element.
 - ii. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. This shall include an analysis of the locality's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and

regulatory or other incentives or standards to encourage additional residential development on these sites.

- i) Nonvacant sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income, subject to any other form of rent or price control through a public entity's valid exercise of its police power, or occupied by low or very low income households, shall be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site.
 - j) Clarifies that the residential site inventory may include sites zoned for nonresidential use that can be redeveloped for residential use, as consistent with existing law, provided that the housing element includes a program to rezone the site, as necessary, to permit residential use.
- 4) Requires, in a locality's rezoning program to accommodate its low-income RHNA, that the requirement under existing law that the sites shall be zoned to permit owner-occupied and rental multifamily residential use by right is limited to developments that are 100% affordable to lower income households. These sites also must have sufficient water, sewer, and other dry utilities available and accessible within three years of the beginning of the planning period.
 - 5) Removes a locality's ability to list the airspace "above sites" of publicly owned or leased buildings to the types of sites that can be identified to accommodate a locality's share of the RHNA.

EXISTING LAW:

- 1) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.
- 2) Requires a locality's housing element to identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 3) Requires, prior to each housing element revision, that each council of governments (COG), in conjunction with the Department of Housing and Community Development (HCD), prepare a regional housing needs assessment and allocate to each jurisdiction in the region its fair share of the housing need for all income categories. Where a COG does not exist, HCD determines the local share of the region's housing need (Govt. Code Sections 65584-65584.09).
- 4) Divides the RHNA into the following income categories:
 - a) Very low-income (50% or lower of area median income), including extremely low-income (30% or lower of area median income);

- b) Low-income (80% or lower of area median income);
 - c) Moderate-income (between 80% and 120% of area median income); and
 - d) Above moderate-income (exceeding 120% area median income).
- 5) Requires a locality to inventory land suitable for residential development to identify sites that can be developed to meet the locality's RHNA for all income levels. Provides that "land suitable for residential development" includes all of the following:
- a) Vacant sites zoned for residential use;
 - b) Vacant sites zoned for nonresidential use that allows residential development;
 - c) Residentially zoned sites that are capable of being developed at higher density, including the airspace above sites owned or leased by a city, county, or city and county;
 - d) Sites zoned for nonresidential use that can be redeveloped for and as necessary, rezoned for, residential use, including above sites owned or leased by a city, county, or city and county.
- 6) Provides that the inventory of land suitable for residential development shall include all of the following:
- a) A listing of properties by parcel number or other unique reference.
 - b) The size of each property, and the general plan designation and zoning of each property.
 - c) For nonvacant sites, a description of the existing use of each property.
 - d) 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.
 - e) 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.
 - f) 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.
 - g) 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.
- 7) Allows a locality to do either of the following in order to show that a site is adequate to accommodate some portion of its share of the RHNA for lower-income households:
- a) Provide an analysis demonstrating that the site is adequate to support lower-income housing development at its zoned density level, and requires the analysis to include, but

not be 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; or

b) Zone the site at the jurisdiction's "default" density level.

(Govt. Code Section 65583.2)

- 8) Establishes "default" density levels for purposes of establishing a site's adequacy for supporting lower-income housing development.
- 9) Requires that, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites, including adoption of minimum density and development standards, is required by a specified deadline. (Govt. Code Section 65583)
- 10) Requires the rezoning program to accommodate 100% of the need for housing for very low- and low-income households for which site capacity has not been identified in the inventory of sites. These sites must:
- a) Be zoned to permit owner-occupied and rental multifamily residential use by-right during the planning period;
 - b) Be zoned with minimum density and development standards that permit between 16 and 20 units per acre, depending on the jurisdiction; and
 - c) Accommodate at least 50% of the very low- and low-income housing need on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed uses if those sites allow 100% residential use and require that residential use occupy 50% of the total floor area of a mixed-use project.

(Govt. Code Section 65583.2)

FISCAL EFFECT: Unknown

COMMENTS:

Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when HCD determines the number of new housing units a region is projected to need at all income levels (very low-, low-, moderate-, and above-moderate income) over the course of the next housing element planning period to accommodate population growth and overcome existing deficiencies in the housing supply. This number is known as the RHNA. The COG for the region, or HCD for areas with no COG, then assigns a share of the RHNA number to every city and county in the region based on a variety of factors.

In preparing its housing element, a local government must show how it plans to accommodate its share of the RHNA. The housing element must include an inventory of sites already zoned for

housing. If a community does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period.

Local governments are required to demonstrate that sites are adequate to accommodate housing for each income group based on the zoning after taking into consideration individual site factors such as property size, existing uses, environmental constraints, and economic constraints. With respect to the zoning, density can be used as a proxy for affordability. Jurisdictions may establish the adequacy of a site for very low- or low-income housing by showing that it is zoned at the “default” density (also referred to as the Mullin density). These densities range from 10 to 30 units per acre depending on the type of jurisdiction. Jurisdictions may also include sites zoned at lower densities by providing an analysis of how the lower density can accommodate the need for affordable housing.

