



CITY OF NEWPORT BEACH

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January 4, 2021

Honorable Assemblywoman Cottie Petrie-Norris
District Office
19712 MacArthur Boulevard, Suite 150
Irvine, CA 92612

Re: Request for Legislative Amendment to Enable Local Compliance with
State Housing Element Law (Default Site Criteria)

Dear Assemblywoman Petrie-Norris:

The City of Newport Beach ("City" or "Newport Beach") thanks you for your support in sponsoring Assembly Bill AB 1063. Unfortunately, like many other bills during the last legislative session, the bill failed to make it out of the Housing Senate Committee. The City believes all the previously proposed legislative amendments to housing law are necessary; however, to ensure a greater likelihood of success, the City seeks your support in sponsoring one (1) legislative amendment focused on the site eligibility. The proposed legislative amendment would establish objective standards of what constitutes "site eligibility", or in other words create a default sites criteria standard that jurisdictions can rely on when identifying housing sites in the preparation of 6th Cycle Housing Element. The proposed legislative amendments are explained in greater detail below, with specific revisions to state law reflected in Attachment A.

This amendment would significantly reduce barriers for cities throughout the 74th District to achieve the State of California's ambitious housing goals set forth in the Regional Housing Needs Allocation ("RHNA") process for the 6th cycle covering the period 2021-2029 ("6th Cycle Housing Element").

While the proposed legislative amendment is drawn from Newport Beach's experience, this amendment would benefit other cities within the 74th District and throughout the State of California.

If you have any questions or would like to meet discuss in more detail, please let me know. Your assistance is greatly appreciated.

Sincerely,



Brad Avery
Mayor

CC. City Council Members
Senator Dave Min
Grace Leung, City Manager
Seimone Jurjis, Community Development Director
Department of Housing and Community Development
League of California Cities

Attachments:

- A- Proposed amendments to Government Code Section 65583.2(g) to provide objective standards of what constitutes "substantial evidence."

ATTACHMENT A

**Proposed amendments to Government Code
Section 65583.2(g) to provide objective
standards of what constitutes “substantial
evidence” (Default Sites Criteria)**

Proposed amendments to Government Code Section 65583.2(g) to provide objective standards of what constitutes “substantial evidence” (Default Sites Criteria)

Justification

State law requires cities and counties to submit draft and adopted Housing Elements to HCD for review, and HCD is required to review Housing Elements and issue written findings regarding whether the Housing Element substantially complies with the requirements of State law. A finding of substantial compliance by HCD is referred to as “certification” of the Housing Element.

Housing Element certification is important for two major reasons: 1) eligibility for some grant funds (e.g., SB 2) is contingent upon certification; and 2) in the event of a legal challenge to a Housing Element there is a rebuttable presumption of the validity of the Housing Element if HCD has found that the element substantially complies with State law (Government Code 65589.3).

For these reasons, Housing Element certification has very high financial consequences for cities and counties, and the Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant.

One of the most important aspects of Housing Element law is the requirement to demonstrate “adequate sites” with realistic development potential that could accommodate the jurisdiction’s RHNA allocation at each income level (very-low, low, moderate and above-moderate). Recent changes to State law have resulted in much higher RHNA allocations than in past cycles due to the addition of “existing need” to the allocation. For example, HCD’s 6th cycle RHNA allocation to the SCAG region is more than three times the 5th cycle and nearly double the 4th cycle. As a result, many highly urbanized cities will have RHNA allocations that far exceed their capacity for housing development on vacant land, and redevelopment of existing uses on non-vacant (or “underutilized”) sites would be required in order to accommodate their RHNA allocations.

Recent amendments to Housing Element law establishes additional criteria for underutilized sites to be considered suitable for “RHNA credit.” Under Sec. 65583.2(g)(2) if a city relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed to an impediment to additional residential development, absent findings based on “substantial evidence” that the use is likely to be discontinued during the planning period (emphasis added). Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA growth estimates, the substantial evidence requirement that development is “likely” to occur on all of the underutilized sites in the Housing Element inventory results the inability to demonstrate adequate sites.

Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

The combination of much higher RHNA allocations, particularly for cities in highly urbanized areas with little vacant developable land, together with new substantial evidence criteria for underutilized sites, results in a very high level of uncertainty and potential financial risk for many cities.

One of the important legislative initiatives for increasing housing production has been to limit local government discretion in the review and approval of housing developments. SB 330, the Housing Crisis Act of 2019, describes the Legislature's intent to "Suspend certain restrictions on the development of new housing during the period of the statewide emergency" and "Work with local governments to expedite the permitting of housing..." In adopting SB 330 and other recent housing bills, the Legislature has recognized the importance of establishing clear, objective criteria for housing developments to reduce processing time and cost, and increase the certainty of housing approvals.

By the same token, demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. This approach would be similar to existing law regarding "default density" for lower-income housing. In metropolitan areas, zoning densities of either 20 or 30 units/acre (depending on population) are deemed suitable for lower-income housing, but jurisdictions may use alternative densities in their sites analysis subject to HCD approval (Government Code 65583.2(c)).

In short, it is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market friendly State guidance for implementing reasonable local policies that facilitate housing development.

This bill would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development. Several of the proposed standards build upon the analysis and recommendations of leading housing experts in California, including University of California researchers and the Tax Credit Allocation Committee of the California Treasurer's office.

References

Landis, Hood, Li, Rodgers & Warren (2006) "The Future of Infill Housing in California: Opportunities, Potential, and Feasibility" in *Housing Policy Debate*, Volume 17, Issue 4, p. 687

(https://repository.upenn.edu/cgi/viewcontent.cgi?article=1038&context=cplan_papers)

(This landmark study by University of California, Berkeley researchers identified the metric of “improvement-to-land-value (I/L) as a means of identifying infill development potential of underutilized sites.)

California Fair Housing Task Force (2018) “Opportunity Mapping Methodology” (<https://www.treasurer.ca.gov/ctcac/opportunity/final-opportunity-mapping-methodology.pdf>)

(This study, initiated by HCD and the California Tax Credit Allocation Committee (TCAC), was conducted by a group of independent organizations and research centers that would become the California Fair Housing Task Force. The purpose of the study was to provide research, evidence-based policy recommendations, and other strategic recommendations to HCD and other related state agencies/departments to further fair housing goals. TCAC and HCD asked the Task Force to create a statewide opportunity mapping tool that could be adopted into TCAC regulations to accompany regulations to incentivize development of large-family, new construction developments with 9 percent LIHTCs in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families.)

Proposed Government Code Amendment to Section 65583.2(g) (Amend to provide objective standards for substantial evidence determination)

65583.2(g)(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. 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. Any combination of three (3) or more of the following conditions shall be deemed to be substantial evidence that an existing use is likely to be discontinued during the planning period:

(A) The existing improvement-to-land-value (I/L) ratio is less than 1.0 for commercial and multi-family properties or less than 0.5 for single-family properties according to the most recent available property assessment roll;

(B) The site is designated a Moderate, High or Highest Resource area in the most recent Tax Credit Allocation Committee of the California Treasurer’s office (TCAC) Opportunity Map;

(C) Zoning for the site allows residential development by-right that meets both of the following requirements:

(i) Have at least 100 percent more floor area than existing structures on the site.

(ii) At least 20 percent of the units are affordable to lower-income households;

(D) The use of non-vacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use; or

(E) Documented interest from property owner indicating desire to redevelop property within the planning period.