

CALIFORNIA HOUSING ELEMENT MANUAL

5th Edition

June 2022

Law, Advocacy, and Litigation

Appendices B-P



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www.pilpca.org

PILP advances justice for low income people and communities by building the capacity of legal services organizations through impact litigation, trainings, and publications, and by advocating for low income community groups and individuals.

We could not have produced this 5th edition without the research, drafting and editorial assistance of **Shashi Hanuman, Michael Rawson, Craig Castellanet, Valerie Feldman, Melissa A. Morris,** and **Noah Kirshbaum-Ray.**

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Inclusionary Zoning

- Inclusionary Zoning Revitalized—AB 1505 (January 2018)
- *Inclusionary Zoning After Palmer & Patterson—Alive and Well in California* (May 2010)
- *Inclusionary Zoning: Policy Considerations & Best Practices* (December 2002, with Western Center on Law & Poverty)
- *Inclusionary Zoning: Legal Issues* (December 2002, with Western Center on Law & Poverty)

Rural General Assistance Project

- *Increasing Access to Critical Benefits Through the Rural General Assistance Project* (May 2015)



CALIFORNIA HOUSING ELEMENT MANUAL

5th Edition (June 2022)

Appendices B-P

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Appendix B: HCD Building Blocks: A Comprehensive Housing Element Guide

See also <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>

Appendix B: HCD Building Blocks: A Comprehensive Housing Element Guide
<http://www.hcd.ca.gov/community-development/building-blocks/index.shtml>

Please note that because the Department of Housing and Community Development (HCD) makes periodic navigation and content updates to its website, this table of contents may not reflect the latest version of Building Blocks.

Please see HCD's homepage at <http://housing.hcd.ca.gov/> for more information.

Getting Started

Before You Start

<http://www.hcd.ca.gov/community-development/building-blocks/getting-started/before-starting.shtml>

- Housing Elements and Broader Community Objectives
- Determining Housing Needs
 - Assessment and Allocation
- Housing Element Process
 - Update Prior, Revise, Adopt and Submit
- Housing Element Requirements Framework
- Update Schedule: Every Five Years vs. Every Eight Years

Public Participation

<http://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>

- Government Code
- Requisite Analysis
- Helpful Hints
- Sample Analyses

Review and Revise

<http://www.hcd.ca.gov/community-development/building-blocks/getting-started/review-revise.shtml>

- Government Code
- Requisite Analysis
- Helpful Hints
- Sample Analyses

Existing Housing Needs

Assisted Housing Developments at Risk of Conversion

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/assisted-housing-developments.shtml>

- Government Code
- Defining "Assisted Housing Developments" (or "At-Risk Units")
- Requisite Analysis
- Sample Analyses

Extremely Low-Income Housing Needs

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Housing Stock Characteristics

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Overpayment and Overcrowding

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/overpayment-overcrowding.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Population, Employment, and Household Characteristics

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/population-employment-household-characteristics.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Projected Housing Needs

Projected Housing Needs - Regional Housing Needs Allocation

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/projected-housing-needs.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Special Housing Needs

Farmworkers

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/farmworkers.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Large Families and Female-Headed Households

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/large-families-female-head-household.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

People Experiencing Homelessness

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/people-experiencing-homelessness.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

People with Disabilities, Including Developmental Disabilities

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/people-with-disabilities.shtml>

- Government Code
- Requisite Analysis
- Helpful Hints
- Sample Analyses

Seniors

<http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/seniors.shtml>

- Government Code
- Requisite Analysis
- Sample Analyses

Site Inventory and Analysis

Adequate Sites Alternative

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/adequate-sites-alternative.shtml>

- Requisite Analysis
- Helpful Hints

Analysis of Sites and Zoning

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>

- Realistic Development Capacity
- Analysis of Non-Vacant and Underutilized Sites
- Zoning to Accommodate the Development of Housing Affordable to Lower-Income Households
- Environmental Constraints and Adequate Infrastructure Capacity

Inventory of Suitable Land

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/inventory-of-land-suitable.shtml>

- Requisite Analysis
- Helpful Hints
- Sample Analysis
- Links

Accessory Dwelling Units (ADU)

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/accessory-dwelling-units.shtml>

- Government Code
- Requisite Analysis
- Frequently Asked Questions About Accessory Dwelling Units (ADUs)
- Sample Analyses
- Links

Opportunities for Energy Conservation

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/opportunities-for-energy-conservation.shtml>

- Requisite Analysis
- Sample Analysis

Zoning for a Variety of Housing Types

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/zoning-for-variety-housing-types.shtml>

- Requisite Analysis
- Helpful Hints
- Sample Analysis and Programs

Constraints

Codes and Enforcement and Onsite Offsite Improvement Standards

<http://www.hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml>

- Requisite Analysis
- Required Analysis
- Helpful Hints

Constraints for People with Disabilities

<http://www.hcd.ca.gov/community-development/building-blocks/constraints/constraints-for-people-with-disabilities.shtml>

- Requisite Analysis
- Helpful Hints
- Sample Analysis

Fees and Exactions

<http://www.hcd.ca.gov/community-development/building-blocks/constraints/fees-and-exactions.shtml>

- Requisite Analysis
- Helpful Hints
- Sample Analysis

Land-Use Controls

<http://www.hcd.ca.gov/community-development/building-blocks/constraints/land-use-controls.shtml>

- Requisite Analysis
- Helpful Hints
- Sample Analysis

Non-Governmental Constraints

<http://www.hcd.ca.gov/community-development/building-blocks/constraints/nongovernment-constraints.shtml>

- Requisite Analysis
- Helpful Hints
- Sample Analysis and Programs

Processing and Permitting Procedures

<http://www.hcd.ca.gov/community-development/building-blocks/constraints/processing-permitting-procedures.shtml>

- Requisite Analysis
- Sample Analysis

Program Requirements***Program Overview and Quantified Objectives***

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/program-overview.shtml>

- Developing Effective Programs
- Requisite Analysis
- Sample Analysis

Address and Remove (or Mitigate) Constraints

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/address-remove-mitigate-constraints.shtml>

- Required Components of Programs

- Policy and Program Options
- Sample Program Format
- Sample Programs
- Sample Program Implementation

Assist in the Development of Housing

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/assist-in-development-housing.shtml>

- Required Components of Programs
- Policy and Program Options
- Sample Program Format
- Sample Programs
- Sample Program Implementation

Identify Adequate Sites

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/identify-adequate-sites.shtml>

- Required Components of Programs
- Policy and Program Options
- Sample Program Format
- Sample Programs
- Sample Program Implementation

Improve and Conserve the Existing Housing Stock

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/improve-conserve-existing-housing.shtml>

- Required Components of Programs
- Policy and Program Options
- Sample Program Format
- Sample Programs
- Sample Program Implementation

Preserve Units at-Risk of Conversion to Market Rates

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/preserve-units-at-risk-conversion-market-rate.shtml>

- Required Components of Programs
- Policy and Program Options
- Sample Programs
- Sample Program Implementation

Provide Equal Housing Opportunities

<http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/equal-housing-opportunity.shtml>

- Required Components of Programs
- Policy and Program Options
- Sample Program Format

- Sample Programs
- Sample Program Implementation

Other Requirements

Analysis of Consistency with General Plan and Coastal Zone Requirements

<http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/analysis-consistency-general-plan.shtml>

- Requisite Analysis
- Coastal Zone Requirements
- Sample Analysis

Housing Element Annual Progress Reports

<http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/housing-element-annual-progress-reports.shtml>

- View Housing-Element Annual Progress Reports
<http://www.hcd.ca.gov/community-development/housing-element/index.shtml>

Priority for Water and Sewer

<http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/priority-for-water-sewer.shtml>

- Requisite Analysis
- Technical Assistance Papers
http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/memo_sb1087.pdf

**Appendix C: HCD Housing Element Update Schedules for 6th
Regional Housing Need Assessment (RHNA) Cycle, June 15,
2021**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/docs/6th-web-he-dupdate.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/docs/6th-web-he-dupdate.pdf>

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Project Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual ^{Note:1, 2}	Housing Element Planning Period
<u>Calaveras County (HCD acts as COG):</u> Calaveras County (1) and all cities [1]	2	December 31, 2018 – June 15, 2027	June 15, 2019* <i>Actual</i>	June 15, 2019 – June 15, 2027 (8 years): ^{Note 4}
<u>Nevada County (HCD acts as COG):</u> Nevada County (1) and all cities [3]	4	December 31, 2018 – August 15, 2027	August 15, 2019* <i>Actual</i>	August 31, 2019 – August 31, 2027 (8 years): ^{Note 4}
<u>Mono County (HCD acts as COG):</u> Mono County (1) and all cities [1]	2			
<u>Mendocino Council of Governments (MCOG):</u> Mendocino County (1) and all cities [4]	5			
<u>Lake County City Area-wide Planning Council:</u> Lake Country (1) and all cities [2]	3			

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>Humboldt County Association of Governments (HCAOG):</u> Humboldt County (1) and all cities [7]	8	December 31, 2018 – August 31, 2027	August 31, 2019* Actual	August 31, 2019 – August 31, 2027
<u>Other Regions (non-COG) (HCD acts as COG):</u> Counties (total 9). Cities [total 8]. Alpine [0], Lassen [1], Mariposa [0], Modoc [1], Plumas [1], Sierra [1], Tehama [3], Trinity [0], and Tuolumne [1]	17	December 31, 2018 – August 31, 2024	August 31, 2019 Actual	August 31, 2019 – June 30, 2024
<u>Shasta County (HCD acts as COG):</u> Shasta County (1) and all cities [3]	4	December 31, 2018 – April 15, 2028	April 15, 2020* Actual	April 15, 2020 – April 15, 2028
<u>Colusa County (HCD acts as COG):</u> Colusa County (1) and all cities [2]	3	December 31, 2018 – December 31, 2028	December 31, 2020* Actual	December 31, 2020 – December 31, 2028

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>San Luis Obispo Council of Governments (SLOCOG):</u> San Luis Obispo County (1) and all cities [7]	8	December 31, 2018 – December 31, 2028	December 31, 2020* <i>Actual</i>	December 31, 2020 – December 31, 2028
<u>San Diego Association of Governments (SANDAG):</u> San Diego County (1) and all cities [18]	19	June 30, 2020 – April 15, 2029	April 15, 2021* <i>Actual</i>	April 15, 2021 – April 15, 2029
<u>Inyo County (HCD acts as COG):</u> Inyo County (1) and all cities (1)	2	December 31, 2018 – April 30, 2029	April 30, 2021* <i>Actual</i>	April 30, 2021 – April 30, 2029
<u>Sacramento Area Council of Governments (SACOG):</u> Counties (6) and cities [23] within each county: El Dorado [2], Placer [6], Sacramento [7], Sutter [2], Yolo [4], and Yuba [2]	28	June 30, 2021 – August 31, 2029	May 15, 2021 <i>Actual</i>	May 15, 2021 – May 15, 2029

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>Tahoe Regional Planning Agency (HCD acts as COG)</u> City of South Lake Tahoe [1]	1	December 31, 2021 – June 30, 2027	June 30, 2022 <i>Actual</i>	June 30, 2022 – June 30, 2027
<u>Amador County (HCD acts as COG):</u> Amador County (1) and all cities [5]	6	December 31, 2018 – September 15, 2029	September 15, 2021* <i>Actual</i>	September 15, 2021 – September 15, 2029
<u>Southern California Association of Governments (SCAG):</u> Counties (6) and cities [191] within each county: Imperial [7], Los Angeles [88], Orange [34], Riverside [28], San Bernardino [24], and Ventura [10]	197	June 30, 2021 – October 15, 2029	October 15, 2021* <i>Actual</i>	October 15, 2021 – October 15, 2029
<u>Glenn County (HCD acts as COG):</u> Glenn County (1) and all cities [2]	3	December 31, 2018 – November 30, 2029	November 30, 2021* <i>Actual</i>	November 30, 2021 – November 30, 2029

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>Butte County Association of Governments (BCAG):</u> Butte County (1) and all cities [5]	6	December 31, 2021 – June 15, 2030	June 15, 2022* <i>Estimate</i>	June 15, 2022 – June, 2030
<u>Del Norte County (HCD acts as COG):</u> Del Norte County (1) and all cities [1]	2	December 31, 2018 – September 15, 2030	September 15, 2022* Actual	September 15, 2022 – September 15, 2030
<u>Siskiyou (HCD acts as COG):</u> Siskiyou County (1) and all cities [9]	10	December 31, 2018 – November 15, 2030	November 15, 2022* <i>Estimate</i>	November 15, 2022 – November 15, 2030
<u>Association of Bay Area Governments (ABAG):</u> Counties (9) and all cities [100] within each county: Alameda [14], Contra Costa [19], Marin [11], Napa [5], San Francisco [0], San Mateo [20], Santa Clara [15], Solano [7], and Sonoma [9]	109	June 30, 2022 – December 15, 2030	January 31, 2023* <i>Estimate</i>	January 31, 2023 – January 31, 2031

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>Santa Barbara County Assn of Governments (SBCAG):</u> Santa Barbara County (1) and all cities [8]	9	June 30, 2022 – February 15, 2031	February 15, 2023* <i>Estimate</i>	February 15, 2023 – February 15, 2031
<u>Association of Monterey Bay Area Governments (AMBAG):</u> The counties (2) and all cities [16] within each county: Monterey County [12] and Santa Cruz County [4]	18	June 30, 2023 – December 31, 2031	December 31, 2023* <i>Estimate</i>	December 31, 2023 – December 31, 2031
<u>San Benito County Council of Governments (San Benito COG):</u> San Benito County [1] and all cities [2]	3			

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>San Joaquin County Council of Governments (SJCOG):</u> San Joaquin County (1) and all cities [7]	8	June 30, 2023 – December 31, 2031	December 31, 2023* <i>Estimate</i>	December 31, 2023 – December 31, 2031
<u>Stanislaus County Council of Governments (Stan COG):</u> Stanislaus County (1) and all cities [9]	10			
<u>Tulare County Association of Governments (TCAG):</u> Tulare County (1) and all cities [8]	9			
<u>Fresno Council of Governments (FCOG):</u> Fresno County (1) and all cities [15]	16			

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>Kern Council of Governments (KCOG):</u> Kern County (1) and all cities [11]	12	June 30, 2023 – December 31, 2031	December 31, 2023* <i>Estimate</i>	December 31, 2023 – December 31, 2031
<u>Kings County Association of Governments (KCAG):</u> Kings County (1) and all cities [4]	5			
<u>Kern Council of Governments (KCOG):</u> Kern County (1) and all cities [11]	12			
<u>Kings County Association of Governments (KCAG):</u> Kings County (1) and all cities [4]	5			

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

Council of Governments/Jurisdictions 6th RHNA Cycle	Number of Jurisdictions (539)	6th Cycle RHNA Projection Period	Sixth Housing Element (HE) Revision Due Date Estimated/Actual <small>Note:1, 2</small>	Housing Element Planning Period
<u>Madera County Transportation Commission (MCTC)</u> <u>(HCD acts as COG):</u> Madera County (1) and all cities [2]	3	June 30, 2023 – January 31, 2032	January 31, 2024* <i>Estimate</i>	January 31, 2024 – January 31, 2032
<u>Merced County Association of Governments (MCAG):</u> Merced County (1) and all cities [6]	7			

California Department of Housing and Community Development
Housing Element Update Schedule for Regional Housing Need Assessment (RHNA)

The jurisdiction that will report new housing units to Department of Finance (annual Housing Unit Survey) can take RHNA credit (1 time) for units approved (entitled or permitted) or built since the start date of the RHNA Projection Period

Last updated: June 15, 2021

NOTES:

1. Until actual RTP adoption date is known, housing element due date is marked “*Estimated.*”
 - a. “***Estimated***” date is based on required MPO/RTPA 12-month notice to HCD and any subsequent required notices from changes to the estimated RTP adoption date.
 - b. “***Actual***” date is based on official RTP adoption date. An adoption date past the estimated date used by HCD to determine the RHNA period will change the actual housing element due date and period past the RHNA period (GC 65588(e)(5)).
2. HCD rounds up the housing element due date falling in a month to the 15th or last day of the month.
3. To change from a 5-year to a 8-year housing element period, an MPO/RTPA must elect to adopt the RTP on a 4-year schedule. After making an election, all local governments within a county in the region change the next housing element period to 8-years. For the next 7th housing element cycle (starting after June 30, 2024), the election must have been made by **January 1, 2020** (54 months before the next housing element due date) and the next RTP adopted within three (3) years of the election date. For HCD to determine RHNA and housing element periods, GC 65588(e)(5) requires MPOs and RTPAs on a 4-year RTP update schedule to notify HCD in writing of the estimated RTP adoption date at least 12 months prior to the estimated adoption date.
4. Elected to change from 5-year to 8-year housing element planning period.

** Consequence of late element adoption: SB 375 (2008, Chapter 728). GC 65588(e)(4). Jurisdictions on an 8-year planning period that do not adopt their element within 120 calendar days from the start date of the planning period must revise and adopt the housing element every four years until timely adopting at least two consecutive revisions by the applicable due date.*

Appendix D: HCD Memorandum, Affirmatively Furthering Fair Housing, Guidance for All Public Entities and for Housing Elements (April 2021 Update) (AFFH Guidance)

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf) website at:
https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf



California Department of Housing and Community Development

Affirmatively Furthering Fair Housing

Guidance for All Public Entities and for Housing Elements

(April 2021 Update)



Definition of Affirmatively Furthering Fair Housing

Meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.

Additional definitions can be found on Pg. 64.

Purpose and Uses of Ongoing Guidance and AFFH Data Viewer:

(Sample text for now – actual text to follow)

This guidance memo is a more comprehensive update to the AB 686 summary of requirements in housing element law that the Department of Housing and Community Development (HCD) released April 23, 2020, which can be found at hcd.ca.gov. This guidance is meant to assist public agencies and local governments meet AB 686 requirements. The guidance will be updated periodically in collaboration with practitioners and stakeholders to provide additional samples and best practices.

This guidance is advisory and is adopted pursuant to HCD's general authority to provide technical assistance on the preparation of housing elements. HCD is also cognizant of its own duty to affirmatively further fair housing (AFFH) in adopting this guidance. Nevertheless, where the document says "shall" or "must," there is no intent to create a mandatory duty that does not independently exist in statute, and the use of these terms is merely a repetition of that mandatory duty. This document offers guidance and should not be construed as legal advice.

HCD has also developed a statewide AFFH Data Viewer that assembles various data sources and provides options for addressing each of the components within the full scope of the assessment of fair housing. The AFFH Data Viewer may be utilized to address the data components of new requirements to affirmatively furthering fair housing but must be used in combination with other data such as local or regionally available data. The AFFH Data Viewer consists of map data layers organized by: 1) Fair Housing Enforcement and Outreach Capacity, 2) Segregation and Integration, 3) Disparities in Access to Opportunity, 4) Disproportionate Housing Needs, including Displacement Risks, 5) Racially and Ethnically Concentrated Areas of Poverty and Affluence and 6) Supplemental Data. The AFFH Data Viewer is intended to be useful to a broad audience, such as local and regional governments, and organizations involved in the housing element process. For more information, visit the HCD's website at www.hcd.ca.gov/community-development/affh/.





HCD Mission, Vision, and Core Values

Mission

Promote safe, affordable homes and vibrant, inclusive, sustainable communities for all Californians.

Vision

Every California resident can live, work, and play in healthy communities of opportunity.

Core Values

INNOVATION: Empowered to apply creative solutions

PROFESSIONALISM: Demonstrate a willing attitude, open-mindedness, competence, and respect at all levels

ACCOUNTABILITY: Responsible, thoughtful ownership and acknowledgement of actions and performance

MISSION-DRIVEN: Determined and focused on achieving HCD's purpose

INTEGRITY: Direct, honest, transparent, and ethical in every action

DIVERSITY: Support, strengthen, and foster diversity and inclusive teams, programs, and partnerships



California Department of Housing and Community Development

Director Gustavo Velasquez

Message Re: **AB 686 Affirmatively Furthering Fair Housing**

April is fair housing month, and April 2021 marks a momentous time in the recent history of fair housing in America. Racial and economic inequity have been catapulted to the forefront of public discourse through the lenses of a deadly pandemic and ongoing structural racism, clearly capturing which of our neighbors are affected most, and why. For the well-being of our state, it is vital that we maintain a sharp focus on addressing the challenges we face in achieving racial equity and opportunity for all Californians.

President Joe Biden is following through with his early commitment to make racial equity and fair housing advancement a cornerstone of his administration's policy and has committed to reinstate the 2015 Affirmatively Furthering Fair Housing rule and the 2013 Disparate Impact rule. California also recognizes and fully commits to addressing the role that public policy – at all levels of government – played in creating the patterns of segregation and racially concentrated areas of poverty that we see in our state today.

In 2018, California passed AB 686 as the statewide framework to affirmatively further fair housing; to promote inclusive communities, further housing choice, and address racial and economic disparities through government programs, policies, and operations. AB 686 is one of the most important tools that our local jurisdictions and partners can use to address systemic racism in housing and achieve positive impact for all Californians through public policies. AB 686 applies to all public agencies in all activities related to housing and community development. The duty to affirmatively further fair housing must be taken with the utmost diligence and cannot be ignored by any of us if it is to be successful.

Together, we must ameliorate past actions that led to inequity. As decision-makers we must create land-use and funding policies to increase affordable housing in high-resource neighborhoods that have often been exclusionary and bring additional resources to traditionally under-resourced neighborhoods.

Affirmatively furthering fair housing in California is about achieving better outcomes for all Californians regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, disability, and all other protected characteristics. These principles and requirements are necessary in addressing the racial wealth and homeownership gap, income disparities, and unequal access to opportunities. When everyone has better housing, health, and economic outcomes, we all do better as a whole.

Please join HCD and the many devoted partners in promoting stronger and more inclusive, sustainable communities. We know that our shared struggle for racial equity is centuries in the making and that there is more work to be done. We are honored to be part of a legacy of stepping up and making things better, for all of us.

Purpose

This guidance memo is a more comprehensive update to the AB 686 summary of requirements in housing element law that the Department of Housing and Community Development (HCD) released April 23, 2020, which can be found at hcd.ca.gov. This guidance is meant to assist public agencies and local governments meet AB 686 requirements. The guidance will be updated periodically in collaboration with practitioners and stakeholders to provide additional samples and best practices.

This guidance is adopted pursuant to Department of Housing and Community Development's (HCD's) general authority to provide technical assistance on the preparation of housing elements. Local jurisdictions' use of this guidance will support their legal obligation to comply with the duty to affirmatively further fair housing. HCD is also cognizant of its own duty to affirmatively further fair housing in this guidance.

Acknowledgements

The Department appreciates the contributions of the many individuals and organizations and sincerely thanks the guidance, expertise and partnership of:

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- » University of California, Berkeley – Center for Community Innovation, Othering and Belonging Institute and Terner Center
- » Furthering Fair Housing MIT Research Consortium
- » University of Minnesota Center for Urban and Regional Affairs
- » National Housing Law Project
- » Western Center on Law and Poverty
- » PolicyLink
- » Public Advocates
- » Public Interest Law Project
- » California Rural Legal Assistance
- » Disability Rights
- » Leadership Counsel for Justice and Accountability
- » Poverty and Race Research Action Council
- » Housing Rights Center
- » The Law Foundation of Silicon Valley
- » Public Law Center
- » Public Interest Advocacy
- » California Housing Partnership Corporation

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Background and History of Affirmatively Furthering Fair Housing

Where we call home has far-reaching impacts on our lives and futures. Home can provide us with the building blocks to success: a sense of belonging, safety, and access to economic and social opportunities. Housing is a key determinant in whether or not people have the resources to live healthy lives and achieve their full potential. Land use policies and planning often translate into the ability of families to access neighborhoods of opportunity, with high-performing schools, greater availability of jobs that afford entry to the middle class, and convenient access to transit and services. The limits on housing choice and access experienced by people within protected classes, such as race, sexual orientation, or disability, have far-reaching impacts on access to job opportunity, quality education, and mental and physical health.

Residential segregation and exclusion, whether by race, ethnicity, disability, or income, is a result of numerous housing policies, practices, and procedures—both public and private—that have had enduring and pervasive negative impacts. Overt and covert housing discrimination through land use policy, shifting housing markets, and patterns of investment and disinvestment, have restricted meaningful fair housing choice and equitable access to opportunity, particularly for communities of color. Historic patterns of segregation persist in California despite the long-standing federal mandate, established by the Fair Housing Act of 1968 (FHA), that federal agencies and federal grantees affirmatively further the purposes of the FHA.

In the decades preceding and since the passage of the FHA, government and non-governmental policies and practices have disproportionately and unfairly impacted people and communities. Rampant exclusionary tactics and disparate treatment such as redlining, racially restrictive covenants, and biased mortgage lending practices were a few of the methods in the housing system that federal, state, and local lawmakers developed or explicitly supported to encourage spatial inequality based on race. State-sponsored, racially explicit practices fostered economic inequality and created a systematic wealth gap, as some groups were excluded from accessing homeownership and thereby denied the ability to create intergenerational wealth through investments in real estate.

In 1968, the FHA was enacted to remedy significant and long-standing inequities borne by protected classes, particularly Black and Hispanic people. As amended in subsequent years, the FHA mandates broad protections, prohibiting housing discrimination based upon race, color, religion, sex, disability, familial status, or national origin. Importantly, it advances the need to go beyond prohibiting housing discrimination and create opportunities for real housing choice through affirmatively furthering fair housing.¹

¹ The Fair Housing Act of 1968 originally only protected against discrimination based on race, color, religion, and national origin. The FHA was later amended in 1974 to include sex and then again in 1988 to include discrimination based on disability and familial status.

Although federal mandates prohibit overt forms of discrimination in housing, forces driving residential segregation have persisted, sometimes taking on new forms to achieve the same discriminatory ends. Racially explicit practices were subtly replaced by race-neutral methods to exclude people of color from predominantly white neighborhoods. Over time, single-family zoning emerged and replaced race-based zoning as a tool for segregating communities by restricting more affordable housing options, such as apartments or condominiums. Exclusionary zoning policies have made it difficult for lower-income residents to access certain communities and in turn has had a discriminatory effect on protected characteristics such as race, disability, and familial status. Furthermore, federal, state, and local subsidized programs failed to construct affordable housing in high-resource neighborhoods, which are disproportionately white, thereby reinforcing the spatial segregation of low-income communities of color.²

Past and present discriminatory policies and practices, including long-term disinvestment, have resulted in neighborhoods with concentrated poverty and poor housing stock, limited access to opportunity, unsafe environmental conditions, underfunded schools, dilapidated infrastructure, and other disproportionately experienced problems. In addition, governmental policies have subsidized the development of segregated, high-resourced suburbs in metropolitan areas by constructing new highway systems—often through lower income communities of color—to ensure access to job opportunities in urban centers. This physical and policy infrastructure supports patterns of discrimination and high levels of segregation that continue to persist in California and across the country. All of these conditions persist despite the over 50-year-old obligation to prohibit discrimination and affirmatively further fair housing.

² As of 2017, the State of California had 391 racially and ethnically concentrated areas of poverty (R/ECAP) areas, which represents a notable 40 percent increase from the 278 R/ECAP areas documented in 2010. Between 2000, when the state had 182 R/ECAP areas, and 2017, California has seen a 115 percent increase in R/ECAP areas (Final 2020 Analysis of Impediments (AI), p. 165).

Housing policy, program guidelines, and regulations were essential in creating current inequities, and they are equally important in both preventing further segregation and concentration of poverty, as well as increasing access to opportunity. In order to ameliorate past actions that led to inequity, decision-makers must create land-use and funding policies to increase affordable housing in high resource neighborhoods that have often been exclusionary (explicitly or in effect of costs and zoning policies) and bring additional resources to traditionally under-resourced neighborhoods.

To address these conditions, Assembly Bill 686 (AB 686), signed in 2018, establishes an independent state mandate that expands the duty of all California’s public agencies to affirmatively further fair housing (AFFH). AB 686 added to existing protections in California. The Fair Employment and Housing Act (FEHA) provides broad protections to California residents, prohibiting housing discrimination through public or private land-use practices, decisions, and authorizations based upon “race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.”³ Also, Government Code section 65008 prohibits discrimination against affordable housing based on financing or occupancy by low- and moderate-income households. With the passage of AB 686, state and local public agencies are required to affirmatively further fair housing through deliberate action to explicitly address, combat, and relieve disparities resulting from past and current patterns of segregation to foster more inclusive communities. Importantly, AB 686 also creates new housing element requirements applying to all housing elements due to be revised on or after January 1, 2021. These requirements include an assessment of fair housing practices, an analysis of the relationship between available sites and areas of high or low resources, and concrete actions in the form of programs to affirmatively further fair housing. The purpose of this assessment and analysis is to replace segregated living patterns with truly integrated and balanced living patterns and to transform racially and ethnically concentrated areas of poverty (R/ECAP) into areas of opportunity. The purpose of this memo is to assist in that assessment and analysis.

3 Gov. Code, §§ 12900-12996.

Chart 1: Summary of AB 686 Requirements



Overview of AB 686 Changes to Law

AB 686 (Chapter 958, Statutes of 2018) makes changes to laws in two broad areas:

1. Duty of All Public Agencies to Affirmatively Further Fair Housing
2. Affirmatively Furthering Fair Housing Changes to Housing Element Law

Duty of All Public Agencies to Affirmatively Further Fair Housing

Existing federal law requires departments and agencies to administer programs relating to housing in a way that affirmatively furthers fair housing.⁴ These obligations extend to state and local governments that receive funds or contract with the federal government. For example, a local government receiving Community Development Block Grant (CDBG) dollars directly from the federal government is obligated to affirmatively further fair housing; under federal law this included completing an assessment of fair housing to inform the consolidated plan. However, federal planning requirements are subject to shifting promulgation of laws through various mechanisms such as regulations, rules, and program guidelines.⁵

As of January 1, 2019, AB 686 extends the obligation to affirmatively further fair housing to all public agencies in the State of California. This affirmative duty is not limited to those agencies with relationships with the federal government and is to be broadly applied throughout agencies at the state and local level.⁶ Now, all public agencies must both (1) administer programs and activities relating to housing and community development in a manner that affirmatively furthers fair housing, and (2) take no action inconsistent with this obligation. Affirmatively furthering fair housing means “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities.”⁷ These new statutory obligations charge all public agencies with broadly examining their existing and future policies, plans, programs, rules, practices, and related activities and make proactive changes to promote more inclusive communities.⁸

Affirmatively Furthering Fair Housing Changes to Housing Element Law

Even prior to the passage of AB 686, Housing Element Law inherently promoted more inclusive communities, such as by addressing the disproportionate housing needs of lower income households, and households with special needs (e.g., persons with disabilities, elderly, large households, single

4 See [Executive Order 12892](#) – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing. January 17, 1994.

5 Effective September 8, 2020, HUD replaced the final AFFH rule with the [Preserving Community and Neighborhood Choice rule](#) [\[federalregister.gov\]](#). Under the new rule entities are not required to complete a fair housing assessment (AFH or AI). They must AFFH, which has been redefined to read as, “means to take any action rationally related to promoting any attribute or attributes of fair housing as defined in the preceding subsection” (24 C.F.R. §5.150 (2020)).

6 Gov. Code, § 8899.50, subd. (a)(2).

7 Id., subd. (a)(1).

8 Id., subds. (a)(1), (a)(2), (b), (c), and (d).

parent households, farmworkers, and people experiencing homelessness).⁹ For example, Housing Element Law requires local governments to make diligent efforts to include all segments of the community in public participation. Housing Element Law requires specific analysis of persons and households with special needs and commensurate development of policies and programs.¹⁰ Housing Element Law, among many other things, also requires zoning for a variety of housing choices, the identification of sites to accommodate the housing needs of all incomes, and specific programs to promote fair housing.¹¹

AB 686 makes changes to Housing Element Law to ensure the long-standing duty to affirmatively further fair housing is part of the housing element of the general plan,¹² which is the fundamental guiding document for community development for all local governments.¹³

Major changes include:

Outreach and Capacity

The preparation, adoption, and implementation of a housing element requires a diligent effort to include all economic segments of the community.¹⁴ AB 686 reinforces and builds on this requirement. Under AB 686 and changes to Housing Element Law, the housing element must also include a summary of fair housing outreach and capacity.¹⁵ The element must describe meaningful, frequent, and ongoing community participation, consultation, and coordination that is integrated with the broader stakeholder outreach and community participation process for the overall housing element.¹⁶

Outreach plans should consider geographic barriers to participation, especially in geographically extensive jurisdictions and rural areas, and should plan to hold in-person meetings in various locations to ensure residents from across the jurisdiction have the opportunity to participate. Jurisdictions should seek sites that are transit-accessible and/or consider options to assist residents without vehicle access with transportation.¹⁷ Meetings should be held outside of work hours, including on evenings and weekends, to facilitate participation.¹⁸ Drafts of the housing element should be made available to the public for review and comment with ample time before submission to the Department of Housing and Community Development (HCD) for review. In-person and electronic options for participation should also be made available. Also, housing element outreach should be aligned with the SB 1000 (2016)

⁹ See, e.g., Gov. Code, § 65583, subds. (a)(1), (a)(7); HCD, Building Blocks, at <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>.

¹⁰ Gov. Code, § 65583, subds. (a)(7), (c).

¹¹ See, e.g., Gov. Code, § 65583, subd. (a)(4), (c)(1).

¹² See, e.g., Gov. Code, § 65583, subd. (c)(5).

¹³ *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 772–773 (“general plan ... remains, a ‘constitution’ for future development”); *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540 (general plan is located at the top of “the hierarchy of local government law regulating land use”).

¹⁴ Gov. Code, § 65583, subd. (c)(9).

¹⁵ See, e.g., Gov. Code, § 65583, subd. (c)(10)(A)(i).

¹⁶ Gov. Code, §§ 65583, subds. (c)(9), (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42292-42302, 42353-42360, esp. 42354-42356 (July 16, 2015).

¹⁷ Gov. Code, § 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360, esp. 42354-42356 (July 16, 2015); HCD, Building Blocks, Public Participation at <https://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>.

¹⁸ Gov. Code, § 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42292-42302, 42353-42360, esp. 42354-42356 (July 16, 2015); HCD, Building Blocks, Public Participation at <https://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>.

(Environmental Justice Element)¹⁹ outreach to the extent possible, given the overlapping topic areas.

Examples of key stakeholders:

- Community-based and other organizations (CBOs) that represent protected class members
- Public housing authorities
- Housing and community development providers
- Lower income community members and households that include persons in protected classes
- Fair housing agencies
- Independent living centers
- Regional centers
- Homeless services agencies
- Churches and community service organizations that serve ethnic/linguistic minorities

Important components of meaningful engagement:

- Translation of materials and making translation available at meetings
- Working with CBOs and other community stakeholders to develop effective outreach and engagement plans
- Making accessible information materials that avoid use of overly technical language
- Offering mini-grants to CBOs and other stakeholders to assist with engagement of low-income households and protected classes

Assessment of Fair Housing: Summary of Issues and Analysis of Patterns, Trends, and Disproportionate Housing Needs

The housing element now incorporates planning and analysis which is collectively referred to as an assessment of fair housing (AFH),²⁰ which generally includes:

- A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and outreach capacity; and
- An analysis and summary of fair housing issues utilizing available federal, state, and local data and knowledge. The analysis must include a variety of factors, such as trends and patterns within the locality and in comparison to the broader region, and the analysis must address:
 - » Integration and segregation;
 - » Racially or ethnically concentrated areas of poverty;
 - » Disparities in access to opportunity, including for persons with disabilities; and
 - » Disproportionate housing needs (this may include things like overpayment, overcrowding, housing conditions disproportionately affecting protected classes), including displacement risk.

¹⁹ Gov. Code, § 65302, subd. (h).

²⁰ Gov. Code, §§ 65583, subds. (c)(9), (c)(10), 8899.50, subds. (a), (b), (c); AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42292-42302, 42343-42344, 42353-42360 (July 16, 2015).