Need for this bill: According to the author, "One of the greatest barriers to addressing California’s affordable housing crisis is the lack of appropriate sites on which new multifamily housing can be built in many communities. AB 1397 helps address this by tightening the standards for what constitutes an “adequate site” under housing element law for purposes of meeting some portion of a jurisdiction’s RHNA."

"Unfortunately, current law has a number of gaps that allow jurisdictions to circumvent this critical planning obligation, relying on sites that aren’t truly available or feasible for residential development, especially multifamily development. For example, the law permits local governments to designate very small sites that cannot realistically be developed for their intended use, or designate non-vacant sites with an ongoing commercial or residential use, even though the current use is expected to continue indefinitely. Even after many years of relying on these sites that never end up as new housing, the law allows jurisdictions to continue to count them as a potential location for housing. These practices lead to a scarcity of land that drives up the cost of housing and makes it difficult or impossible for affordable housing developers to find developable land in locations where affordable housing is badly needed. They also place an unfair burden on neighboring jurisdictions that do identify sites that are genuinely suitable for development."

This bill makes several changes to the "inventory of land suitable for residential development" analysis in housing element law, including:

- Establishes higher standards and requires a more detailed analysis before allowing sites with existing uses to be considered suitable for residential development.
- Limits reliance on sites that are over 10 acres or under 1 acre.
- Limits reliance on sites that have been listed across multiple Housing Elements without being developed as housing.
- Removes a locality's ability to list the airspace "above sites" of publicly owned or leased buildings to the types of sites that can be identified to accommodate a jurisdiction's share of the RHNA.

- Provides that only sites that will be served by water, sewer, and other dry utilities that are available and accessible within three years of the beginning of the planning period will be considered suitable for residential development.
- Limits a locality's rezone program, which rezones sites to permit owner-occupied and rental multifamily residential use by-right during the planning period, to projects that are 100% affordable.
- Requires nonvacant sites with existing or previous (within the last five years) affordable housing units to be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site.

Arguments in support: Supporters point out that the law recognizes that local governments are not generally in the housing construction business, but do have substantial control over whether or not there are opportunities for developers to come in and build in their jurisdiction. When done properly, this site identification can be a very effective tool in facilitating the construction of new housing at all income levels. In supporters' view, this bill helps address this need by strengthening state housing element law by limiting the reliance of local governments on sites that do not have a realistic capacity for development of housing. Housing production is incredibly important for all Californians and will take a concerted effort if we truly want to ensure that we have stable housing for our residents.

Arguments in opposition: In opponents' view, this bill poses a number of challenges for local jurisdictions. The City of Thousand Oaks contends that "creating such detailed inventories is inefficient use of staff time because it requires cities and counties to perform unnecessary and time-consuming analyses but will not necessarily yield more affordable housing." Opponents also take issue with the requirement that cities bring utilities to each site identified in the housing element within 3 years of beginning the planning period. Requiring cities to provide utilities to these sites would be costly and place significant burden on a city's general fund, since developers typically fund expansion of utility services.

Committee amendments:

The Committee may wish to consider the following clarifying amendments. The amendments do the following:

1. Make technical changes
2. Clarify low-income housing replacement requirements.

The proposed committee amendments are as follows:

On page 17, line 6, strike "unless a development affordable to lower income households has been proposed and approved for development on the site,"

On page 17, line 22, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 17, line 31, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 17, line 38, insert:

(E) A site may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.

On page 20, line 17, after "site." insert:

Replacement requirements shall be consistent with those set forth in subdivision (3) of paragraph (c) of Section 65915.

On page 24, line 10, strike "unless a development affordable to lower income households has been proposed and approved for development on the site,"

On page 24, line 26, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 24, line 35, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 25, line 3, insert:

(E) A site may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.

On page 26, line 36, after "site." insert:

Replacement requirements shall be consistent with those set forth in subdivision (3) of paragraph (c) of Section 65915.

Related legislation:

AB 2208 (Santiago) Chapter 460, Statutes of 2016: Added the airspace "above sites" of publicly owned or leased buildings to the types of sites that can be identified to accommodate a jurisdiction's share of the RHNA.

AB 1690 (Gordon) Chapter 883, Statutes of 2014: Authorizes a local government, when it fails to identify adequate sites in its housing element and must adopt a rezoning program, to accommodate all of its very low- and low-income housing need on sites designated for mixed uses only if those sites allow 100% residential use and require at least 50% residential floor area of a mixed-use project.

AB 414 (Jones, 2007)- Would have restricted the use of double-zoned sites to accommodate a city or county's RHNA share under housing element law, and amends the no-net-loss zoning law to clarify that upzoning or findings are required if fewer units are approved than were counted for the site in the housing element. *This bill was vetoed by the Governor.*

AB 2348 (Mullin)- Chapter 724, Statutes of 2004- Among other things, changed housing element law to establish minimum densities for multifamily development on the identified sites and to strengthen the definition of "use by right" applicable to such sites.

Double-referred: This bill was also referred to the Local Government Committee where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (co-sponsor)
Public Advocates (co-sponsor)
Western Center on Law and Poverty (co-sponsor)
California Apartment Association
California Housing Consortium
Housing California
Leadership Counsel for Justice and Accountability
Non-Profit Housing Association of Northern California
SV@Home

Opposition

City of Thousand Oaks
League of California Cities

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