
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: SB 405 **Hearing Date:** 4/24/2023
Author: Cortese
Version: 2/9/2023
Urgency: No **Fiscal:** Yes
Consultant: Mehgie Tabar

SUBJECT: Planning and zoning: housing element: inventory of sites: regional housing need

DIGEST: This bill requires cities and counties to provide notice to property owners included in the 7th cycle housing element's sites inventory to determine development potential and authorizes the removal of those sites from being considered as meeting a jurisdiction's RHNA, if the property owner does not intend to develop.

ANALYSIS:

Existing law:

- 1) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must 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.
- 2) Provides that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and Department of Housing and Community Development (HCD) develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.
- 3) Requires local governments to prepare an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public

facilities and services to these sites. Requires local governments to use the inventory of land suitable for residential development to identify sites that can be developed for housing within the planning period.

This bill:

- 1) Requires a planning agency, for their 7th cycle housing element, to provide notice to property owners of sites in the inventory of land suitable for residential development that their property is included in the inventory, if the owner's identity and contact information is known, as specified.
- 2) Requires a planning agency to make a reasonable effort to identify property owners and their contact information to determine the intent of the owner to develop the site.
- 3) Provides that a site cannot be considered a site that can be developed to meet a jurisdiction's share of RHNA if the property owner notifies the planning agency or HCD that the owner does not intend to develop the site, as specified, during the current planning period.
- 4) Requires that the information gathered in this effort be an important factor for HCD in determining whether the planning agency's housing element identifies sufficient sites to meet the jurisdiction's share of RHNA.
- 5) Requires HCD to amend specified standards, forms, and definitions to implement these provisions.

COMMENTS:

- 1) *Author's statement.* "For too long, the State has allowed Regional Housing Need Allocation (RHNA) plans to include sites that have no reasonable chance of being developed. Many jurisdictions are working hard to address their housing shortages, but given the current housing crisis, we can no longer afford to allow local governments to overstate potential housing parcels. While new funding sources and regulatory streamlining is necessary, the State also should ensure that existing programs are functioning as efficiently as possible. Towards that end, SB 405 would make local housing elements more reliable. SB 405 requires local planning agencies to verify the sites listed in their RHNA plans are viable. Specifically, this bill would require a local planning agency to provide notice to the owner that their property is being listed when the owner's identity and contact information is known. Moreover, any site that the owner doesn't intend to develop with at least 80% of the units assigned to it would not

be eligible to be included in the RHNA plan. With the passage of SB 405, RHNA plans could become a more credible and useful tool for developers.”

- 2) *Housing Elements and Regional Housing Needs Assessment (RHNA)*. Every city and county in California is required to develop a general plan that outlines the community’s vision of future development through a series of policy statements and goals. A community’s general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. State law mandates seven elements: land use, circulation (*e.g.*, traffic), housing, conservation, open-space, noise, and safety.

Each community’s general plan must include a housing element, which outlines a long-term plan for meeting the community’s existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its “fair share” of its region’s housing needs. Following a staggered schedule, cities and counties located within the territory of a metropolitan planning organization (MPO) must revise their housing elements every eight years, and cities and counties in rural non-MPO regions must revise their housing elements every five years. These five- and eight-year periods are known as the housing element planning period.

Before each revision, each community is assigned its fair share of the region’s housing need for four separate income categories (very low-, low-, moderate-, and above-moderate income households) through a two-step process known as RHNA. In the first step, HCD determines the aggregate housing need for the region during the planning period the housing element will cover. In the second step, the council of governments (COG) for the region allocates the regional housing need to each city and county within the region.

In general, a housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet its share of the RHNA, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development. Among other things, the element specifically must include an analysis of existing subsidized housing developments that are eligible to convert to market-rate rental housing upon the expiration of affordability restrictions, and identify all public resources.

As part of the process to identify adequate sites, a city or county first prepares an inventory of existing sites zoned for housing. When the inventory of existing sites is insufficient to accommodate the need for one or more income

categories, the housing element must contain a program to rezone sites within the first three years of the planning period.

