

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1397 (Low) – As Amended April 20, 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;
 - b) 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;
 - c) 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;
 - d) 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;
- e) 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;
- f) A site smaller than one acre shall not be deemed realistic for development to accommodate lower-income housing need, 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;
- g) A site larger than 10 acres shall not be deemed realistic for development to accommodate lower-income housing need, 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;
- h) Nonvacant sites shall not be deemed realistic for development to accommodate lower-income housing need, 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;
- i) Allows a site to 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.
- j) For nonvacant sites, the locality to specify the additional development potential for each site within the planning period and provide an explanation of the methodology used to determine the development potential to and to demonstrate that the existing use does not constitute an impediment to additional residential development during the period covered by the element. Specifies that 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.
- k) 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. Specifies that replacement requirements must be consistent with those contained in Density Bonus law.

- 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.
- 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; and,
 - 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; and,
 - 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.
- 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.

- 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.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill makes a number of changes to the “inventory of land suitable for residential development” analysis required in housing element law, including the following:
- a) Establishes higher standards and requires a more detailed analysis before allowing sites with existing uses to be considered suitable for residential development;
 - b) Limits reliance on sites that are over 10 acres or under one acre;
 - c) Limits reliance on sites that have been listed across multiple housing elements without being developed as housing;
 - d) 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; and,
 - e) Limits a locality’s rezone program to projects that are 100% affordable.

This bill is co-sponsored by the California Rural Legal Assistance Foundation, Public Advocates, and the Western Center on Law & Poverty.

- 2) **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 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.

- 3) **Author’s Statement.** According to the author, “California remains one of the most expensive housing markets in the United States and has a well-documented shortage of affordable units available to lower-income families. The loss of redevelopment agencies and reductions in state and federal housing funding have dramatically exacerbated this shortage, but money is only one part of the equation. 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.”
- 4) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **What’s realistic?** The League of California Cities, in opposition, points to requirements in the bill that would abandon the existing general inventory process in housing element law and instead require cities to identify land, including vacant sites that have “realistic and demonstrated potential for redevelopment.” The League argues that this cannot be done because there is no way for a city to determine whether the potential is “realistic.”
 - b) **Water, sewer and other dry utilities.** The League argues that the existing law already requires each site to include a general description of existing or planned water, sewer and other dry utilities.
- 5) **Arguments in Support.** Supporters argue that the law recognizes that local governments are not generally in the housing construction business, but do have substantial control over whether there are opportunities for developers to come in and build in their jurisdiction. Supporters argue that when done properly, this site identification can be a very effective tool in facilitating the construction of new housing at all income levels. They argue that this bill will help 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.

- 6) **Arguments in Opposition.** Opposition argues that the requirement in the bill that requires cities to bring utilities to each site identified in the housing element within three years of the planning period is problematic given the requirements in existing law which specifies that each site must include a general description of existing or planned, water, sewer, and other dry utilities. Opposition believes this requirement would be incredibly expensive and place a significant burden on a city's general fund, since developers typically fund expansion of utility services.
- 7) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on April 19, 2017, and passed on a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Rural Legal Assistance Foundation [CO-SPONSOR]
Public Advocates [CO-SPONSOR]
Western Center on Law & 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

League of California Cities

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