

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2208 (Santiago) – As Amended April 4, 2016

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

**SUMMARY:** Adds, for purposes of the requirements of housing element law, to the list of the types of sites that a local government can identify as suitable for residential development in the housing element. Specifically, **this bill:**

- 1) Adds, for purposes of the requirements of housing element law that a city or county 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, the following to the list of land suitable for residential development:
  - a) Buildings owned or under the control of a city or county, zoned for residential use and capable of having residential developments constructed above the existing building;
  - b) Buildings owned or under the control of a city or a county and zoned for nonresidential use that can be rezoned for residential use and are capable of having residential developments constructed above the building;
  - c) Underutilized sites zoned for residential use; and,
  - d) Underutilized sites zoned for nonresidential use that allow residential development.
- 2) Defines "underutilized sites" to mean properties or portions of a property that are used only at irregular periods or intermittently by the accountable agency of the local government or property that is being used for the accountable agency's current program purposes that can be satisfied with only a portion of the property.
- 3) States that no reimbursement is necessary because a local agency has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by this act.

**EXISTING LAW:**

- 1) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.
- 2) Divides the regional housing needs allocation (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).
- 3) 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.
  - 4) Requires a local government to inventory land suitable for residential development to identify sites that can be developed to meet the jurisdiction's regional housing needs 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; and,
    - d) Sites zoned for nonresidential use that can be redeveloped for and as necessary, rezoned for, residential use.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary.** This bill adds, for purposes of the requirements of housing element law that a city or county 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, the following to the list of land suitable for residential development:
  - e) Buildings owned or under the control of a city or county, zoned for residential use and capable of having residential developments constructed above the existing building;
  - f) Buildings owned or under the control of a city or a county and zoned for nonresidential use that can be rezoned for residential use and are capable of having residential developments constructed above the building;
  - g) Underutilized sites zoned for residential use; and,
  - h) Underutilized sites zoned for nonresidential use that allow residential development.

The bill defines "underutilized sites" to mean properties or portions of a property that are used only at irregular periods or intermittently by the accountable agency of the local government or property that is being used for the accountable agency's current program purposes that can be satisfied with only a portion of the property.

This bill is an author-sponsored measure.

- 2) **Author's Statement.** According to the author, "In many urban, dense areas, there is a distinct lack of land that can be used for affordable housing. In fact, the City of Los Angeles is about to hit its development limit. The city is now zoned to house, at most, 4.2 million

people. The current population is 3.9 million. There were 28,000 new housing starts in the Los Angeles metro area last year (population 13 million), versus 64,000 in Houston (population two million). In California's largest urban areas, and those where land costs are the highest, it is particularly important that local governments and developers both think outside the box on how to use land and space more effectively. AB 2208 takes an important step in this direction by requiring that local governments specifically consider non-traditional spaces in their property surveys for housing. AB 2208 requires local governments to include underutilized land, and available air rights when surveying property that may be applicable for use in affordable housing as a part of their Housing Element."

- 3) **Background.** Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when the Department of Housing and Community Development (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 council of governments (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.

- 4) **Building Up.** According to an article in *Governing Magazine* entitled "Why Don't More Cities Sell Air Rights?" published in September 2014, "Public works projects often come at heavy expense. Whether it's building new schools, municipal halls or other facilities, such projects produce not only upfront costs, but depending on their magnitude, long-term debts. There is however, a way to mitigate costs, or even make a project more profitable: sell off the air rights."

The article also points out that "U.S. cities do not maximize their use of public properties...It is in compact cities such as Seattle – along with Boston, Chicago, New York City, San Francisco and Washington, D. C – where utilizing air rights would make the most sense...after all, if proposed three-story schools, libraries and recreation centers could instead sit inside 50-story mixed-use towers, this would increase the supply of affordable housing and office space, further compelling people to locate centrally."

- 5) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Feasibility.** Is it feasible to build residential units on top of existing structures? The Committee may wish to consider whether cities should be able to count these sites toward the RHNA, if constructing residential developments above existing buildings is not truly feasible. Also, given the concerns around seismic safety in California, the Committee may wish to consider whether it is prudent to encourage developments on top of existing buildings that were not originally built with the idea of expansion upwards.
  - b) **Cost of Reviewing Existing Properties.** As noted by the California State Association of Counties in their letter of "Concerns," "Counties are concerned...with the potential costs of reviewing existing properties to determine whether they can feasibly accommodate housing development....moreover, we are concerned that the bill may put counties in the position of proving why county-owned or controlled buildings or properties are not appropriate for housing development rather than solely allowing local jurisdictions the flexibility to inventory these properties when they are clearly suitable for development."
  - c) **More Housing?** The Committee may wish to consider whether such a review of existing properties will actually result in any additional housing being built on those sites.
- 6) **Arguments in Support.** Supporters argue that the expansion in the bill will provide cities additional flexibility in meeting their regional housing needs by identifying a greater number of sites where housing can be built.
- 7) **Arguments in Opposition.** There are concerns that the definition of "underutilized" and the public buildings on which housing can be built above is not adequately developed in the bill and could result in sites not suitable for residential development being included in the jurisdiction's housing element.
- 8) **Double-Referral.** This bill was heard by the Housing and Community Development Committee on April 13, 2016, where it passed with a 7-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

League of California Cities  
California Council for Affordable Housing

**Concerns**

California State Association of Counties  
Housing California

**Opposition**

American Planning Association, California Chapter (unless amended)

**Analysis Prepared by:** Debbie Michel / L. GOV. / (916) 319-3958