- 3) *Site Inventory and Analysis.* The purpose of the land inventory is to identify specific sites that are suitable for residential development in order to compare the local government's RHNA with its residential development capacity. Inventories assist in determining whether there are sufficient sites to accommodate the regional housing need in total, and by income category. A thorough sites inventory and analysis help cities determine whether program actions must be adopted to "make sites available" with appropriate zoning, development standards, and infrastructure capacity to accommodate the new construction need. Preparing the site inventory is a two-part process and includes the preparation of a parcel specific inventory of sites and accompanying site suitability analysis. While statute outlines the requirements and factors that are included in the site inventory and analysis, HCD does not prescribe any one specific methodology in addressing those requirements.
- 4) *Inventory of Suitable Land.* The housing element must identify specific sites or parcels that are available for residential development. Land suitable for residential development must be appropriate and available for residential use in the planning period. Identified sites that require rezoning may be included in the inventory, provided the housing element includes a program to accomplish the rezoning early within the planning period. Other characteristics to consider when evaluating the appropriateness of sites include, physical features (*e.g.*, susceptibility to flooding, slope instability or erosion, or environmental considerations) and location (proximity to transit, job centers, and public or community services). Land suitable for residential development includes all of the following:
 - a) Vacant sites that are zoned for residential development.
 - b) Vacant sites that are not zoned for residential development, but that allow residential development.
 - c) Underutilized sites that are zoned for residential development and capable of being developed at a higher density or with greater intensity.
 - d) Sites that are not zoned for residential development, but can be redeveloped for, and/or rezoned for, residential use (via program actions).
 - e) Sites owned or leased by a city, county, or city and county.

The inventory can also include sites that are in the process of being made available (*i.e.*, planned) for residential uses via rezones or specific plans, provided the housing element includes a program that commits the local

government to completing all necessary administrative and legislative actions early in the planning period.

Pursuant to SB 6 (Beall, 2019), the site inventory must be prepared using the standards, form, and definitions adopted by HCD. Local governments are also required to submit an electronic version of the site inventory to HCD along with its adopted housing element.

- 5) *Closing the loopholes.* In 2017, over concern that housing element law had gaps that allowed jurisdictions to circumvent their housing planning obligation (*i.e.*, relying on sites that were not really available or feasible for residential development, especially multifamily development), AB 1397 (Low) strengthened the law by limiting the reliance of local governments on sites that do not have a realistic capacity. Those evasive practices can lead to a scarcity of land and increase housing costs—making it virtually impossible for affordable housing developers to find developable land in locations where housing is badly needed. It also may place an unfair burden on neighboring jurisdictions that do identify sites that are genuinely suitable for development.

Given that not every jurisdiction is at the same stage in their housing element cycle, not all the benefits from AB 1397 have been fully realized yet.

- 6) *Need for the bill.* According to the Author, despite recent reforms to address unrealistic or infeasible housing element sites, the current system still allows local governments to receive RHNA credit for sites that have no realistic chance of being developed during the current RHNA cycle. A site can have the appropriate planning and zoning designations and be economically viable to develop with housing, yet still not have a chance of being developed.

This bill attempts to address those concerns by requiring local governments to identify and contact landowners of sites included in the sites inventory, and, if the landowner responds notifying that they have no intention of developing housing on the site within the housing element period, the local government is precluded from relying on the site in its inventory.

- 7) *Opposition.* Those writing in opposition are opposed to requiring local governments to survey property owners prior to including them in their sites inventories, stating that this requirement would increase costs without improving the quality of sites planned to accommodate housing needs.
- 8) *Committee amendments.* The committee is concerned that this bill would make it more difficult to complete the sites inventory or shrink opportunities for cities

to plan for housing. For example, a property owner now may have no intention of selling, but next year, due to market conditions or personal circumstances, decide to sell. **Rather than gathering information by individually contacting property owners and removing sites eligible from a local government's sites inventory, the author has agreed to amend the bill in committee to create a likelihood of development methodology for sites, starting with a pilot program.**

RELATED LEGISLATION:

SB 6 (Beall, Chapter 667, Statutes of 2019) — required the Department of General Services (DGS), in coordination with HCD, to create a public inventory of local sites suitable for residential development, along with state surplus lands.

AB 1397 (Low, Chapter 375, Statutes of 2017) — made several changes to housing element law by revising what may be included in a locality's inventory of land suitable for residential development and limiting the reliance of local governments on sites that do not have a realistic capacity for the development of housing.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, April 19, 2023.)

SUPPORT:

California Building Industry Association (CBIA) (Sponsor)
California Chamber of Commerce
Circulate San Diego
City of Gilroy Council Member Zach Hilton
YIMBY Action
YIMBY Law

OPPOSITION:

American Planning Association California Chapter
League of California Cities
RCRC
Urban Counties of California (UCC)

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