

Date of Hearing: June 5, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1048 (Jones) – As Amended March 21, 2024

SENATE VOTE: 39-0

SUBJECT: Planning and zoning: local planning: site plans.

SUMMARY: Deletes topographic lines, drainage, lighting, distance between buildings, and ground sign location from the list of items that must be included in a “site plan,” as that term is defined in provisions of law that require local agency planning departments to protect architectural drawings that are protected by the federal Copyright Act of 1976.

FISCAL EFFECT: None

COMMENTS:

- 1) **Author’s Statement.** According to the author, “SB 1048 is a cleanup measure that provides clarity to provisions enacted by SB 1214 (Jones) relating to copyrights on architectural drawings submitted to a local planning department. SB 1214 sought to balance the need to provide the public with information about proposed development projects with an obligation on planning departments to follow the federal Copyright Act. SB 1214 is working well for both local governments and design professionals, but one clarification is needed.

“Specifically, SB 1214 provided that if an architect submits a ‘site plan’ or ‘massing diagram’ to the local planning department along with the architectural drawings, then the architect’s intellectual property rights are protected as specified. However, some local planning departments are requiring ‘site plans’ to contain ‘all’ the specified items as described in statute, even when the project does not require their inclusion. While these local departments are adhering to the statute, this adherence is resulting in the hiring of expensive consultants to comply with the specified list.

“SB 1048 seeks to remove certain items from the ‘site plan’ list to clarify that only the necessary items are listed in statute. Local planning departments may still require these additional items for a site plan as necessary depending on the project. Overall, SB 1048 continues with SB 1214’s objective to balance the needs of the public to have information about proposed development projects with the design professional’s intellectual property rights.”

- 2) **Architectural Works.** Architects are licensed design professionals who plan buildings and often oversee construction. Architects produce architectural drawings that depict how a building will look and function when built. Architectural drawings have various components, including:
 - a) A “site plan” that displays an overhead view of the site and its buildings in relation to the nearby area. Site plans often contain information on property lines, utilities, lighting, streets, and outlines of existing and proposed structures drawn to scale.

- b) A “massing diagram” that displays the three-dimensional form of a building and its general size, shape, and bulk, but may not contain architectural details such as the external materials to be used, designs on the façade, or the positioning of windows.
 - c) A “floor plan” that indicates the position of internal components inside of a building.
 - d) An “elevation” that shows the exterior or a cross-section of a building as viewed directly facing the building.
- 3) **Copyright Law and Architectural Works.** The Copyright Act prohibits the unauthorized copying of an “original work of authorship” fixed in a “tangible form of expression.” Among other protections, federal copyright law provides copyright owners with the exclusive right to reproduce the work, prepare other works based on it, sell or lease copies, and display it publicly. Copyright law also provides the owner of a copyright the ability to authorize others to exercise these rights. An original work of authorship is copyrighted automatically by fixing it in a tangible form of expression, but copyright owners can also register a copyright with the United States Copyright Office, which confers additional protections and can be of assistance in litigating copyright issues. Additionally, copyright owners may place a copyright notice, along with the date of first publication and the owner’s name, on copies of a work to indicate that the author is claiming ownership.

In 1990, the United States Congress enacted the Architectural Copyright Act to allow the “original design” of a building to be protected under the Copyright Act. This original design can include architectural plans, drawings, the building itself, or other tangible forms of expression. However, standard features – such as standard configurations of spaces and individual standard features, such as windows, doors, and other staple building components – cannot be registered.

- 4) **SB 1214 of 2022.** In an effort to balance the critical importance of facilitating public participation in local agency planning decisions with the need to protect the architects’ intellectual property rights under the federal Copyright Act, SB 1214 (Jones), Chapter 226, Statutes of 2022, required local planning agencies to ensure architectural drawings that contain protected information are made available to the public in a manner that does not facilitate their copying. “Protected information” means the architectural drawing is protected under the Copyright Act, as amended by the Architectural Copyright Act, and contains a copyright annotation indicating it is protected by the Copyright Act.

The bill specified that a local planning agency may maintain official copies of each set of architectural drawings submitted to the agency, but imposed restrictions on those copies if they contain protected information, unless permission is granted by the design professional or the owner of the copyright. These restrictions include:

- a) The copy shall be open for inspection and public review only on the premises of the planning agency as a public record.
- b) The copy must not be copied by a member of the public without the permission of the design professional or the owner of the copyright.

- c) A local planning agency must not provide on the internet copies of architectural drawings or postarchitectural drawings that contain protected information.

Despite these restrictions, however, SB 1214 allowed a local planning agency to do any of the following regarding architectural drawings that contain protected information:

- a) Make copies of the architectural drawings for internal official review by the planning agency, legislative body, government agencies, or other government bodies responsible for the review.
- b) Distribute copies to members of the legislative body and members of the planning agency's governing body without having to make them available to the public pursuant to the Brown Act.
- c) Display a copy on the internet and a copy physically on premise during a public hearing of the planning agency or legislative body when a development application that incorporates those architectural drawings is under consideration.

When a design professional or the owner of the copyright submits an official copy of architectural drawings to a local planning agency, the design professional or the owner of the copyright can also submit a site plan or a massing diagram for posting online or for distribution to the public. A local planning agency may provide a copy of or post on the internet a site plan or massing diagram, and may allow a site plan or massing diagram to be copied.

If the design professional or the owner of the copyright elects not to submit a site plan or massing diagram, SB 1214 deemed permission to be granted to exhibit the full designs and the planning agency is not subject to any restrictions on the copying or distribution of those architectural documents.

SB 1214 defined "site plan" to mean "a document for a project that is drawn to scale and displays *all* of the following (emphasis added):

- a) Property lines.
- b) Setback lines.
- c) Topographic lines.
- d) Easements.
- e) Drainage.
- f) Utilities.
- g) Lighting.
- h) Driveways.

- i) Surrounding streets and traffic flow.
- j) Parking lots and parking spaces.
- k) Landscaped areas.
- l) Setback distance between buildings and property lines.
- m) Outline of existing and proposed buildings and structures.
- n) Distance between buildings.
- o) Ground sign location.

According to the author's office, "This statutory list contains things that may be included in a site plan but, for some projects, may not be relevant. For example, one architect is working to permit the design of a rear yard deck with a hot tub. In this city, installing a hot tub triggers a neighbor notification. Items such as topographic lines (which would require hiring a surveyor), traffic flow, drainage (which requires a civil engineer), and ground sign locations are not necessary for this project and would necessitate hiring expensive consultants for something very small. SB 1048 seeks to clarify the 'site plan' list, thus limiting the items in statute to only those which are necessary for every type of project."

- 5) **Bill Summary.** This bill deletes topographic lines, drainage, lighting, distance between buildings, and ground sign location from the list of items that must be included in a "site plan" pursuant to SB 1212. This bill is sponsored by the American Institute of Architects
- 6) **Arguments in Support.** The American Institute of Architects, sponsor of this bill, write, "SB 1048 is a simple clean-up measure that seeks to provide clarity that not all items are necessary for a site plan. This bill establishes a list of items that should be included in all site plans and leaves the power to local planning departments to determine which other items are necessary for a project. This will help provide needed flexibility for local planning departments and reduce potential expense to local development projects while continuing to balance the public's ability to review relevant information with the intellectual property rights provided to architects under federal law."
- 7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Institute of Architects [SPONSOR]

Opposition

None on file

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