
Legislature Addresses Affordable Workforce Housing on School District and County Office of Education Property

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On September 28, 2022, Governor Gavin Newsom signed Assembly Bill (AB) 2295, which allows a school district or county office of education (local educational agency or LEA) that meets certain criteria to utilize its surplus property to provide affordable housing to its employees. AB 2295 seeks to streamline the process for an LEA to utilize its surplus property for workforce housing without having to go through cumbersome zoning and surplus property processes. However, only certain LEAs will be eligible to take advantage of AB 2295.

Under existing law, LEAs developing workforce housing have to comply with all applicable building and zoning ordinances of the city or county where the LEA is located. If selling or leasing LEA property to a developer who would then construct and operate workforce housing, LEAs would potentially also have to follow the stringent process for disposing of surplus property.

AB 2295 addresses the fundamental issue that housing development is not an expressly permissible use on most LEA property. With the passage of AB 2295, certain LEAs will be deemed in compliance with local development standards, zoning codes, and the general plan of a city or county.

The bill goes into effect on January 1, 2024, as Education Code section 65914.7, and will remain in effect until January 1, 2033.

Acceptable Use of Property

Proponents of AB 2295 emphasized that the over 1,000 LEAs in California collectively own more than 150,000 acres of land. Accounting for LEA-owned land already in use, there are around 75,000 acres Statewide that could theoretically be developed into affordable housing for LEA employees. LEA property, however, is typically not zoned for housing.

Under AB 2295, LEA property development proposed for workforce housing will be “deemed consistent, compliant, and in conformity with local development standards, zoning codes or maps, and the general plan” if the development meets all of the following criteria:

1. Consists of at least 10 housing units.

2. Has a recorded deed restriction ensuring for at least 55 years that the majority of the units will be affordable rentals for lower income or moderate-income households. 30 percent of the units must be affordable to lower income households.
3. All units must first be offered to LEA employees to rent, then to local public employees, and then to general members of the public, if there is additional capacity.
4. Meets residential density requirements as provided by the city/county, or Government Code section 65583.2, subdivision (c), paragraph (3).
5. Is suited to the greater of the height limits as provided by the city/county or 35 feet.
6. Is adjacent to a property that permits residential uses as a principally permitted use.
7. Is located on an infill site, under the standards described below.
8. Satisfies other local objective zoning standards, objective subdivision standards, and objective design review standards as described below.
9. Is located entirely within any applicable urban limit line or urban growth boundary established by local ordinance.
10. Complies with all infrastructure-related requirements, including impact fees that are existing or pending at the time the application is submitted.

An LEA's property qualifies as an "infill site" if the site meets one of the following criteria: (1) it is in any residential, commercial, public institutional, transit/transportation facility, or retail area, and has been developed for those "qualified urban uses;" (2) it is located next to property that is developed with the above "qualified urban uses;" or (3) it has a minimum of 75 percent of the surrounding land developed with "qualified urban uses" under the California Environmental Quality Act (CEQA). (Pub. Resources Code, §§ 21061.3 & 21072.)

The objective zoning standards involve "no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official prior to submission."

By following these criteria, an LEA may forego surplus property procedures found in the Surplus Land Act (Gov. Code, § 54220, et seq.) and at Education Code (Ed. Code, § 17387, et seq.) in order to develop their own affordable workforce housing, which reduces major cost and time concerns. LEAs are still required to comply with CEQA.

Takeaways

AB 2295 makes it easier for eligible LEAs to develop affordable housing for their employees on their own property. The legislation's approach, removing potential obstacles conditioned on clearly defined criteria, is similar to how other State laws have removed obstacles for private developers in recent years. (See [Lozano Smith's 2019 Client News Brief Number 76](#).) LEAs that qualify under AB 2295's extensive prerequisites will be able to avoid burdensome surplus property procedures when developing workforce housing. However, the list of qualifications is significant, and many LEAs may not have property that falls within the somewhat narrow confines of the bill. We will be updating Lozano Smith's Surplus Property Checklist to reflect the changes brought by AB 2295. LEAs are encouraged to work with legal counsel to confirm and ensure compliance with the above standards.

Client News Brief

If you have any questions about AB 2295 and affordable housing for LEA employees, please contact one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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