Site Inventory

Prior to AB 686, Housing Element Law required jurisdictions to inventory and identify adequate sites appropriately zoned and available to accommodate its Regional Housing Need Allocation (RHNA).²¹ The housing element must demonstrate that there are adequate sites zoned for the development of housing for households at each income level sufficient to accommodate the number of new housing units needed at each income level as identified in the RHNA.²²

AB 686 now requires that a jurisdiction identify sites throughout the community in a manner that is consistent with its duty to affirmatively further fair housing (AFFH) and the findings of its assessment of fair housing, pursuant to Government Code section 65583, subdivision (c)(10)(A).²³ In the context of AFFH, the site identification requirement involves not only an analysis of site capacity to accommodate the RHNA, but also whether the identified sites serve the purpose of replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity.²⁴

Identification and Prioritization of Contributing Factors

Existing Housing Element Law requires various analyses, such as a housing needs assessment, housing needs of persons with special needs, housing conditions, potential governmental and non-governmental constraints, site inventory to accommodate the projected housing need (i.e., regional housing need allocation), and identification of units at risk of converting to market-rate uses.²⁵ Each of these analyses inform the goals, policies and schedule of actions to address the existing and projected housing needs over the planning period.²⁶ AB 686 advances this same framework and requires linking analysis with policy and action formulation. AB 686 requires an identification and prioritization of contributing factors to fair housing issues based on all the previously required analysis (outreach, fair housing assessment, site inventory).²⁷ This identification and prioritization must give highest priority to factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights.²⁸

Goals and Actions

Existing Housing Element Law requires programs with a schedule of actions with timelines and specific commitment to have a “beneficial impact” within the planning period to achieve the goals and objectives of the housing element. Programs must address various statutorily mandated areas, such as identification of adequate sites, zoning for a variety of types, assisting development for lower and moderate income households, addressing governmental and non-governmental constraints,

21 See, e.g., Gov. Code, § 65583, subds. (a)(3); HCD, Building Blocks, at <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>.

22 Ibid.

23 Gov. Code, § 65583.2, subd. (a).

24 Gov. Code, § 8890.50, subd. (b).

25 See, e.g., Gov. Code, § 65583, subd. (a); HCD, Building Blocks, at <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>.

26 See, e.g., Gov. Code, § 65583, subds. (b), (c); HCD, Building Blocks, at <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>.

27 See, e.g., Gov. Code, § 65583, subd. (c)(10)(A)(iii); Gov. Code, § 8899.50, subds. (a)(1), (b).

28 See, e.g., Gov. Code, § 65583, subd. (c)(10)(A)(iv).

conserving the existing housing stock, preserving at-risk units, and promoting housing opportunities for all people.²⁹ AB 686 builds upon these program requirements, including modifying the existing program requirement to promote fair housing opportunities to now include actions that promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons. As part of this requirement, the housing element now requires an identification of priorities and goals based on identified contributing factors that limit or deny fair housing choice or access to opportunity, or that negatively impact fair housing or civil rights compliance.³⁰ Similar to the existing Housing Element Law, AB 686 also requires identification of metrics or quantified objectives and milestones for determining what fair housing results will be achieved.³¹ Strategies and actions to implement priorities and goals may include, but are not limited to:

- Enhancing mobility strategies and promoting inclusion for protected classes
- Encouraging development of new affordable housing in high-resource areas
- Implementing place-based strategies to encourage community revitalization, including preservation of existing affordable housing
- Protecting existing residents from displacement

These actions, taken together, must significantly address disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, fostering and maintaining compliance with civil rights; and must affirmatively further fair housing.

Consistency with the Affirmatively Furthering Fair Housing Rule

The passage of AB 686 in 2018 enshrined the duty to affirmatively further fair housing within California state law, regardless of future federal actions. California's law essentially preserves the U.S. Department of Housing and Urban Development's (HUD) 2015 Affirmatively Furthering Fair Housing Final Rule as published in the Federal Register in 2015.³² This was done to ensure the 2015 AFFH Final Rule remained the law in California, despite the potential federal rollback of the rule and tool. (The 2015 rule was suspended in 2018 and ultimately terminated in 2020.) State law is clear, California's AFFH duty remains regardless of subsequent amendment, suspension, or revocation of the 2015 AFFH Final Rule.

²⁹ Gov. Code, § 65583, subd. (c).

³⁰ Gov. Code, §§ 65583, subds. (c)(10), 8899.50, subds. (a), (b), (c); AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360, esp. 42358 (July 16, 2015).

³¹ Gov. Code, § 65583, subds. (c)(10)(A)(iv).

³² Per Government Code section 8899.50, subdivision (c), the section shall be interpreted consistent with the AFFH Final Rule and accompanying commentary as published by [HUD in volume 80 of the Federal Register, Number 136, pages 42272 to 42371, inclusive, dated July 16, 2015](#). Note that, at times, this document cites to the 2016 the Code of Federal Regulations; this is because the rule adopted in July 2015 was too late to be codified in the 2015 Code and was codified in the regulations for the first time in the 2016.

Part 1:

Duty of All Public Agencies to Affirmatively Further Fair Housing

AB 686 strengthens existing California fair housing and civil rights laws. California’s Fair Employment and Housing Act (FEHA) provides broad protections to California residents, prohibiting housing discrimination based upon “race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information.”³³ California’s Government Code section 65008 prohibits discrimination in housing based on occupation, age, or protected characteristic; method of financing; or the intended occupancy by lower or moderate income people. While state law prohibited discrimination through public or private land use practices, decisions, and authorizations based on any of these characteristics, it had not included a state requirement to affirmatively further fair housing. As of January 1, 2019, AB 686 creates a state mandate requiring public agencies and jurisdictions to go beyond combating discrimination to affirmatively further fair housing.

“Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency’s activities and programs relating to housing and community development. - (Gov. Code, § 8899.50, subd. (a)(1).)

Beyond the housing element requirements, AB 686 requires all public agencies (including, but not limited to, all cities and counties, and housing authorities) to ensure that their housing and community development programs and activities—taken together—affirmatively further fair housing, and that they take no action materially inconsistent with this obligation.³⁴

Affirmatively furthering fair housing includes taking proactive and meaningful actions that have a

³³ Gov. Code, §§ 12900-12996.

³⁴ Gov. Code, § 8890.50, subds. (a)(1), (b), (d).

significant impact in integrating living patterns and socio-economic concentrations—well beyond combating discrimination or mitigating disparities. Meaningful actions must be taken in concert with each other and address all of the following:³⁵

- 1. Significant Disparities in Housing Needs and in Access to Opportunity:** Examples include incentivizing new residential development to include below-market rate housing; conserving affordability of existing housing, such as limitations on rents or conversion of such housing to higher rent or higher priced housing; encouraging systematic code enforcement activities that maintain housing stock while ensuring such enforcement does not cause displacement; and promoting housing mobility strategies and displacement mitigation strategies to ensure equitable access to opportunity. Housing mobility strategies may include providing affordable and accessible transportation options to enhance access to education and economic development opportunities. Displacement mitigation strategies may include tenant protections, conservation of existing stock, preservation of units at-risk of conversion to market-rate uses, acquisition and rehabilitation of existing stock, including naturally occurring affordable housing, and removing barriers to building affordable housing.
- 2. Replacing Segregated Living Patterns with Truly Integrated and Balanced Living Patterns:** Examples include community benefits agreements that balance development proposals with tangible, local benefits to residents in the area (e.g., creating affordable housing, funding renter assistance programs for nearby residents, or other investments that meet community-identified needs, such as infrastructure and community amenities). Other examples include inclusionary zoning requirements and land-value recapture mechanisms, zoning for a variety of housing types, particularly those that may be lacking from the community or neighborhood, including: multifamily housing, low-barrier navigation centers, group homes, supportive housing, and accessible units. Promote education on how restrictions on multifamily housing, such as limited multifamily zoning and height and density limitations, impact inclusive communities. Seek local input on housing proposals while recognizing that “local vetoes” of affordable and mixed-income housing in racially segregated concentrated areas of affluence create fair housing issues.³⁶
- 3. Transforming Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) into Areas of Opportunity:** Examples include community-led, place-based strategies to revitalize communities, such as economic development strategies and prioritizing investment in R/ECAPs that meet the needs of existing low-income residents, such as safe routes to school, transit, parks, schools, bike and pedestrian infrastructure, urban forestry, other neighborhood improvements; preserving naturally occurring affordable housing, such as mobilehome parks; and preservation as affordable housing of market-rate units where low-income households live; and promoting mixed-income development coupled with strong anti-displacement protections. Conduct outreach and advertise city program to persons with limited English proficiency. Other examples include community engagement in planning processes, including targeted outreach, technical assistance to help apply for grants, economic development strategies, workforce development, youth engagement and educational programs, healthy food access, affordable energy, and transportation access.

35 Gov. Code, §§ 8890.50, subds. (a)(1), (b), (d), 65583, subds. (c)(5), (c)(10); AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360 (July 16, 2015); 24 C.F.R. §§ 5.152, 5.154 (2016).

36 The Internal Revenue Service Revenue Ruling 2016-29 states that the Internal Revenue Code neither forces nor encourages local approval in decisions allocating Low Income Housing Credits, based on the concern that this practice perpetuates racial segregation. State housing agencies are not required or encouraged to honor local vetoes.

4. Fostering and Maintaining Compliance with Civil Rights and Fair Housing Laws: Agencies must diligently comply with civil rights and fair housing laws, including the California Fair Employment and Housing Act (FEHA) (Part 2.8 (commencing with section 12900) of Division 3 of Title 2), Government Code sections 8899.50, 65008, 65583, subdivisions (c)5 and (c)10, and 11135, Civil Code section 51 (the Unruh Civil Rights Act), and FEHA regulations in California Code of Regulations, title 2, sections 12005-12271.

In addition to taking meaningful action, public agencies must not take any action materially inconsistent with the obligation to affirmatively further fair housing. Examples of materially inconsistent actions include those that:

- Hinder any of the affirmative actions public agencies take to further fair housing (e.g., lack of enforcement of rules intended to promote fair housing choices, diminishing fair housing principles from program guidelines, and inequitable implementation or enforcement of programs and activities)
- Perpetuate discrimination, segregation, R/ECAPs, and barriers that restrict access to opportunity based on protected characteristics (e.g., lack of affirmative marketing in funded housing developments, excluding accessibility modifications from eligible uses in funding, absence of community revitalization strategies in programs and policies)
- Are inconsistent with the housing element or the No-Net-Loss Law³⁷ (e.g., downzoning without upzoning, zoning barriers to housing choices, removing tenant protections)
- Have a disparate impact on protected classes (e.g., zoning or siting toxic or polluting land uses or projects near a disadvantaged community, lack of investment in concentrated areas of poverty, lack of multifamily housing or affordable housing options in high-resource areas, investment without ant-displacement strategies in areas of disproportionate housing need)

Public agencies must ensure housing and community development programs and activities are designed and can be reasonably expected to achieve a significant and tangible positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

All Public Agencies

Existing federal law requires departments and agencies to administer programs relating to housing in a way that affirmatively furthers fair housing. These obligations apply to state and local governments that receive funds or contract with the federal government and are often limited to housing programs. However, California Government Code section 8899.50 extends well beyond those agencies with federal funds or contracts and includes virtually all public agencies in California.

Public agencies include all subdivisions of the state, such as officers, offices, agencies, commissions, bureaus, boards, departments and divisions. Examples include the Department of Housing and Community Development (HCD), California Housing Finance Agency, Department of Developmental Services, Department of Health Services, Department of Social Services, Tax Credit Allocation Com-

³⁷ Gov. Code, § 65863.

mittee, Governor’s Office of Planning and Research, including the Strategic Growth Council, California Department of Transportation, California Transportation Commission, California Department of Education, Department of Conservation, California Coastal Commission, Natural Resources Agency, California Environmental Protection Agency, State Water Resources Control Board, Department of Water Resources, and many more. Public agencies also include all public housing authorities, redevelopment successor agencies, cities, counties, cities and counties, and charter cities and counties.³⁸

Programs and Activities

The obligation to AFFH for public agencies applies to all housing and community development programs and activities. Programs and activities should be considered expansively and not in a manner to limit affirmatively furthering fair housing. For example, most state agencies are involved in some combination of planning, financial investment, regulatory function, or technical assistance, outreach and education. All of these broad categories should be considered programs and activities. This expansive application of programs and activities also applies to local governments. For example, capital improvement plans, code enforcement and other regulatory functions, housing assistance programs, and planning and zoning documents should all affirmatively further fair housing.

38 Gov. Code, § 8899.50, subd. (a)(2).

Programs and Activities Related to Housing and Community Development

All public agencies are required to administer programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Housing and community development should be broadly construed and should not be interpreted in a limited manner. For example, an agency’s name does not need to explicitly bear the words “housing” or “community” or “development” to have activities or programs related to housing and community development. Any program or activities that impact housing and community development should address the obligation to affirmatively further fair housing. Community development should be considered broadly as any processes or issues related to community members or social and physical surroundings. Housing and community development are not limited to housing programs and activities. For example, public agencies with programs and activities in any way related to land use or access to opportunity based on where a person lives pertains to community development, which in turn involves housing. In this way, programs and activities that involve transportation, land conservation, hazard planning, infrastructure, economic issues, public facilities, social services, coastal resources, other environmental resources, and more should be affirmatively furthering fair housing. The same applies to local agencies. This obligation is not limited to investment, planning, and outreach related to housing, but also broader community development, such as infrastructure, public schools, parks and recreation, and other capital improvements.

Tips for Implementation

To affirmatively further fair housing through programs and activities, public agencies should consider a variety of factors and consult with other agencies. Agencies should also consider a process to incorporate affirmatively furthering fair housing in programs and activities.

For example:

- 1. Gather and Analyze Data:** To better understand affirmatively furthering fair housing, agencies should explore available data related to the topic area to identify spatial patterns and trends and evaluate the impacts of programs and activities. For data options, see “Part 3 Resources” or visit HCD’s website at www.hcd.ca.gov/community-development/affh/.
- 2. Engage the Community:** Proactively reach out to individuals and organizations that represent lower income households, people in protected classes, and households with special needs to develop open and mutual communication. Solicit input and communicate on a regular and ongoing basis, not just during formal public comment periods.
- 3. Assess Programs and Activities:** Inventory programs and activities and explore opportunities to affirmatively further fair housing.
- 4. Develop a Plan with Clear Timelines:** Identify goals and actions and establish a schedule. Proactively seek the public’s input on the plan and make it available prior to finalizing.
- 5. Implement the Plan and Monitor Progress:** Assign a lead and prioritize the plan to carry out the actions and achieve the goals. Regularly monitor (e.g., biannually) progress and make adjustments.

Engagement: Early, Often, Ongoing and More

Outreach early in the development and throughout the completion of programs and activities is foundational to affirmatively furthering fair housing. Public agencies should seek a variety of methods to gather input from key stakeholders, such as community-based and other organizations that include and represent protected class members, lower income households and households with special needs (e.g., elderly, persons with disabilities, large households, farmworkers, female-headed households and persons experiencing homelessness), public housing authorities, community members that are lower income, and members of protected classes.

- **Early:** Public agencies should involve stakeholders well before releasing drafts of programs and in the early stages of development of other activities. This early engagement often yields better program results and at a nimbler stage in the development of a program. Early engagement is also key to building stronger working relationships and products that are more inclusive by design.
- **Often:** Many times, the development of programs and activities at a state and local level can take months and even years. An effective and inclusive outreach process will have multiple contact points throughout the development.

- **Ongoing:** Outreach should not stop after a program or activity is developed. An inclusive process will continue outreach through marketing, technical assistance, implementation, and evaluation of a program or activity.
- **More:** Outreach should employ a variety of strategies and methods to promote access (e.g., effective communication and reasonable accommodations for persons with disabilities, and meaningful access for persons with limited English proficiency) and consider feedback loops to keep stakeholders and individuals informed whenever possible.

Inventory and Amend Existing Programs and Activities

Public agencies should review all programs and activities for opportunities to affirmatively further fair housing. For state programs, example areas include planning documents, eligibility and scoring criteria and other provisions for funding programs, geographic distribution criteria, outreach, marketing and technical assistance, regulatory enforcement, and lack of exception processes. For local programs, example areas include assessing land use and zoning policies against patterns of racial segregation, marketing and outreach, prioritization of areas of concentrated poverty or lack of access to opportunity, funding, capital improvements such as infrastructure investment, anti-displacement policies, workforce development training, and economic development strategies.

Public agencies should also incorporate racial and equity inclusion into regulatory and technical assistance functions by prioritizing assistance to combat racial segregation, foster inclusion, and benefit areas of concentrated poverty, eliminate disparities in access to opportunity, and address disproportionate housing need, including displacement and housing and transportation cost burden. For example, a local government could adopt zoning and incentives for more housing choices and affordability in higher resource areas; target resources for rehabilitation and maintenance of existing housing and anti-displacement policies in lower resource areas; develop pathways to homeownership for people in lower resource areas; seek to creatively engage communities; and create decision-making opportunities for communities in low resource areas regarding outcomes for health, economic development, planning, housing, and transportation.

Make a Schedule and Regularly Evaluate and Modify Programs

All public agencies should immediately evaluate all programs and activities for opportunities to affirmatively further fair housing. A comprehensive evaluation and modification of programs and activities may be time-consuming for larger agencies, especially when regulation and legal changes are required. To address these challenges, make a schedule and allocate adequate staff time and resources to make affirmatively furthering fair housing a deliberate and consistent effort. Also, whenever updates occur, ensure that equity and inclusion are considered and addressed. This will require a thorough analysis of potential intended and unintended impacts of policy decisions on protected class members, lower income households, households with special needs, areas of concentrated poverty, lower resource areas, and areas of disproportionate housing need. Examples include updates to regulations, guidelines, notices of funding availability, scoring rubrics, and planning document updates such as general plans, community plans, zoning codes and capital improvement plans. Engaging residents and representative organizations into policy decisions is the best way to understand the full breadth of impacts of policy change.

Cultivate Values of Inclusion

Fostering inclusion in an agency's values can have a huge impact in program and activity design. Agencies could consider implementing a variety of diversity, equity, and inclusion initiatives, such as racial equity trainings, incorporating racial equity into hiring practices and promotional opportunities, and committing to creating an organizational culture of inclusion and open communication. Making sure that staff and leadership are better trained and consistently practicing inclusion will have an ongoing impact throughout the processes.

A Public Agency AFFH Success: In partnership with [Race Forward](#), the Public Health Institute, and the [California Endowment](#), the California Strategic Growth Council (SGC) is leading a variety of activities to affirmatively further fair housing in the agency. Specifically, SGC supports the Capitol Collaborative on Race & Equity (CCORE)—a racial equity capacity-building program for State of California employees. CCORE builds on the success of a 2018-2019 Government Alliance for Race and Equity Capitol Cohort pilot initiative, and offers two cohorts for participants to receive training to learn about, plan for, and implement activities that embed racial equity approaches into institutional culture, policies, and practices. In 2020, SGC adopted a [Racial Equity Action Plan](#), which outlines concrete actions that SGC is taking to achieve racial equity in the organization's operations, programs and policies in order to achieve its vision that all people in California live in healthy, thriving and resilient communities regardless of race.

Part 2:

Affirmatively Furthering Fair Housing Changes to Housing Element Law

As discussed in Part 1, AB 686 requires virtually all state and local agencies (including, but not limited to, all cities, counties, cities and counties, and housing authorities) to ensure that their laws, programs and activities affirmatively further fair housing, and that they take no action inconsistent with this obligation.³⁹ In addition, AB 686 amends Housing Element Law⁴⁰ to better affirmatively further fair housing by adding several new requirements related to:

- Outreach
- Assessment of Fair Housing
- Site Inventory
- Identification and Prioritization of Contributing Factors
- Goals and Actions

Outreach

The preparation, adoption, and implementation of a housing element includes a diligent effort to include public participation from all economic segments of the community.⁴¹ A diligent effort means going beyond simply giving the public an opportunity to provide input and should be proactively and broadly conducted through a variety of methods to assure access and participation.⁴² AB 686 also requires jurisdictions to include a summary of their fair housing outreach capacity.⁴³ To address these requirements, the housing element must describe meaningful, frequent, and ongoing public participation with key stakeholders.⁴⁴ Among others, examples of key stakeholders must include public housing authorities, housing and community development providers, advocacy groups (local, regional, and state level), community members who are lower income, persons and households with special needs, members of protected classes, representative advocacy organizations and other similarly interested parties, fair housing agencies, independent living centers, regional centers, and

³⁹ Gov. Code, § 8899.50, subd. (a)(2).

⁴⁰ Gov. Code, § 65583, subds. (c)(5), (c)(10).

⁴¹ Gov. Code, §§ 65583, subds. (c)(9).

⁴² Gov. Code, §§ 65583, subds. (c)(9), (c)(10)(A)(i), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360 (esp. 42354-42356), 42363-42364 (July 16, 2015).

⁴³ Gov. Code, §§ 65583, subds. (c)(9), (c)(10)(A)(i).

⁴⁴ Gov. Code, §§ 65583, subds. (c)(9), (10)(A)(i), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360 (July 16, 2015). See details in, for instance, 24 C.F.R. § 5.158 (2016).

homeless service agencies. The element must describe:⁴⁵

- Outreach activities intended to reach a broad audience, such as utilizing a variety of methods, broad and proactive marketing, including targeted areas and needs, promoting language access and accessibility for persons with disabilities (which can include effective communication, reasonable accommodations, and remote participation opportunities), and consulting with relevant organizations;
- List of organizations contacted and consulted in the process and for what purpose;
- Summary of comments and how the comments are considered and incorporated (including comments that were not incorporated), particularly with changes to the housing element; and
- Summary of issues that contributed to lack of participation in the housing element process by all economic segments, particularly people with protected characteristics, if that proves to be the case.

While localities must undertake diligent outreach efforts throughout the entire housing element preparation, some key areas to seek input include:

- **Review of Past Actions:** The housing element requires a review of the previous housing element for progress in implementation, effectiveness of programs in meeting goals, and appropriateness of modifying programs for the current planning period. Localities should make a specific effort to gather input from all segments of the community on the effectiveness of these programs and how to make adjustments moving forward.
- **Assessment of Fair Housing:** The assessment of fair housing requires various analyses such as segregation, integration, disparities in access to opportunity, and disproportionate housing needs. Localities should reach out to fair housing organizations for any available data to complement readily available state or federal data.
- **Potential Constraints on Housing for Persons with Disabilities:** Localities should seek individuals and advocates for persons with disabilities to better identify barriers and promote access to fair housing choices. Examples of agencies to reach include independent living centers, regional centers for developmental services, information from institutions including jails and prisons, state hospitals, etc. Disability outreach should include place-based/neighborhood-based groups and senior groups, like area associations on aging and others, including those that serve distinct ethnic or linguistic communities.
- **Policies and Actions:** Specific outreach to all segments of the community will assist and strengthen policy formulation to result in meaningful actions that have a significant positive impact.

Assessment of Fair Housing

The housing element includes a housing needs assessment, which includes various requirements such as analysis of household characteristics (e.g., overpayment, overcrowding), housing conditions, and persons with special needs.⁴⁶ These analyses, in turn, guide policy and action formulation. As part of the housing needs assessment, the element is now required to include an assessment of fair

⁴⁵ Gov. Code, §§ 65583, subds. (c)(9), (10)(A)(i), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42292-42297, 42353-42360 (July 16, 2015). See details in, for instance, 24 C.F.R. §§ 5.514(d)(6), 5.158 (2016).

⁴⁶ Gov. Code, §§ 65583, subd. (c)(10)(A), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42348-42351, 42353-42360, esp. 42353-42354 (July 16, 2015).

housing, including a summary of fair housing issues. A summary of fair housing issues is an essential step to informing and prioritizing contributing factors and, eventually, goals and actions.

A **fair housing issue** is a condition in a geographic area of analysis that restricts fair housing choice or access to opportunity, and includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty and affluence, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing.

Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, disability, or other protected characteristics. Fair housing choice encompasses: **(1) Actual choice**, which means the existence of realistic housing options; **(2) Protected choice**, which means housing that can be accessed without discrimination; and **(3) Enabled choice**, which means realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice and access to opportunity include access to accessible housing and housing in the most integrated setting appropriate to an individual's needs as required under federal civil rights law, including equitably provided disability-related services that an individual needs to live in such housing.

Examples:

- People with mobility impairments have **actual choice** when realistic housing options (e.g., units with accessible features) exist in their housing market area at an affordable cost. Persons with disabilities who are unable to use stairs or need a zero-step shower may not have actual housing choice without the presence of housing units with these accessibility features.
- People with lower incomes have **actual choice** when units that are affordable and well maintained exist in all parts of a jurisdiction and region.
- In order for families to have **protected choice** they need to access housing options without discrimination. In a 2016 housing discrimination study, researchers found that compared to households without children, households with children were shown slightly fewer units and were commonly told about units that were slightly larger, and as a result, slightly more expensive to rent. This differential treatment is considered discrimination and a type of steering, which occurs on a racial basis as well.⁴⁷
- Households participating in the Housing Voucher Program have **enabled choice** when they are provided with sufficient information regarding their housing options so that any choice is informed. For example, researchers found that, "if given the appropriate information and opportunities, more voucher families would move to better schools when their children reach school age."⁴⁸

47 For additional information see HUD's December 2016 study, "Discrimination Against Families with Children in Rental Housing Markets: Findings of the Pilot Study" available at: <https://www.huduser.gov/portal/sites/default/files/pdf/HDSFamiliesFinalReport.pdf>.

48 NYU Furman Center, "Why Don't Housing Choice Voucher Recipients Live Near Better Schools? Insights from Big Data" published in June 2016 available at: <https://furmancenter.org/research/publication/why-don8217t-housing-voucher-recipients-live-near-better-schools-insights-f>.

Analysis Requirements

An assessment of fair housing must consider the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs.⁴⁹ Such an assessment would at least include all of the following components:⁵⁰

- **Identification and Analysis of Patterns and Trends:** First, the assessment should identify the conditions using either narration, data tables, maps or a combination of all three. See “Part 3: Resources” for sample data tables. The identification of conditions should spatially describe concentrations of all the assessment of fair housing components (e.g., fair housing enforcement and outreach, integration and segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs including displacement risk). Using the data tables and maps, the housing element must analyze differences in geographies. The analysis must address patterns at a regional and local level and trends in patterns over time.⁵¹ Patterns at a regional level must compare conditions at the local level to the rest of the region. This analysis should compare the locality at a county level or even broader regional level such as a Council of Government, where appropriate, for the purposes of promoting more inclusive communities. For localities near county borders, trends and patterns across county boundaries should be addressed. Patterns at a local level must address whether certain areas strongly differ from other areas and should utilize a data level (i.e., census tract or block group) that is most meaningful for this analysis. At minimum, the analysis should compare patterns from the most recent 5-Year American Community Survey and the prior 10-year census and could address trends over longer periods of time. The analysis should also examine differences in housing tenure (ownership vs. rental) among members of protected classes.
- **Local Data and Knowledge:** In addition to using federal or state level data sources, local jurisdictions are also expected to use local data and knowledge to analyze local fair housing issues, including information obtained through community participation or consultation, such as narrative descriptions of people’s lived experiences. Federal and state level data identify fair housing issues that exist within a community, but local data and knowledge can be especially important to developing an understanding of why the problems exist and why they persist. Using point-in-time federal and state level data sets alone to identify areas may misrepresent areas that are experiencing more current and rapid changes or may be primed to do so in the near future. Also, federal and state data sets might not be available or could be less accurate at a smaller geography. For these reasons, an additional screen of local data and knowledge is necessary and should complement available federal and state data sources. There may be rare circumstances in which a jurisdiction has no local data or local knowledge for a particular topic and should include a statement that it has no local data or local knowledge it can use to address that particular assessment component.

49 Gov. Code, §§ 65583, subds. (c)(10)(A), (c)(10)(B), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271 (July 16, 2015). See also 24 C.F.R. §§ 5.150, 5.152, 5.154(a), (d)(2) (2016).

50 Gov. Code, §§ 65583, subds. (c)(10)(A), (c)(10)(B), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42274, 42282-42283, 42322, 42323, 42336, 42339, 42353-42360, esp. 42355-42356 (July 16, 2015). See also 24 C.F.R. §§ 5.150, 5.154(b)(2) (2016).

51 Gov. Code, §§ 65583, subds. (c)(9), (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271; 24 C.F.R. §§ 5.150, 5.154(d)(6), 5.158 (2016).

- **Other Relevant Factors:** A discussion of other relevant factors is an important piece of evaluating patterns and trends, policies and practices, and other factors that lead to fair housing conditions. Other relevant factors should consider information beyond data that identifies and compares concentrations of groups with protected characteristics. Examples of other relevant factors include changes and barriers in zoning and land use rules, information about past redlining/greenlining, patterns of institutionalization, restrictive covenants and other discriminatory practices, presence and history of place-based investment, mobility option patterns, and outreach and community engagement. Demographic trends can include population growth, age, housing tenure by protected characteristics, race, educational attainment, rates of homelessness, construction, and rent and sales prices. Policies and practices should include governmental barriers or lack of action, preservation of housing and development of new affordable housing, and addressing the needs of renters and unhoused or unstably housed people. This discussion should also incorporate the public participation process. Localities could engage the community around these patterns and trends to better identify policies and practices that led, or could lead, to less fair housing choice. This discussion should also include topics and information that complement the data at a regional and local level and sub-geographies within a locality. Other useful information could be the location and type of publicly assisted housing, such as housing financed with federal, state, and local financing. Trends related to housing choice vouchers can show patterns of concentration and integration to inform needed actions. Outcomes and policies related to inclusionary ordinances, general plans or specific plans can also be a good source of past practices to promote integration.
- **Conclusions and Summary of Issues:** A complete assessment must identify and summarize key issues to better identify and prioritize contributing factors to fair housing issues. An analysis will point to the clearest fair housing issue trends and patterns both within the jurisdiction and in comparison to the region, and will highlight the primary practices and other factors that have led to current conditions. In addition to utilizing the data and mapping resources, the jurisdiction must draw upon relevant and easily obtainable local data and knowledge when describing fair housing issues and trends. Local data may be more up-to-date and available at a more granular level. The summary of issues must be detailed and comprehensive enough so that later in the Assessment of Fair Housing it is clear what it would take for an action or program to not only address, but overcome and undo, the identified fair housing issues.

Data Sources and Using the Statewide AFFH Data Viewer

The assessment of fair housing should use a variety of data, such as the U.S. Census, American Community Survey, local data and knowledge, and issues identified in the community participation process. Local data and knowledge refer to any locally gathered and available information, such as a survey with a reasonable statistical validity or usefulness for identifying contributing factors, policies, and actions. Localities must also collaborate with regional agencies to collect the appropriate data for the assessment of fair housing. For additional information on data sources see “Part 3: Resources.”

Barriers to AFFH

Examples of Common Zoning and Land Use Barriers Include:

- Lack of zoning for a variety of housing types throughout a jurisdiction such as multifamily, duplexes to fourplexes, group housing, transitional and supportive housing at a variety of need levels, shelters, single room occupancy, residential motels, mobilehomes, and accessory dwelling units
- Predominance of single family uses and larger lot sizes in racially concentrated areas of affluence
- Voter initiatives that restrict multifamily developments, rezoning to higher density, height limits or similar measures that limit housing choices
- Multifamily height requirements
- Minimum unit sizes
- Parking requirements
- Lack of new affordable housing choices in high resource areas
- Lack of anti-displacement policies, including nonet loss of units in the case of demolitions and replacement housing, and relocation ordinances
- Lack of incentives and other land use mechanisms to promote affordable housing throughout the community
- Excluding group homes or residential care (greater than six persons) from single family zones or excessive spacing/concentration requirements
- Family definitions or other occupancy requirements
- Nuisance or crime free ordinances or programs
- Ordinances prohibiting excessive use of city services
- Restrictive historic preservation districts
- Zoning that does not allow for residential uses in commercial zones
- Failure to allow supportive housing by right
- Failure to allow emergency shelters by right
- Lack of zoning on land appropriate for accessible development

Examples of Common Investment Barriers Include:

- Lack of infrastructure investment, including community infrastructure such as parks, community amenities in lower resource areas, disadvantaged communities, and areas of concentrated poverty
- Lack of targeted housing preservation/conservation and tenant protection programs in areas at risk of displacement
- Lack of public (local, state, or federal) funds invested in the development of affordable housing
- Absence of housing choice vouchers
- Limited housing stock affordable to lower income households or households with special needs
- Lack of proactive outreach with developers of affordable housing and non-profit service providers
- Lack of proactive measures to assist maintenance and rehabilitation of existing housing
- Lack of multilingual tenant counseling or foreclosure assistance

AFFH Data Viewer: In addition to various data sources, HCD has developed a statewide AFFH Data Viewer. The AFFH Data Viewer assembles various data sources and provides options for addressing each of the components within the full scope of the assessment of fair housing. The AFFH Data Viewer may be utilized to address the data components of new requirements to affirmatively furthering fair housing but must be used in combination with other data such as local or regionally available data. The AFFH Data Viewer consists of map data layers organized by: 1) Fair Housing Enforcement and Outreach Capacity, 2) Segregation and Integration, 3) Disparities in Access to Opportunity, 4) Disproportionate Housing Needs, including Displacement Risks, 5) Racially and Ethnically Concentrated Areas of Poverty and Affluence and 6) Supplemental Data. The AFFH Data Viewer is intended to be useful to a broad audience, such as local and regional governments, and organizations involved in the housing element process. For more information, visit the HCD's website at www.hcd.ca.gov/community-development/affh/.

Incorporate HUD Assessment of Fair Housing into Housing Elements

Generally, local jurisdictions that complete or revise an assessment of fair housing (AFH) or an analysis of impediments to fair housing choice (AI) pursuant to past federal requirements (prior to August 17, 2015) may incorporate relevant portions into the AFH portion of their housing element. This may include localities participating in a regional AI. For example, the housing element AFH may include various data points from their HUD AFH or AI, such as fair housing issues, analysis of patterns and trends, and identification of priorities that can be incorporated in concert with other data collection and analysis required in the housing element. Identification and prioritization of contributing factors to fair housing issues may also be useful as part of the housing element. However, incorporating these documents, particularly the analysis of impediments, may not meet all requirements or might include less relevant information than required for the housing element. For example, a regional HUD AI might not have relevant local data or contributing factors tailored to fair housing issues. Information in a HUD AFH or AI may also be outdated or incomplete depending on how recently that information was prepared. Also, a HUD AI likely will not have the specific actions and programs that will be required in the housing element. The housing element must have programs with specific timelines, milestones, and metrics to ensure a meaningful impact. Local governments should seek to incorporate only the relevant portions in a manner that complements the analysis, identification of contributing factors and strategies and action. Jurisdictions may not simply add the HUD AFH or AI as an appendix, or place sections into the housing element without context or purpose, in lieu of engaging in the requisite analysis.⁵²

Components of the Housing Element Assessment of Fair Housing⁵³

An assessment of fair housing must identify and analyze patterns, trends, conditions, and practices that result in less fair housing choice and must address all of the following assessment components. This section addresses each of the required components:

1. Summary of fair housing enforcement and outreach capacity;
2. Integration and segregation patterns, and trends related to people with protected characteristics;
3. Racially or ethnically concentrated areas of poverty;

⁵² Gov. Code, § 65583, subd. (c)(10)(B).

⁵³ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360 (esp. 42354-42356), 42361-42362 (July 16, 2015); 24 C.F.R. §§ 5.150, 5.152, 5.154(a), (b)(2), (d) (2016).

4. Disparities in access to opportunity for people with protected characteristics, including persons with disabilities; and
5. Disproportionate housing needs within the jurisdiction, including displacement risk.

1. Fair Housing Enforcement and Outreach Capacity

Fair housing enforcement and outreach capacity relates to the ability of a locality and fair housing entities to disseminate information related to fair housing and provide outreach and education to assure community members are well aware of fair housing laws and rights. In addition, enforcement and outreach capacity includes the ability to address compliance with fair housing laws, such as investigating complaints, obtaining remedies, and engaging in fair housing testing. The summary should include (1) a listing of local, regional and state agencies and organizations active in the locality, (2) description of primary activities and capacity for each entity, including actions taken by the locality, such as provision of dedicated resources, (3) evaluation of impacts on protected characteristics and geographic trends, and (4) any additional relevant information about fair housing enforcement, outreach capacity, and resources in the jurisdiction and region affecting groups with other protected characteristics.⁵⁴

This summary will provide valuable information for local jurisdictions to evaluate fair housing issues that exist within the community, highlighting needs for remediation of existing fair housing concerns. Wherever possible, the summary should include a discussion of fair housing enforcement and outreach at a geographic level appropriate to better determine any locational trends—simply reporting information at a city-wide level will not fully display patterns and impacts on protected characteristics. Examples of appropriate geographic levels include census tracts, block groups, neighborhoods, housing development, or any other sub-section of a locality. Additionally, fair housing organizations and other non-profits that receive funding through the Fair Housing Initiatives Program are a valuable resource for information, trends, and patterns to tailor and complete an adequate summary of fair housing enforcement and outreach capacity. An adequate discussion of fair housing enforcement and outreach will provide the necessary background information that can be analyzed with other components of the assessment of fair housing and site inventory to better inform contributing factors, priorities, and meaningful actions.

