

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 1537 (Levine) – As Amended: April 21, 2014

SUBJECT: Land use: housing element: default densities.

SUMMARY: Creates a pilot program for Marin County to utilize a "suburban" default density standard for accommodating its share of affordable housing. Specifically, this bill:

- 1) Specifies that, for purposes of determining a jurisdiction's "default density" for accommodating affordable housing, if a county that is in the San Francisco-Oakland-Fremont, California Metropolitan Statistical Area (MSA) has a population of less than 400,000, that county is considered suburban. If this county includes an incorporated city that has a population of less than 100,000, this city is also considered suburban.
- 2) Provides that this classification shall apply to a housing element revision cycle that is in effect from July 1, 2014, to December 31, 2023, inclusive.
- 3) Requires that all jurisdictions affected by this legislation report to the Assembly Committee on Housing and Community Development, the Senate Committee on Transportation and Housing, and the Department of Housing and Community Development (HCD) regarding its progress in developing low- and very low-income housing. The report must be provided twice, once, on or before December 31, 2019, and a second time, on or before December 31, 2023. The report is comprised of information that is already required as part of all local governments' annual Housing Element Progress Report to HCD.

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 located within the territory of a metropolitan planning organization (MPO) to revise their housing elements every eight years following the adoption of every other regional transportation plan. Cities and counties in rural non-MPO regions must revise their housing elements every five years. (Government Code 65588)
- 4) Requires, prior to each housing element revision, that each council of governments (COG), in conjunction with 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)

- 5) Divides the RHNA into the following income categories:
 - a) Very low-income (50% 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).

(Government Code Section 65584)
- 6) 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)
- 7) 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)
- 8) Establishes the following "default" density levels for purposes of establishing a site's adequacy for supporting lower-income housing development:
 - a) 30 units per acre for metropolitan jurisdictions, generally defined as any city or county (except for jurisdictions of less than 25,000 persons) in an MSA with a population of 2 million persons or greater and any city or county over 100,000 persons in any size MSA.
 - b) 20 units per acre for suburban jurisdictions, generally defined as cities and counties in an MSA of less than 2 million persons (except for jurisdictions over 100,000 persons) and jurisdictions under 25,000 persons in larger MSAs.
 - c) 15 units per acre for incorporated cities within non-metropolitan counties and for non-metropolitan counties that have micropolitan areas (*i.e.*, Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne Counties).

- d) 10 units per acre for unincorporated areas in all non-metropolitan counties.
- 9) Requires each local government to prepare an annual Housing Element Progress Report using forms and definitions adopted by HCD. This includes reporting on the local government's progress in meeting its share of the RHNA. (Government Code Section 65400)

FISCAL EFFECT: Unknown.

COMMENTS:

Background:

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 regional housing needs assessment (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 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.

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.

Arguments in Support:

Supporters of the bill argue that the default density standards are in need of refinement due to inconsistent outcomes. They explain that certain cities and counties within larger multi-county MSAs are considered "metropolitan" under the current default density standards despite being suburban or rural in character. Specifically, supporters point to the fact that unincorporated Sonoma County, which is in a less populous MSA, is considered "suburban" despite having a higher population than unincorporated Marin County. Supporters also point to the fact that Marin has the same default density standard as San Francisco due to its inclusion in the same MSA.

Supporters contend that Marin County has difficulty zoning for a default density of 30 units per acre, which impacts their ability to promote affordable housing. In this view, reducing the default density would create momentum for more affordable housing projects by addressing local concerns about high-density housing. Supporters argue that the bill would allow specific communities more flexibility to zone land suitable for affordable housing in a way that fits within the communities' individual circumstances.

Arguments in Opposition:

Opponents of the bill point to the fact that default densities are not mandatory. In establishing the adequacy of sites for affordable housing, local governments can either zone the site at the default density or provide HCD with an analysis demonstrating that the site is adequate to support lower-income housing development at its zoned density level, including 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.

