

Date of Hearing: April 27, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 542 (Allen) – As Introduced: February 16, 2011

SUBJECT: Land use: housing element: regional housing need.

SUMMARY: Specifies that sites zoned at densities less than a jurisdiction's default density shall be deemed appropriate to accommodate housing for lower-income households, if the site is owned by the planning agency and set aside for affordable housing development, or if the planning agency has offered to provide subsidies of at least an unspecified dollar amount per unit for affordable housing construction.

EXISTING LAW

- 1) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element (Government Code Sections 65300 and 65302).
- 2) Requires a jurisdiction'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 (Government Code Section 65583).
- 3) Requires cities and counties within a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act to revise their housing elements every eight years based on a staggered statutory schedule (Government Code Section 65588).
- 4) Requires all other local governments to revise their housing elements every five years based on a staggered statutory schedule (Government Code Section 65588).
- 5) 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 (RHNA) 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. (Government Code Sections 65584-65584.09)
- 6) 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).
- 7) Requires housing elements to include an inventory of land suitable for residential development that identifies enough sites that can be developed for housing within the planning period to accommodate the jurisdiction's entire share of the RHNA (Government Code Sections 65583 and 65583.2).
- 8) Allows a jurisdiction 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.
- (Government Code Section 65583.2)
- 9) Establishes the following "default" density levels for purposes of establishing a site's adequacy for supporting lower-income housing development:
- a) 15 units per acre for incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas;
 - b) 10 units per acre for unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.
 - c) 20 units per acre for suburban jurisdictions; and
 - d) 30 units per acre jurisdictions in metropolitan.
- (Government Code Section 65583.2)
- 10) Specifies that jurisdictions are classified as follows:
- a) Metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau;
 - b) 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;

- c) Suburban jurisdictions are those located in a Metropolitan Statistical Area (MSA) of less than 2,000,000, 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, are considered suburban unless they are in an MSA of 2,000,000 or greater in population in which case they are considered metropolitan; and
- d) Metropolitan jurisdictions are those located in an MSA of 2,000,000 or greater, unless the jurisdiction's population is less than 25,000 in which case it is considered suburban.

(Government Code Section 65583.2)

11) Requires each local government to make sites available during the first three years of the housing element planning period with appropriate zoning and development standards and with services and facilities to accommodate the city's or county's share of the regional housing need (Government Code Section 65583).

FISCAL EFFECT: None

COMMENTS:

Background

Every local government in California is required to prepare and adopt 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 address existing deficiencies in the housing supply. This number is often referred to as the "RHNA" number (short for regional housing needs assessment). The COG for the region, or HCD for areas with no COG, then assigns every city and county in the region its fair share of the RHNA number to every based on a variety of factors.

In preparing its housing element, a city or county 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. With respect to sites rezoned to accommodate the need for very low- and low-income housing, the new zoning must allow multifamily residential use by right and be zoned at minimum densities of 16 to 50 units per acre depending on the jurisdiction.

Cities and counties 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.

The purpose of housing element law is to create opportunities for the private housing market to function. Builders cannot build without access to appropriately zoned land, and current land use plans in many cities and counties in California fail to provide sufficient opportunities to accommodate projected population growth. Housing element law addresses this problem directly by requiring cities and counties to zone land at appropriate densities to accommodate the projected housing needs of all income groups and to remove constraints that prevent such sites from being developed at the allowed densities. Cities and counties, however, are not required to build housing because that is the role of private developers. The law holds cities and counties accountable only for that which they control: zoning and land use entitlements. Without the ability to enforce housing element law, the market's ability to meet housing demand may well remain locked up.

Adequate Sites for Affordable Housing

The default densities were added to housing element law in 2004, AB 2348 (Mullin), Chapter 724. Prior to that time, the only way for a city or county to establish the adequacy of a site for affordable housing was by providing an analysis demonstrating the site's suitability. Local governments complained that the existing process was too subjective and requested that an objective standard be placed in law to give them certainty that sites would be accepted by HCD during the housing element review process.

Density level was chosen as the objective standard in recognition of the fact that generally, density is needed in order to achieve the economies of scale needed to achieve long-term affordability and to ensure the public subsidies are used efficiently and effectively. If a site is zoned at or above a jurisdiction's default density, HCD must accept the site as adequate to accommodate affordable housing. This saves jurisdictions time and effort in preparing their housing elements by allowing them to avoid a detailed analysis of every site in their housing element that is expected to accommodate a portion of the lower-income RHNA.