This summary must address:⁵⁵

- Findings, lawsuits, enforcement actions, settlements, or judgments related to fair housing or civil rights;
- Compliance with existing fair housing laws and regulations;
- Fair housing enforcement and housing outreach capacity; and
- Conclusion and findings: Summary of fair housing issues related to enforcement and outreach capacity and relationship to other fair housing issue areas (e.g., segregation and integration, racially and ethnically concentrated areas of poverty, etc.).

⁵⁴ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360 (esp. 42354-42356), 42361-42362 (July 16, 2015).

⁵⁵ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42353-42360 (July 16, 2015); 24 CFR § 5.154 (2016).

Findings, Lawsuits, Enforcement Actions, Settlements or Judgments Related to Fair Housing and Civil Rights

This section lists and summarizes legal actions that have or have not been resolved, including a charge or letter of finding from HUD concerning a violation of a civil rights-related law, a cause determination from the Department of Fair Employment and Housing (DFEH) or local fair housing agency concerning a violation of a state or local fair housing law, a letter of findings or notice of violation issued by HCD, or a letter of findings issued by or lawsuit filed or joined by the U.S. Department of Justice or the State of California Department of Justice, Office of the Attorney General, alleging a pattern or practice or systemic violation of a state and/or federal fair housing or civil rights law, or a claim under the False Claims Act related to fair housing, nondiscrimination, or civil rights generally, including an alleged failure to affirmatively further fair housing.

Compliance with Existing Fair Housing Laws and Regulations

The element should include a description of state and local fair housing laws and how the locality complies with those laws.

Examples of state fair housing laws include:

- California Fair Employment and Housing Act (FEHA) (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2)
- FEHA Regulations (California Code of Regulations (CCR), title 2, sections 12005-12271)
- Government Code section 65008 covers actions of a city, county, city and county, or other local government agency, and makes those actions null and void if the action denies an individual or group of individuals the enjoyment of residence, landownership, tenancy, or other land use in the state because of membership in a protected class, the method of financing, and/or the intended occupancy.
 - » For example, a violation under Government Code section 65008 may occur if a jurisdiction applied more scrutiny to reviewing and approving an affordable development as compared to market-rate developments, or multifamily housing as compared to single family homes.
 - » Government Code section 65008, subdivision (e), authorizes preferential treatment of affordable housing
- Government Code section 8899.50 requires all public agencies to administer programs and activities relating to housing and community development in a manner to affirmatively further fair housing and avoid any action that is materially inconsistent with its obligation to affirmatively further fair housing.
- Government Code section 11135 et seq. requires full and equal access to all programs and activities operated, administered, or funded with financial assistance from the state, regardless of one's membership or perceived membership in a protected class.
- Density Bonus Law (Gov. Code, § 65915.)
- Housing Accountability Act (Gov. Code, § 65589.5.)
- No-Net-Loss Law (Gov. Code, § 65863)

- Least Cost Zoning Law (Gov. Code, § 65913.1)
- Excessive subdivision standards (Gov. Code, § 65913.2.)
- Limits on growth controls (Gov. Code, § 65302.8.)
- Housing Element Law (Gov. Code, § 65583, esp. subds. (c)(5), (c)(10).)

Examples of local fair housing laws include:

- San Francisco’s “No Eviction without Representation Act” which provides eligible tenants who have received an eviction notice, or been served with an unlawful detainer (eviction) lawsuit, free legal representation.
- Local rent control or rent freezes
- Voter initiatives to fund affordable and/or supportive housing
- Local ordinances that limit rent increases and limit late fees
- Ordinances facilitating community land trusts and tenant opportunities to purchase their multi-family housing
- Local ordinances designed to prevent displacement of mobilehome residents
- Local relocation ordinances
- Local ordinances that prohibit unlawful harassment of tenants including things such as illegal lockouts, utility shutoffs, and removing tenants’ belongings from the unit.
- The City of Oakland’s tenant protection ordinance which makes it illegal for landlords to misrepresent or conceal material facts related to a tenant vacating
- Inclusionary ordinances
- Laws/regulations or agreements related to the use of local housing funds
- Eviction protection ordinances enacted to protect renters during the COVID-19 pandemic and rental relief programs to protect tenancies that accumulated rental debt during the pandemic

2. Integration and Segregation Patterns and Trends Related to People with Protected Characteristics and Lower Incomes

To inform priorities, policies, and actions, the housing element must include an analysis of integration and segregation, including patterns and trends, related to people with protected characteristics.⁵⁶ Importantly, the analysis must address both integration and segregation to holistically evaluate the patterns and practices and better identify and prioritize contributing factors to fair housing issues.⁵⁷ A strong analysis would also address segregation and integration of households with lower incomes.⁵⁸

⁵⁶ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42305, 42336, 42353-42360 (July 16, 2015); 24 C.F.R. § 5.152 (2016).

⁵⁷ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42305, 42336, 42353-42360 (July 16, 2015); 24 C.F.R. §§ 5.152, 5.154 (2016).

⁵⁸ Gov. Code, §§ 65008, 65583 [“shall make adequate provision for the existing and projected needs for all economic segments of the community] and subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42305, 42336, 42353-42360 (July 16, 2015); 24 C.F.R. §§ 5.152, 5.154 (2016).

Defining Integration and Segregation

Integration generally means a condition in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area.

Segregation generally means a condition in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area.

The analysis must address areas of ongoing and concentrated segregation and integration and compare concentrations of protected characteristics and incomes at both a regional and local level.⁵⁹ The analysis should consist of comparisons using data tables or maps. To compare, the analysis should discuss the degrees of segregation and integration for protected characteristics and incomes. At minimum, the analysis must discuss levels of segregation and integration for race and ethnicity, income, familial status, persons with disabilities, and identify the groups that experience the highest levels of segregation.⁶⁰

Data Considerations

Two quantitative metrics can be used to analyze the relative extent of racial and ethnic segregation in entitlement jurisdictions for federal housing programs.⁶¹ These are known as the dissimilarity index and the isolation index. The dissimilarity index is a primary quantitative metric used for identifying patterns of geographic segregation. The isolation index, another quantitative metric for identifying patterns of geographic segregation, compares a group's share of the overall population to the average share within a given sub-area (such as block group). Data to calculate dissimilarity index and isolation index are available at the Census Tract or block group level from the American Community Survey: <https://www.census.gov/programs-surveys/acs/data.html>. Smaller jurisdictions may wish to utilize block group level data to better capture trends and patterns. Additional sources and approaches include the Entropy Index, the Divergency Index and the Exposure Index. For more information on formulas, see "Part 3: Resources."

Identifying Dissimilarity at a Regional Level: To determine dissimilarity at a regional level, data tables or maps should be utilized to compare the locality to the broader region. See "Part 3: Resources" for sample data tables.

Identifying Dissimilarity at a Local Level: To determine dissimilarity or isolation at a local level, the housing element should identify and compare indices across census tracts, block group or some

⁵⁹ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42305, 42336, 42353-42360 (July 16, 2015); 24 C.F.R. §§ 5.152, 5.154 (2016).

⁶⁰ Gov. Code, § 8899.50; 24 C.F.R. 51.154(d) (2016); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42284-42285 (July 16, 2015).

⁶¹ HUD. (2013). AFFH Data Documentation. Available at: http://www.huduser.org/portal/publications/pdf/FR-5173-P-01_AFFH_data_documentation.pdf; Glaeser, E. and Vigdor, J. (2001). Racial Segregation in the 2000 Census: Promising News. Washington, DC: The Brookings Institution, Center on Urban and Metropolitan Policy. Available at: <https://www.brookings.edu/wp-content/uploads/2016/06/glaeser.pdf>

other geography at a level that best highlights patterns of segregation and integration. Data tables or maps may be utilized.

Identifying Dissimilarity for Lower Income Households: Using readily available data, local jurisdictions should map concentrations of low- and moderate-income (LMI) households within the community. Particularly for smaller jurisdictions with relatively few Census Tracts, this tool can enhance understanding of where there are pockets of concentrated low and moderate-income households within the community, because data are available at the block group level.

Data for this analysis are available in the form of HUD Low and Moderate Income Summary Data (LMISD), based on the American Community Survey (2011-2015). The data are available at the block group level from the following website: <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-block-groups-places/> The data file includes records for each block group with a calculation of the percentage of households that are LMI.

The LMISD data for the local jurisdiction can be thematically mapped to show the block groups where there are high concentrations of LMI households. Local jurisdictions should use this tool as part of the needs assessment to understand where there are concentrations of lower-income households within the community and identify the need for housing element policies and programs that can help to better distribute households of all income levels across the community. This can also highlight the need for housing element policies and programs that can help to provide better access to opportunity for households that live in areas where there are high concentrations of lower-income households.

This map can be overlaid with R/ECAP maps to identify areas where there are concentrations of LMI households as well as higher levels of segregation. Because the block group data available for this tool enables a more fine-grained geographic analysis of patterns low-income concentration and racial/ethnic segregation, this approach may be particularly useful in jurisdictions with relatively low populations spread across small numbers of census tracts where tools that rely on data only available at the census tract level may not provide sufficient resolution for meaningful analysis (e.g., see R/ECAP tool, below).

3. Racially & Ethnically Concentrated Areas of Poverty (R/ECAP)

The housing element must include an analysis of racially and ethnically concentrated areas of poverty.⁶² A strong analysis will separately evaluate significant concentrations of poverty and concentrations of Black, Indigenous and people of color (BIPOC) populations. The analysis must be conducted at a regional and a local level where the incidence of concentrated areas of poverty is discussed relative to the region and within the locality.⁶³ Importantly, this regional comparison should discuss the incidence of racial concentrations in areas of affluence. For example, a jurisdiction might not have areas of concentrated poverty, but have areas of affluence or vice versa, which might be unique when compared to the rest of the region. Identifying this difference between the locality and the region

⁶² Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42305, 42336, 42353-42360 (July 16, 2015); 24 C.F.R. §§ 5.152, 5.154(c) (2016).

⁶³ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42771, 42273, 42275, 42338-42342 (July 16, 2015); 24 C.F.R. §§ 5.152, 5.154(d), 5.156(d) (2016).

is an essential part of evaluating policies, practices and investments to better identify and prioritize contributing factors to fair housing issues. The analysis should evaluate the patterns and changes over time and consider other relevant factors, such as public participation, past policies, practices, and investments and demographic trends.

Data Considerations

R/ECAP: To assist communities in identifying racially and ethnically concentrated areas of poverty (also known as R/ECAPs), HUD developed a definition that relies on a racial and ethnic concentration threshold, as well as a poverty test. For an area to be identified as having a racial and ethnic concentration, the threshold is that a RCAP or ECAP have a non-White population of 50 percent or more, within metropolitan or micropolitan areas. In locations outside these areas, where the non-White populations are likely to be much smaller than 50 percent, the threshold is set at 20 percent. The poverty test defines areas of “extreme poverty” as those where 40 percent or more of the population lives at or below the federal poverty line, or those where the poverty rate is three times the average poverty rate in the metropolitan area, whichever is less. An area that meets either the racial or ethnic concentration and also meets the poverty test would be considered a RCAP or ECAP; broadly referred to as R/ECAPs.

The R/ECAP database is available online at:

https://hudgis-hud.opendata.arcgis.com/datasets/56de4edea8264fe5a344da9811ef5d6e_0.

TCAC/HCD Opportunity Map: The High Segregation & Poverty category in the TCAC/HCD Opportunity Area Map may also be used in identifying R/ECAPS and is available online at:

<https://www.treasurer.ca.gov/ctcac/opportunity.asp>

Much like the R/ECAP, the High Segregation and Poverty category uses an absolute threshold for poverty. However, instead of a threshold for race, the TCAC/HCD approach uses a location quotient for racial segregation. The poverty threshold is 30 percent of the population living below the poverty line and the location quotient is essentially a measure of the concentration of race in a small area compared to a county level.

Local jurisdictions can use the HUD data to map or the TCAC/HCD Opportunity Area Map for High Segregation and Poverty to identify and analyze the presence of R/ECAPS in their community.

Racially Concentrated Areas of Affluence: In addition to identifying and analyzing racially and ethnically concentrated areas of poverty, an analysis should also consider concentrated areas of affluence to better evaluate trends, patterns, policies, and practices and to guide meaningful goals and actions to address fair housing issues. In response to the R/ECAPs utilized by HUD in its 2015 AFFH rule, scholars at the University of Minnesota Humphrey School of Public Affairs have created the Racially Concentrated Areas of Affluence (RCAAs) metric to more fully tell the story of segregation in the United States.⁶⁴ Based on their research, RCAAs are defined as census tracts where 1) 80 percent or more of the population is white, and 2) the median household income is \$125,000 or greater (slightly more than double the national the median household income in 2016). While this is a useful measure nationwide, HCD has adjusted the RCAA methodology to better reflect California’s relative diversity.

⁶⁴ Goetz, E. G., Damiano, A., & Williams, R. A. (2019). [Racially Concentrated Areas of Affluence: A Preliminary Investigation](#). *Citiescape: A Journal of Policy Development and Research*, 21(1), 99–124.

HCD's version of the RCAA map and accompanying data can be accessed using the AFFH Data Viewer, and HCD encourages jurisdictions to use this metric as they prepare their R/ECAP analysis.

When analyzing patterns and trends of segregation and proposing policy approaches, localities should not only focus on communities of color. Segregation is a continuum, with polarity between race, poverty, and affluence, which can be a direct product of the same policies and practices. To better evaluate these conditions, both sides of the continuum should be considered and compare patterns within the community and across the region. This more holistic approach will better unveil deeply rooted policies and practices and improve identification and prioritization of contributing factors to inform more meaningful actions.

Local jurisdictions should use this information to understand where there are racial/ethnic concentrations of poverty and affluence as a starting point. A complete analysis will then address the trends, patterns, policies, practices, and conditions in combination with other relevant factors to summarize issues and better inform goals and actions.

4. Disparities in Access to Opportunity⁶⁵

The housing element must identify and analyze significant disparities in access to opportunity. While the analysis can consider indices of various access to opportunity variables, it must also independently address access to opportunity variables. For example, the analysis may evaluate total access to opportunity (e.g., high, moderate, low), but must also individually address access to opportunity for education, transportation, economic development, and environment. This more complete understanding of what types of disparities in access to opportunity exist for what populations and in what geographies is necessary to identify and prioritize contributing factors to fair housing issues and formulation of goals and actions. This analysis must be conducted at a regional and local level and should address substantial differences in access to education, transportation, economic, environment and other important opportunities based on socio-economic characteristics (e.g., race, income, familial status, disability, income, poverty). Patterns over time should be discussed as well as policies, practices, and investments that affect access to opportunity. Local data and knowledge and other relevant factors must be considered, including incorporating public outreach and targeted community engagement. This analysis is a key opportunity to engage residents to learn what they want/need, but lack access to, as well as essential community assets to preserve.

What is Access to Opportunity?

Access to opportunity is a concept to approximate place-based characteristics linked to critical life outcomes. Access to opportunity oftentimes means both improving the quality of life for residents of low-income communities, as well as supporting mobility and access to 'high resource' neighborhoods. This encompasses education, employment, economic development, safe and decent housing, low rates of violent crime, transportation, and other opportunities, including recreation, food and healthy environment (air, water, safe neighborhood, safety from environmental hazards, social services, and cultural institutions).

⁶⁵ Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 42305, 42338, 42336, 42353-42360 (July 16, 2015).

Housing Element Access to Opportunity Analysis

Through maps, data tables and discussion, the access to opportunity analysis must address the following opportunity variables: education, transportation, economic, environment, and other factors.

For educational opportunities, the analysis should, at minimum:

- Describe any differences amongst schools within a jurisdiction and whether access to more proficient schools has any patterns across protected characteristics (e.g., race and ethnicity, familial status, persons with disabilities);
- Analyze the proximity of proficient and less proficient schools to areas of segregation and racial and ethnic concentrated areas of poverty; and
- Evaluate the presence or lack of policies, practices, and investment to promote access to more proficient schools or that contribute to a disparity in access to opportunity.

For employment opportunities, the analysis should, at minimum:

- Describe any disparities in access to jobs by protected groups;
- Address where protected groups live and how that affects their ability to obtain a job; and
- Evaluate employment trends by protected groups.

For transportation opportunities, the analysis should, at minimum:

- Compare concentrations of protected groups with access to transportation options;
- Assess any disproportionate transportation needs for members of protected classes; and
- Analyze combined housing and transportation cost impacts on protected groups.

For access to a healthy environment, the analysis should, at a minimum:

- Describe any disparities in access to environmentally healthy neighborhoods by protected class groups;
- Consider available statewide data such as CalEnviroScreen at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>;
- Evaluate consistency with the environmental justice element; and
- Discuss policies, practices and investments that impact access to environmentally healthy neighborhoods.

Additional factors to consider in the analysis should, at minimum:

- Patterns in Disparities in Access to Opportunity
 - » Identify and discuss any overarching patterns of access to opportunity for members of protected classes, including trends over time;
 - » Identify areas that experience an aggregate of poor access to opportunity; and
 - » Include how these patterns compare to patterns of segregation and R/ECAPs.

- Additional Information
 - » Provide additional relevant information, including local data and knowledge and community input, about disparities in access to opportunity in the locality and relative to the region.

Data Considerations

In collaboration, the California Tax Credit Allocation Committee (TCAC) and HCD developed the TCAC/HCD Opportunity Maps, a mapping tool that identifies areas of higher and lower resources to evaluate access to opportunity. The tool maps areas of highest resource, high resource, moderate resource, moderate resource (rapidly changing), low resource and high segregation and poverty. Note: The moderate resource (rapidly changing) designation is still being evaluated to understand its efficacy at predicting future trends. The tool may be utilized to identify areas of high and low resources to address this analysis and is available at:

<https://www.treasurer.ca.gov/ctcac/opportunity.asp>

The TCAC/HCD Opportunity Maps can help to identify areas within the community that provide good access to opportunity for residents or, conversely, provide low access to opportunity. They can also help to highlight areas that are rapidly changing (potentially creating risk of displacement for lower-income households) and areas where there are high levels of segregation and poverty. The information from the opportunity mapping can help to highlight the need for housing element policies and programs that would help to remediate conditions in low resource areas and areas of high segregation and poverty and to encourage better access for LMI and BIPOC households to housing in high resource areas.

Disparities in Access to Opportunity for Persons with Disabilities

An analysis of disparities in access to opportunity must specifically address the housing and community development needs of persons with disabilities. According to the U.S. Census Bureau, over four million Californians have a disability. Health and safety are directly linked to housing, and yet, many people with disabilities face enormous barriers in finding suitable housing to accommodate their needs. Additionally, because people with disabilities have faced a history of institutionalization—in state hospitals, developmental centers, jails and prisons, etc. – ensuring that appropriate community-based housing with appropriate supports exists is critical. People with disabilities are also overrepresented in the unhoused population and any solutions related to homelessness must address appropriate accommodations and accessibility. Critically, there are significant disparities by race within the population with disabilities, so jurisdictions should engage in an intersectional analysis of needs. The assessment should consider the unique needs and barriers faced by persons with disabilities and whether persons with disabilities are able to access housing choices and services in an integrated community-based setting. Examples include accessibility features for housing, transportation, education, jobs and other types of community elements to enable fair housing choices.

Disability types include hearing difficulty, vision difficulty, cognitive difficulty, ambulatory difficulty, self-care difficulty, and independent living difficulty.

Data and factors to consider in an analysis of access to opportunity for persons with disabilities could include:

- Prevalence of Disability by Type (e.g., vision, hearing, cognitive, ambulatory, self-care and independent living)
- Disability by Age Group
- Disability by Race/Ethnicity/National Origin
- Assessment of Supportive Housing Stock and Other Housing Stock Including Group Homes, Homes for People with Intellectual or Developmental Disabilities and Mental Health Disabilities
- Assessment of Accessibility of Homelessness Programs and Coordinated Entry System
- General or Estimated Number of “Covered Multifamily Dwellings” – Adaptable Units under the Fair Housing Act⁶⁶
 - » Federal law triggers specific accessibility requirements in fourplex and larger developments with covered multifamily dwellings.
- Estimated Number of Units with Mobility and Communication Accessibility Features under California Building Code Ch. 11B for public housing projects⁶⁷ – housing provided by, for, or on behalf of a public entity, or as part of a public entity’s program to provide housing
 - » 5 percent of these units are required to have mobility features, 2 percent of the units are required to have communication features regardless of first occupancy date or number of units in a building, including multistory dwellings and single-family dwellings. **Note:** Jurisdictions should consider higher requirements commensurate with identified need.
- Estimated Number of Multifamily Units pursuant to Government Code section 12955.1(b)
 - » 10 percent of units in multifamily buildings without elevators consisting of three or more rental units or four or more condominium units are subject to accessibility building standards.

To address the housing needs of persons with disabilities and better inform the formulation of policies and actions, the analysis should include, where available: (1) data tables to evaluate trends, magnitude of needs relative to disability at a local, regional and state level (see Resources section for sample tables), (2) maps to analyze spatial patterns relative to accessibility features and services, in comparison to racial and ethnically concentrated areas of poverty, (3) housing accessibility, such as the dispersion of housing choices and zoning to encourage a variety of housing types, (4) efforts to integrate persons with disabilities into community based settings, and (5) a discussion of disproportionate housing needs, including policies and practices such as zoning barriers and gaps, disparities in access to accessibility features, services, resources and strategies, including geographically. Examples of data sources include U.S Census and American Community Survey. When evaluating spatial patterns, an analysis should address whether persons with disabilities are concentrated or integrated throughout the jurisdiction and region and if there are any geographic patterns for persons with disabilities by age.

⁶⁶ The Fair Housing Act requires all “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities. Covered multifamily dwellings are all dwelling units in buildings containing four or more units with one or more elevators, and all ground floor units in buildings containing four or more units, without an elevator. Federal regulations adopted by the Department of Housing and Urban Development at [24 C.F.R. § 100.201](#) define covered multi-family dwellings.

⁶⁷ California Building Code Chapter 11B covers public housing and generally meets 2010 Americans with Disabilities Act Standards, Fair Housing Act requirements when applicable by requiring adaptability features of FHA to other covered multifamily dwelling units if built for first occupancy as housing on or after March 13, 1991.

This disparities analysis for people with disabilities may be included in the disparities in access to opportunity section, segregation and integration section, as part of the section of the housing element that addresses the housing needs of persons with special needs, or in the specific analysis required on potential constraints on housing for persons with disabilities. Additionally, the analysis must go beyond simply identifying and removing barriers and constraints. The analysis should discuss resources and strategies to encourage housing options and access to opportunity to better inform meaningful and proactive goals and actions to address the housing and community development needs of persons with disabilities.

Common Zoning Barriers for Persons with Disabilities

- Reasonable Accommodation Procedure:** The lack of a procedure to address disability issues is one of the most prominent zoning barriers because a strong process can be utilized to provide exception to zoning and land use policies that impact housing choices and livability for persons with disabilities. Other common issues with reasonable accommodation procedures include excessive findings of approval, burden on applicants to prove the need for exception, application costs, and discretionary approvals.
- Family Definition:** Family definitions in zoning or other land use related documents can directly impact housing choices for persons with disabilities, particularly group home situations. Examples of common elements in family definitions that have an exclusionary effect include regulating the number of people, or requiring occupants to be related or under one lease agreement.
- Excluding Group Homes:** Excluding group homes, community or residential care homes for seven or more persons, or subjecting these homes to a conditional use permit in single family zones acts as a barrier to housing choice for persons with disabilities.
- Spacing Requirements:** Excessive spacing requirements, such 500 feet or more, between group homes or community or residential care facilities can have a direct impact on the supply of housing choices.
- Unit Types and Sizes:** The lack of multifamily housing or zoned capacity for multifamily and a variety of sizes from efficiency to four or more bedrooms can constrain the ability of persons with disabilities to live in a more integrated community setting.
- Lack of Accessible Accessory Dwelling Units (ADUs):** ADUs can provide an important housing choice for persons with disabilities or care providers, including independent and integrated living patterns.
- Nuisance and Crime Free Ordinances:** Ordinances that can be used or have the effect of disproportionately targeting persons with disabilities.
- Lack of By Right Zoning for Supportive Housing:** By right zoning for supportive housing can result in more objective processes that are less likely to discriminate or have the effect of discriminating against persons with disabilities.

5. Disproportionate Housing Needs, Including Displacement

The housing element must include an assessment of disproportionate housing needs, including displacement risk, on people with protected characteristics and households with low incomes. This analysis is important to understand how some groups of persons experience severe housing needs when compared to other populations within a local level and when compared to a region. Particularly important to this analysis is local data and knowledge, since some areas could be impacted by market conditions that put households at risk of displacement, or pending or upcoming planning decisions may exacerbate displacement risk.

Disproportionate Housing Needs generally refers to a condition in which there are significant disparities in the proportion of members of a protected class experiencing a category of housing need when compared to the proportion of members of any other relevant groups, or the total population experiencing that category of housing need in the applicable geographic area. For purposes of this definition, categories of housing need are based on such factors as cost burden and severe cost burden, overcrowding, homelessness, and substandard housing conditions.

At minimum, the analysis must address:

- Cost Burden and Severe Cost Burden:** Cost burden is the fraction of a household's total gross income spent on housing costs. There are two levels of cost burden: (1) "Cost Burden" refers to the number of households for which housing cost burden is greater than 30 percent of their income; and (2) "Severe Cost Burden" refers to the number of households paying 50 percent or more of their income for housing. This analysis must address the burdens on both owners and renters (tenure).
- Overcrowding:** Households having more than 1.01 to 1.5 persons per room are considered overcrowded and those having more than 1.51 persons per room are considered severely overcrowded. The person per room analysis excludes bathrooms, porches, foyers, halls, or half-rooms. This analysis must address the overcrowding on both owners and renters.
- Substandard Housing:** As defined by the U.S. Census, there are two types of substandard housing problems: (1) Households without hot and cold piped water, a flush toilet and a bathtub or shower; and (2) Households with kitchen facilities that lack a sink with piped water, a range or stove, or a refrigerator. Given the limits of this measure, the analysis must incorporate local data and knowledge, such as housing conditions surveys or code enforcement activities.
- Homelessness:** Includes individuals or families who lack or are perceived to lack a fixed, regular, and adequate nighttime residence, or who have a primary nighttime residence in a shelter, on the street, in a vehicle, or in an enclosure or structure that is not authorized or fit for human habitation. People experiencing homelessness are vulnerable to violence and criminalization due to their unhoused status.

The analysis should address these factors for protected characteristics and at least race and ethnicity, familial status, persons with disabilities and incomes. The analysis may use data tables or maps and at least must compare the locality to the broader region and the sub-geographies within the locality. Other considerations for the analysis include:

- Identifying the protected groups (e.g., race/ethnicity, familial status, persons with disabilities and income) that experience higher rates of housing cost burden, overcrowding, homelessness, or substandard housing when compared to other groups;
- Discussing the areas of a locality that experience the greatest disproportionate housing needs and any coincidence with protected groups;
- Comparing the needs of families with the availability of housing stock with two and three or more bedrooms; and,
- Evaluating significant disparities relative to other factors such as renter and owner rates.

Displacement

Shifts in neighborhood composition are often framed and perpetuated by established patterns of racial inequity and segregation. Neighborhood change is influenced by three processes: movement of people, public policies and investments, such as capital improvements and planned transit stops, and flows of private capital (Zuk et al 2015)⁶⁸. These processes can disproportionately impact people of color, as well as lower income households, persons with disabilities, large households, and persons at-risk or experiencing homelessness. These processes can also displace people to the extent of homelessness. An assessment of displacement within a city should address these three processes and their mutual dependencies, particularly as mediated by race and scale. For the purposes of this guidance, displacement is used to describe any involuntary household move caused by landlord action or market changes. Displacement is fueled by a combination of rising housing costs, rising income inequality, stagnant wages, and insufficient market-rate housing production (Been, Ellen, & O'Regan 2018)⁶⁹. Decades of disinvestment in low-income communities, coupled with investor speculation, can result in a rent gap or a disparity between current rental income of the land, and potentially achievable rental income if the property is converted to its most profitable use.

Displacement can broadly be understood to be caused by disinvestment, investment-fueled gentrification, or a process combining the two. Low-income neighborhoods experience displacement due to disinvestment resulting from both public and private sector decisions. Similarly, both public and private investments fuel displacement by attracting residents with higher incomes and higher educational attainments into low-income communities (Chapple 2020).⁷⁰ These forces can cause both physical displacement, preventing low-income communities of color from benefiting from the new economic growth; cultural displacement, as cultural resources disappear and communities are disrupted; and/or exclusionary displacement, with increasing housing prices preventing the entrance of low-income households (Cash et al. 2020).⁷¹

68 Zuk, M., et al. (2015). Gentrification, Displacement, and the Role of Public Investment. Federal Reserve Bank of San Francisco, 32.

69 Been, V., Ingrid, E., & O'Regan, K. (2019). Supply Skepticism: Housing Supply and Affordability. Housing Policy Debate, 29(1), 25-40.

70 Chapple, K. (2020). "On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable." Written statement for the record before the House Financial Services Committee, Washington DC: January 14, 2020. <https://docs.house.gov/meetings/BA/BA00/20200114/110362/HHRG-116-BA00-Wstate-ChappleK-20200114.pdf>Desmon

71 Cash, Anna et al. (2019). Building a National Narrative of Anti-Displacement Strategies: Key Takeaways From SPARCCC Regions. Urban Displacement Project, University of California, Berkeley.

Disinvestment-driven Displacement: Historically, low-income communities in California with large populations of people of color have received fewer public sector investments in infrastructure, impacting everything from parks and schools to streets and sewers. Racially exclusionary housing policies and limited access to credit have limited and shaped private-sector investments in the same communities with lasting impact on homeownership and intergenerational wealth building (Trounstine 2018).⁷² Together, these forms of neighborhood disinvestment can lead to displacement of low- and moderate-income communities and communities of color. Disinvestment-fueled displacement can occur when the value of a property does not justify investing in its maintenance, often resulting in abandonment and decay (Zuk et al 2015).⁷³ These displaced residents can often endure “hyper-mobility” when forced moves to substandard housing compel them to rapidly move again, creating a destructive cycle of housing instability (Desmond et al. 2015).⁷⁴

Investment-driven Displacement: Displacement can take place as a neighborhood undergoes a process of gentrification, particularly within the context of the increasing desirability of housing in urban cores. Often following decades of disinvestment, a flood of public and private sector investments can lead to real estate speculation, improvements in transit access, and changes in land use. While these investments and changes can be positive, they are also associated with displacement, as historic residents cannot afford to stay and benefit from investments in housing, transit infrastructure, and access to healthy foods. Studies of gentrification and investment-driven displacement consistently describe a pattern of whiter, wealthier, and more educated residents moving into historically disinvested neighborhoods, matching an outflow of poorer renters of color displaced by rising residential rents (Zuk et al. 2015).⁷⁵

The foreclosure crisis contributed to making low-income communities vulnerable to gentrification and displacement. In these communities, disproportionate levels of predatory subprime lending resulted in waves of foreclosures, leaving the neighborhoods vulnerable to investors looking to purchase and flip homes. This displacement has been financed by banks, private equity, and Wall Street firms. Capital providers often work with real estate speculators and serial evictor corporate landlords who purchase properties with the intention of evicting tenants and small businesses.

Gentrification: A process of neighborhood change that includes economic change in a historically disinvested neighborhood —by means of real estate investment and new higher-income residents moving in - as well as demographic change - not only in terms of income level, but also in terms of changes in the education level or racial make-up of residents.⁷⁶

72 Jessica Trounstine, *Segregation By Design: Local Politics and Inequality in American Cities*. (Cambridge University Press, 2018).

73 Zuk, M., et al. (2015). Gentrification, Displacement, and the Role of Public Investment. Federal Reserve Bank of San Francisco, 32.

74 Desmond, M., Gershenson, C., & Kiviat, B. (2015). Forced Relocation and Residential Instability among Urban Renters. *Social Science Review* 89(2). 237-262.

75 Zuk, M., et al. (2015). Gentrification, Displacement, and the Role of Public Investment. Federal Reserve Bank of San Francisco, 32.

76 [Gentrification Explained | Urban Displacement Project](#)

Disaster-driven Displacement: The geologic and climate forces that have helped shape California’s natural beauty also make the state susceptible to environmental disasters and their ensuing potential for displacement. California’s recent history has shown that environmental disasters such as wildfires, earthquakes and floods can be significant causes of displacement, and that climate change is accelerating the risk from such disaster events. The risk of climate disaster can also put pressure on lower income communities as wealthy people seek to relocate to safer locations. An analysis should address the potential displacement from local environmental hazards. Jurisdictions should make reference to their Local Hazard Mitigation Plan, Safety Element, Environmental Justice Element, and any recent locally available hazard data in detailing the types of environmental hazards present in the community, the location of high hazard risk areas in the community, and what type of populations live in those areas of heightened hazard risk. FEMA flood maps are a good starting point for assessing flood risk, but jurisdictions are encouraged to utilize any more recent local flood risk data available, as FEMA flood maps can oftentimes be outdated and fail to account for climate change.⁷⁷ Addressing disaster risk is not a justification for furthering segregation, and policies that seek to address this risk should include strategies that mitigate the risk of displacement and exclusion.

In this analysis, jurisdictions should make note of potential impacts of disasters on protected classes and low-income residents, particularly low-income renter populations. Research has shown that low-income renter populations are disproportionately exposed to environmental hazards and that housing tenure is a telling determinant of social vulnerability to disasters.⁷⁸ Renters bear the brunt of the existing affordable housing shortage, and their adaptive capacity to cope and recover from the impacts of environmental hazards may be reduced due to systemic inequities and limited resources. Furthermore, renters also face the added physical challenges because they do not control the housing units they live in, and are more likely to be displaced post-disaster because of the following forces:

- Lack of control of when or if their housing unit will be rebuilt
- Lack of control of the maintenance or possible addition of resilience investments to the property
- Fewer financial resources to rebuild rental housing than for homeowners
- Rental price increases as rental housing supply decreases
- Evictions
- More likely to live in housing typologies such as apartments or duplexes, which can take longer to rebuild post-disaster

Any analysis of disaster-driven displacement risk should call out how those risks impact low-income renters in the community, and any programs or resources in place meant to increase resiliency and address those hazard risks. Disaster risk is not a justification for the perpetuation of patterns of segregation. Jurisdictions should creatively utilize both land use planning and public investments in mitigation measures to solve for the issues of environmental hazard risk, climate change adaptation, fair housing, and housing affordability simultaneously.

77 Homeland Security Inspector General – FEMA Needs to Improve Management of its Flood Mapping Programs, 2017, <https://www.documentcloud.org/documents/4066233-OIG-17-110-Sep17.html>

78 Lee & Van Zandt, 2018, Social Vulnerability to Disasters: A Review of the Evidence

Data Considerations: Through maps, data tables, and discussion, the analysis must address the concentrations of risk of displacement. The analysis might consider the following variables that are associated with risk of displacement and neighborhood change.

Other Considerations:

- **Public Infrastructure Investments:** Government investments in physical infrastructure, such as rail transit, schools, parks, and highways can be associated with increasing home values and subsequent displacing forces (Zuk et al. 2015).
- **Historically Disinvested Areas:** Today's displacement is built upon a history of dispossession and exclusion, fueled by racism, and perpetuated by the logic of capitalism. Historical exclusionary housing policies such as redlining, racially restrictive covenants, implicitly racial zoning, racialized public housing policies, and urban renewal continue to shape wealth accumulation and access to resources like high-quality schools and job centers.
- **At-risk Affordable Units:** The conversion of federally-and -state-subsidized affordable rental developments to market-rate units can constitute a substantial loss of housing opportunity for low-income residents. There are approximately 149,000 units of privately owned, federally assisted, multifamily rental housing, as well as tax-credit and mortgage revenue bond properties, often with project-based rental assistance. As the subsidy contracts or regulatory agreements expire, a large percentage of these units may convert to market-rate. These at-risk units are home to seniors and families with low incomes who are at risk of displacement if the developments convert.