Opponents also point to the issue that default density standards were instituted after a lengthy working group process involving a diverse group of stakeholders. In opponents' view, the bill is a result of local opposition to affordable housing, and legislating to accommodate this narrow opposition is the wrong direction. Opponents point to the current lack of availability of affordable housing for low- and moderate-income individuals and families, and contend that AB 1537 will have the effect of making it even more costly to develop affordable housing in the areas affected by the bill.

Purpose of the Bill:

According to the author, AB 1537 will refine the default density housing formula to allow for suburban designations for the lower population county of Marin. The bill is intended to help create momentum for more affordable housing development in areas that have had challenges in getting projects off the ground due to concerns about high density development.

Staff Comments:

AB 1537 will impact reforms to housing element law 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, COGs, 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.

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. The bills that implemented the reform proposals represented a consensus agreement and received broad bi-partisan support throughout the legislative process. No "no" votes were cast against the bills. One of these bills, AB 2348 (Mullin) amended housing element law by clarifying the land inventory requirements to provide local governments more certainty about the statutory requirements. Amongst other things, AB 2348 established the default densities, also known as "Mullin" densities, for affordable housing sites.

In establishing the adequacy of sites for affordable housing, current law allows a city or county to either zone the site at the default density or provide an analysis demonstrating that the site is adequate to support lower-income housing development at its zoned density level. The default density is not mandatory, but was intended to provide an option for local governments to streamline the housing element approval process. If a local government can show that affordable housing can be developed within the jurisdiction at lower densities, then the law allows these lower density sites to count towards meeting a share of the jurisdiction's RHNA for lower-income households.

AB 1537 was introduced in response to concerns arising out of Marin County. Marin County is included in an MSA of 2 million persons or greater. Several cities within the County have populations of less than 25,000, and are already considered "suburban" under the default density standards. This bill would reduce the default density from 30 units per acre to 20 units per acre in the cities of Novato and San Rafael, and in unincorporated Marin County for one housing element cycle. It is unclear why this bill is needed for the city of San Rafael, which currently utilizes densities between 43 and 72 units per acre toward its lower income need, which is well above the current default density. The city of Novato currently utilizes a density of 23 units per acre toward its lower income need after working with HCD to zone at a lower density. Unincorporated Marin County currently zones at its default density of 30 units per acre, although nothing is precluding them from utilizing the existing process with HCD to zone at a lower density.

While this bill requires the affected jurisdictions to report back twice on their progress in developing affordable housing, this report is comprised of information that is already required as part of all local governments' annual reports to HCD. The Committee may wish to consider additional reporting requirements to better evaluate the effectiveness of this pilot project. There is no provision in the bill for an outside evaluation of Marin County's progress in developing affordable housing at the reduced default density level. Additionally, there is no mechanism for terminating the pilot project if the first four years show no positive outcomes. It will be difficult to measure the effectiveness of this legislation without additional reporting and evaluation requirements.

Reducing default density levels may have the effect of increasing the price of affordable housing development and thereby making it a less attractive option for developers. In a county such as Marin, with one of the least affordable housing markets in the nation and nearly 60% of its workforce commuting into the county from other areas, sufficient affordable housing development is something that should be promoted. While there may certainly be legitimate concerns about the default density standards, and nothing precludes the Legislature from revisiting this issue, it may not be a prudent course of action to take a piecemeal approach. It is also likely that other jurisdictions, as a result of this legislation, will request similar reductions in default density.

Double referred: If AB 1537 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

Bridge Housing
California State Association of Counties
Center for Sustainable Neighborhoods
County of Marin
Domus Development
EAH Housing
Eden Housing
El Dorado County
League of California Cities
Marin County Council of Mayors and Council members
Non-Profit Housing Association of Northern California (NPH)
Transportation Authority of Marin

Opposition

Western Center on Law and Poverty
California Rural Legal Assistance Foundation

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