Purpose of the Bill

Napa County's last housing element was due in June of 2009. HCD's review of the draft element found that it was not in compliance with the law, primarily because HCD did not believe that the county had identified adequate sites to support the development of affordable housing. The county had included a number of sites in its housing element at below the default density of 20 units per acre, and HCD did not believe the county's analysis of those sites was enough to establish their adequacy. The county disagrees with HCD's position and believes that it provided all of the analysis that the law requires. The county adopted the housing element despite HCD's finding that it was not in compliance with the law and was subsequently sued by Latinos Unidos, a farmworker advocacy group. That suit is currently being litigated.

The county's next housing element update is due in October, 2014. Prior to that update, the county is seeking legislation that it believes would make it easier for the county to produce a housing element that complies with the law. AB 542 is one of two bills that county is sponsoring to provide more flexibility. The other, AB 679, has also been referred to this committee.

AB 542 requires HCD to accept zoned at densities less than a jurisdiction's default density as adequate to support housing for lower-income households, if the site is owned by the planning agency and set aside for affordable housing development, or if the planning agency has offered to provide subsidies of at least an unspecified dollar amount per unit for affordable housing construction.

Housing Element Working Group

AB 2348 (Mullin) was one of the major pieces of legislation that came out of the Housing Element Working Group (HEWG). The group, which was convened by HCD in 2003, was a broad-based group that included representatives from local government, councils of government, the for-profit and non-profit development community, and affordable housing advocacy groups. HCD proposed the group after several lengthy and divisive Legislative battles over changes to housing element law, including the fight over SB 910 (Dunn, 2002) that would have imposed severe penalties on local governments for failing to adopt a housing element that HCD found to be in compliance with the law.

The (HEWG) met from June through November of 2003 and reached consensus on reform proposals in three major areas: the regional housing needs allocation process, increasing housing development certainty, and the identification of adequate sites. AB 2348 was one of the legislative vehicles for implementing these reforms. Because the bill represented a consensus agreement, it received broad bi-partisan support throughout the legislative process. No “no” votes were cast against the bill.

HCD recently reconvened a new HEWG to evaluate how effective the changes that came out of the prior HEWG have been and to examine whether further changes to housing element law may be necessary to achieve the goals of SB 375. The group has already met several times and has identified a variety of issues on which to focus its attention.

AB 542 makes changes to what was a carefully crafted compromise around the adequate sites analysis. Given that the HEWG is currently meeting and there is no rush to make statutory changes (Napa County's next housing element update is not due until October of 2015), the Committee may wish to consider asking the county to first take this issue to the working group before pursuing legislation. The HEWG was able to reach consensus on the issue of the adequate sites analysis in the past, and it may be worth seeing if its members can reach consensus again.

Arguments in Support

Napa County, the sponsor of AB 542, argues that the bill would provide a needed mechanism to address local land use and geographical challenges while working to comply with the spirit of housing element law. The county notes that although the bill would somewhat reduce HCD's discretion, it would provide an incentive for local agencies to fund affordable housing development. The county believes that in many cases, the resulting development would be more in keeping with the scale and density of rural communities than developments designed at the default densities.

Arguments in Opposition

Writing in opposition, the California Rural Legal Assistance Foundation and the Western Center on Law and Poverty note that the density standards in current law were carefully crafted to ensure that the planning in the housing element results in real sites for housing for lower-income

households and that the sites will actually result in the development of affordable housing. They argue that the fact that a site is owned by a local government or has a commitment of funds does nothing to overcome the practical limitations of a parcel zoned at densities too low to accommodate affordable housing. They further argue that allowing jurisdictions to exhaust all of their affordable housing dollars on a few units in order to meet this standard would only further undermine the goal of having very jurisdiction working to provide as many affordable units as possible.

Committee Amendments

On page 4, strike lines 10-15 and insert:

- (4) Notwithstanding subparagraph (B) of paragraph (3), a site within the unincorporated area of a county shall be deemed appropriate to accommodate housing for lower income households if all of the following apply:
 - (A) Either the site is owned by the county, is set aside for affordable housing, and the land will be provided for the development of affordable housing at no cost to the developer; or the county has committed to providing subsidies of at least 15% of the total development cost per unit for the construction of affordable housing on the site during the planning period.
 - (B) The site is zoned to allow a minimum residential density of 10 units per acre.
 - (C) The site is located close to jobs and within one mile of a grocery store or an elementary school.

If, by the end of the second year of the planning period, the county has not entered into an enforceable agreement to provide committed assistance, as defined in paragraph (4) of subdivision (c) of Section 65583.1, for the development of affordable units on a site included in a county's housing element pursuant to this paragraph, the county shall, not later than July 1 of the fourth year of the planning period, identify additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided.

Double-Referred

This bill was also referred to the Local Government Committee, where it passed on April 6, 2011, by a vote of 9-0.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Napa (sponsor)
California State Association of Counties
Napa Valley Community Housing

Opposition

California Rural Legal Assistance Foundation
Western Center on Law and Poverty

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