Income Variables		
Variable	Data Source	Association
Income Diversity	U.S. Census Table P007 ACS % Year Estimates Table B03002	Higher income diversity is associated with higher risk of neighborhood change
% of renters paying >35% of income	ACS 5 Year Estimates, DP04	Higher share of rent-burdened tenants is associated with higher risk of displacement
% of owners paying >35% of income	ACS 5 Year Estimates, DP04	Higher share of over-burdened owners associated with higher risk of displacement

Demographic Variables		
Variable	Data Source	Association
% non-family households	ACS 5 Year Estimates, DP02, B09029	Larger share of non-family households associated with higher risk of displacement
% non-Hispanic whites	ACS 5 Year Estimates, DP05	Larger share of non-Hispanic whites associated with lower risk of displacement
Educational Attainment	ACS 5 Year Estimates, S21501	Increasing share of high educational attainment associated with active displacement

Housing Variables		
Variable	Data Source	Association
% of dwellings units in buildings with 3+ units	ACS 5 Year Estimates, DP04	Higher share of multi-unit buildings is associated with higher risk of displacement
% renter-occupied housing	ACS 5 Year Estimates, DP04	Higher share of renter-occupied housing is associated with higher risk of displacement
Median gross rent	ACS 5 Year Estimates, DP04	Lower median gross rent compared to nearby higher rents is associated with higher risk of displacement
Overcrowding	ACS 5 Year Estimates, DP04	Higher rates of overcrowding are associated with higher risk of displacement

Site Inventory

The purpose of the housing element’s site inventory is to identify and analyze specific land (site) that is available and suitable to accommodate the regional housing need by income group. The site inventory enables the jurisdiction to determine whether there are sufficient and adequate sites to accommodate the RHNA by income category. A site inventory and analysis will determine whether program actions must be adopted to “make sites available” with appropriate zoning, development standards, and infrastructure capacity to accommodate the new development need.

AB 686 requires a jurisdiction’s site inventory “...shall be used to identify sites throughout the community, consistent with...” its duty to affirmatively further fair housing.⁷⁹ Sites must be identified and evaluated relative to the full scope of the assessment of fair housing (e.g., segregation and integration, racially and ethnically concentrated areas of poverty and affluence, access to opportunity, etc.). The site inventory and accompanying analysis must identify and analyze selected sites, map the location of the sites, indicate the number of projected units for each site and represent the assumed affordability (i.e., lower, moderate and above moderate) for each site, and evaluate relative to socio-economic patterns. Importantly, the analysis ought not be limited to the identification of sites for lower income households. Rather, it should incorporate the jurisdiction’s projected housing development at all income levels and assess the extent to which that development will either further entrench or help to ameliorate existing patterns of segregation and/or exclusion of members of protected categories. Where the analysis of the inventory indicates that the community has insufficient sites appropriately zoned and located to accommodate its lower income RHNA in a manner that affirmatively furthers fair housing, the housing element must include a program to address this inconsistency, such as making additional sites available to accommodate its lower income RHNA in a manner that affirmatively furthers fair housing. To evaluate the site inventory’s consistency with the obligation to affirmatively furthering fair housing, the site inventory analysis should address:

- **Improved Conditions:** A discussion of how the sites are identified in a manner that better integrates the community with a consideration for the historical patterns and trends, number of existing households, the magnitude (e.g., number of units) of the RHNA by income group and impacts on patterns of socio-economic and racial concentrations.
- **Exacerbated Conditions:** Similar to above, an explanation of identified sites relative to the impact on existing patterns of segregation and number of households relative to the magnitude (e.g., number of units) of the RHNA by income group.
- **Isolation of the RHNA:** An evaluation of whether the RHNA by income group is concentrated in areas of the community.
- **Local Data and Knowledge:** A consideration of current, planned and past developments, investment, policies, practices, demographic trends, public comment and other factors.

⁷⁹ Gov. Code, §§ 65583.2, 65583, subd. (c)(10)(A), 8899.50; see also HCD, Building Blocks, at <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>; 24 C.F.R. § 5.154 (2016).

- **Other Relevant Factors:** Any other factors that influence the impacts of the identification of sites to accommodate the regional housing need on socio-economic patterns and segregation. This requirement should address any pending or approved plans, other elements of the general plan and relevant portions of the housing element and site inventory analysis requirements including, but not limited to, effectiveness of past programs in achieving the goals of the housing element, suitability of sites, existing uses and impacts of additional development potential, including potential for displacement of residents, businesses and other community amenities and infrastructure capacity.

Summary of Conclusions and Approach to Policies and Programs: Based on the outcomes of the analysis, the element must summarize conclusions and directly identify policies and programs needed to address identifying and making available adequate sites to accommodate the RHNA in a manner that affirmatively furthers fair housing. Policies and programs must include “meaningful actions” beyond combating discrimination to overcome patterns of segregation and foster inclusive, affordable and stable communities.

Specifically, the analysis must include each of the fair housing issue areas: (1) segregation and integration, (2) racially and ethnically concentrated areas of poverty (R/ECAPs), (3) access to opportunity, and (4) disproportionate housing needs, including displacement. The analysis should not be limited to the jurisdiction itself, but should include the surrounding region and an understanding of the role the jurisdiction plays in current and historical trends of segregation at a regional level.

Segregation and Integration

The analysis must address identified sites relative to segregation and integration of protected classes. This analysis may focus on households by income but must address segregation and integration of other protected classes as well, including population by race, disability and familial status; the analysis must address the effects of economic segregation on members of protected classes. The analysis must show how the site inventory decreases the segregation index scores for protected classes and along income within the jurisdiction, as well as the segregation indices at the regional scale. It should provide an estimate of how much the sites identified are expected to decrease the dissimilarity and isolation index scores. Furthermore, the analysis should include an evaluation of current and historical spatial patterns of subsidized housing within and surrounding the jurisdiction, including emergency shelters, subsidized affordable housing, supportive housing, and usage of housing choice vouchers, and how the site inventory decreases patterns of segregation given these trends. This analysis of subsidized housing can provide insights into patterns of segregation and integration at a more granular scale that may prove helpful when U.S. Census data is only available at large geographies like tracts and block groups.

Data Considerations: Sample Methodology for Analysis by Income Group (should also be applied to race, disability and familial status)

1. Identify the percentage of the total local households that are lower, moderate and above moderate income.
2. **A.** Calculate the percentage of households in each census tract or block group that are lower, moderate and above moderate income.

B. As a secondary indicator, identify those tracts or block groups where the percentage of households at the appropriate income level is significantly higher than the community-wide average. The actual level chosen should be sensitive to the local context. For example, if a community has a very low existing percentage of lower income households, an appropriate measure might be block groups where the percentage of lower income households is double the community-wide average. In communities where the percentage of existing lower income households is relatively high, then a standard of 25 or 50 percent higher than the community-wide average may be appropriate. When tracts or block groups contain relatively small numbers of households, the percentage calculations will have relatively high margins of error (MOE). MOEs are also included in each record in the LMISD data. The MOEs should be considered when interpreting the results of this analysis.
3. Identify the existing percentage of LMI households in each block group where there is a residential capacity targeted to accommodate the RHNA for LMI households.
4. **A.** Calculate the total percentage of housing units counted towards satisfaction of the RHNA for lower income households where the existing block group percentage of LMI households exceeds the overall average for the jurisdiction.

B. Calculate the total percentage of housing units counted towards satisfaction of the RHNA for LMI households where the existing block group percentage of LMI households exceeds the secondary standard for concentration of LMI households that is significantly higher than the overall jurisdiction average.
5. If the percentage of housing units from #4 A. is significantly higher than the percentage from #2 A., and/or if the percentage of housing units from #4 B. is significantly higher than the percentage from #2 B., then this is an indicator that the site inventory for development of housing for lower income households is overly concentrated in areas that the housing sites would tend to encourage over-concentration of lower income households and sites targeted for lower income housing development should be better located among tracts or block groups where the percentage of lower income households is below the exiting citywide average.
6. Analyze local and regional data and knowledge, policies, practices and investments, demographic trends and other factors.

Racially and Ethnically Concentrated Areas of Poverty and Affluence

The analysis must evaluate both the location of identified sites and the location of capacity (number of units) by income group relative to racially and ethnically concentrated areas of poverty and affluence. The analysis should address whether sites are located in or near areas of concentrated poverty and race and affluence, and whether the identified sites significantly concentrate capacity (number of units) to accommodate lower income households in or near racially and ethnically concentrated areas of poverty. The analysis should also evaluate the relationship between the location where the capacity for the lower-income housing need is accommodated in comparison to the housing need for above moderate income households. For example, whether sites to accommodate above moderate income households are significantly concentrated in areas of affluence. This analysis of R/ECAPs and RCAs should include looking at neighborhoods of the jurisdiction where there are no identified sites in the site inventory and evaluating if the absence of sites in those neighborhoods perpetuates patterns of R/ECAPs or RCAs.

Disparities in Access to Opportunity

The analysis must address the location of identified sites and the location of capacity (number of units) by income group relative to overall access to opportunity and various categories of access to opportunity (e.g., education, transportation, employment, environment). The analysis should not only address an overall score value of access to opportunity, but must also individually address access to education, transportation, economic prosperity, areas with low rates of violent crime, parks and recreation areas, environmentally healthy neighborhoods and other important opportunities. This is an important place to include local data, such as school performance and enrollment boundaries, local bicycle and pedestrian data, and access to critical local and cultural institutions if available, although the analysis should extend beyond the jurisdiction's boundaries when considering access to opportunity. This analysis should be quantitative where possible and qualitative at least to guide appropriate goals and actions resulting from the analysis. Even where information about these indicators of opportunity is more qualitative or anecdotal than quantitative, it is a valuable and necessary component of developing appropriate actions.

Local jurisdictions using the TCAC/HCD Opportunity Maps should note that rural areas are scored relative to other rural areas in the same county, meaning they are not scored on the same scale as non-rural areas. This is important to note in jurisdictions that include a mix of rural and non-rural areas. While the TCAC/HCD Opportunity Maps provide data at a block group level in rural areas, data tools for rural areas and lower population areas sometimes do not fully capture the nuance of the socio-economic patterns, which highlights the importance of using local data and knowledge as a complement.

Disproportionate Housing Needs, including Displacement Risk

The identification of sites should be informed by the findings of the disproportionate housing needs section of the assessment of fair housing. To analyze sites relative to disproportionate housing needs, including displacement risk, a locality must identify and evaluate sites according to cost burdens, overcrowding and substandard housing. This analysis must also address displacement risks as well as any other disproportionate housing needs addressed in the assessment of fair housing based on local data and knowledge. Factors of disproportionate housing need (e.g., overpayment, overcrowding, displacement, etc.) may be considered together to the extent there is a significant coincidence. The analysis must also address ways in which development of the identified sites will impact displacement risk. Where development of the identified sites is likely to increase displacement risk, then the element must include programs to mitigate the risks and impacts of displacement.

Identification and Prioritization of Contributing Factors

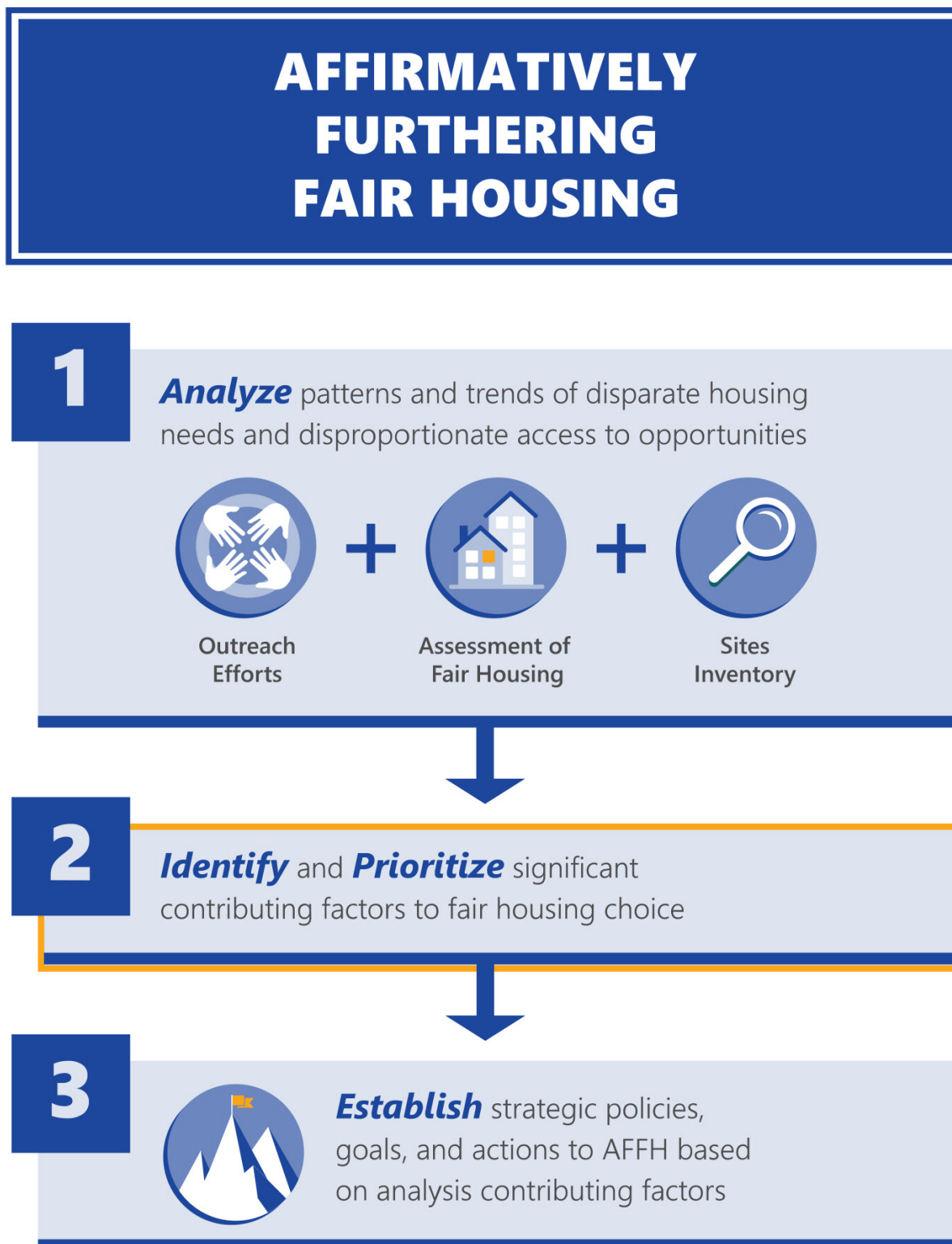
The housing element must include an identification and prioritization of significant contributing factors to segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs. Fair housing contributing factor (or contributing factor) means a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. See “Part 3: Resources” for examples of contributing factors by fair housing issue area. Contributing factors should be based on all the prior efforts and analyses: outreach, assessment of fair housing, and site inventory. Contributing factors must also be prioritized in terms of needed impact on fair housing choice and strongly connect to goals and actions.

The identification and evaluation of contributing factors must:

- Identify fair housing issues and significant contributing factors;
- Prioritize contributing factors, including any local information and knowledge, giving highest priority to those factors that most limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights compliance; and
- Discuss strategic approaches to inform and strongly connect to goals and actions.

For more information, see “Part 3: Resources” (Sample Contributing Factors and Action Matrix)

Chart 2: Contributing Factors Relationship Between Assessment of Fair Housing and Goals and Actions



The Importance of Prioritization

In any given community, there will be several contributing factors. However, listing contributing factors without analysis will not result in meaningful actions. For example, a list of 50 contributing factors that are not analyzed will likely result in less guided and impactful goals and actions. Instead, the housing element must prioritize contributing factors and should consider a manageable list (e.g., 4-6) to strongly connect to goals and actions, focus resources and maximize impact in the planning period. Further, the element should consider regular evaluation of the effectiveness of goals and actions and adjust and re-prioritize contributing factors and goals and actions as necessary.

Contributing factors are not limited to public actions. Private actions can also contribute to patterns of segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs. While public agencies do not directly control private actions or contributing factors beyond a locality's boundaries, the actions of public agencies can influence private action and have impacts beyond local boundaries. As a result, regardless of whether contributing factors are public or private or local, region, state or federal, the housing element must recognize a broader social and legal obligation to affirmatively further fair housing and still identify and prioritize those contributing factors to commit to commensurate goals and actions.

Using Other Consolidated Plan Documents

Localities may utilize an assessment of fair housing or analysis of impediments created pursuant to past federal requirements to identify and prioritize contributing factors to fair housing issues. Also, the statewide analysis of impediments and, if available, a regional analysis of impediments may be useful. While these documents may be a sufficient starting point, in all cases, contributing factors must be tailored to local conditions or must be re-evaluated and prioritized based on the assessment of fair housing in the housing element. Note that information in an AFH or AI may also be outdated or incomplete depending on how recently that information was prepared and may need to be updated.

Goals, Policies, and Actions

The housing element must include goals, policies and most specifically, a schedule of actions during the planning period. Actions must be specific with timelines, discrete steps and measurable outcomes to have a "beneficial impact" during the planning period. The schedule of actions must reflect the results of analyses and is intended to be adequate to address the housing needs of all economic segments of the community. The schedule of actions must address the following statutory areas:

- Identify adequate sites, with appropriate zoning and development standards and services to accommodate the locality's share of the regional housing needs for each income level;
- Assist in the development of adequate housing to meet the needs of extremely low-, very low-, low-, and moderate-income households;

- Address and, where possible, remove governmental and non-governmental constraints to the maintenance, improvement, and development of housing, including housing for people at all income levels, as well as housing for people with disabilities and providing reasonable accommodation;
- Conserve and improve the condition of the existing affordable housing stock;
- Preserve assisted housing developments at risk of conversion to market rate;
- Promote housing opportunities throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics; and
- Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at an affordable rent.

What is “Beneficial Impact”

Programs in the element must have specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. For example, programs to “explore” or “consider” on an “ongoing” basis are inadequate to demonstrate a beneficial impact in the planning period. Conversely, a program with clear and specific commitment and numerical objectives such as “rezone 50 acres to high density by June 2022” is adequate to demonstrate a beneficial impact. This specific and clear commitment combined with numerical objectives and timelines is called “beneficial impact.” Similarly, programs to affirmatively furthering fair housing must have specific and clear commitment, milestones, and metrics or numerical and anticipated outcomes.

Goals and Policies

Goals and policies typically are utilized to determine a direction in the implementation of a schedule of actions. Through this direction, actions can be interpreted, prioritized, adjusted and carried out to best achieve the necessary outcomes to address the identified needs without re-evaluating over-arching principles or re-starting legislative or complex policy-making processes. To affirmatively further fair housing, goals and policies must have a specific connection to outreach, the assessment of fair housing, the analysis of the site inventory and most importantly, the prioritization of contributing factors to fair housing issues. Goals, policies and actions must be aggressively set to overcome those contributing factors to meet the “meaningful impact” requirement in statute and to avoid actions that are materially inconsistent with the obligation to affirmatively further fair housing. Goals and policies must be created with the intention to have a significant impact, well beyond a continuation of past actions, and to provide direction and guidance for meaningful action.

What If Goals Are Outside of Local Control?

Goals should be set regardless of whether a locality directly controls all the factors involved in achieving that goal. A locality's ability to influence may be a consideration in development of actions but should not limit setting goals. Instead, recognizing the ability or inability to influence a goal should be a starting point for forming appropriate policies and actions. For example, a locality might have limited financial and staff resources. Instead of setting goals and actions at an inadequate level due to limited resources, localities should recognize this constraint and form policies and actions accordingly, such as building partnerships with non-profits to explore all private and public funding available, creating coalitions, working with legislators, exploring all private and public funding available, collaborating with nearby localities and seeking technical assistance.

Goals and policies to affirmatively further fair housing do not need to be independent or isolated on a contributing factor. Instead, goals and policies can be integrated with other goals and policies required by the housing element. For example, a housing element could have a program to "Improve housing supply." On the other hand, an integrated program could "Improve and integrate housing supply, choices and affordability throughout the community." Goals and policies intended to affirmatively further fair housing should be described as such. By integrating goals and policies, a locality can leverage efforts for a broader and more significant impact while better reflecting more inclusive values.

Actions

Actions implement goals and consist of concrete steps, timelines and measurable outcomes. Actions should be considered a part of the schedule of actions or programs required by Housing Element Law and must affirmatively further fair housing pursuant to Government Code section 8899.50. Specifically, Government Code section 8899.50 requires "meaningful actions" well beyond combating discrimination to overcome patterns of segregation and foster inclusive communities. These actions, as a whole, must:

- Address significant disparities in housing needs and in access to opportunity;
- Replace segregated living patterns with truly integrated and balanced living patterns;
- Transform racially and ethnically concentrated areas of poverty into areas of opportunity; and
- Foster and maintain compliance with civil rights and fair housing laws.

Further, local agencies shall not take any action materially inconsistent with the obligation to affirmatively further fair housing. This requirement should apply to all actions in the housing element and the rest of the general plan as well as any actions, policies or practices outside of the general plan.

Action Areas

Actions to affirmatively further fair housing may include, but are not limited to:

- Enhancing housing mobility strategies;
- Encouraging development of new affordable housing in high resource areas;
- Improving place-based strategies to encourage community conservation and revitalization, including preservation of existing affordable housing; and
- Protecting existing residents from displacement.

While the goals, policies and actions may select from the above areas (e.g., mobility, housing in high resource areas, place-based, protection from displacement), actions must be formulated in a manner to address the full scope of outreach, assessment of fair housing, analysis of site inventory and overcome contributing factors to fair housing. As a result, a schedule of actions generally must address all four categories.

For examples of affirmatively furthering fair housing actions by each of the action areas, see “Part 3: Resources.”

Using a Variety of Actions

To address the full scope of outreach, complete the assessment of fair housing, and overcome contributing factors to fair housing and affirmatively further fair housing, actions must consider a wide range of actions across all action areas (e.g., mobility, housing in high resource areas, place-based and protection from displacement). The number and scale of actions will depend on the severity of the needs but regardless of need, a cohesive and effective program will consider multiple action areas. For example, a place-based approach might improve infrastructure or invest in active transportation, but those efforts would be ineffective in addressing needs without complementary anti-displacement measures.

Further, a balanced and effective approach will consider different types of actions utilizing: (1) human resources: outreach, education, marketing, collaboration, (2) land use resources: planning documents such as general plans, zoning, specific plans, ordinances and procedures, and (3) financial resources.

A balanced and effective approach will consider and combine each of these areas. For example, an approach could include marketing and collaboration as part of increasing mobility, zoning to increase housing choices in high resource areas, and investing financial resources in place-based and displacement action areas. An effective approach will also seek to combine these types within an action area. For example, a locality might take a zoning and financial resources approach to displacement risks or creating new housing choices in high resource areas. By combining these action areas, a program will be more balanced and more effective in achieving the goals to affirmatively further fair housing.

Milestones, Objectives, Monitoring and Making Adjustments

Specific actions with timelines and measurable or numerical objectives are essential to an effective approach. Successful outcomes will not be achievable and discernable without specificity. For example, a program to “explore feasibility on an ongoing basis” does little to achieve tangible results but a commitment to “rezone 50 acres to the high density district by October 2021” has a far more likelihood of producing results. In addition, measurable or numerical objectives clarify goals and serve as a reference point for monitoring the effectiveness of programs. As part of the annual progress report (Gov. Code, § 65400), localities, through a community process, should evaluate actions for progress toward goals and objectives and effectiveness to make regular adjustments as necessary.

Integrating Affirmatively Furthering Fair Housing into Existing Housing Element Programs

Housing elements must include actions to address statutory areas, such as identifying adequate sites to accommodate the regional housing need, assisting in the development of housing for lower income households and households with special needs, and conserving and improving the existing housing stock.⁸⁰ These statutory program areas can be modified to complement the statutorily required affirmatively furthering fair housing programs.⁸¹ Examples include:

- **Adequate Sites:** In some cases, housing elements will include programs to rezone to address a shortfall of sites to accommodate the regional housing need. These types of programs should be carried out where possible to promote more inclusive communities. In addition, in some cases, a locality might find circumstances warranting rezoning above and beyond the regional housing need to promote more housing choices and affordability. Examples include long held patterns of isolation in higher income areas, or other factors, or when identifying sites to accommodate the housing need for lower income households exacerbates segregation.
- **Assist in Development of Housing for Lower Income Households and Households with Special Needs:** Housing elements will include programs to encourage affordable development, such as utilizing, seeking or supporting funding, building partnerships with non-profit developers and incentives for affordability. These programs can be targeted to high resource areas or other similar areas to promote inclusive communities.
- **Addressing Governmental and Non-governmental Constraints:** Land use and zoning can be a key barrier to inclusive communities. Zoning, permit processing, fees and other land use reforms can be targeted geographically to promote more inclusive communities. Non-governmental constraints can include factors such as local opposition to affordable housing. Education and other programs can be geographically targeted to build campaigns for more integrated land use patterns.

80 Gov. Code, §§ 65583, subd. (a)(3) , 65583.2; see also HCD, Building Blocks at <https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>.

81 Gov. Code, §§ 8899.50, 65583, subd. (c).

- **Conserve and Improve the Existing Affordable Housing Stock:** Elements must have actions to conserve and improve the existing affordable housing stock. Typical actions include programs for rehabilitation (renter, owner), acquisition and rehabilitation, infrastructure investment, conservation of mobilehome parks, housing choice vouchers, and administrative actions like zoning or displacement policies. These types of programs can be geographically targeted as place-based strategies to revitalize and improve communities or as new opportunities in high opportunity areas.
- **Incentivize Accessory Dwelling Units (ADUs):** Programs to incentivize ADUs can be targeted as new opportunities in high resource areas or as place-based revitalization strategies.

Integrating Goals, Policies and Actions across Multiple Planning Objectives

Various policy topics can be integrated where more than one objective is considered at a time to promote more balanced approaches and multiple benefits. The intent is to align objectives and set clearer direction to avoid future conflict. Various policy topics can be considered within the housing element and also across the general plan. For example, a goal or policy could be set to both identify adequate sites to accommodate the regional housing need and affirmatively furthering fair housing. Also, a housing issue could be considered at the same time as a circulation or safety issue. Through more integrated approaches, the general plan becomes a more cohesive, internally consistent and implementable plan. For examples of integrated concepts in the general plan, please review resources developed by the Governor’s Office of Planning and Research. In addition, See “Part 3: Resources” for a matrix of policy topics and integrated planning approaches.

Part 3:

Resources

Statute (strikeout/underline)

Division 1 of Title 2 of the Government Code, Chapter 15

Government Code Section 8899.50 (Additions and Deletions in Strikeout/Underline)

Section 8899.50. (a) For purposes of this section, the following terms have the following meanings:

- (1) “Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency’s activities and programs relating to housing and community development.
- (2) “Public agency” means all of the following:
 - (A) The state, including every state office, officer, department, division, bureau, board, and commission, including the California State University.
 - (B) A city, including a charter city, county, including a charter county, city and county, and a redevelopment successor agency.
 - (C) A public housing authority created pursuant to the Housing Authorities Law (Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code).
 - (D) A public housing agency, as defined in the United States Housing Act of 1937 (codified at 42 U.S.C. Sec. 1437 et seq.), as amended.
 - (E) Any other political subdivision of the state that is a grantee or subgrantee receiving funds provided by the United States Department of Housing and Urban Development under the Community Development Block Grant program, the Emergency Solutions Grants program, the HOME Investment Partnerships program, or the Housing Opportunities for Persons With AIDS program.
- (b) A public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

- (c) This section shall be interpreted consistent with the Affirmatively Furthering Fair Housing Final Rule and accompanying commentary published by the United States Department of Housing and Urban Development contained in Volume 80 of the Federal Register, Number 136, pages 42272 to 42371, inclusive, dated July 16, 2015. Subsequent amendment, suspension, or revocation of this Final Rule or its accompanying commentary by the federal government shall not impact the interpretation of this section.
- (d) In selecting meaningful actions to fulfill the obligation to affirmatively further fair housing, this section does not require a public agency to take, or prohibit a public agency from taking, any one particular action.

Division 1 of Title 7 of the Government Code, Chapter 3

Government Code Section 65583 (Additions and Deletions in Strikeout/Underline)

Section 65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

- (a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:
 - (1) through (9) Omitted – No substantive changes.
 - (b) (1) through (2) Omitted – No substantive changes.
- (c) A program ~~which~~ that sets forth a schedule of actions during the planning period, each with a timeline for implementation, ~~which~~ that may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, the utilization of appropriate federal and state financing and subsidy programs when available, and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:
 - (1) Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level

that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

- (A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years and 120 days from the statutory deadline in Section 65588 for adoption of the housing element.
- (B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in Section 65583.2.
- (C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.
- (2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.
- (3) Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.
- (4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.
- (5) Promote ~~housing opportunities~~ and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or ~~disability~~. disability, and

other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law.

- (6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.
- (7) Include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals.
- (8) Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.
- (9) (A) Affirmatively further fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2. The program shall include an assessment of fair housing in the jurisdiction that shall include all of the following components:
 - (i) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.
 - (ii) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.
 - (iii) An assessment of the contributing factors for the fair housing issues identified under clause (ii).
 - (iv) An identification of the jurisdiction's fair housing priorities and goals, giving highest priority to those factors identified in clause (iii) that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved.
 - (v) Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.
- (B) A jurisdiction that completes or revises an assessment of fair housing pursuant to Subpart A (commencing with Section 5.150) of Part 5 of Subtitle A of Title 24 of the Code of Federal Regulations, as published in Volume 80 of the Federal Register, Number 136, page 42272, dated July 16, 2015, or an analysis of impediments to fair housing choice in accordance with the requirements of

Section 91.225 of Title 24 of the Code of Federal Regulations in effect prior to August 17, 2015, may incorporate relevant portions of that assessment or revised assessment of fair housing or analysis or revised analysis of impediments to fair housing into its housing element.

- (C) The requirements of this paragraph shall apply to housing elements due to be revised pursuant to Section 65588 on or after January 1, 2021.
- (d) through (f) omitted – No substantive changes.

Division 1 of Title 7 of the Government Code, Chapter 3

Government Code Section 65583.2 (Additions and Deletions in Strikeout/Underline)

65583.2. (a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (9) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the sites that meet the standards set forth in subdivisions (c) and (g):

- (1) Vacant sites zoned for residential use.
 - (2) Vacant sites zoned for nonresidential use that allows residential development.
 - (3) Residentially zoned sites that are capable of being developed at a higher density, including the airspace above sites owned or leased by a city, county, or city and county.
 - (4) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, rezoned for, to permit residential use, including sites owned or leased by a city, county, or city and county.
- (b) Through (l) omitted – No substantive changes.

AB 686 Housing Element Compliance Checklist

Part 1 Outreach:

- Does the element describe and incorporate meaningful engagement that represents all segments of the community into the development of the housing element, including goals and actions (e.g., language access, accessibility for persons with disabilities, resident engagement, including low income residents and residents in subsidized housing programs, description of comments and whether incorporated, and outreach to fair housing agencies, legal services and public housing agencies)?

Part 2 Assessment of Fair Housing:

- Does the element include a summary of fair housing enforcement and capacity in the jurisdiction?
- Does the element include an analysis of these five areas: Fair housing and enforcement capacity? Integration and segregation patterns and trends? Racially or ethnically concentrated areas of poverty? Disparities in access to opportunity? And disproportionate housing needs within the jurisdiction, including displacement risk? Each of these four areas must have its own analysis.

Each analysis on the four fair housing issue areas should include the following:	Fair Housing Enforcement and Capacity	Segregation and Integration	R/ECAP	Access to opportunity	Disp. Housing needs +displacement risk
Patterns and trends – local and regional					
Local data and knowledge					
Other relevant factors					
Conclusions and summary of issues					

Part 3 Site Inventory:

- Did the element identify and evaluate (e.g., maps) the number of units, location and assumed affordability of identified sites throughout the community (i.e., lower, moderate, and above moderate income RHNA) relative to all components of the assessment of fair housing?
- Did the element analyze identified sites related to improving or exacerbating conditions for each of the fair housing areas (integration and segregation, racially and ethnically concentrated areas of poverty, areas of opportunity, disproportionate housing needs, including displacement)?

Part 4 Identification of Contributing Factors

- Did the element identify, evaluate and prioritize the contributing factors to fair housing issues? Did the element prioritize those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance?

Part 5 Goals and Actions

- Did the element identify goals and actions based on the identified and prioritized contributing factors?
- Do goals and actions address mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for preservation and revitalization, displacement protection, and other program areas?
- Are actions significant, meaningful and sufficient to overcome identified patterns of segregation and affirmatively further fair housing?
- Did the element include metrics and milestones for evaluating progress on programs/actions and fair housing results, including concrete timelines?

Definitions

Affirmatively Furthering Fair Housing

Meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.⁸²

Assessment of Fair Housing (AFH)

An analysis undertaken pursuant to 24 CFR § 5.154 that includes an analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals, and is conducted and submitted to HUD using the Assessment Tool. The AFH may be conducted and submitted by an individual program participant (individual AFH), or may be a single AFH conducted and submitted by two or more program participants (joint AFH), or two or more program participants, where at least two of which are consolidated plan program participants (regional AFH).⁸³

Community Participation

As required in 24 CFR § 5.158, means a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating such views and recommendations into decisions and outcomes. For HUD regulations implementing the Housing and Community Development Act of 1974, the statutory term for "community participation" is "citizen participation."⁸⁴

Contributing Factor

A factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues as provided in 24 CFR § 5.154.⁸⁵

Disparities in Access to Opportunity

Defined by the AFFH Final Rule as "substantial and measurable differences in access to educational, transportation, economic, and other opportunities in a community based on protected class related to housing."⁸⁶

⁸² Gov. Code, § 8899.50, subd. (a)(1).

⁸³ 24 C.F.R. §5.152 (2016).

⁸⁴ *ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Disproportionate Housing Needs

Generally refers to a condition in which there are significant disparities in the proportion of members of a protected class experiencing a category of housing need when compared to the proportion of members of any other relevant groups, or the total population experiencing that category of housing need in the applicable geographic area. For purposes of this definition, categories of housing need are based on such factors as cost burden, severe cost burden, overcrowding, tenure (own vs. rent), homelessness, and substandard housing conditions.

Fair Housing Choice

Under the AFFH Final Rule, fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or disability. Fair housing choice encompasses:

- Actual choice, which means the existence of realistic housing options;
- Protected choice, which means housing that can be accessed without discrimination;
- Enabled choice, which means realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice and access to opportunity include access to accessible housing and housing in the most integrated setting appropriate to an individual's needs, as required under Federal civil rights law, including disability-related services that an individual needs to live in such housing.

Fair Housing Issue

A condition in a program participants geographic area of analysis that restricts fair housing choice or access to opportunity, and includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing.⁸⁷

Integration

A condition within the program participants geographic areas of analysis, as guided by the AFFH Data Viewer, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area."⁸⁸

Land Value Recapture

A policy approach by which communities can recover and reinvest land value increases that result from public investment and other government actions, including re-zoning. This can include things such as requiring community benefits from landowners and developers whose land has increased in value due to government actions, public benefit zoning, incentive zoning, density bonuses, housing overlay zoning, tax increment financing, community benefits agreements, special assessment districts, transferable development rights, linkage or impact fees, and others.

⁸⁷ Ibid.

⁸⁸ Ibid.

Meaningful Action

Significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.⁸⁹

Public Agency

Means all of the following:

- A. The state, including every state office, officer, department, division, bureau, board, and commission, including the California State University.
- B. A city, including a charter city, county, including a charter county, city and county, and a redevelopment successor agency.
- C. A public housing authority created pursuant to the Housing Authorities Law (Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code).
- D. A public housing agency, as defined in the United States Housing Act of 1937 (codified at 42 U.S.C. Sec. 1437 et seq.), as amended.
- E. Any other political subdivision of the state that is a grantee or subgrantee receiving funds provided by the United States Department of Housing and Urban Development under the Community Development Block Grant program, the Emergency Solutions Grants program, the HOME Investment Partnerships program, or the Housing Opportunities for Persons With AIDS program.⁹⁰

Segregation

A condition within the program participant's geographic area of analysis....in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area.⁹¹

⁸⁹ Ibid.

⁹⁰ Gov. Code, § 8899.50, subd. (a)(2).

⁹¹ 24 C.F.R. §5.152 (2016).

Dissimilarity and Isolation Index Formulas

Dissimilarity Index: This index measures the evenness with which two groups (frequently defined on racial or ethnic characteristics) are distributed across the geographic units, such as block groups within a community. The index ranges from 0 to 100, with 0 meaning no segregation and 100 indicating complete segregation between the two groups. The index score can be understood as the percentage of one of the two groups that would need to move to produce an even distribution of racial/ethnic groups within the specified area. An index score above 60 is considered high (i.e.: 60 percent of people would need to move to eliminate segregation), while 30 to 60 is considered moderate, and below 30 is considered low.⁹²

The formula for calculating the dissimilarity index, by Census block group, is as follows:

$$D = \frac{1}{2} \times \sum_{i=1}^N \left| \frac{P_{ig}}{P_g} - \frac{P_{ih}}{P_h} \right|$$

- P_{ig} is the population of group g in Census block group i
- P_{ih} is the population of group h in Census block group i
- P_g is the total population of group g in the City
- P_h is the total population of group h in the City

Isolation Index: Ranging from 0 to 100, the isolation index represents the percentage of residents of a given race or ethnicity in a block group where the average resident of that group lives, correcting for the fact that this number increases mechanically with that group's share of the overall citywide population. Using Hispanic or Latino residents as an example, an aggregate isolation index of 40 indicates that the average Hispanic or Latino resident lives in a block group where the Hispanic share of the population exceeds the overall citywide average by roughly 40 percent. Isolation index values that equal close to zero indicate that members of that BIPOC group live in relatively integrated neighborhoods.^{93 94}

The formula for calculating the isolation index, by Census block group, is as follows:

$$I = \frac{\left[\left(\sum_i^N \frac{P_{ig}}{P_g} \times \frac{P_{ig}}{P_{it}} \right) - \frac{P_g}{P_t} \right]}{1 - \frac{P_g}{P_t}}$$

- P_{ig} is the population of group g in Census block group i
- P_{it} is the total population in Census block group i
- P_g is the total population of group g in the City
- P_t is the total population in the City

92 Massey, D.S. and N.A. Denton. (1993). *American Apartheid: Segregation and the Making of the Underclass*. Cambridge, MA: Harvard University Press.

93 HUD. (2013). AFFH Data Documentation. Available at: http://www.huduser.org/portal/publications/pdf/FR-5173-P-01_AFFH_data_documentation.pdf

94 Glaeser, E. and Vigdor, J. (2001). *Racial Segregation in the 2000 Census: Promising News*. Washington, DC: The Brookings Institution, Center on Urban and Metropolitan Policy. Available at: <https://www.brookings.edu/wp-content/uploads/2016/06/glaeser.pdf>

Local jurisdictions should use the dissimilarity index and/or isolation index tools as part of the needs assessment to help to understand where there are areas of segregation in the community and highlight needs for housing element policies and programs to help reduce segregation. Dissimilarity index and Isolation index values for census tracts within the jurisdiction can be mapped thematically to highlight areas with high levels of segregation. This will highlight locations within the community where there are needs for housing element policies and programs to promote better racial and ethnic integration and reduce segregation.

Examples of Contributing Factors to Fair Housing Issues by Area

Outreach

- Lack of a variety of media (e.g., meetings, surveys, stakeholder interviews)
- Lack of marketing community meetings
- Lack of meetings at various times
- Lack of accessibility to draft documents
- Lack of language access
- Lack of accessible forums (e.g., webcast, effective communication, reasonable accommodation procedures)

Fair Housing Enforcement and Outreach Capacity

- Lack of local private fair housing outreach and enforcement
- Lack of local public fair housing enforcement
- Lack of resources for fair housing agencies and organizations
- Lack of state or local fair housing laws to support strong enforcement
- Unresolved violations of fair housing or civil rights law (including challenges to protect the constitutional and statutory rights of unhoused people)

Segregation and Integration

- Community opposition
- Displacement of residents due to economic pressures
- Lack of community revitalization strategies
- Lack of private investments in specific neighborhoods
- Lack of public investments in specific neighborhoods, including services or amenities
- Lack of regional cooperation
- Land use and zoning laws
- Lending discrimination
- Location and type of affordable housing
- Occupancy codes and restrictions
- Private discrimination
- Source of income discrimination
- Lack of tenant protections
- Harassment
- Lack of supportive housing in community-based settings
- Policing and criminalization

Racially and Ethnically Concentrated Areas of Poverty

- Community opposition
- Deteriorated and abandoned properties
- Displacement of residents due to economic pressures
- Lack of community revitalization strategies
- Lack of private investments in specific neighborhoods
- Lack of public investments in specific neighborhoods, including services or amenities
- Lack of regional cooperation
- Land use and zoning laws
- Location and type of affordable housing
- Occupancy codes and restrictions
- Private discrimination
- Lending discrimination
- Policing and criminalization

Disparities in Access to Opportunity

- Access to financial services
- The availability, type, frequency, and reliability of public transportation
- Lack of private investments in specific neighborhoods
- Lack of public investments in specific neighborhoods, including services or amenities
- Lack of regional cooperation
- Land use and zoning laws
- Lending discrimination
- Location of employers
- Location of environmental health hazards
- Location of proficient schools and school assignment policies
- Location and type of affordable housing
- Occupancy codes and restrictions
- Private discrimination
- Policing and criminalization

Disparities in Access to Opportunity for Persons with Disabilities

- Access to proficient schools for persons with disabilities
- Access to publicly supported housing for persons with disabilities
- Access to transportation for persons with disabilities
- Inaccessible government facilities or services
- Inaccessible sidewalks, pedestrian crossings, or other infrastructure
- Lack of affordable in-home or community-based supportive services
- Lack of affordable, accessible housing in range of unit sizes
- Lack of affordable, integrated housing for individuals who need supportive services
- Lack of assistance for housing accessibility modifications
- Lack of assistance for transitioning from institutional settings to integrated housing
- Land use and zoning laws
- Lending discrimination
- Location of accessible housing

- Occupancy codes and restrictions
- Lack of effective accommodations for unhoused people with disabilities
- Regulatory barriers to providing housing and supportive services for persons with disabilities
- State or local laws, policies, or practices that discourage individuals with disabilities from being placed in or living in apartments, family homes, and other integrated settings
- Policing and criminalization (especially people with mental disabilities or neurodivergent individuals)

Disproportionate Housing Needs, Including Displacement Risks

- The availability of affordable units in a range of sizes
- Displacement of residents due to economic pressures
- Lack of private investments in specific neighborhoods
- Lack of public investments in specific neighborhoods, including services or amenities
- Lack of renter protections
- Lack of protections for mobilehome park residents
- Land use and zoning laws
- Lending discrimination
- Lack of rental relief programs for people at risk of homelessness

Site Inventory

- Community opposition
- Lack of community revitalization strategies
- Lack of private investments in specific neighborhoods
- Lack of public investments in specific neighborhoods, including services or amenities
- Lack of regional cooperation
- Land use and zoning laws
- Local policies or practices (e.g., councilmember veto)
- Location and type of affordable housing
- Private discrimination

Sample Contributing Factors & Actions Matrix

Identified Fair Housing Issue	Contributing Factor	Priority (high, medium, low)	Meaningful Action

Examples of Affirmatively Furthering Fair Housing Actions

Housing Mobility Strategies consist of removing barriers to housing in areas of opportunity and strategically enhancing access. Examples include:

- Voucher mobility
- Housing mobility counseling
- City-wide affordable rental registries
- Landlord outreach to expand the location of participating voucher properties
- Landlord education and outreach on source of income discrimination and voucher programs
- Assistance with security deposits and moving expenses for voucher holders and other low-income tenants
- Extend search times for particular groups with housing choice vouchers, such as larger families with children or persons with disabilities
- Regional cooperation and administration of vouchers (such as through portability and shared waiting lists);
- Affirmative marketing can be targeted at promoting equal access to government-assisted housing or to promote housing outside the immediate neighborhood to increase awareness and the diversity of individuals in the neighborhood
- Collaborate with high performing school districts to promote a diversity of students and staff to serve lower income students
- Developing multifamily housing opportunities⁹⁵
- Encouraging the development of four or more units in a building
- Encouraging collaboration between local governments and community land trusts as a mechanism to develop affordable housing in higher-opportunity areas.⁹⁶
- Accessibility programs focus on improving access to housing, transit, public buildings and facilities, sidewalks, pedestrian crossings, and businesses

New Housing Choices and Affordability in Areas of Opportunity means promoting housing supply, choices and affordability in areas of high opportunity and outside of areas of concentrated poverty. Examples include:

- Zoning, permit streamlining, fees, incentives and other approaches to increase housing choices and affordability (e.g., duplex, triplex, multifamily, accessory dwelling units, transitional and supportive housing, group homes) in high opportunity areas
- Target housing creation or mixed income strategies (e.g., funding, incentives, policies and programs, density bonuses, land banks, housing trust funds)
- Inclusionary requirements

⁹⁵ The federal FHA includes design and construction requirements for all residential buildings with four or more attached units. In buildings with stairs, all ground floor units must be accessible, and in buildings with elevator access, all units must have minimum access. There is no federally mandated standard for accessibility in single family homes. Government Code section 12955.1, subdivision (b), requires 10 percent of units in multifamily buildings without elevators consisting of 3 or more rental units or 4 or more condominium units are subject to accessibility building standards.

⁹⁶ See Community Land Trusts and Stable Affordable Housing, available at <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-110419.html>, last visited on March 19, 2021.

- Scattered site affordable development
- Targeted investment and programs, including sweat equity, down payment assistance, new rental construction
- Accessibility modification programs and other measures that proactively enhance accessibility
- Increase accessible number of units above state law through incentives, policies, funding and other similar measures
- Developing waiting lists for persons with disabilities, such as coordination with regional centers for developmental services and targeting those lists to property owners or homeowners making units (e.g., ADUs) available
- Leveraging in-home or community based supportive services
- Develop a campaign to combat local opposition
- Increase number of ADUs allowed per site
- Increasing opportunities for community ownership of housing

Place-based Strategies to Encourage Community Conservation and Revitalization Involves approaches that are focused on conserving and improving assets in areas of lower opportunity and concentrated poverty such as targeted investment in neighborhood revitalization, preserving or rehabilitating existing affordable housing, improving infrastructure, schools, employment, parks, transportation and other community amenities. Examples include:

- Targeted investment in areas of most need focused on improving community assets such as schools, recreational facilities and programs, social service programs, parks, streets, active transportation and infrastructure
- Develop a proactive code enforcement program that targets areas of concentrated rehabilitation needs, results in repairs and mitigates potential cost, displacement and relocation impacts on residents
- Dedicate or seek funding to prioritize basic infrastructure improvements (e.g., water, sewer) in disadvantaged communities
- Address negative environmental, neighborhood, housing and health impacts associated with siting and operation of land uses such as industrial, agricultural, waste storage, freeways, energy production, etc. in disadvantaged communities
- Address negative impacts from climate change through investments in adaptation measures such as urban forestry, flood prevention measures, etc. in disadvantaged communities
- Target acquisition and rehabilitation to vacant and blighted properties in neighborhoods of concentrated poverty
- Inter-governmental coordination on areas of high need
- Prioritized capital improvement programs
- Develop new financing
- Recruit residents from areas of concentrated poverty to serve on boards, committees, task forces and other local government decision-making bodies
- Catalyze leadership and future community wide decision-makers, including affirmative recruitment in hiring practices
- Leverage private investment for community revitalization, including philanthropic
- Expand access to community meetings, including addressing language barriers, meeting times

Protecting Existing Residents from Displacement comprises strategies that protects residents in areas of lower or moderate opportunity and concentrated poverty and preserves housing choices and affordability. Examples include:

- First right of return to existing residents and policies that include moving expenses
- Multi-lingual tenant legal counseling
- Affirmative marketing strategies or plans targeting nearby neighborhoods, a Disadvantaged Community or a Low-Income Community
- Replacement requirements in targeted growth areas such as transit stations, transit corridors, job and housing rich areas, downtowns and revitalization areas or policies on sites identified to accommodate the housing needs of lower income households
- Rent stabilization programs beyond what is required by California Civil Code 1946.2
- Just cause eviction or other efforts improving tenant stability beyond what is required by California Civil Code 1946.2
- Policies to preserve Single Room Occupancy (SRO) housing or mobilehome parks
- Condominium conversion restrictions
- Land banking programs actively receiving funding
- Community benefit zoning and/or other land value recapture strategy
- Rent review board and/or mediation, foreclosure assistance, or multilingual tenant legal counseling services
- Density bonus ordinances that expand on state replacement requirements
- Implementation of an overlay zone to protect and assist small businesses
- Establishment of a small business advocate office and single point of contact for every small business owner;
- Creation and maintenance of a small business alliance;
- Increased visibility of the jurisdiction's small business assistance programs;
- Formal program to ensure that some fraction of a jurisdiction's purchases of goods and services come from local businesses
- Prioritization of Minority and Women Business Enterprises (MWBE) for public contracting
- Environmental contamination mitigation and hazard mitigation measures such as seismic retrofits, flood adaptation measures, etc. to prevent displacement from disasters
- Eliminating crime-free or nuisance ordinances or programs that result in penalties to landlords and evictions of tenants

Sample Tables

Regional Comparisons

Population by Race/Ethnicity

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
White (Non-Hispanic)						
Hispanic/Latino						
Black or African American						
Native American						
Asian						
Native Hawaiian and Other Pacific Islander						
Other						
Two or More Races						

Population by Disability Type

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Total with a Disability						
» Hearing Difficulty						
» Vision Difficulty						
» Cognitive Difficulty						
» Ambulatory Difficulty						
» Self-care Difficulty						
» Independent Living						

Source: XXXXXXXXX

Housing Units by Type

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Single Family-Detached						
Single Family-Attached						
2-4 Units						
5+ Units						
Mobilehomes						
Other						

Source: XXXXXXXXXX

Population by Familial Status

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Family Households						
» Married-Couple Family Households						
• With Children						
• Without Children						
» Other Family Households						
• With Children						
• Without Children						
Non-family Households						

Source: XXXXXXXXXX

Households by Income

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Less than \$10,000						
\$10,000-\$14,999						
\$15,000-\$24,999						
\$25,000-\$34,999						
\$35,000-\$49,999						
\$50,000-\$74,999						
\$75,000-\$99,999						
\$100,000-\$149,999						
\$150,000-\$199,999						
\$200,000 or More						
Median Income						

Source: XXXXXXXXXX

Households by Overpayment

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Owner Households (All Low Income Levels 0-80% AMI)						
Paying >30%						
Paying >50%						
Renter Households (All Low Income Levels 0-80% AMI)						
Paying >30%						
Paying >50%						
Owner Households (Extremely Low Income Levels 0-30% AMI)						
Paying >30%						
Paying >50%						
Renter Households (Extremely Low Income Levels 0-30% AMI)						
Paying >30%						
Paying >50%						

Source: XXXXXXXXXX

Households by Tenure

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Owner Households						
Renter Households						
Total Households						

Source: XXXXXXXXXX

Households by Overcrowding

	City		County		Region/State	
	2010	2018	2010	2018	2010	2018
Owner Households						
» 1.01 to 1.50 occupants per room						
» 1.51 to 2.00 occupants per room						
» 2.01 or more occupants per room						
Renter Households						
» 1.01 to 1.50 occupants per room						
» 1.51 to 2.00 occupants per room						
» 2.01 or more occupants per room						
Total Households						

Source: XXXXXXXXXX

List of Fair Housing Assistance Organizations

Name	Service Area	Address	Phone	Website
California Department of Fair Employment and Housing	California	2218 Kausen Dr. Ste. 100 Elk Grove, CA 95758	916-478-7251	https://www.dfeh.ca.gov/
Greater Bakersfield Legal Assistance, Inc.	Kern County, CA	615 California Ave. Bakersfield, CA 93304	661-325-5943	http://www.gbla.org/
Fair Housing Council of Central California	Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, Shasta, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba	333 W. Shaw Ave. Ste. 14 Fresno, CA 93704	559-244-2950	http://www.fhc-cc.org/index.html
Mental Health Advocacy Services, Inc.	Los Angeles area	3255 Wilshire Blvd. Ste. 902 Los Angeles, CA 90010	213-389-2077	http://mhas-la.org/
Southern California Housing Rights Center	The City of Los Angeles, Los Angeles County, Antelope Valley, & Ventura County	3255 Wilshire Blvd. 1150 Los Angeles, CA 90010	213-387-8400	http://www.hrc-la.org/default.asp?id=6
Housing and Economic Rights Advocates	State of California	1814 Franklin St. Ste. 1040 Oakland, CA 94612	510-271-8443	http://www.heraca.org/
Bay Area Legal Aid	San Rafael, Napa, Richmond, Oakland, San Francisco, Redwood City, & San Jose	1735 Telegraph Ave. Oakland, CA 94612	510-663-4755	https://baylegal.org/
		1025 Macdonald Ave, Richmond, CA 94801	510-233-9954	
		575 Lincoln Ave., Ste. 210, Napa, CA 94558	707-259-0579	
		1800 Market St., 3rd Floor, San Francisco, CA 94102	415-982-1300	
		1038 El Camino Real, Ste. A, Redwood City, CA 94063	650-358-0745	
		4 N. Second St., Ste. 600, San Jose, CA 95113	408-283-3700	

Name	Service Area	Address	Phone	Website	
California Rural Legal Assistance	California	1430 Franklin St., Ste. 103 Oakland, CA 94612	1-800-337-0690	https://www.crla.org/	
		141 A Street, Suite D. Arvin, CA 93203	661-854-3839		
		1460 6th Street, P.O. Box 35Coachella, CA 92236	760-398-7261		
		601 High St., Ste. C Delano, CA 93215	661-725-4350		
		449 Broadway St. El Centro, CA 92243	760-353-0220		
		3747 E. Shields Ave. Fresno, CA 93726	559-441-8721		
		126 North "B" St. Madera, CA 93638	559-674-5671		
		511 "D" St. Marysville, CA 95901	530-742-5191		
		1020 15th St, Ste. 20, Modesto, CA 95354	209-577-38811		
		338 "A" St. Oxnard, CA 93030	805-486-1068		
		3 Williams Rd. Salinas, CA 93905	831-757-5211		
		175 Santa Rosa St. San Luis Obispo, CA 93405	805-544-7994		
		2050 South Broadway Ste. G Santa Maria, CA 93454	805-922-4564		
		1160 N. Dutton Ave., Ste. 105 Santa Rosa, CA 95401	707-528-9941		
		145 E. Weber Ave. Stockton, CA 95202	209-946-0605		
		640 Civic Ctr. Dr. #108, Vista, CA 92084	760-966-0511		
21 Carr St. Watsonville, CA 95076	831-724-2253				
CSA San Diego County	San Diego County, CA	131 Avocado Ave. El Cajon, CA 92020	619-444-5700	https://www.c4sa.org/	
Eden Council of Hope & Opportunity	Alameda, Contra Costa, and Monterey Counties, and the Cities of Alameda, Antioch, Concord, Hayward, Livermore, Monterey, Oakland, Pleasanton, Richmond, Salinas, San Leandro, Seaside, Union City, and Walnut Creek	770 A Street, Ste. 204, Hayward, CA 94541	510-581-9380	www.echofairhousing.org	
		301 W. 10th St. Antioch, CA 94509	925-732-3919		
		141 N. Livermore Ave. Livermore, CA 94550	925-583-5992		
		1305 Franklin St. #305 Oakland, CA 94612	510-496-0496		
		570 Pacific St. Monterey, CA 93940	831-566-0824		
		168 W. Alisal St. Salinas, CA 93901	831-566-0824		

Name	Service Area	Address	Phone	Website
Fair Housing Advocates of Northern California	Marin County and Sonoma Counties; cities of Fairfield and Vallejo	1314 Lincoln Ave. Ste. A San Rafael, CA 94901	415-457-5025	http://www.fairhousingnorcal.org/
Fair Housing Council of Orange County	Orange County, CA	1516 Brookhollw Dr., Ste. A Santa Ana, CA 92705	714-569-0823	https://www.fairhousingoc.org/
Fair Housing Council of Riverside County	Riverside County (all jurisdictions), Moreno Valley, Corona, Temecula, Palm Springs, Palm Desert, Perris, Jurupa Valley, Hemet, Menifee	<p>4164 Brockton Ave. Riverside, CA 92501</p> <p>23890 Alessandro Blvd., Suite A1 Moreno Valley, Ca 92553</p> <p>190 W. Amado Rd. Palm Springs, CA 92262</p> <p>650 Main St. Corona, CA 92882</p>	951-682-6581	https://fairhousing.net/
Fair Housing Council of San Diego	San Diego Region	9845 Erma Rd., Ste. 300 San Diego, CA 92131	619-699-5888	https://fhcsd.com/
Fair Housing Council of the San Fernando Valley	Los Angeles County, primarily in the San Fernando Valley	14621 Titus St., Ste. 100 Panorama City, CA 91402	818-373-1185	http://www.fhcsfv.com/
Fair Housing Foundation	Aliso Viejo, Bellflower, Buena Park, Compton, Costa Mesa, Downey, Fullerton, Garden Grove, Garden, Huntington Beach, Huntington Park, Irvine, La Habra, Long Beach, Lynwood, Mission Viejo, Newport Beach, Norwalk, Orange, Paramount, San Clemente, South Gate, Tustin, Westminster	<p>3605 Long Beach Blvd., Ste 302 Long Beach, CA 90807</p> <p>2300 E Katella Ave., Ste 405 Anaheim, CA 92806</p>	(800) 446 - FAIR (3247) Deaf or hard of Hearing TTY (800) 855-7100	https://fhfca.org/
Fair housing Napa Valley	Napa County, CA	1804 Soscol Avenue, Ste. 203, Napa, CA 94559	707-224-9720	https://napafairhousing.org/
Fair Housing of Sonoma County at Petaluma	Petaluma	1500 Petaluma Blvd., South Ste A Petaluma, CA 94952	707-765-8488	https://petalumapeople.org/housing/

Name	Service Area	Address	Phone	Website
Housing Equity Law Project	Northern California	180 S. Spruce Ave., Ste. 250 San Francisco, CA 94080	415-434-9400	http://www.housingequality.org/
Housing Rights Center	Los Angeles County, Antelope Valley, & Ventura County	3255 Wilshire Blvd. 1150 Los Angeles, CA 90010	213-387-8400	https://www.housingrightscenter.org/
		6320 Van Nuys Blvd., Ste. 311 Van Nuys, CA 91402		
		Jackie Robinson Center 1020 N. Fair Oaks Ave. Pasadena, CA 91103		
		1015 N. Lake Ave., Ste. 100 Pasadena, CA 91104		
Inland Fair Housing and Mediation Board	San Bernardino, Riverside, and Imperial Counties	1500 S. Haven Ave., Ste. 100 Ontario, CA 91761	800-321-0911	https://www.ifhmb.com/
		225 W. Hospitality Ln., Ste. #207 San Bernardino, CA 92408		
		15248 Civic Dr., Ste. #225 Victorville, CA 92392		
		82921 Indo Blvd. Indio, CA 92201		
		444 S. 8th St., Ste. #C-1A El Centro, CA 92243		
Legal Aid Society of San Diego	San Diego County, CA	110 S. Euclid Ave. San Diego, CA 92114	1-844-449-3500	https://www.lasds.org/
		1764 San Diego Ave., Ste. 100 San Diego, CA 92110		
		216 S. Tremont St. Oceanside, CA 92054		
Project Sentinel	Northern California	1490 El Camino Real, Santa Clara, CA 95050	408-470-3739	https://www.housing.org/

Bibliography

AFFH Rule and Assessments

[Assembly Bill 686](#)

California State Legislature. September 30, 2018 Bill text for California's Affirmatively Furthering Fair Housing law. HCD AB 686 Summary of Requirements in Housing Element Law Memorandum (April 2020)

[Affirmatively Furthering Fair Housing: California's New Law \(PDF\)](#)

National Housing Law Project. 2019. 2 pp.

Summarizes Assembly Bill 686, California's Affirmatively Furthering Fair Housing Law.

[Affirmatively Furthering Fair Housing Final Rule \(PDF\)](#)

Federal Register. 2015. 101 pp.

[AFFH Rule Guidebook \(PDF\)](#)

U.S. Dept of Housing and Urban Development (HUD). 2015. 222 pp.

[California Department of Housing and Community Development Final 2020 Analysis of Impediments to Fair Housing Choice \(PDF\)](#)

Executive Summary. June 2020. 10 pp.

[California Department of Housing and Community Development Final 2020 Analysis of Impediments to Fair Housing Choice – Final AI 425 Chapter 13: Impediments to Fair Housing Choice \(PDF\)](#)

June 2020. 9 pp.

[Furthering Fair Housing](#)

National Fair Housing Alliance

Summarizes the Obama administration's AFFH Rule and provides update on the rule change.

[Furthering Fair Housing](#)

Massachusetts Institute of Technology, Department of Urban Studies and Planning. This website provides a clearinghouse of assessments of fair housing completed during the implementation of the HUD AFFH Rule, sample goals, and articles detailing research on implementation of the HUD AFFH Rule and related topics.

[Policy Objective: Affirmatively Furthering Fair Housing](#)

Local Housing Solutions.

This web article provides suggestions for improving access to opportunity through place-based strategies, mobility strategies (including inclusionary zoning), and specific policies detailed in a housing policy toolkit.

[National Housing Law Project \(NHLP\)](#)

These resources provide context regarding the Obama administration's implementation of the 2015 federal AFFH rule.

- [AFFH Implementation: An Update for Advocates \(PDF\) 2016.](#)
- [AFFH Glossary \(PDF\) 2016.](#)
- [Assessment of Fair Housing Advocate Participation Checklist \(PDF\) 2016.](#)

Assessment of Fair Housing Plan (PDF)

City of Los Angeles & The Housing Authority of the City of Los Angeles.

Prepared by Enterprise Community Partners and the Lawyers Committee. Nov. 6, 2017. 434 pp.

NLIHC: Assessment Tools

National Low-Income Housing Coalition.

NLIHC makes available assessment tools from the Obama administration's AFFH rule. Included are Assessment Tools for Localities and PHAs as well as a Proposed Assessment Tool for States.

PRRAC: Affirmatively Furthering Fair Housing

Poverty & Race Research Action Council (PRRAC) provides multiple samples and tools for conducting an Analysis of Impediments/Assessment to Fair Housing Choice. Also includes background information on AFFH plus comment letters and news stories regarding the termination of the rule.

Preserving Community and Neighborhood Choice (PDF)

HUD. 2020. 57 pp.

This presents HUD's new rule, which replaces the 2015 Affirmatively Furthering Fair Housing rule, terminated by HUD in 2020.

Federal Guidance

Joint Statement of HUD and DOJ on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act (PDF)

U.S. Dept. of Justice (DOJ). November 10, 2016. 20pp.

Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (PDF)

HUD. April 4, 2016. 10 pp.

Joint Statement of HUD and DOJ on Reasonable Accommodations Under the Fair Housing Act (PDF)

HUD. May 17, 2004. 15 pp.

Fair Housing Enforcement – Occupancy Standards; Notice of Statement of Policy (PDF)

Federal Register. December 22, 1998. 7 pp.

Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency (PDF)

HUD. September 15, 2016. 9 pp.

The guidance clarifies that discrimination against people in housing transactions based on the language they speak can be considered discrimination under the Fair Housing Act.

Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs; Final Rule

Federal Register. September 21, 2016.

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity; Final Rule

Federal Register. February 3, 2012.

Olmstead: Community Integration for Everyone

DOJ, Civil Rights Division. Information and Technical Assistance on the Americans with Disabilities Act

This is an overview of the 1999 Supreme Court decision regarding Title II of the Americans with Disabilities Act. The decision requires states to place qualified people with mental disabilities in community settings rather than institutional ones.

Joint Statement of HUD and DOJ on Reasonable Modifications Under the Fair Housing Act (PDF)

HUD. March 5, 2008. 18 pp.

Joint Letter to Local Colleagues (PDF)

U.S. Departments of Education; Transportation; and Housing and Urban Development. June 3, 2016. 3 pp.

This joint letter calls on “local education, transportation, and housing leaders to work together on issues at the intersection of our respective missions in helping to guarantee full access to opportunity across the country.” It lays out the original vision of the AFFH rule as being one of coordination among agencies that provide access to opportunity.

Data & Maps

CalEnviroScreen

California Office of Environmental Health Hazard Assessment.

This mapping tool helps identify California communities that are most affected by several sources of pollution.

California Health Interview Survey

University of California, Los Angeles, Center for Health Policy Research.

“The California Health Interview Survey (CHIS) is the nation’s largest state health survey and a critical source of data on Californians as well as on the state’s various racial and ethnic groups.”

California Healthy Places Index

This site maps by zip code the following conditions: economic, education, housing, healthcare access, neighborhood, and clean environment.

California Neighborhood Change Maps

Urban Displacement Project. Text, data, and color-coded maps.

- [Mapping Displacement, Gentrification, and Exclusion in the San Francisco Bay Area](#) Updated in 2018.
- [Mapping Neighborhood Change in Southern California: Los Angeles, Orange, and San Diego Counties](#) Updated in 2020 with new layers reflecting COVID-19 vulnerabilities.

Data and Tools for Fair Housing Planning

Urban Institute. July 2020.

Provides downloadable files of Affirmatively Furthering Fair Housing data and guidelines pertaining to the 2015 rule, thus offering assistance for states still pursuing these goals.

Mapping Inequality: Redlining in New Deal America

University of Richmond Digital Scholarship Lab.

Provides historic Home Owners Loan Corporation (HOLC) maps that were color coded to reflect the mortgage security potential of various neighborhoods. These maps and their coding provided a tool for redlining that made it difficult or impossible for people in certain areas to access mortgage financing to become homeowners. The maps “allow and encourage you to grapple with this history of government policies contributing to inequality.”

National Equity Atlas

“America's most detailed report card on racial and economic equity. We equip movement leaders and policymakers with actionable data and strategies to advance racial equity and shared prosperity.”

Opportunity Insights: The Economic Tracker

Harvard University.

Data, research, and policy recommendations. “Our mission is to identify barriers to economic opportunity and develop scalable solutions that will empower people throughout the United States to rise out of poverty and achieve better life outcomes.” This data is currently focused on the economic impacts of the COVID-19 pandemic.

TCAC/HCD Opportunity Maps - California

HCD, Treasurer of the State of California | California Tax Credit Allocation Committee, and The Institute of Othing and Belonging, U.C. Berkeley.

PolicyMap

PolicyLink. 2017.

Uses 2010 Census to map a variety of measurements, including demographics, income, and housing.

Race Counts

Race Counts measures the overall performance, amount of racial disparity, and impact by population size of counties and cities in California.

Urban Displacement Project

Articles, reports, and policy briefs; gentrification and displacement maps of several metropolitan areas; UCLA and UC Berkeley case studies of Los Angeles and San Francisco Bay Area neighborhoods.

Using Data to Assess Fair Housing and Improve Access to Opportunity: A Guidebook for Community Organizations (PDF)

L. Hendey & M. Cohen. Urban Institute. 2017. 64 pp.

Videos

Affirmatively Furthering Fair Housing in California: Prioritizing Fair Housing Goals in Planning for the State's Housing Needs

(Opens to page with embedded recording of Webinar. Run time: 1 hour 27 min.)

Turner Center for Housing Innovation, U.C. Berkeley. 2020.

Webinar panel discussion featuring Gillian Adams, Arthur Gales, and Annelise Osterberg, moderated by Turner Center Managing Director Ben Metcalf, with opening remarks by HCD's Director, Gustavo Velasquez.

Segregated by Design

M. Lopez, Director. Silkwood Studios. 2019. Run time: 17 min. 42 sec.

This animated video, narrated by Richard Rothstein, "examines the forgotten history of how our federal, state and local governments unconstitutionally segregated every major metropolitan area in America through law and policy."

Books

The Color of Law: A Forgotten History of How Our Government Segregated America

R. Rothstein. New York: Liveright Publishing Corp., 2017. 345 pp.

Examines the historical segregation of housing due to governmental policies and real estate and mortgage industry practices. Analyzes the impact this has on neighborhoods today regarding environmental justice and access to quality schools, public transportation, jobs, parks, and other opportunities.

The One-way Street of Integration: Fair Housing and the Pursuit of Racial Justice in American Cities.

E.G. Goetz. Ithaca, NY: Cornell University Press, 2018. 228 pp.

From the bookseller's website: "Goetz traces the tensions involved in housing integration and policy to show why he doesn't see the solution to racial injustice as the government moving poor and nonwhite people out of their communities."

Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership

Keeanga-Yamahtta Taylor. Chapel Hill: University of North Carolina Press, 2019. 368 pp.

From the publisher's website: "Race for Profit uncovers how exploitative real estate practices continued well after housing discrimination was banned. The same racist structures and individuals remained intact after redlining's end, and close relationships between regulators and the industry created incentives to ignore improprieties."

Segregation by Design: Local Politics and Inequality in American Cities

J. Trounstein. Cambridge: Cambridge University Press, 2018. 277 pp.

From the publisher's website: "Segregation by Design draws on more than 100 years of quantitative and qualitative data from thousands of American cities to explore how local governments generate race and class segregation."

Research Articles & Reports

Affirmatively Furthering Fair Housing: A Reckoning with Government-Sponsored Segregation in the 21st Century

(Links to page with free PDF download.)

S. Menendian. National Civic Review 106(3): 20-27. 2017.

Affirmatively Furthering Fair Housing for People with Disabilities: Recommendations and Best Practices for Municipalities (PDF)

A. Ballard. Access Living of Metropolitan Chicago. n.d.

This 18-slide presentation defines barriers to housing for people with disabilities and provides solutions.

"Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape"

R. Williams. Journal of Affordable Housing & Community Development Law 28(3): 387-396. 2019.

America's Formerly Redlined Neighborhoods Have Changed, and So Must Solutions to Rectify Them

(Links to page with button for free PDF download.)

A.M. Perry & D. Harshbarger. Brookings. 2019. 20 pp.

The population currently living in what were once HOLC "redlined" neighborhoods is majority-BI-POC but not majority-Black, and, contrary to conventional perceptions, Black residents also do not form a plurality in these areas overall.

Antisubordination Planning

(Links to page with full-text download.)

J. Steil. Journal of Planning Education and Research. 2018.

"Beyond People Versus Place: A Place-Conscious Framework for Investing in Housing and Neighborhoods"

M.A. Turner. Housing Policy Debate 27(2), 306-314. 2017.

This paper offers five principles for ongoing experimentation and knowledge building: (a) develop citywide strategies that promote both inclusion and redevelopment; (b) anticipate and plan for residential mobility and neighborhood change; (c) connect residents of poor neighborhoods to city and regional opportunities; (d) capitalize on the coming rental housing boom; and (e) use data for continuous learning and accountability.

Building a National Narrative of Anti-Displacement Strategies: Key Takeaways From SPARC-CC Regions

Cash, Anna, et al. Urban Displacement Project. University of California, Berkeley.

This article reviews recent gentrification and displacement literature, outlines the need for a broader neighborhood change narrative that acknowledges the role of cultural and political displacement as well as neighborhood decline in perpetuating diverse impacts in vulnerable communities. The article presents cross-site themes that emerged during site visits in dialogue with recent literature and policy initiatives focused on investment and disinvestment driven displacement, race and displacement, access to resources in communities receiving displaced residents, and the impact of climate change on neighborhoods. Finally, the article draws upon lessons from the sites to offer a national narrative of anti-displacement approaches for action across local, regional, state, and national levels.

Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice (PDF)

P. Bergman, R. Chetty, S. DeLuca, N. Hendren, L. F. Katz, & C. Palmer. 2020. 97 pp.

The authors conclude that redesigning affordable housing policies to provide customized assistance in a housing search could reduce residential segregation and increase upward mobility substantially.

Developing Opportunity: Innovative Models for Strategic Housing Acquisition (PDF)

P. Kye, M. Mouton & M. Haberle. Poverty & Race Research Action Council. 2018. 26 pp.

New initiatives provide pathways to mobility and create affordable housing by acquiring existing market-rate housing in areas of high opportunity. Authors detail programs and provide examples from Baltimore, Dallas, Chicago, and King County, Washington.

Disparate Impact and an Antisubordination Approach to Civil Rights and Urban Policy (PDF)

J. Steil. Poverty & Race 28(2). 2019.

The Effects of the 1930s HOLC "Redlining" Maps

D. Aaronson, D. Hartley & B. Mazumder. Federal Reserve Bank of Chicago. 2020. 100 pp.

This working paper, begun in 2017 and revised in 2020, examines "the effects of the 1930s-era HOLC 'redlining' maps on the long-run trajectories of neighborhoods."

Fair Housing in Jeopardy: Trump Administration Undermines Critical Tools for Achieving Racial Equity (PDF)

National Fair Housing Alliance. 2020. 87 pp.

Annual Fair Housing Trends report.

Forced Relocation and Residential Instability Among Urban Renters.

Desmond, M., Gershenson, C., & B. Kiviat. Social Science Review 89(2). 237-262. 2015.

From the abstract: This article reveals mechanisms of residential mobility among low-income renters, identifies previously undocumented consequences of forced displacement, and develops a more comprehensive model of residential instability and urban inequality.

The Geography of Inequality: How Land Use Regulation Produces Segregation (PDF)

J. Trounstein. American Political Science Review 114(2): 443-455. 2020.

From the abstract: "I provide evidence that more stringent land use regulations are supported by whiter communities and that they preserve racial homogeneity."

Home Equity: A Vision of Housing Security, Health and Opportunity (PDF)

Colorado Health Institute. 2019. 56 pp.

This paper explores the interdependence of health outcomes; healthful, quality housing; and access to better schools, jobs, and other opportunities. It offers multiple strategies for change.

HUD's Affirmatively Furthering Fair Housing Rule: A Contribution and Challenge to Equity Planning for Mixed Income Communities (PDF)

K.M. O'Regan & K. Zimmerman. Case Western Reserve University. 2020. 23 pp.

From the abstract: "This essay explains the framework and theory behind the rule, and how a rule aimed at overcoming racial segregation can support the creation and preservation of mixed-income communities. ...We conclude with a discussion of implications for action (or at least attention) with respect to the rule, particularly with respect to mixed-income strategies."

Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report (PDF)

Shanti Abdein et al. National Fair Housing Alliance. 2018. 100 pp.

From the abstract: "If everyone had access to affordable housing, fair credit, a good school, healthy food, a decent job, green space, and quality health care, how would our nation and our economy look then? How do we ensure that future generations of all backgrounds live in neighborhoods rich with opportunity? Fair housing."

Neighborhoods for All: Expanding Housing Opportunity in Seattle's Single-Family Zones (PDF)

City of Seattle, Planning Commission. 2018. 52 pp.

This white paper presents Seattle's strategies for increasing access to affordable housing, transportation, and jobs for those living outside of the urban core.

A Place-Conscious Approach Can Strengthen Integrated Strategies in Poor Neighborhoods

M.A. Turner. Brookings. 2015. 7 pp.

This short article is the forerunner of Turner's Housing Policy Debate piece, above.

Place and Opportunity: Using Federal Fair Housing Data to Examine Opportunity across US Regions and Populations (PDF)

R. Gourevitch, S. Greene, and R. Pendall. Urban Institute. 2018. 24 pp.

This research brief highlights new connections between place and access to opportunity across regions and populations. The authors analyze data on neighborhood-level exposure to opportunity that the U.S. Department of Housing and Urban Development originally released in 2015 to help local communities reduce segregation and comply with the Fair Housing Act.

Pricing Roads, Advancing Equity (PDF)

TransForm. 2019. 64 pp.

Fair housing and access to opportunity are advanced when efficient, affordable transportation is available.

Promoting Opportunity through Equitable Transit-Oriented Development (eTOD): Navigating Federal Transportation Policy (PDF)

A. Abu-Khalaf. Enterprise Community Partners. 2018. 28 pp.

This report provides stakeholders involved in achieving eTOD guidance on understanding and benefitting from federal transportation policies and programs.

Promoting Opportunity through Equitable Transit-Oriented Development (eTOD): Barriers to Success and Best Practices for Implementation

(Links to page where full-text article is available via the Open Resource button.)

M. Spotts. Enterprise Community Partners. 2015. 74 pp.

This report demonstrates that numerous barriers inhibit low- and moderate-income families' ability to find housing in communities with access to robust, multi-modal transportation options. The report also makes recommendations for overcoming those barriers and highlights numerous best practices from regions across the U.S.

Promoting Opportunity through Equitable Transit-Oriented Development (eTOD): Making the Case

(Links to page where full-text article is available via the Open Resource button.)

J. Hersey & M. Spotts. Enterprise Community Partners. 2015. 21 pp.

Equitable transit-oriented development (eTOD) is one tool to ensure that high-opportunity neighborhoods are inclusive despite the property value increases that often result from such investments.

Racial Disparities in Home Appreciation: Implications of the Racially Segmented Housing Market for African Americans' Equity Building and the Enforcement of Fair Housing Policies

M. Zonta. Center for American Progress. 2019. 39 pp.

"Segregation and racial disparities in home appreciation put African Americans at a disadvantage in their ability to build equity and accumulate wealth."

Removing Barriers to Accessing High-Productivity Places (PDF)

D. Shoag. The Hamilton Project: Policy Proposal 2019-02. 2019. 30 pp.

Workers without a college education are moving away from the places that offer them the highest wages and their children the best later-life outcomes. The author offers strategies that policymakers at various levels of government can use to combat this relatively new problem, including case studies of cities that have successfully expanded access at the local level.

Segregation and Neighborhood Health

J. Richardson et al. NCRC. 2020. 50 pp.

"This report examined [historically] redlined areas and how they are associated with adverse public health outcomes for a range of diseases and conditions that make people particularly susceptible to the worst effects of COVID-19."

Supply Skepticism: Housing Supply and Affordability

Been, V., Ingrid, E., & K. O'Regan. Housing Policy Debate 29(1), 25-40. 2019.

From the abstract: "Growing numbers of affordable housing advocates and community members are questioning the premise that increasing the supply of market-rate housing will result in housing that is more affordable. This article is meant to bridge the divide, addressing each of the key arguments supply skeptics make and reviewing what research has shown about housing supply and its effect on affordability."

"Survival of the Fairest: Examining HUD Reviews of Assessments of Fair Housing"

J.P. Steil & N. Kelly. Housing Policy Debate 29(5), 736-751. 2019.

From the abstract: "Our analysis shows that HUD engaged in detailed reviews of municipalities' Assessments of Fair Housing and provided constructive feedback. The most common issues with which municipalities struggled were setting realistic goals that would actually advance fair housing and creating measurable metrics and milestones to gauge progress."

What Would It Take to Ensure Quality, Affordable Housing for All in Communities of Opportunity? (PDF)

M.A. Turner, S. Greene, C. P. Scally, K. Reynolds & J. Choi. Urban Institute. 2019. 40 pp.

If everyone could afford quality housing, and every neighborhood offered a diversity of housing options, people up and down the income ladder could enjoy housing security and build wealth through homeownership. Achieving this calls for bold action at all levels of government and in the private and nonprofit sectors.





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**Appendix E: HCD Memorandum, Housing Element Sites
Inventory Guidebook (AB 1397, AB 1486, AB 686, SB 6), June
10, 2020**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf) website at:
https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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June 10, 2020

MEMORANDUM FOR: Planning Directors and Interested Parties

FROM: Megan Kirkeby, Acting Deputy Director
Division of Housing Policy Development

SUBJECT: **Housing Element Site Inventory Guidebook
Government Code Section 65583.2**

The housing element of the general plan must include an inventory of land suitable and available for residential development to meet the locality's regional housing need by income level. The purpose of this Guidebook is to assist jurisdictions and interested parties with the development of the site inventory analysis for the 6th Housing Element Planning Cycle and identify changes to the law as a result of Chapter 375, Statutes of 2017 (AB 1397), Chapter 958, Statutes of 2018 (AB 686), Chapter 664, Statutes of 2019 (AB 1486), and Chapter 667, Statutes of 2019 (SB 6). The Guidebook should be used in conjunction with the site inventory form developed by the California Department of Housing and Community Development (HCD). These laws introduced changes to the following components of the site inventory:

- Design and development of the site inventory (SB 6, 2019)
- Requirements in the site inventory table (AB 1397, 2017 AB 1486, 2019)
- Capacity calculation (AB 1397, 2017)
- Infrastructure requirements (AB 1397, 2017)
- Suitability of nonvacant sites (AB 1397, 2017)
- Size of site requirements (AB 1397, 2017)
- Locational requirements of identified sites (AB 686, 2018)
- Sites identified in previous housing elements (AB 1397, 2017)
- Nonvacant site replacement unit requirements (AB 1397, 2017)
- Rezone program requirements (AB 1397, 2017)

The workbook is divided into five components: (Part A) identification of sites; (Part B) sites to accommodate the lower income RHNA; (Part C) capacity analysis; (Part D) non-vacant sites; and (Part E) determination of adequate sites.

If you have any questions, or would like additional information or technical assistance, please contact the Division of Housing Policy Development at (916) 263-2911.

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BACKGROUND AND PURPOSE

Housing Element Site Inventory Requirements

Scarcity of land with adequately zoned capacity is a significant contributor to increased land prices and housing development costs. A lack of adequately zoned sites exacerbates the already significant deficit of housing affordable to lower income households. An effective housing element provides the necessary conditions for conserving, preserving and producing an adequate supply of housing affordable at a variety of income levels and provides a vehicle for establishing and updating housing and land-use strategies to reflect changing needs, resources, and conditions. Among other things, the housing element establishes a jurisdiction's strategy to plan for and facilitate the development of housing over the five-to-eight year planning period by providing an inventory of land adequately zoned or planned to be zoned for housing and programs to implement the strategy.

The purpose of the housing element's site inventory is to identify and analyze specific land (sites) that is available and suitable for residential development in order to determine the jurisdiction's capacity to accommodate residential development and reconcile that capacity with the jurisdiction's Regional Housing Need Allocation (RHNA). The available and suitable sites are referred to as "adequate sites" throughout this Guidebook. The site inventory enables the jurisdiction to determine whether there are sufficient adequate sites to accommodate the RHNA by income category. A site inventory and analysis will determine whether program actions must be adopted to "make sites available" with appropriate zoning, development standards, and infrastructure capacity to accommodate the new development need.

Sites are suitable for residential development if zoned appropriately and available for residential use during the planning period. If the inventory demonstrates that there are insufficient sites to accommodate the RHNA for each income category, the inventory must identify sites for rezoning to be included in a housing element program to identify and make available additional sites to accommodate those housing needs early within the planning period.

Other characteristics to consider when evaluating the appropriateness of sites include physical features (e.g., size and shape of the site, improvements currently on the site, slope instability or erosion, or environmental and pollution considerations), location (e.g., proximity to and access to infrastructure, transit, job centers, and public or community services), competitiveness for affordable housing funding (e.g., Low Income Housing Tax Credit scoring criteria), and likelihood or interest in development due to access to opportunities such as jobs and high performing schools¹. When determining sites to include in the inventory to meet the lower income housing need, HCD recommends that a local government first identify development potential in high opportunity neighborhoods. This will assist the local government in meeting its requirements to affirmatively further fair housing and ensure developments are more competitive for development financing.

¹ Please Note: Significant increases in the housing capacity of the residential land inventory of the housing element could also warrant planning for updating of other elements, including the land use, safety, circulation elements and inclusion of an environmental justice element or environmental justice policies. The housing element must include a program describing the means by which consistency will be achieved with other general plan elements and community goals (GC 65583(c)(8)).

SITE INVENTORY GUIDEBOOK FRAMEWORK

The following is a Guidebook designed to assist a jurisdiction through the site inventory analysis required by Housing Element Law. Use of the Guidebook is not required for a determination of compliance by HCD. The Guidebook is intended to facilitate the jurisdiction in determining if adequate sites are available by income category to accommodate the jurisdiction's share of the RHNA or if rezoning or other program actions are needed. Areas of the law that are newly added since the beginning of the 5th housing element cycle are marked with the designation ***NEW***.

Guidebook Structure

PART A: IDENTIFICATION OF SITES

General characteristics of suitable sites identified in the inventory, including zoning, infrastructure availability, and environmental constraints, among others.



PART B: SITES TO ACCOMMODATE LOW AND VERY LOW- INCOME RHNA

Analysis to determine if sites are appropriate to accommodate the jurisdiction's RHNA for low- and very low-income households.



PART C: CAPACITY ANALYSIS

Description of the methodology used to determine the number of units that can be reasonably developed on a site.



PART D: NONVACANT SITES

Analysis to determine if nonvacant sites are appropriate to accommodate the jurisdiction's RHNA.



PART E: DETERMINATION OF ADEQUATE SITES

After consideration of the above analysis and any alternate methods to accommodate RHNA, the determination of whether sufficient sites exist to accommodate RHNA or if there is a shortfall requiring a program to rezone additional sites.

PART A: IDENTIFICATION OF SITES

Step 1: Identification of Developable Sites

Government Code section 65583.2(a)

Generally, a site is a parcel or a group of parcels that can accommodate a portion of the jurisdictions RHNA. A jurisdiction must identify, as part of an inventory, sites within its boundaries (i.e., city limits or a county’s unincorporated area)² that could have the potential for new residential development within the eight- or five-year timeframe of the housing element planning period.

Types of sites include:

- Vacant sites zoned for residential use.
- Vacant sites zoned for nonresidential use that allow residential development.
- Residentially zoned sites that are capable of being developed at a higher density (nonvacant sites, including underutilized sites).
- Sites owned or leased by a city, county, or city and county.
- Sites zoned for nonresidential use that can be redeveloped for residential use and a program is included to rezone the site to permit residential use.

Pending, approved, or permitted development:

Projects that have been approved, permitted, or received a certificate of occupancy since the beginning of the RHNA projected period may be credited toward meeting the RHNA allocation based on the affordability and unit count of the development. For these projects, affordability is based on the actual or projected sale prices, rent levels, or other mechanisms establishing affordability in the planning period of the units within the project (See Part E). For projects yet to receive their certificate of occupancy or final permit, the element must demonstrate that the project is expected to be built within the planning period.

Definition of Planning Period: The “Planning period” is the time period between the due date for one housing element and the due date for the next housing element (Government Code section 65588(f)(1).) For example, the San Diego Association of Governments’ 6th Cycle Planning Period is April 15, 2021 to April 15, 2029.

Definition of Projection Period: “Projection period” is the time period for which the regional housing need is calculated (Government Code section 65588(f)(2).). For example, the San Diego Association of Governments’ 6th Cycle Projection Period is June 30, 2020 to April 15, 2029.

Please note, sites with development projects where completed entitlements have been issued are no longer available for prospective development and must be credited towards the RHNA based on the affordability and unit count of the development. “Completed entitlements” means a housing development or project which has received all the required land use approvals or entitlements necessary for the issuance of a building permit. This

² In some cases, jurisdictions may want to include sites anticipated to be annexed in the planning period. Annexation is considered a rezoning effort to accommodate a shortfall of sites. For more information on annexation please see Part E, Step 3.

means that there is no additional action required to be eligible to apply and obtain a building permit.

Jurisdictions may choose to credit sites with pending projects since the beginning of the RHNA projection period towards their RHNA based on affordability and unit count within the proposed project but must demonstrate the units can be built within the remaining planning period. Affordability must be based on the projected sales prices, rent levels, or other mechanisms establishing affordability in the planning period of the units within the project.

Census definition of a unit: A housing unit is a house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants do not live and eat with other persons in the structure and which have direct access from the outside of the building or through a common hall. Living quarters of the following types are excluded from the housing unit definition: dormitories, bunkhouses, and barracks; quarters in predominantly transient hotels, motels, and the like, except those occupied by persons who consider the hotel their usual place of residence; quarters in institutions, general hospitals, and military installations, except those occupied by staff members or resident employees who have separate living arrangements.

Student/University Housing: Please be aware, college and university student housing may be considered noninstitutional group quarters and not a housing unit for purposes of meeting the RHNA. According to the census, college/university student housing includes residence halls and other buildings, including apartment-style student housing, designed primarily to house college and university students in group living arrangements either on or off campus. These facilities are owned, leased, or managed by a college, university, or seminary or can be owned, leased, or managed by a private company or agency. Residents typically enter into “by the bed” leases (i.e., single-liability leases). Another distinguishing factor is that the unit is not available for rent to non-students. For further information on whether university housing meets the definition of a housing unit, please contact the Department of Finance at (916) 323-4086.

Exempt entity-controlled sites (state excess sites, military, university, and tribal land)

HCD recognizes that the development of new housing on exempt entity sites (land controlled by exempt federal, state, or tribal entities) can meet a portion of a jurisdiction’s RHNA. However, sites located on land controlled by exempt entities are analyzed differently because the jurisdiction may not have control over the planning, permitting, and decision-making processes of land owned by another public entity.

Sites controlled by exempt entities can be used to accommodate RHNA when documentation can be provided that demonstrates the likelihood that the planned housing will be developed within the current RHNA/housing element cycle. Adequate documentation can vary due to differences in the planning processes on land controlled by exempt federal, state, or tribal entities. The following are examples of documentation that demonstrates the likelihood of housing being developed on sites outside the control of a local government. In each of these examples, the units would have to meet the U.S. Census Bureau (Census) definition of a housing unit:

- Agreement with the entity controlling the land that grants the jurisdiction authority regarding approving, permitting, certifying occupancy, and/or reporting new units to the California Department of Finance.
- Documentation from the entity controlling the land that demonstrates planned housing has been approved to be built within the current RHNA cycle.
- Data pertaining to the timing of project construction and unit affordability by household income category.
- If the site is listed on the Department of General Services Real Estate Excess State Property map located [EO N-06-19 Affordable Housing Development webpage](#).

Step 2: Inventory of Sites

Government Code section 65583.2(b)

Provide a parcel specific inventory of sites that includes the following information for each site:

- ***NEW*** Assessor parcel number(s).
- Size of each parcel (in acres).
- General plan land use designation.
- Zoning designation.
- For nonvacant sites, a description of the existing use of each parcel (See Part D)
- ***NEW*** Whether the site is publicly owned or leased.
- Number of dwelling units that the site can realistically accommodate (See Part C)
- ***NEW*** Whether the parcel has available or planned and accessible infrastructure (Part A: Step 3).
- ***NEW*** The RHNA income category the parcel is anticipated to accommodate (See Part A: Step 5).
- ***NEW*** If the parcel was identified in a previous planning period site inventory (Part B: Step 1).

NEW Please note pursuant to Chapter 667, Statutes of 2019 (SB 6), the site inventory must be prepared using the standards, form, and definitions adopted by HCD. HCD has prepared a form and instructions for this purpose that includes space for the information above and commonly provided optional fields. Starting January 1, 2021, local governments will need to submit an electronic version of the site inventory to HCD on this form along with its adopted housing element.

NEW Pursuant to Chapter 664, Statutes of 2019 (AB 1486), at Government Code section 65583.2(b)(3), if a site included in the inventory is owned by the city or county, the housing element must include a description of whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act [Article 8 \(commencing with Section 54220\) of Chapter 5 of Part 1 of Division 2 of Title 5](#).

Step 3: Infrastructure Availability

Government Code section 65583.2(b)(5)(B)

Determine if parcels included in the inventory, including any parcels identified for rezoning, have sufficient water, sewer, and dry utilities available and accessible to support housing development or whether they are included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity to secure sufficient water, sewer, and dry utilities supply to support housing development on the site in time to make housing development realistic during the planning period. Dry utilities include, at minimum, a reliable energy source that supports full functionality of the

home and could also include access to natural gas, telephone and/or cellular service, cable or satellite television systems, and internet or Wi-Fi service.

If Yes: Provide an analysis in the housing element describing existing or planned water, sewer, and other dry utilities supply, including the availability and access to parcels on the site inventory, distribution facilities, general plan programs or other mandatory program or plan (including a program or plan of a public or private entity to secure water or sewer service) to support housing development on the site. The housing element must include sufficient detail to determine whether the service levels of water delivery/treatment systems and sewer treatment facilities are sufficient and have the capacity to accommodate development on all identified sites in order to accommodate the RHNA. For example, the water supply should be a reliable supply that meets federal and state drinking water standards.

Please note sites identified as available for housing for above moderate-income households can still be in areas not served by public sewer systems.

If No: Include a program in the housing element that ensures access and availability to infrastructure to accommodate development within the planning period. If this is not possible, the site is not suitable for inclusion in the site inventory or in a program of action identifying a site for rezoning.

Step 4: Map of Sites

Government Code section 65583.2(b)(7)

Provide a map that shows the location of the sites included in the inventory. While the map may be on a larger scale, such as the land use map of the general plan, the more detailed the map, the easier it will be to demonstrate the sites meet new requirements pursuant to Chapter 958, Statutes of 2018 (AB 686) as stated below.

Step 5: Determination of Consistency with Affirmatively Furthering Fair Housing

Government Code section 65583.2(a)

NEW Pursuant to AB 686, for housing elements due on or after January 1, 2021, sites must be identified throughout the community in a manner that affirmatively furthers fair housing opportunities (Government Code Section 65583(c)(10)).

Affirmatively Furthering Fair Housing means “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency’s³

³ Public Agencies include the state, including every state office, officer, department, division, bureau, board, and commission, including the California State University, a city, including a charter city, county, including a charter county, city and county, and a redevelopment successor agency, a public housing authority created pursuant to the Housing Authorities Law, a public housing agency, and any other political subdivision of the state that is a grantee or subgrantee receiving funds provided by the United States Department of Housing and Urban Development (Government Code section 8899.5(a)(2)).

activities and programs relating to housing and community development.” (Government Code section 8899.50(a)(1)).

For purposes of the housing element site inventory, this means that sites identified to accommodate the lower-income need are not concentrated in low-resourced areas (lack of access to high performing schools, proximity to jobs, location disproportionately exposed to pollution or other health impacts) or areas of segregation and concentrations of poverty. Instead, sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing. One resource the jurisdiction could use when completing this analysis is the California Tax Credit Allocation/California Department of Housing and Community Development Opportunity Maps, which can be accessed at <https://www.treasurer.ca.gov/ctcac/opportunity.asp>. Particularly, the jurisdiction should consider the barriers and opportunities identified in its assessment of fair housing pursuant to Government Code section 65583(c)(10). HCD plans to release a technical assistance memo to assist jurisdictions in addressing AB 686 requirements in their housing element in the Summer of 2020.

Jurisdictions should also consider integrating this analysis with the requirements of Government Code 65302(h), as added by SB 1000 (Statutes of 2016), which requires the preparation and adoption of an Environmental Justice element or equivalent environmental justice-related policies, objectives, and goals throughout other elements of their general plan, to address the needs of disadvantaged communities. More information on Environmental Justice elements can be found on the [Governor’s Office of Planning and Research Website](#).

Step 6: Sites by RHNA Income Category

Government Code section 65583.2(c)

NEW Identify which RHNA income category that each site in the inventory is anticipated to accommodate. On the site inventory, specify whether the site or a portion of the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing. Sites can accommodate units for more than one income category. However, the inventory should indicate the number of units of each income category, and together the total of units attributed to each income category may not exceed total units attributed to the site, so that no unit is designated for more than one income category. This requirement is particularly important because the No Net Loss Law (Government Code section 65863) requires adequate sites be maintained throughout the planning period to accommodate the remaining RHNA by income category. For more information, please consult the HCD’s memo on [No Net Loss Law](#).

HCD Best Practices for selecting sites to accommodate the lower income RHNA:

When determining which sites are best suited to accommodate the RHNA for lower income households, the jurisdiction should consider factors such as:

- Proximity to transit.
- Access to high performing schools and jobs.
- Access to amenities, such as parks and services.
- Access to health care facilities and grocery stores.
- Locational scoring criteria for Low-income Housing Tax Credit (TCAC) Program funding.
- Proximity to available infrastructure and utilities.

- Sites that do not require environmental mitigation.
- Presence of development streamlining processes, environmental exemptions, and other development incentives.

Step 7: Environmental Constraints*Government Code section 65583.2(b)(4)*

Provide in the analysis a general description of any known environmental or other features (e.g., presence of floodplains, protected wetlands, oak tree preserves, very high fire hazard severity zones) that have the potential to impact the development viability of the identified sites. The housing element need only describe those environmental constraints where documentation of such conditions is available to the local government. This analysis must demonstrate that the existence of these features will not preclude development of the sites identified in the planning period at the projected residential densities/capacities. This information need not be identified on a site-specific basis. However, local governments will find it beneficial to describe site specific environmental conditions when demonstrating site suitability and realistic buildout capacity of each site, as these types of impediments to building must be considered when determining how many residential units can be developed on the site.

NEXT STEP:

- If the site is selected to accommodate its low or very-low income RHNA, move to Part B: Sites to Accommodate Low and Very-Low Income RHNA.
- If the site accommodates moderate or above-moderate RHNA, move to Part C: Capacity Analysis.

PART B: SITES TO ACCOMMODATE LOW AND VERY LOW- INCOME RHNA

Step 1: *NEW* Sites Used in Previous Planning Periods Housing Elements

Government Code section 65583.2(c)

Determine if the site identified to accommodate the low- and very low-income RHNA pursuant to Part A, Step 6 was used in the previous planning period⁴. Generally, previously identified sites refer to parcels that were identified in a previous housing element's site inventory to accommodate any portion of any income category of the jurisdiction's RHNA, as follows:

For a nonvacant site: Included in a prior planning period's housing element (e.g., 5th cycle housing element)

For a vacant site (see definition of vacant site on page 21): Included in two or more consecutive planning periods (e.g., 5th cycle and 4th cycle housing element)

If Yes: move to Step 1A

If No: move to Step 2

Unusual Circumstances

Sites rezoned or identified for rezoning to accommodate a RHNA shortfall

Previously identified sites can also include sites that were subject to a previous housing element's rezone program but that were ultimately not rezoned. For example: a previous housing element's rezone program to address a shortfall of sites for lower income households committed to rezone four acres to R-4 zoning, and identified five candidate sites for rezoning, A through E, and each site was two acres in size. If the program was completed in the prior planning period and four acres were rezoned, only those sites rezoned are considered "previously identified." However, if none or fewer than four acres were rezoned, all the non-rezoned sites identified as candidate sites would be considered as "previously identified."

Sites rezoned to a higher density as part of a general plan update (not needed to accommodate a shortfall)

Due to updates in the prior planning period to the general plan or other planning activities, such as the creation of a specific plan, some sites previously identified in the housing element may have been rezoned allowing a higher density, and therefore increasing the potential housing capacity of the site. Because the zoning characteristics of this site have changed, it can be considered a new site for the purposes of the housing element inventory. This is only the case if it was not utilized to accommodate a shortfall of sites to accommodate the RHNA.

⁴ Sites in unincorporated areas in a nonmetropolitan county without a micropolitan area are exempt from this step. This includes the unincorporated parts of Alpine, Amador, Calaveras, Colusa, Glenn, Mariposa, Modoc, Mono, Plumas, Sierra, Siskiyou, Trinity.

Step 1A:

Indicate in the housing element site inventory that this parcel was used in a prior housing element planning period.

Step 1B:

Include a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right at specified densities (see Step 2) for housing developments in which at least 20 percent of the units are affordable to lower income households. This program can be an overlay on these specific sites. Please be aware that the intent of this requirement is to further incentivize the development of housing on sites that have been available over one or more planning periods. The application of the requirement should not be used to further constrain the development of housing. As such, housing developments that do not contain the requisite 20 percent would still be allowed to be developed according to the underlying (base) zoning but would not be eligible for “by right” processing. However, the jurisdiction would have to make findings on the approval of that project pursuant to No Net Loss Law (Government Code section 65863) and proceed to identify an alternative site or sites pursuant to that law. Sites where zoning already permits residential “use by right” as set forth in Government Code section 65583.2 (i) at the beginning of the planning period would be considered to meet this requirement.

Definition of Use By Right (Government Code section 65583.2 (i))

By right means the jurisdiction shall not require:

- A conditional use permit.
- A planned unit development permit.
- Other discretionary, local-government review or approval that would constitute a “project” as defined in Section 21100 of the Public Resources Code (California Environmental Quality Act “CEQA”).

However, if the project requires a subdivision, it is subject to all laws, including CEQA.

This does not preclude a jurisdiction from imposing objective design review standards. However, the review and approval process must remain non discretionary and the design review must not constitute a “project” as defined in Section 21100 of the Public Resources Code. For example, a hearing officer (e.g., zoning administrator) or other hearing body (e.g., planning commission) can review the design merits of a project and call for a project proponent to make design-related modifications, but cannot exercise judgment to reject, deny, or modify the “residential use” itself. (See *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 31 Cal.App.5th 80.)

For reference, CEQA applies when a governmental agency can exercise judgment in deciding whether and how to carry out or approve a project. This makes the project “discretionary” (CEQA Guidelines, §15357.) Where the law requires a governmental agency to act on a project using fixed standards and the agency does not have authority to use its own judgment, the project is called “ministerial,” and CEQA does not apply. (CEQA Guidelines, §§ 15268(a), 15369.)

Sample Program:

Provide Adequate Sites for Lower Income Households on Nonvacant and Vacant Sites Previously Identified

The City of X will rezone to allow developments by right pursuant to Government Code section 65583.2(i) when 20 percent or more of the units are affordable to lower income households on sites identified in Table A to accommodate the lower income RHNA that was previously identified in past housing elements. Specifically, the City will rezone the nonvacant sites identified on Table A previously identified in the 5th cycle housing element, and the vacant sites identified on Table A as previously identified for both the 5th and 4th cycle housing elements.

Objective: Create opportunity for at least X units of rental housing for lower income households

Responsible Agency: Community Development Department

Timeline: Sites rezoned by (a specific date, no more than three years from the beginning of the planning period)

Funding Source(s): General fund

Step 2: Zoning Appropriate to Accommodate Low- and Very Low- Income RHNA
Government Code section 65583.2(c)(3)

Determine if the zoning on the site is appropriate to accommodate low- and very low-income (termed together as “lower”) housing.

The statute allows jurisdictions to use higher density as a proxy for lower income affordability, as long as certain statutory requirements are met. Parcels must be zoned to allow sufficient density to accommodate the economies of scale needed to produce affordable housing. To make this determination, the statute allows the jurisdiction to either demonstrate that the zoning allows a specific density set forth in the statute (default density)⁵ or to provide an analysis demonstrating the appropriateness of the zoned densities of the site identified to accommodate the lower RHNA.

Step 2A: Does the parcel’s zoning allow for “at least” the following densities?

- For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.
- For an unincorporated area in a nonmetropolitan county not included in the first bullet: sites allowing at least 10 units per acre.
- For a suburban jurisdiction: sites allowing at least 20 units per acre.
- For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

“At least” means the density range allowed on the parcel by the zone has to include the default density. For example, if a jurisdiction has a default density of 30 units per acre and the zone allows for range of 24 – 35 units per acre, the zoning is considered appropriate to accommodate the RHNA for lower income households. This is different than the program standard outlined in Part E which requires a minimum of a specific density in the allowed

⁵ Sometimes called “Mullin densities” after the author of AB 2348, Statutes of 2004, which originated these requirements.

density range in the zone. To determine the default density for jurisdictions, please refer to [HCD Memorandum: Default Density Standard Option \(2010 Census Update\)](#).

If Yes: Move to Step 3

If No: Move to Step 2B

Step 2B: Can the analysis demonstrate the appropriateness of the zoning to accommodate housing?

Provide an analysis demonstrating how the allowed densities facilitate the development of housing to accommodate the lower income RHNA. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, and information based on development project experience within a zone or zones, or at densities that accommodate housing for lower income households.

Information gathered from local developers on densities ideal for housing development in the community and examples of recent residential projects that provide housing for lower income households is helpful in establishing the appropriateness of the zone. Other information could include land costs, market demand for various types of affordable housing, and the gap between typical market rents and subsidized rents. It is recognized that housing affordable to lower income households requires significant subsidies and financial assistance. However, for this analysis, identifying examples of subsidized housing projects alone is not sufficient to demonstrate the adequacy of a zone and/or density to accommodate the housing affordable to lower income households. In particular, identification of older project(s) or one-off projects that cannot be easily duplicated is not sufficient to demonstrate a development trend.

The analysis of “appropriate zoning” should not include residential buildout projections resulting from the implementation of a jurisdiction’s inclusionary program or potential increase in density due to a density bonus, because these tools are not a substitute for addressing whether the underlining (base) zoning densities are appropriate to accommodate the RHNA for lower income households. Additionally, inclusionary housing ordinances applied to rental housing must include options for the developer to meet the inclusionary requirements other than exclusively requiring building affordable units on site. While an inclusionary requirement may be a development criterion, it is not a substitute for zoning. The availability of density bonuses is also not a substitute for an analysis, since they are not a development requirement, but are development options over the existing density, and generally require waivers or concessions in development standards to achieve densities and financial feasibility.

If Yes: Move to Step 3

If No: Site is not appropriate to accommodate lower income. Reclassify pursuant to Part A, Step 5.

Housing Overlays

Affordable housing or zoning overlays are a zoning tool that allows jurisdictions to modify existing zoning to allow for or require certain types of residential development, or development at certain densities, on a parcel without modifying the standards of the underlying zoning district. Usually, they have specific requirements and conditions (e.g., a percentage of the development must be deed-restricted as affordable to lower income households for a specific number of years) that must be met in order for a developer to take advantage of the overlay. These are often combined with incentives to encourage developers to utilize the overlay. Jurisdictions use overlays to help promote a specific type of development, and to increase densities without having to go through a rezoning procedure on the actual parcel and can be more useful when issues such as density and affordable housing become contentious. To ensure the overlay is considered zoning and not just a development incentive, the overlay must demonstrate the following:

- There is no additional discretionary action needed above what is required in the base zone (i.e., a conditional use permit or other review) for a developer to take advantage of overlay.
- Development standards are consistent with those needed to allow for the density allowed under the overlay. Development standards for use exclusively in the overlay may be needed in order to ensure maximum allowable densities can be achieved.
- The developer can access State Density Bonus Law in addition to using the densities allowed in the overlay. For example, if the underlying zoning allows a maximum density of 15 units per acre, but the overlay allows a maximum density of 25 units per acre, and if the developer is using the overlay and wants to use State Density Bonus Law, the density bonus is calculated assuming the base density is 25 units per acre.

If the overlay has conditions such as an affordability requirement, incentives should be sufficient and available to make development feasible and more profitable than the underlying zoning.

For an affordable housing overlay, the element should describe affordability threshold requirements to utilize the overlay (i.e., percentage of units and levels of affordability which must be met to develop at the increased densities). Please note, the jurisdiction should talk with for-profit and nonprofit developers to determine an appropriate mix of incomes that make development feasible in their community. For example, a 100 percent affordability requirement may act as a constraint to using the overlay depending on the level of subsidy required per unit and the availability of funding to support the level of affordability or available incentives.

Step 3: Size of Sites

Government Code section 65583.2(c)(2)(A), (B), and (C)

NEW Is the size of the site appropriate to accommodate housing for lower income households?

To achieve financial feasibility, many assisted housing developments using state or federal resources are between 50 to 150 units. Parcels that are too small may not support the number of units necessary to be competitive and to access scarce funding resources. Parcels that are large may require very large projects, which may lead to an over concentration of affordable housing in one location, or may add cost to a project by

requiring a developer to purchase more land than is needed, or render a project ineligible for funding. If the size of the site is smaller than one half acre or larger than 10 acres, the following analysis is required.

If the parcel is more than 0.5 acres or less than 10 acres, is the size of the site automatically considered appropriate to accommodate lower income RHNA?

Not necessarily. If the size of the parcel in combination with the allowable density and accompanying development standards cannot support a housing development affordable to lower income households, further analysis and programs may be needed to demonstrate the suitability of that site to accommodate the portion of the RHNA for lower income households.

Is the size of the parcel under 0.5 acres?

If Yes: Move to Step 3A

Is the size of the parcel over 10 acres?

If Yes: Move to Step 3B

If No to Both: Move to Part C: Capacity Analysis

Step 3A: Sites smaller than 0.5 acres

A parcel smaller than one half acre is considered inadequate to accommodate housing affordable to lower income households, unless the housing element demonstrates development of housing affordable to lower income households on these sites is realistic or feasible. While it may be possible to build housing on a small parcel, the nature and conditions (i.e., development standards) necessary to construct the units often render the provision of affordable housing infeasible. The housing element must consider and address the impact of constraints associated with small lot development on the ability of a developer to produce housing affordable to lower income households. To demonstrate the feasibility of development on this type of site, the analysis must include at least one of the following:

- An analysis demonstrating that sites of equivalent size were successfully developed during the prior planning period with an equivalent number of lower income housing units as projected for the site.
- Evidence that the site is adequate to accommodate lower income housing. Evidence could include developer interest, potential for lot consolidation, densities that allow sufficient capacity for a typical affordable housing project, and other information that can demonstrate to HCD the feasibility of the site for development. For parcels anticipated to be consolidated, the housing element must include analysis describing the jurisdiction's role or track record in facilitating small lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for consolidation such as common ownership, and recent trends of lot consolidation. The housing element should include programs promoting, incentivizing, and supporting lot consolidations and/or small lot development.
- A site may 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.

The housing element must also describe existing and proposed policies or incentives the jurisdiction will offer to facilitate development of small sites. Examples of program incentives for lot consolidation include deferring fees specifically for consolidation, expediting permit processing, providing flexible development standards such as setback requirements, reduced parking or increased heights, committing resources for development of affordable housing on small sites, or increasing allowable density, lot coverage or floor area ratio.

Step 3B: Sites larger than 10 acres

Parcels larger than 10 acres are considered inadequate to accommodate housing affordable to lower income households, unless the housing element demonstrates development of housing affordable to lower income households on such sites was successful during the prior planning period, or there is other evidence that the site is realistic and feasible for lower income housing.

Definition of a Large Site

For purposes of this requirement, “site” means that portion of the parcel designated to accommodate lower income housing needs. For example, a parcel greater than 10 acres in size could have to be split zoned, have an overlay zone with identified boundaries, or be identified in a specific plan that provides for subdivision of the parcel. If the specified boundaries of the site identified to accommodate the RHNA for lower income is less than 10 acres in size, then the large site analysis would not be required. However, the analysis must describe how the development will work on the site, including opportunities and timing for specific-plan development, further subdivision, or other methods to facilitate the development of housing affordable to lower income households on the identified site within the planning period.

To demonstrate the feasibility of development on this type of site, the analysis must include at least one of the following:

- An analysis demonstrating that sites of equivalent size were successfully developed during the prior planning period with an equivalent number of lower income housing units as projected for the site.
- Evidence that the site is adequate to accommodate lower income housing. Evidence may include developer interest, proposed specific-plan development, potential for subdivision, the jurisdiction’s role or track record in facilitating lot splits, or other information that can demonstrate to HCD the feasibility of the site for development. The housing element should include programs promoting, incentivizing, and supporting lot splits and/or large lot development.
- A site may 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.

Specific Plans, Master Plan, and other Subdivisions

To utilize residential capacity in Specific Plan areas, areas under a Master Plan, or a similar multi-phased development plan, the housing element must identify specific sites by parcel number and demonstrate that the sites are available and suitable for development within the planning period. The analysis should include the following information:

- Identify the date of approval of the plans and expiration date.
- Identify approved or pending projects within these plans that are anticipated in the planning period, including anticipated affordability based on the actual or projected sale prices, rent levels, or other mechanisms establishing affordability in the planning period of the units within the project.
- Describe necessary approvals or steps for entitlements for new development (e.g., design review, site plan review, etc.).
Describe any development agreements, and conditions or requirements such as phasing or timing requirements, that impact development in the planning period.

The housing element must also describe existing and proposed policies or incentives the jurisdiction will offer to facilitate development of large sites. Examples of facilitation include expedited or automatic approval of lot splits or creation of new parcels, waivers of fees associated with subdivision, or expedited processing or financial assistance with the development of infrastructure required to develop the site.

NEXT STEP:

- Move to Part C: Capacity Analysis

PART C: CAPACITY ANALYSIS

Government Code Section 65583.2(c) requires, as part of the analysis of available sites, a local government to calculate the projected residential development capacity of the sites identified in the housing element that can be realistically be achieved. The housing element must describe the methodology used to make this calculation. Jurisdictions have two options to make this calculation.

- Utilize minimum densities (Step 1)
- Utilize adjustment factors (Step 2)

Step1: Utilizing minimum densities to calculate realistic capacity of sites

Government Code section 65583.2(c)(1)

If the jurisdiction has adopted a law, policy, procedure, or other regulation that requires the development of a site to contain at least a certain minimum residential density, the jurisdiction can utilize that minimum density to determine the capacity of a site. For purposes of this analysis, the use of either gross or net acreage is acceptable but should be consistent with the standard the jurisdiction typically uses for determining allowable units for a residential development project. For example:

Site Description	Value
Size of site (Gross acreage)	3 acres
Zoning	Residential Multifamily
Allowable density	20 (required minimum) – 30 dwelling units per acre
Realistic capacity utilizing minimum	3 X 20 = 60 units

Please note, to meet this standard on a zone that allows for multiple uses, the general plan or zoning must require the specified minimum number of residential units on the identified sites regardless of overlay zones, zoning allowing nonresidential uses, or other factors potentially impacting the minimum density. Otherwise, the capacity of the site must be calculated using the factors outlined in Step 2.

Step 2: Utilizing factors to calculate realistic capacity of sites

Government Code section 65583.2(c)(2)

The housing element must describe the methodology used to determine the number of units calculated based on the following factors:

- Land use controls and site improvements requirements,
- ***NEW*** The realistic development capacity for the site,
- ***NEW*** Typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction,
- ***NEW*** The current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

Applicable land-use controls and site improvement requirements

The analysis must consider the imposition of any development standards that impact the residential development capacity of the sites identified in the inventory. When establishing realistic unit capacity calculations, the jurisdiction must consider the cumulative impact of standards such as maximum lot coverage, height, open space, parking, on-site improvements such as sidewalks or easements, and floor area ratios. The analysis should consider any development standards or the cumulative effect of development standards that would limit the achievable density on a site. For example, if a mixed-use zone requires commercial on the ground floor and has a height limit of three stories along with lot coverage and other development standards, the density that can actually be achieved on that site might be less than the maximum allowable density.

The capacity of a site should also be adjusted for areas that cannot be developed due to environmental factors such as hazards, wetlands, or topography that cannot be mitigated. The capacity of sites subject to specific plans, overlays or other modifications of the base zoning should be adjusted to reflect those factors. For purposes of this analysis, it is recommended that the jurisdiction start with the gross acreage and adjust the buildable acreage accordingly to reach net buildable acreage.

Form Based Codes

To estimate capacity for sites in jurisdictions that have adopted form-based codes, the element should describe the relationship between general plan land-use designation and the form-based code and density assumptions used to determine capacity. Specifically, describe where residential development is allowed, how density requirements found within the general plan are incorporated, how the zoning designations under the form-based code relate to the land-use designations of the general plan, identify potential densities, and consider development standards such as bulk, height, and build-to requirements, buildings types, and use requirements. The element could include examples of recently built projects and densities to support the analysis.

Realistic development capacity for nonresidential, nonvacant, or overlay zoned sites

The capacity calculation must be adjusted to reflect the realistic potential for residential development capacity on the sites in the inventory. Specifically, when the site has the potential to be developed with nonresidential uses, requires redevelopment, or has an overlay zone allowing the underlying zoning to be utilized for residential units, these capacity limits must be reflected in the housing element. Factors used to make this adjustment may include the following:

- Performance standards mandating a specified portion of residential development in mixed use or nonresidential zones (e.g., residential allowed only above first floor commercial).
- The likelihood for residential development such as incentives for residential use, market demand, efforts to attract and assist developers, or allowance of 100 percent residential development.
- Local or regional residential development trends in the same nonresidential zoning districts.
- Local or regional track records, past production trends, or net unit increases/yields for redeveloping sites or site intensification. This estimate may be based on the rate at which similar parcels were developed during the previous planning period, with

adjustments as appropriate to reflect new market conditions or changes in the regulatory environment. If no information about the rate of development of similar parcels is available, report the proportion of parcels in the previous housing element's site inventory that were developed during the previous planning period. For example, if past production trends indicate that two out of three similar sites were developed for residential use, and one out of three similar sites was developed for commercial use, an initial estimate of the proportion of new development which is expected to be residential would be two-thirds, i.e., 0.67.

- Local or regional track records, trends, or build out yields for redeveloping sites or site intensification.

In addition, the housing element should include monitoring programs with next-step actions to ensure sites are achieving the anticipated development patterns. The programs should identify modifications to incentives, sites, programs, or rezoning the jurisdiction will take should these strategies not yield the expected housing potential.

Typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction

While using typically built densities to determine realistic capacity has long been an option to be used as an adjustment factor, the statute now requires this factor to be adjusted based on approved project by affordability level. For example, if a site is identified to accommodate the lower income RHNA, it should use project densities for housing affordable to lower income households developed either locally or regionally to determine typical densities⁶. Using this adjustment factor may result in utilizing different capacity methodologies for above moderate-, moderate-, and lower income sites.

Current or planned availability and accessibility of sufficient water, sewer, and dry utilities

The capacity methodology must be adjusted to account for any limitation as a result of availability and accessibility of sufficient water, sewer, and dry utilities (i.e., if the capacity of the site could be limited because a development would have to use a septic system, if there are any septic tank requirements or restrictions that constrain capacity, or limitations on water hook-ups). See Part A, Step 3 for more information on infrastructure requirements.

Example Capacity Calculation

Here is an example of the actual capacity calculation for a particular site in the inventory. The methodology analysis must describe how each of these adjustments was generated per the analysis requirements above. The factors used below are based on the factors outlined in the statute. The percentages and how the factors are applied will vary depending on the unique circumstance in each jurisdiction.

⁶ In using this adjustment factor, because of the use of density bonus, it may be possible that trends demonstrate typical densities higher than the maximum allowable densities, especially for housing affordable to lower income households. On a case-by-case basis, it may be appropriate to utilize increased densities due to density bonuses when determining the adjustment factor in the capacity methodology.

Site Description	
Size of site	2.5 acres
Zoning	Residential Mixed-Use
Allowable density	20 – 45 dwelling units per acre
RHNA affordability	Lower income
Existing Use	Nonvacant, single storefront
Infrastructure availability	Yes, no constraints
Environmental constraints	None known

Capacity Factors	Adjustment	Reasoning
Land Use Controls and Site Improvements	95%	For net acreage due to on-site improvements including sidewalks, utility easement
Realistic capacity of the site	55%	55% adjustment based on past development trends for residential redevelopment in the residential mixed-use zones, and programs to incentivize development in this zone.
Typical densities	95%	Affordable housing projects are built out to almost maximum density
Infrastructure availability	No adjustment	Not applicable, no constraint
Environmental constraints	No adjustment	No known site constraint

Realistic capacity utilizing factors = $(2.5 \times 45)(.95)(.55)(.95) = 56$ units

Realistic Capacity = 56 Units

No Net Loss Law

In estimating realistic capacity on sites in the sites inventory, jurisdictions may want to consider No Net Loss Law. This law was amended by Chapter 367, Statutes of 2017 (Senate Bill 166), which requires sufficient adequate sites to be available at all times throughout the RHNA planning period to meet a jurisdiction's remaining unmet housing needs for each income category. To comply with the No Net Loss Law, as jurisdictions make decisions regarding zoning and land use, or development occurs, jurisdictions must assess their ability to accommodate new housing in each income category on the remaining sites in their housing element site inventories. A jurisdiction must add additional sites to its inventory if land use decisions or development results in a shortfall of sufficient sites to accommodate its remaining housing need for each income category. In particular, a jurisdiction may be required to identify additional sites according to the No Net Loss Law if a jurisdiction rezones a site or if the jurisdiction approves a project at a different income level than shown in the sites inventory. Lower density means fewer units than the capacity assumed in the site inventory.

To ensure that sufficient capacity exists in the housing element to accommodate the RHNA throughout the planning period, it is recommended the jurisdiction create a buffer in the housing element inventory of at least 15 to 30 percent more capacity than required, especially for capacity to accommodate the lower income RHNA. Jurisdictions can also create a buffer by projecting site capacity at less than the maximum density to allow for some reductions in density at a project level.

NEXT STEP:

- If the parcel is nonvacant, including underutilized sites (see definition of vacant site on page 22), move to Part D: Nonvacant Sites Analysis
- If not, move to Part E: Determination of Adequate Sites

PART D: NONVACANT SITES

Local governments with limited vacant land resources or with infill and reuse goals may rely on the potential for new residential development on nonvacant sites, including underutilized sites, to accommodate their RHNA. Examples include:

- Sites with obsolete uses that have the potential for redevelopment, such as a vacant restaurant.
- Nonvacant publicly owned surplus or excess land; portions of blighted areas with abandoned or vacant buildings.
- Existing high opportunity developed areas with mixed-used potential.
- Nonvacant substandard or irregular lots that could be consolidated.
- Any other suitable underutilized land.

Local governments can meet other important community objectives to preserve open space or agricultural resources, as well as assist in meeting greenhouse gas emission-reduction goals, by adopting policies to maximize existing land resources and by promoting more compact development patterns or reuse of existing buildings.

Definition of a Vacant Site

A vacant site is a site without any houses, offices, buildings, or other significant improvements on it. Improvements are generally defined as development of the land (such as a paved parking lot, or income production improvements such as crops, high voltage power lines, oil-wells, etc.) or structures on a property that are permanent and add significantly to the value of the property.

Examples of Vacant Sites:

- No improvement on the site (other than being a finished lot).
- No existing uses, including parking lots.
- Underutilized sites are not vacant sites.
- Sites with blighted improvements are not vacant sites.
- Sites with abandoned or unoccupied uses are not vacant sites.

If the inventory identifies nonvacant sites to address a portion of the RHNA, the housing element must describe the realistic development potential of each site within the planning period. Specifically, the analysis must consider the extent that the nonvacant site's existing use impedes additional residential development, the jurisdiction's past experience converting existing uses to higher density residential development, market trends and conditions, and regulatory or other incentives or standards that encourage additional housing development on the nonvacant sites.

Step 1: Description of the nonvacant site

Government Code Section 65583.2(b)

As stated in Part A, the site inventory must describe the specific existing use on the site, such as a surplus school site, auto shop, restaurant, single family residence, nursery, etc. Additional details, such as whether the use is discontinued, land to value information, age and condition of the structure, known leases, developer or owner interest, whether the property is currently being marketed, degree of underutilization, etc., are useful for demonstrating the potential for the site to be redeveloped within the planning period (See Step 2).

Step 2: Nonvacant site analysis methodology

Government Code section 65583.2(g)(1)

Provide an explanation of the methodology used to determine the development potential. This methodology can be done on a site-specific basis by utilizing factors (e.g., common ownership, valuation, age, etc.) in common that demonstrate the potential for residential development within the planning period, or a combination of both approaches. The methodology shall consider factors including:

Existing Uses:

Include an analysis that demonstrates the extent to which existing uses may constitute an impediment to additional residential development. Among other things, this analysis includes considerations for the current market demand for the existing use, ***NEW*** an analysis of any known existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, and could include other market conditions that would encourage redevelopment of the property. For example, an analysis might describe an identified site as being developed with a 1960's strip commercial center with few tenants and expiring leases and, therefore, a good candidate for redevelopment, versus a site containing a newly opened retail center, an active Home Depot, the only grocery store in the city, etc. that is unlikely to be available for residential development within the planning period.

Development Trends:

The inventory analysis should describe development and/or redevelopment trends in the community as it relates to nonvacant sites, i.e., the rate at which similar sites have been redeveloped. This could include a description of the local government's track record and specific role in encouraging and facilitating redevelopment, adaptive reuse, or recycling to residential or more intensive residential uses. If the local government does not have any examples of recent recycling or redevelopment, the housing element should describe current or planned efforts (via new programs) to encourage and facilitate this type of development (e.g., providing incentives to encourage lot consolidation or assemblage to facilitate increased residential-development capacity). The results of the analysis should be reflected in the capacity calculation described in Part C, above.

Market Conditions:

Housing market conditions also play a vital role in determining the feasibility or realistic potential of nonvacant sites for residential development. The nonvacant sites analysis should include an evaluation of the impact of local market conditions on redevelopment or reuse strategies. For example, high land and construction costs, combined with a limited supply of available and developable land, may indicate conditions "ripe" for more intensive, compact and infill development or redevelopment and reuse.

Availability of Regulatory and/or other Incentives:

The analysis should describe existing or planned financial assistance, incentives or regulatory concessions to encourage residential development on nonvacant sites. Many local governments develop partnerships with prospective developers to assist in making redevelopment/reuse economically feasible. Examples of these incentives include:

- Organizing special marketing events geared towards the development community.
- Identifying and targeting specific financial resources.
- Allowing streamlined or by right development application processing for infill sites.
- Reducing appropriate development standards.

Absent a track record or development trends to demonstrate the feasibility of a recycling or redevelopment strategy, the housing element should describe existing or planned financial assistance or regulatory relief from development standards that will be provided sufficient to encourage and facilitate more intensive residential development on the identified nonvacant sites.

Step 3: *NEW* Reliance on nonvacant sites to accommodate more than 50 percent of the RHNA for lower income households

Government Code Section 65583.2(g)(2)

Determine if more than 50 percent of the lower income RHNA is on nonvacant sites.

- Calculate the sum of lower income RHNA capacity on vacant sites and other alternatives not related to capacity on nonvacant sites (e.g., accessory dwelling units, vacant sites to be rezoned (see Part E)).
- Subtract that sum from the total lower income RHNA to get the amount of RHNA needed to be accommodated on nonvacant sites.
- Determine if this number is greater than 50 percent of the RHNA.

Example calculation for a jurisdiction with a lower income RHNA of 500:

Adjustment Factor	Number of units
Proposed Lower Income Project	50
Accessory Dwelling Unit Capacity (affordable to lower)	15
Capacity on Vacant Sites	100
Total Capacity (not related to non-vacant sites)	165
RHNA on Nonvacant sites	$500 - 165 = 335$
Percentage of Lower Income RHNA accommodated on Nonvacant sites	$335/500 = 77\%$

If Yes: Move to Step 3A

If No: Move to Step 4

Step 3A:

If a housing element relies on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site's existing use is presumed to impede additional residential development, unless the housing element describes findings based on substantial evidence that the use will likely be discontinued during the planning period. The housing element must include the following:

- As part of the resolution adopting the housing elements, findings stating the uses on nonvacant sites identified in the inventory to accommodate the RHNA for lower income is likely to be discontinued during the planning period and the factors used to make that determination. This can be included in the body or in the recital section of the resolution.

Example: WHEREAS, based on <name factors here (e.g., expiring leases, dilapidated building conditions, etc.)>, the existing uses on the sites identified in the site inventory to accommodate the lower income RHNA are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the housing element.

- The housing element should describe the findings and include a description of the substantial evidence they are based on.

In general, substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. An example of substantial evidence would be a nonvacant site with a grocery store and with a building lease expiring in a year, and evidence that the store has entered into a lease to relocate to another site subsequent to the lease expiring.

Examples of substantial evidence that an existing use will likely be discontinued in the current planning period include, but are not limited to:

- The lease for the existing use expires early within the planning period,
- The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses,
- There is a development agreement that exists to develop the site within the planning period,
- The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
- The property owner provides a letter stating its intention to develop the property with residences during the planning period.

If multiple sites make up a common existing use and the same factors affect each of the sites, the same findings can be used for each of the sites (e.g., an abandoned shopping mall with sites under common ownership that will not be restored to commercial use located in an area where there is recent residential development). The "substantial evidence" would indicate the existing use will not impede further residential development or that the existing use will be discontinued during the planning period. In this type of situation, use of the same findings for each of the multiple sites would be appropriate.

However, the same finding for multiple sites in a specific area may not be appropriate if their characteristics widely vary. For example, nonvacant sites with differing existing uses and lacking in common ownership, whether contiguous or located in the same general area, may not rely on a generalized analysis. While the sites may be located in an area with common economic issues, individual owners may not wish to sell their property or redevelop their site with residential uses. In addition, each site's existing use, e.g., grocery store, retail shop, parking lot, and offices, may have lease agreements of different lengths of time or the owner may not wish to relocate or redevelop the site with a more intensive residential use. In this type of situation, use of the same findings for the multiple sites would not be appropriate.

Step 4: *NEW* Program and policy requiring replacement of existing affordable units
Government Code Section 65583.2(g)(3)

The housing element must include a program in the housing element and policy independent of the housing element requiring the replacement of units affordable to the same or lower income level as a condition of any development on a nonvacant site consistent with those requirements set forth in Density Bonus Law (Government Code section 65915(c)(3).) Replacement requirements shall be required for sites identified in the inventory that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, and:

- 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, or
- 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

For the purpose of this program "previous five years" is based on the date the application for development was submitted.

Please note, until 2025, pursuant to Government Code section 66300(d) (Chapter 654, Statutes of 2019 (SB 330)), an affected city or county shall not approve a housing development project that will require the demolition of residential dwelling units regardless of whether the parcel was listed in the inventory unless a) the project will create at least as many residential dwelling units as will be demolished, and b) certain affordability criteria are met. A listing of affected cities and counties can be found at <https://www.hcd.ca.gov/community-development/accountability-enforcement/statutory-determinations.shtml>.

SAMPLE PROGRAM

Program X: Replacement Unit Program

XXXX will adopt a policy and will require replacement housing units subject to the requirements of Government Code section 65915, subdivision (c)(3) on sites identified in the site inventory when any new development (residential, mixed-use or nonresidential) occurs on a site that is identified in the inventory meeting the following conditions:

- currently has residential uses or within the past five years has had residential uses that have been vacated or demolished, and
- was subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low-income, or
- 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

Funding: General Funds

Responsible Parties: Planning and Community Development Department

Objectives: In order to mitigate the loss of affordable housing units, require new housing developments to replace all affordable housing units lost due to new development.

Timeframes: The replacement requirement will be implemented immediately and applied as applications on identified sites are received and processed, and local policy shall be adopted by <DATE>. End of Sample Program

NEXT STEP:

- Move to Part E: Determination of Adequate Sites

PART E: DETERMINATION OF ADEQUATE SITES

The last step in this process is a determination of whether the housing element demonstrates sufficient land suitable and available for residential development to meet the locality's housing need for each designated income level or if further program actions are required to accommodate a shortfall.

Step 1: Consider any alternative means of meeting the RHNA

Government Code section 65583.1

The housing element may satisfy its RHNA requirement through a variety of methods other than identifying sites. The following is a description of those alternative methods.

- Units permitted, built, entitled or pending: (See Part A, Step 1)
- Potential for accessory dwelling units (ADU) or junior accessory dwelling units (JADU): The jurisdiction can count the potential for the development of ADUs within the planning period. The analysis is based on the following factors:
 - the number of ADUs or JADUs developed in the prior planning period
 - community need and demand for these types of housing units
 - the resources and/or incentives available that will encourage the development of ADUs
 - the availability of ADUs and JADUs for occupancy, rather than used as offices or guest houses
 - the unit must meet the Census definition of a housing unit, which can be found on the U.S. Census Bureau website, and be reported to the Department of Finance as part of the annual City and County Housing Unit Change Survey
 - the anticipated affordability of these units. The purpose of this analysis is to determine the appropriate RHNA income category to be accommodated through ADU and JADU development.

Affordability can be determined in a number of ways. As an example, a community could survey existing ADUs and JADUs for their current market rents and consider other factors such as square footage, number of bedrooms, amenities, age of the structure and general location, including proximity to public transportation. Another method could examine current market rents for reasonably comparable rental properties to determine an average price per square foot in the community. This price can be applied to anticipated sizes of these units to estimate the anticipated affordability of ADUs and JADUs. Available regional studies and methodology on ADU affordability can also be a resource to determine the likely affordability mix for ADUs and JADUs.

- other relevant factors as determined by HCD.

In addition, the housing element must describe and analyze any currently adopted ordinance and other factors that could affect ADU and JADU development within the planning period. At a minimum, the housing element should analyze whether the ordinance conforms with state ADU and JADU requirements and any additional development standards (i.e., setbacks, maximum unit sizes, lot coverage, etc.) adopted by the local government, zones allowing ADUs, fees and exactions, and any other potential constraints impacting the development of ADUs and JADUs.

Impact of New Accessory Dwelling Unit Laws

Since 2017, the Legislature has passed a series of new laws that significantly increase the potential for development of new ADUs and JADUs by removing development barriers, allowing ADUs through ministerial permits, and requiring jurisdictions to include programs in their housing element that incentivize their development. As a result, using trend analysis when estimating the potential for development may not accurately reflect the increased potential for these units. To account for this increased potential, HCD recommends the following options when performing this analysis:

- Use the trends in ADU construction since January 2018 to estimate new production. This is a conservative option to only account for the effect of the new laws without local promotional efforts or incentives (safe harbor option).
- Where no other data is available, assume an average increase of five times the previous planning period construction trends prior to 2018. This option is a conservative estimate based upon statewide data on ADU development since the implementation of the new laws (safe harbor option).
- Use trends from regional production of ADUs.
- Include programs that aggressively promote and incentivize ADU and JADU construction.
- Other analysis (reviewed on a case-by-case basis).

Potential affordability of these units must still be calculated per the analysis outlined on the previous page. In addition to the above options, the element should also include a monitoring program that a) tracks ADU and JADU creation and affordability levels, and b) commits to a review at the planning cycle mid-point to evaluate if production estimates are being achieved. Depending on the finding of that review, amendments to the housing element may be necessary, including rezoning pursuant to Government Code 65583.2 (h) and (i).

- Alternative Adequate sites: Under limited circumstances, a local government may credit up to 25 percent of their adequate sites requirement per income category through existing units that will be:
 - substantially rehabilitated
 - in a multifamily rental or ownership housing complex of three or more units that are converted from non affordable to affordable rental
 - preserved at levels affordable to low- or very low-income households, where the local government has provided those units with committed assistance

For more information on this option, please refer to HCD's [Building Blocks Webpage](#)

- Manufactured housing, manufactured housing park hook-ups, floating homes/live aboard berths: In certain circumstances a jurisdiction can utilize the potential for new manufactured housing either in a manufactured housing park or on large properties in rural areas, or new floating home/liveaboard berths with sewer and water hook ups. In cases of a manufactured home park or in floating home/liveaboard berth marinas, the jurisdiction may count new spaces with infrastructure hook-ups intended for permanent residential occupancy and reported to the Department of Finance. Potential for manufactured homes in rural areas should be analyzed using the same factors as those

for potential ADUs, including establishing the market rate affordability of the units and crediting them to the appropriate RHNA category. In addition, the analysis should indicate if appropriate water and sewer infrastructure is available to support the development.

- Former military housing: Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the housing element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.
- In consultation with HCD, other alternatives may be considered, such as motel conversions, adaptive reuse of existing buildings, or legalization of units not previously reported to the Department of Finance.

Step 2: Determine whether there is sufficient capacity to accommodate the RHNA for the jurisdiction by income.

Government Code Section 65583(a)(3)

The following table is an example of that calculation:

Adjustment Factor	Very Low	Low	Moderate	Above Moderate
RHNA	300	200	165	465
Entitled, Permitted, or Constructed Project Projects	50	50	0	200
Accessory Dwelling Unit Potential	10	15	15	10
Adequate Sites Alternative Preservation	20	16		
Multifamily Residential R-3 (Vacant)	75	50		
Mixed Use MU (Nonvacant)	75	50	50	
Multifamily Residential (Vacant) R-2			75	
Single-Family (Vacant) R-1				200
Spring Valley Specific Plan			150	250
Total	230	181	290	660
Shortfall/Surplus	-70	-19	+125	+195

While the jurisdiction has sufficient sites to accommodate its RHNA for moderate- and above moderate-income units, it has a shortfall of 89 units to accommodate its lower income need. The jurisdiction would be required to include a program in the housing element to accommodate that shortfall.

If Yes: Congratulations, the site inventory analysis is complete

If No: Move to Step 3

Step 3: Adequate Sites Program

Government Code section 65583(f) and Government Code section 65583.2(h)

Where the inventory of sites does not identify adequate sites to accommodate the RHNA for lower income households, a program must be included to identify sites that can be developed for housing within the planning period. The housing element should include an inventory of potential sites for rezoning. Those sites must meet the adequate sites requirements in terms of the suitability and availability outlined above.

General Program Requirements

A jurisdiction's adequate sites program must accommodate 100 percent of the shortfall of sites necessary to accommodate the remaining housing need for housing for very low- and low-income households during the planning period and include the following components:

- Permit owner-occupied and rental multifamily uses by right for developments in which 20 percent or more of the units are affordable to lower income households. By right means local government review must not require a conditional use permit, planned unit development permit, or other discretionary review or approval.
- Permit the development of at least 16 units per site.
- Ensure sites within suburban and metropolitan jurisdictions — as defined by Government Code Section 65583.2(c)(3)(B)(iii) and (iv) — permit a minimum of 16 dwelling units per acre for incorporated cities within nonmetropolitan/rural counties and nonmetropolitan counties with micropolitan areas or 20 dwelling units per acre for suburban and metropolitan jurisdictions.
- Ensure a) at least 50 percent of the shortfall of low- and very low-income regional housing need can be accommodated on sites designated for exclusively residential uses, or b) if accommodating more than 50 percent of the low- and very low-income regional housing need on sites designated for mixed-uses, all sites designated for mixed-uses must allow 100 percent residential use and require residential use to occupy at least 50 percent of the floor area in a mixed-use project.

Timing

Rezoned due to a shortfall from the current planning period:

A locality's ability to accommodate needed housing during the planning period requires designating appropriate zoning as early as possible. Generally, however, a rezoning should occur no later than three years and 120 days from the beginning of the planning period. A one-year extension to the deadline to complete required rezoning may be allowed if a local government has completed rezoning at sufficient densities to accommodate at least 75 percent of the units for very-low and low-income households. Also, the jurisdiction must determine after a public meeting that substantial evidence supports findings and adoption of a resolution that the rezone deadline was not met due to one of the following reasons:

- Action or inaction beyond the control of the local government of any other state, federal, or local agency.
- Infrastructure deficiencies due to fiscal or regulatory constraints.

- The local government must undertake a major revision to its general plan in order to accommodate the housing-related policies of a sustainable communities strategy or an alternative planning strategy adopted pursuant to Section 65080.

The jurisdiction must provide HCD a copy of the resolution and findings along with: - a detailed budget and schedule for preparation and adoption of required rezoning within one year of the adoption of the resolution, - plans for citizen participation, and - expected interim actions to complete the rezoning, and any revisions to the general plan (Government Code section 65583(f)).

Consequences for Failing to Complete Rezoning Deadline:

If a local government fails to complete all rezoning's by the prescribed deadline, a local government may not disapprove a housing development project⁷, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project:

- Is proposed to be located on a site included in a housing element program to be rezoned.
- Complies with applicable objective general plan and zoning standards and criteria, including design review standards, described in the rezone program action.

However, any subdivision of the site is subject to the Subdivision Map Act.

A jurisdiction may disapprove a housing development or approve it upon the condition that the project be developed at a lower density only if it makes written findings supported by substantial evidence on the record that both of the following conditions exist:

- The housing development project would have a specific, adverse impact upon the public health or safety⁸.
- There is no feasible method to satisfactorily mitigate or avoid the adverse impact.

The local government may also be subject to enforcement actions by HCD, including a determination that the housing element no longer complies with the requirements of state law and referral to the Attorney General pursuant to Government Code section 65585(i) and (j).

⁷ "Housing development project" is defined a project to construct residential units for which the project developer provides sufficient legal commitments to the appropriate legal agency to ensure the continued availability and use of at least 49 percent of the housing units for very-low, low-, and moderate-income households with an affordable housing cost or affordable rent.

⁸ "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Housing Accountability Act and the Housing Element

The Housing Accountability Act (Government Code section 65589.5) establishes state overarching policy that a local government not deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards and contribute to meeting housing need. Jurisdictions without a housing element in compliance with State Housing Element Law or without a complete site inventory are further limited in the ability to deny a housing development application.

Among other requirements (including those related to housing development regardless of affordability levels), the Housing Accountability Act states that a local agency shall not disapprove or condition approval in a manner that renders the housing development project infeasible, including through the use of design review standards, for development of an emergency shelter or a housing development project for very low, low-, or moderate-income households unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

- The jurisdiction has adopted a housing element in substantial compliance with Housing Element Law and the jurisdiction has met or exceeded its share of the RHNA for the planning period for the income category proposed for the housing development project.
- The project would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.
- The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable or rendering the development of the emergency shelter financially infeasible.
- The project is proposed on land zoned for agriculture or resource preservation, or which does not have adequate water or wastewater facilities to serve the project.
- The project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation, unless the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, or if the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584.

“Housing for very low, low-, or moderate-income households” means where at least 20 percent of the total units are or will be sold or rented to lower income households or 100 percent of the units will be sold or rented to persons and families of moderate income, or persons and families of middle income.

Rezoned due to an unaccommodated need from previous planning period⁹:

Pursuant to Government Code section 65584.09, if the jurisdiction failed to make adequate sites available to accommodate the regional housing need in the prior planning period, the jurisdiction must zone or rezone sites to accommodate any unaccommodated need within the first year of the planning period. If more than one year has lapsed since the beginning of the planning period, the housing element cannot be found in compliance with Housing Element Law until the required zoning or rezoning is complete and the housing element is amended to reflect the necessary rezoning.

Annexation

If the jurisdiction must rely on annexation to accommodate its RHNA, the housing element must include a program committing to completing the annexation within three years of the planning period. In addition, the housing element must also include an evaluation of the suitability of the annexed sites, including the following information:

- Consistency with Local Agency Formation Commission (LAFCO) policies
- Actions to pre-zone prior to annexation
- Descriptions of the zone, density, development standards and design requirements
- The anticipated housing capacity allowed by each site
- Timeline to complete annexation which is early enough in the planning period to facilitate development of annexed sites (e.g., within the first three years of the planning period)
- Analysis of the suitability and availability of sites, including identification of any sites currently under Williamson Act contracts
- Demonstrated compliance with the requirements of the adequate sites program requirements of Government Code section 65583.2, subdivisions (h) and (i)

Please note, if the potential for annexation was not included in the RHNA allocation methodology, a portion of the county's allocation may be transferred to the city pursuant to Government Code section 65584.07(d). This transfer of RHNA would require an amendment to the housing element to ensure that any additional RHNA can be accommodated on sites within the inventory.

⁹ Sometimes called the AB 1233 consequence.

Sample Rezone Program:

To accommodate the remaining lower-income RHNA of 89 units, the City of X will identify and rezone a minimum of 4.5 acres of vacant land to the R3 zoning district, allowing exclusively residential uses and a minimum of 20 units per acre to a maximum of 30 units per acre by June 30, 2024. Rezoned sites will permit owner-occupied and rental multifamily uses by right pursuant to Government Code section 65583.2(i) for developments in which 20 percent or more of the units are affordable to lower income households and will be selected from sites 20 through 30 in the parcel listing (Appendix A). As reflected in Appendix A, each site has the capacity to accommodate at least 16 units and will be available for development in the planning period where water, sewer, and dry utilities can be provided.

Objective: Create opportunity for at least 89 units of multifamily housing for lower income households

Responsible Agency: Community Development Department

Timeline: Sites rezoned by June 30, 2024

Funding Source(s): General fund

Other program ideas for increasing capacity or facilitating development on identified sites:

- Up-zone existing neighborhoods in areas of opportunity or in high quality neighborhood transit areas at appropriate densities to facilitate development of housing.
- Increase maximum allowable residential densities in existing residential, commercial, and mixed-use zones and modify development standards, such as height limitations to ensure maximum density can be achieved.
- Establish minimum densities — Designate minimum densities of development to ensure that existing available land is not underutilized.
- Allow and encourage mixed-use zoning — Permit housing in certain nonresidential zones either as part of a mixed-use project or as a standalone residential use.
- Rezone underutilized land from nonresidential to residential to expand the supply of available residential land.
- Institute flexible zoning — Allow various residential uses within existing nonresidential zones without requiring rezoning or conditional approvals.
- Redevelop and/or recycle underutilized existing land to more intensive uses.
- Convert obsolete, older public/institutional/commercial/industrial buildings to residential use through adaptive reuse and/or historic preservation.
- Over-zone — Create a surplus of land for residential development during the current planning period of at least 20 percent more than the locality's share of the regional housing need. Over-zoning compensates for urban land left vacant due to ownership and development constraints and creates a real surplus. A sufficient supply of land beyond the time frame of the housing element helps prevent land shortages from bidding up land costs.
- Allow and promote small and irregular-size lot development.

- Consolidate lots — Facilitate combining small residential lots into larger lots to accommodate higher-density development.
- Increase height limitations — At a minimum, allow three stories in multifamily zones.
- Increase Floor Area Ratios — Allow for larger buildings on smaller lots and/or more units per lot by reducing the floor area ratio (total lot area divided by the total building area).
- Identify publicly owned land suitable for affordable housing development and sell parcels for \$1 (with consideration of the Surplus Land Act as amended by AB 1486, Statutes of 2019).
- Facilitate development by encouraging staff outreach to owners of potential sites and affordable housing developers to discuss needs and constraints in the jurisdiction.
- Adopt incentives such as a super density bonus or by right approval for housing that meets community objectives, such as housing near transit, affordability, housing that meets the needs of special populations, etc.
- Adopt a specific plan that streamlines CEQA compliance.

Common Program Questions and Answers for Shortfall Zoning:

Q: How do I establish the density range for a rezone site?

A: The density range is set at the minimum density (either 16 or 20 dwelling units per acre, depending on the jurisdiction). While there is no specific maximum density requirement, the range must include the density that was identified as appropriate to accommodate housing affordable to lower-income households (Part B, Step 2).

However, jurisdictions should not set the minimum and maximum density range at the same density (e.g., 20 units per acre minimum as both a minimum and maximum density). If identifying a narrow density range, the housing element must analyze the range as a potential governmental constraint on housing development, including potential impacts resulting from site constraints, financial considerations, and other development factors.

Q: If a development is proposed with less than 20 percent affordability to lower income, can the jurisdiction approve it?

A: Yes, however, the project would not qualify for the by right provisions of this law unless the underlining zone already permitted housing by right. This, and all housing development projects, is subject to the Housing Accountability Act. In addition, the jurisdiction may be subject to No Net Loss Law provisions.

Q: How is the 20 percent calculated when State Density Bonus Law is added?

A: This 20 percent calculation is based upon the total number of units in the development including additional units provided by a density bonus. This calculation methodology is consistent with several other pieces of housing laws, including the Streamlined Ministerial Approval Process (Government Code section 65913.4) and the Housing Accountability Act.

ATTACHMENT 1: SUMMARY OF NEW LAWS REFERENCED IN THE GUIDEBOOK

[AB 1397, Low \(Chapter 375, Statutes of 2017\)](#): The law made a number of revisions to the site inventory analysis requirements of Housing Element Law. In particular, it requires stronger justification when nonvacant sites are used to meet housing needs, particularly for lower income housing, requires by right housing when sites are included in more than one housing element, and adds conditions around size of sites, among others.

[AB 686, Santiago \(Chapter 958, Statutes of 2018\)](#): The law ensures that public entities, including local governments, administer their programs relating to housing and urban development in a manner affirmatively to further the purposes of the federal Fair Housing Act and do not take any action that is materially inconsistent with its obligation to affirmatively further fair housing. It also requires that housing elements of each city and county promote and affirmatively further fair housing opportunities throughout the community for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act, Government Code Section 65008, and any other state and federal fair housing and planning law. AB 686 requires jurisdictions to conduct an assessment of fair housing in the housing element, prepare the housing element site inventory through the lens of affirmatively furthering fair housing, and include program(s) to affirmatively further fair housing.

[SB 6, Beall \(Chapter 667, Statutes of 2019\)](#): Jurisdictions are required to prepare the site inventory on forms developed by HCD and send an electronic version with their adopted housing element to HCD. HCD will then send those inventories to the Department of General Services by December 31 each year. The law (?) authorizes HCD to review, adopt, amend, and repeal the standards, forms, or definitions to implement this subdivision and subdivision (a) of Section 65583.

[AB 1486, Ting \(Chapter 644, Statutes of 2019\)](#): The law expanded the definition of surplus land and added additional requirements on the disposal of surplus land. In addition, local agencies must send notices of availability to interested entities on a list maintained by HCD. This list and notices of availability are maintained on HCD's website. Local agencies must also send a description of the notice and subsequent negotiations for the sale of the land, which HCD must review, and within 30 days submit written finding of violations of law. Violations of the Surplus Land Act can be referred to the Attorney General. Finally, it adds a requirement in Housing Element Law for the jurisdiction to identify which of the sites included in the inventory are surplus property.

ATTACHMENT 2: GOVERNMENT CODE SECTION 65583.2

As of January 1, 2020

(a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (9) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the sites that meet the following standards set forth in subdivisions (c) and (g):

(1) Vacant sites zoned for residential use.

(2) Vacant sites zoned for nonresidential use that allows residential development.

(3) Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a city, county, or city and county.

(4) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, rezoned for, to permit residential use, including sites owned or leased by a city, county, or city and county.

(b) The inventory of land shall include all of the following:

(1) A listing of properties by assessor parcel number.

(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

(3) For nonvacant sites, a description of the existing use of each property. If a site subject to this paragraph is owned by the city or county, the description shall also include whether there are any plans to dispose of the property during the planning period and how the city or county will comply with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

(4) 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.

(5) (A) A description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.

(B) Parcels included in the inventory must 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. This paragraph does not impose any additional duty on the city or county to construct, finance, or otherwise provide water, sewer, or dry utilities to parcels included in the inventory.

(6) 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.

(7) 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.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The inventory shall specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing. A nonvacant site identified pursuant to paragraph (3) or (4) of subdivision (a) in a prior housing element and a vacant site that has been included in two or more consecutive planning periods that was not approved to develop 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 that must be accommodated in the current housing element planning period unless the site is zoned at residential densities consistent with paragraph (3) of this subdivision and the site is subject to a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households. An unincorporated area in a nonmetropolitan county pursuant to clause (ii) of subparagraph (B) of paragraph (3) shall not be subject to the requirements of this subdivision to allow residential use by right. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulation requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

(A) A site smaller than half an acre shall not be deemed adequate 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 or unless the locality provides other evidence to the department that the site is adequate to accommodate lower income housing.

(B) A site larger than 10 acres shall not be deemed adequate 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 or unless the locality provides other evidence to the department that the site can be developed as lower income housing. For purposes of this subparagraph, "site" means that portion of a parcel or parcels designated to accommodate lower income housing needs pursuant to this subdivision.

(C) A site may 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.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not 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.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.

(ii) For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 10 units per acre.

(iii) For a suburban jurisdiction: sites allowing at least 20 units per acre.

(iv) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

(d) For purposes of this section, a metropolitan county, nonmetropolitan county, and nonmetropolitan county with a micropolitan area shall be as determined by the United States Census Bureau. A nonmetropolitan county with a micropolitan area includes the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) (1) Except as provided in paragraph (2), a jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in population in which case the county shall be considered metropolitan.

(2) (A) (i) Notwithstanding paragraph (1), if a county that is in the San Francisco-Oakland-Fremont California MSA has a population of less than 400,000, that county shall be considered suburban. If this county includes an incorporated city that has a population of less than 100,000, this city shall also be considered suburban. This paragraph shall apply to a housing element revision cycle, as described in subparagraph (A) of paragraph (3) of subdivision (e) of Section 65588, that is in effect from July 1, 2014, to December 31, 2028, inclusive.

(ii) A county subject to this subparagraph shall utilize the sum existing in the county's housing trust fund as of June 30, 2013, for the development and preservation of housing affordable to low- and very low-income households.

(B) A jurisdiction that is classified as suburban pursuant to this paragraph shall report to the Assembly Committee on Housing and Community Development, the Senate Committee on

Housing, and the Department of Housing and Community Development regarding its progress in developing low- and very low income housing consistent with the requirements of Section 65400. The report shall be provided three times: once, on or before December 31, 2019, which report shall address the initial four years of the housing element cycle, a second time, on or before December 31, 2023, which report shall address the subsequent four years of the housing element cycle, and a third time, on or before December 31, 2027, which report shall address the subsequent four years of the housing element cycle and the cycle as a whole. The reports shall be provided consistent with the requirements of Section 9795.

(f) A jurisdiction shall be considered metropolitan if the jurisdiction does not meet the requirements for “suburban area” above and is located in an MSA of 2,000,000 or greater in population, unless that jurisdiction’s population is less than 25,000 in which case it shall be considered suburban.

(g) (1) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city’s or county’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, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(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.

(3) Notwithstanding any other law, and in addition to the requirements in paragraphs (1) and (2), 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. Replacement requirements shall be consistent with those set forth in paragraph (3) of subdivision (c) of Section 65915.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right

for developments in which at least 20 percent of the units are affordable to lower income households during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c), shall be at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c) and shall meet the standards set forth in subparagraph (B) of paragraph (5) of subdivision (b). At least 50 percent of the very low and low-income housing need shall be accommodated 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 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project.

(i) For purposes of this section and Section 65583, the phrase “use by right” shall mean that the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(j) Notwithstanding any other provision of this section, within one-half mile of a Sonoma-Marín Area Rail Transit station, housing density requirements in place on June 30, 2014, shall apply.

(k) For purposes of subdivisions (a) and (b), the department shall provide guidance to local governments to properly survey, detail, and account for sites listed pursuant to Section 65585.

(l) This section shall remain in effect only until December 31, 2028, and as of that date is repealed.

(Amended (as amended by Stats. 2018, Ch. 958, Sec. 3) by Stats. 2019, Ch. 664, Sec. 15.5. (AB 1486) Effective January 1, 2020. Repealed as of December 31, 2028, by its own provisions. See later operative version amended by Sec. 16.5 of Stats. 2019, Ch. 664.)

Appendix F: HCD Memorandum, Accessory Dwelling Unit and Junior Accessory Dwelling Units (SB 13, AB 68, AB 881, AB 670, AB 671 and AB 587), January 10, 2020

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/docs/ADU_TA_Memo_Final_01-10-20.pdf) website at:
[https://www.hcd.ca.gov/community-development/housing-element/docs/ADU TA Memo Final 01-10-20.pdf](https://www.hcd.ca.gov/community-development/housing-element/docs/ADU_TA_Memo_Final_01-10-20.pdf)

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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**MEMORANDUM**

DATE: January 10, 2020

TO: Planning Directors and Interested Parties

FROM: Zachary Olmstead, Deputy Director
Division of Housing Policy Development

SUBJECT: **Local Agency Accessory Dwelling Units**
Chapter 653, Statutes of 2019 (Senate Bill 13)
Chapter 655, Statutes of 2019 (Assembly Bill 68)
Chapter 657, Statutes of 2019 (Assembly Bill 587)
Chapter 178, Statutes of 2019 (Assembly Bill 670)
Chapter 658, Statutes of 2019 (Assembly Bill 671)
Chapter 659, Statutes of 2019 (Assembly Bill 881)

This memorandum is to inform you of the amendments to California law, effective January 1, 2020, regarding the creation of accessory dwelling units (ADU) and junior accessory dwelling units (JADU). Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Government Code Section 65852.2, 65852.22 and Health & Safety Code Section 17980.12) and further address barriers to the development of ADUs and JADUs. (Attachment A includes the combined ADU statute updates from SB 13, AB 68 and AB 881).

This recent legislation, among other changes, addresses the following:

- Development standards shall not include requirements on minimum lot size (Section (a)(1)(B)(i)).
- Clarifies areas designated for ADUs may be based on water and sewer and impacts on traffic flow and public safety.
- Eliminates owner-occupancy requirements by local agencies (Section (a)(6) & (e)(1)) until January 1, 2025.
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1000 square feet if the ADU contains more than one bedroom (Section (c)(2)(B)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement offstreet parking spaces cannot be required by the local agency (Section (a)(1)(D)(xi)).

- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Section (a)(3) and (b)).
- Clarifies “public transit” to include various means of transportation that charge set fees, run on fixed routes and are available to the public (Section (j)(10)).
- Establishes impact fee exemptions or limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees and impact fees for an ADU of 750 square feet or larger shall be proportional to the relationship of the ADU to the primary dwelling unit (Section (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Section (j)(2)).
- Authorizes HCD to notify the local agency if the department finds that their ADU ordinance is not in compliance with state law (Section (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy RHNA housing needs as specified in Gov. Code Section 65583.1(a) and 65852.2(m).
- Permits JADUs without an ordinance adoption by a local agency (Section (a)(3), (b) and (e)).
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code Section 65852.22).
- Allows upon application and approval, an owner of a substandard ADU 5 years to correct the violation, if the violation is not a health and safety issue, as determined by the enforcement agency (Section (n)).
- Creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separate from the primary dwelling by allowing deed-restricted sales to occur. To qualify, the primary dwelling and the ADU are to be built by a qualified non-profit corporation whose mission is to provide units to low-income households (Gov. Code Section 65852.26).
- Removes covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civil Code Section 4751).
- Requires local agency housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code Section 65583 and Health and Safety Code Section 50504.5) (Attachment D).

For assistance, please see the amended statutes in Attachments A, B, C and D. HCD continues to be available to provide preliminary reviews of draft ADU ordinances to assist local agencies in meeting statutory requirements. In addition, pursuant to Gov. Code Section 65852.2(h), adopted ADU ordinances shall be submitted to HCD within 60 days of adoption. For more information and updates, please contact HCD’s ADU team at adu@hcd.ca.gov.

ATTACHMENT A

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

(AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in strikeout, underline/italics)

Effective January 1, 2020, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria that may include, but are not limited to,~~ the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places. Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, ~~but~~ but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing ~~single-family~~ dwelling.

(iii) The accessory dwelling unit is either attached ~~to,~~ or located ~~within the living area of the~~ within, the proposed or existing primary dwelling or dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) ~~The total area of floorspace of~~ If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the ~~proposed or existing primary dwelling living area or 1,200 square feet.~~ existing primary dwelling.

(v) The total floor area of ~~floorspace~~ for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing ~~garage living area or~~ accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five four feet from the side and rear lot lines shall be required for an accessory dwelling

unit that is ~~constructed above a garage~~. not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to a an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, ~~and the local agency requires~~ shall not require that those offstreet ~~offstreet~~ parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d). ~~replaced.~~

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) ~~When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application~~ A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, ~~within 120 days after receiving the application.~~ permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency ~~subsequent to the effective date of the act adding this paragraph~~ shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. ~~In the event that~~ If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void ~~upon the effective date of the act adding this paragraph~~ and that agency shall thereafter apply the standards established in this

subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the *delay* or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot ~~zoned for residential use~~ that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be ~~utilized~~ used or imposed, including any owner-occupant requirement, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) ~~within 120 days after receiving the application.~~ (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

~~(c) (C) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum Any other minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. 800 square~~

foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) ~~Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.~~ within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) ~~Accessory~~ An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer ~~service~~. service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

~~(A)~~ (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge. charge, unless the accessory dwelling unit was constructed with a new single-family home.

~~(B)~~ (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size-square feet or the number of its plumbing fixtures, drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

~~Local~~ (1) agencies A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. ~~The department may review and comment on this submitted ordinance.~~ After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time,

no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which that provides complete independent living facilities for one or more persons. persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(A) (3) An efficiency unit, "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(B) (4) A manufactured home, as defined in Section 18007 of the Health and Safety Code. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

~~(6)~~ (11) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(j) (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2020 statute noted in underline/italic):

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit

that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, ~~including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.~~ imposed except that, *subject to subparagraph (B)*, a local agency may require *an applicant for a permit issued pursuant to this subdivision to be an owner-occupant* or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms,

passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and may shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or

separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed

or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) “Efficiency unit” has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) “Local agency” means a city, county, or city and county, whether general law or chartered.

(6) “Neighborhood” has the same meaning as set forth in Section 65589.5.

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(7) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.

(8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit

for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed~~ become operative on January 1, 2025.

Effective January 1, 2020, Section 65852.22 of the Government Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 68 (Ting)):

65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence ~~already built~~ built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the ~~existing~~ walls of the structure, and require the inclusion of an existing bedroom. proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation. proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

~~(A) A sink with a maximum waste line diameter of 1.5 inches.~~

~~(B) (A) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas. appliances.~~

~~(C) (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.~~

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine ~~whether~~ if the junior accessory dwelling unit ~~is in compliance~~ complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. ~~A permit shall be issued within 120 days of submission of an application for a permit pursuant to this section.~~ The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the

applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For ~~the~~ purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For ~~the~~ purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

~~(g)~~ (h) For purposes of this section, the following terms have the following meanings:

(1) “Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within ~~an existing~~ a single-family ~~structure.~~ residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is added to the Health and Safety Code, immediately following Section 17980.11, to read (changes noted in underline/italics) (SB 13 (Wieckowski)):

17980.12.

- (a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
- (A) The accessory dwelling unit was built before January 1, 2020.
- (B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.
- (3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.
- (4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).
- (b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.
- (c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

ATTACHMENT B

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

AB 587 Accessory Dwelling Units

(Changes noted in underline/italics)

Effective January 1, 2020 Section 65852.26 is added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The property was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

ATTACHMENT C

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1

AB 670 Accessory Dwelling Units

(Changes noted in underline/italics)

Effective January 1, 2020, Section 4751 is added to the Civil Code, to read (AB 670 (Friedman)):

4751.

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

ATTACHMENT D

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6

AB 671 Accessory Dwelling Units

(Changes noted in underline/italics)

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

**Appendix G: HCD Memorandum, Accessory Dwelling Unit (ADU)
Legislation (SB 229 & AB 494), May 29, 2018**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Accessory-Dwelling-Unit-Legislation.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Accessory-Dwelling-Unit-Legislation.pdf>

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**


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MEMORANDUM

DATE: May 29, 2018

TO: Planning Directors and Interested Parties

FROM: Zachary Olmstead, Deputy Director
Division of Housing Policy Development 

SUBJECT: **Local Agency Accessory Dwelling Units
Chapter 594, Statutes of 2017 (Senate Bill 229) and
Chapter 602, Statutes of 2017 (Assembly Bill 494)**

This memorandum is to inform you of the amendments to California law, effective January 1, 2018, regarding the creation of accessory dwelling units (ADU). Chapter 594, Statutes of 2017 (Senate Bill 229) and Chapter 602, Statutes of 2017 (Assembly Bill 494) build upon recent changes to ADU law (Government Code (GC) Section 65852.2) and further address barriers to the development of ADUs.

SB 229 and AB 494, among other changes, addresses the following:

- Clarifies an ADU can be created through the conversion of a garage, carport or covered parking structure.
- Requires special districts and water corporations to charge a proportional fee scale based upon the ADUs size or its number of plumbing fixtures.
- Reduces the maximum number of parking spaces for an ADU to one space.
- Allows replacement parking spaces to be located in any configuration, as a result, of a parking structure conversion to an ADU.
- Authorizes the Department of Housing and Community Development to review and comment on ADU ordinances.
- Defines the term "tandem parking" to mean two or more automobiles.

For assistance, please see the amended statute in Attachment A. In addition, pursuant to GC Section 65852.2(h), adopted ADU ordinances shall be submitted to HCD within 60 days of adoption. For more information and updates, please contact Greg Nickless, Housing Policy Analyst, at 916-274-6244.

ATTACHMENT A

TITLE 7, DIVISION 2, CHAPTER 4, ARTICLE 2

SB 229 and AB 494 Accessory Dwelling Units (65852.2)

Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones~~ *areas zoned to allow single-family or multifamily use*. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria~~ *criteria* that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and residence~~ *residence*, but may be ~~rented~~ *not be sold or otherwise conveyed separate from the primary residence*.

(ii) The lot is zoned ~~for~~ *to allow* single-family or multifamily use and ~~contains an existing~~ *includes a proposed or existing* single-family dwelling.

(iii) The accessory dwelling unit is either attached ~~to the existing dwelling~~ or located within the living area of the *proposed or existing primary dwelling* or detached from the *proposed or existing primary dwelling* and located on the same lot as the *proposed or existing primary dwelling*.

(iv) The ~~increased floor total~~ *area of floorspace* of an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area* or 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom~~ *bedroom, whichever is less*. These spaces may be provided as tandem parking on ~~an existing~~ *a* driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction~~ *conditions*.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives ~~its first application on or after July 1, 1983, an~~ application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall ~~accept the application and~~ approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or existing primary* dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

- (3) The accessory dwelling unit is part of the *proposed or existing* primary residence or an ~~existing~~-accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a ~~single-family residential zone~~-zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, *including, but not limited to, a studio, pool house, or other similar structure*, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*
- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) Accessory dwelling units shall not be considered ~~new residential uses~~ by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating ~~local-agency~~-connection fees or capacity charges for utilities, including water and sewer service.
- (A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~-agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.
- (B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~-agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*
- (i) As used in this section, the following terms mean:
- (1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.
- (2) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.
- (4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit, as defined in Section 17958.1 of *the Health and Safety Code*.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
- (5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (6) "*Tandem parking*" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

Appendix H: HCD Memorandum, Transitional and Supportive Housing (SB 745), April 24, 2014 (Describing Changes to Statutory Definitions of Supportive and Transitional Housing by SB 745)

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb745memo042414.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb745memo042414.pdf>


**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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**MEMORANDUM**

DATE: April 24, 2014

TO: Planning Directors and Interested Parties

FROM: Lisa Bates, Deputy Director 
Division of Housing Policy Development

SUBJECT: **Transitional and Supportive Housing
Chapter 183, Statutes of 2013 (SB 745)**

This memorandum is to update local decision makers on recent amendments to housing element law (Government Code Section 65582) related to transitional and supportive housing zoning requirements. In 2007, SB 2 (Chapter 633, Statutes of 2007) revised housing element law requiring that transitional and supportive housing be permitted as a residential use, subject only to restrictions that apply to other residential dwellings of the same type in the same zone. SB 745, which took effect on January 1, 2014, generally amends the Section 65582 of the Government Code to replace prior Health and Safety Code definitions of "supportive housing," "target population," and "transitional housing" with definitions now more specific to housing element law.

Previously, definitions for "supportive housing," "target population," and "transitional housing" were found in subdivision (b) of Section 50675.14, subdivision (3)(a) of Section 50675.14 and subdivision (h) of Section 50675.2 of the Health and Safety Code, respectively. SB 745 deletes reference to these sections and creates new definitions in Government Code Section 65582.

The intent for this change is to remove cross references in Government Code Section 65582 to the definitions of "supportive housing" and "transitional housing" that are used in the statutes governing the Multifamily Housing Program (MHP) and replace them with the current definitions that are used for the purposes of zoning applicable at the time SB 2 (Cedillo, Chapter 633, Statutes of 2007) passed. For your assistance, the specific language of SB745 that amends Section 65582 of the Government Code is included in Attachment A.

For a full copy of the statute, please refer to <http://leginfo.legislature.ca.gov/>.

For more information regarding transitional and supportive housing, see the Department's *Building Blocks*' website at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/zoning-for-variety-housing-types.shtml>. If you have any questions, please contact Paul McDougall, Housing Policy Manager, at 916-263-7420.

Changes to State Housing Element Law AB 745 (Chapter 183, Statutes of 2013)

Government Code Section 65582

SB 745 (Changes in underline)

As used in this article, the following definitions apply:

- (a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.
- (b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.
- (c) "Department" means the Department of Housing and Community Development.
- (d) "Emergency shelter" has the same meaning as defined in subdivision (e) of Section 50801 of the Health and Safety Code.
- (e) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.
- (f) "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.
- (g) "Target population" means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.
- (h) "Transitional housing" means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.

Appendix "I": HCD Memorandum, Alternative Adequate Sites Amendments (SB 720, AB 1103, and AB 1867), August 24, 2012 (Explaining Legislation Amending the Requirements of Gov. Code Section 65583.1 Allowing Some Planned Affordable Housing Development, Subsidy or Acquisition to Count Towards Meeting the Jurisdictions Obligation to Zone for Its Regional Housing Needs Allocation (RHNA))

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/alt-adeq-sites082412.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/alt-adeq-sites082412.pdf>

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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**MEMORANDUM**

DATE: August 24, 2012

TO: Planning Directors & Interested Parties

FROM: 
Glen A. Campora, Assistant Deputy Director
Division of Housing Policy Development

SUBJECT: **Recent Housing Element Legislation Amending
Alternative Adequate Sites**

The Alternative Adequate Sites Statute (Government Code 65583.1 (c)) provides flexibility to local government in by allowing up to 25 percent of the adequate sites requirements to be met by making available affordable units through rehabilitation, conversion, and/or preservation. This memorandum describes recent legislation amending the alternative adequate sites sections of State housing element law:

- AB 720 (Caballero) - Chapter 467, Statutes of 2009: Expands the timeline for a local government to provide committed assistance for the rehabilitation, conversion or preservation of affordable housing units.
- AB 1867 (Harkey) - Chapter 367, Statutes of 2010: Allows multifamily “ownership” housing converted to rental housing affordable to lower income households by acquisition or the purchase of affordability covenants to qualify towards meeting the alternative adequate sites requirement. Also reduces the required number of units in a complex to qualify for this section from four to three units.
- AB 1103 (Huffman) - Chapter 210, Statutes of 2011: Allows, under specific conditions, foreclosed properties converted to housing affordable to lower income households by acquisition or the purchase of affordability covenants to qualify under the alternative adequate sites requirement.

Description of Amendments and Guidance

The housing element is required to provide a land inventory identifying sufficient adequate sites suitable for residential development to accommodate the regional housing need allocation (RHNA). Pursuant to Government Code Section 65583.1(c)(1), local governments can meet up to 25 percent of the site requirement by providing “committed assistance” to make existing units affordable through rehabilitation, conversion, and/or preservation. “Committed assistance” is defined as a legally

enforceable agreement which obligates sufficient available funds to provide the assistance necessary to make identified units affordable and available for occupancy within two years of the execution of the agreement.

Timeline to Provide Committed Assistance

Prior to AB 720 (2009, Chapter 467), a local government was limited to entering into a legally enforceable agreement providing committed assistance during the first two years of the housing element planning period. The law was amended to expand the allowable time period by which the local government must enter into a legally enforceable agreement to span the time period from the beginning of the RHNA projection period through the end of the second year of the housing element planning period. Amendments included defining the “projection period” as the time period for which the RHNA is calculated. For example, for local governments within the Sacramento Area Council of Governments (SACOG), the RHNA projection period begins January 1, 2013, with housing element updates due October 31, 2013. Using this example, the period to enter into a legally enforceable agreement for committed assistance would commence on January 1, 2013 and extend until October 31, 2015. A copy of the housing element schedule with the projection and planning periods can be found at http://www.hcd.ca.gov/hpd/hrc/plan/he/he_time.htm.

Conversion of Existing Housing Stock

Prior to AB 1867 (2010, Chapter 367), only multifamily rental housing complexes with four or more units converted by acquisition or the purchase of affordability covenants were eligible under the conversion provisions of the Adequate Sites Alternative. Chapter 367 amended the statute to provide more flexibility by reducing the minimum housing complex size to three units and allowing ownership multifamily units converted to rental housing to qualify.

To convert existing multifamily ownership units, the housing element must demonstrate that for each ownership unit converted to an affordable unit and counted under the Alternative Adequate Sites, a new multifamily rental unit affordable to lower-income households will be constructed within the planning period of the housing element. For example, for a community to count the conversion of 10 multifamily ownership units to units affordable to lower income households, the element must demonstrate that at least 10 new multifamily rental units will be produced within the planning period of the housing element. The element could describe the number of multifamily units that will be constructed within the planning period of the housing element to be affordable to lower-income households, the date new construction was or is anticipated to be completed, and include a description of the RHNA credit methodology used to determine affordability based on actual rent levels or other mechanisms (i.e., financing). The jurisdiction could also include certificates of occupancy to satisfy this requirement. The number of units affordable to low- and very low-income households which have been constructed must meet or exceed the number of converted ownership units credited against particular RHNA income categories.

AB 1103 (2011, Chapter 210) allows foreclosed properties converted by acquisition or the purchase of affordability covenants to qualify towards meeting a local government's share of the RHNA under the conversion provisions for multifamily units pursuant to Government Code 65583.1(c)(1)(B). The element must demonstrate these units meet the same requirements as converted multifamily rental units. After January 1, 2015, in order for foreclosed properties to qualify, the same multifamily rental production requirements enacted by AB 1867 (2010, Chapter 367), must be followed.

Other Amendments

Government Code Section 65400: AB 720 also amended the requirements of the [Housing Element Annual Progress Report \(APR\)](#) to allow reporting of units that have been substantially rehabilitated, converted from non-affordable to affordable by acquisition, and preserved consistent with the standards set by Government Section 65583.1(c). These units can be reported in Table A2 of the APR forms and the report should document how the units meet the alternative adequate sites requirements.

Government Code Section 65583(a)(8): AB 720 further amended the requirement for an analysis of opportunities for energy conservation with respect to residential development in the housing element to encourage the use of weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects. Sample housing element programs and information to address energy conservation and climate change objectives is available on the Department's website at http://www.hcd.ca.gov/hpd/housing_element2/SIA_conservation.php and http://www.hcd.ca.gov/hpd/HE_PoliciesProgramsAddressingClimateChange.pdf.

Further Guidance

The amended statutory language is enclosed as Attachment 1. A checklist to assist in determining whether the provisions of Government Code Section 65583.1(c) can be used to address the adequate sites statute is enclosed as Attachment 2 ([Government Code Section 65583.1\(c\) Checklist](#)).

For more information on the Adequate Sites Alternative, see the Department's *Building Blocks*' website at http://www.hcd.ca.gov/hpd/housing_element2/SIA_adeqsites.php. Copies of published bills from the 2009, 2010, 2011 sessions can be obtained from the Legislature's website at <http://www.leginfo.ca.gov/bilinfo.html> or Legislative Bill Room at (916) 445-2323. If you have any questions or would like additional information or technical assistance, please contact Melinda Coy of our staff, at (916) 445-5307.

ATTACHMENT 1

Changes to State Housing Element Law

AB 720 (Chapter 467, Statutes of 2009)
AB 1867 (Chapter 367, Statutes of 2010)
AB 1103 (Chapter 210, Statutes of 2011)

AB 720 (Chapter 467, Statutes of 2009)
AB 1867 (Chapter 367, Statutes of 2010)
AB 1103 (Chapter 210, Statutes of 2011)
(Excerpts, changes indicated in bold and underlines)

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

Prior to and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element.

That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

The report may include the number of units that have been substantially rehabilitated, converted from nonaffordable to affordable by acquisition, and preserved consistent with the standards set forth in paragraph (2) of subdivision (c) of Section 65583.1. The report shall document how the units meet the standards set forth in that subdivision.

(C) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

65582. (a-g) *Omitted – No changes have been made to these subsections.*

(h) "Planning period" means the time period between the due date for one housing element and the due date for the next housing element.

(i) "Projection period" means the time period for which the regional housing need is calculated.

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of

housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1-7) *Omitted – Chapters 467 and 367 did not have major changes to these subsections.*

(8) An analysis of opportunities for energy conservation with respect to residential development. **Cities and counties are encouraged to include weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects. This may include energy efficiency measures that encompass the building envelope, its heating and cooling systems, and its electrical system.**

(9) *Omitted – No changes have been made to these subsections.*

(b-h) *Omitted – No changes have been made to these subsections*

65583.1. (a-b) *Omitted – No changes have been made to these subsections*

(c)(1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(c)(1)(A) *Omitted – No changes have been made to these subsections*

(c)(1)(B) Units that are located **either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units**, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available for rent at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years.

(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.

(c)(1)(C) *Omitted – No changes have been made to these subsections.*

(c)(2-3) *Omitted – No changes have been made to these subsections.*

(c)(4) For purposes of this subdivision, “committed assistance” means that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the **planning period** that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. “Committed assistance” does not include tenant-based rental assistance.

(5-6) *Omitted – No changes have been made to these subsections.*

(7) In the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units

pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

ATTACHMENT 2

Government Code Section 65583.1(c) Checklist

GENERAL REQUIREMENTS

Note: The following checklist is intended to assist in the determination of project eligibility to utilize the alternate adequate sites provisions in Government Code Section 65583.1(c). To qualify a jurisdiction should answer "yes" to all of the general requirements questions listed below.

Please be aware, all information must be provided in the housing element to demonstrate compliance.

HE Page #

<p>65583.1(c)(4) Is the local government providing, or will it provide "committed assistance" during the period of time from the beginning of the RHNA projection period to the end of the first 2 years of the housing element planning period? See the definition of "committed assistance" at the end of the checklist.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>65583.1(c)(1)(A) Has the local government identified the specific source of "committed assistance" funds? If yes: specify the amount and date when funds will be dedicated through a (legally enforceable agreement). \$: _____ Date: _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>65583.1(c)(3) Has at least some portion of the regional share housing need for very low-income (VL) or low-income (L) households been met in the current or previous planning period? Specify the number of affordable units permitted/constructed in the previous period. _____ Specify the number affordable units permitted/constructed in the current period and document how affordability was established. _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>65583.1(c)(1)(B) Indicate the total number of units to be assisted with committed assistance funds and specify funding source. Number of units: _____ Funding source: _____</p>		
<p>65583.1(c)(1)(B) Will the funds be sufficient to develop the identified units at affordable costs or rents?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>65583.1(c)(1)(C) Do the identified units meet the substantial rehabilitation, conversion, or preservation requirements as defined? Which option? _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

<i>SUBSTANTIAL REHABILITATION (65583.1(c)(2)(A))</i>		
	Program #	HE Page #
Include reference to specific program action in housing element.		
65583.1(c)(2)(A) Will the rehabilitation result in a net increase in the number of housing units available and affordable to very low- and lower-income households? If so, how many units?	<input type="checkbox"/> Yes <input type="checkbox"/> No # of VLI units: _____ # of LI units: _____	
65583.1(c)(2)(A)(i) (I) Are units at imminent risk of loss to affordable housing stock? <i>For example, are the units at-risk of being demolished or removed from the housing stock without the necessary rehabilitation?</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(A)(i) (II) Is the local government providing relocation assistance consistent with Government code 7260 or Health and Safety Code Section 17975, including rent and moving expenses equivalent to four (4) months, to those occupants permanently or temporary displaced?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(A)(i) (III) Will tenants have the right to reoccupy units?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(A)(i) (IV) Have the units been determined to be unfit for human habitation due the at least four (4) of the following violations (as listed in Health & Safety Code Section 17995.3 (a) through (g))? <input type="checkbox"/> Termination, extended interruption or serious defects of gas, water or electric utility systems provided such interruptions or termination is not caused by the tenant's failure to pay such gas, water or electric bills. <input type="checkbox"/> Serious defects or lack of adequate space and water heating. <input type="checkbox"/> Serious rodent, vermin or insect infestation. <input type="checkbox"/> Severe deterioration, rendering significant portions of the structure unsafe or unsanitary. <input type="checkbox"/> Inadequate numbers of garbage receptacles or service. <input type="checkbox"/> Unsanitary conditions affecting a significant portion of the structure as a result of faulty plumbing or sewage disposal. <input type="checkbox"/> Inoperable hallway lighting.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(A)(ii) Will affordability and occupancy restrictions be maintained for at least 20 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(A)(iii) Note: Prior to occupancy of the rehabilitated units, the local government must issue a certificate that finds the units comply with all local and State building and health and safety requirements.		

CONVERSION OF MULTIFAMILY RENTAL AND OWNERSHIP UNITS OF 3 OR MORE OR FORECLOSED PROPERTIES FROM NON-AFFORDABLE TO AFFORDABLE (65583.1(c)(2)(B))		
	Program #	HE Page #
Include reference to specific program action in housing element.	_____	_____
65583.1(c)(2)(B) Specify the number of multifamily rental (3 or more units) to be converted. Specify the number multifamily ownership units to be converted. Specify the number of foreclosed properties acquired. Date Acquired? Will these units be for rent?	_____ _____ _____ _____ _____	
65583.1(c)(2)(B)(i) Will the acquired units be made affordable to low- or very low-income households?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(B)(ii) For units to be converted to very-low income, were those units affordable to very low-income households at the time they were identified for acquisition? For units to be converted to low-income, were those units affordable to low-income households at the time they were identified for acquisition?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(B)(iii) If the acquisition results in the displacement of very low- or low-income households, is the local government providing relocation assistance consistent with Government Code Section 7260, including rent and moving expenses equivalent to four (4) months, to those occupants permanently or temporary displaced?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(B)(iv) Will units be decent, safe, and sanitary upon occupancy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(B)(v) Will affordability and occupancy restrictions be maintained at least 55 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(B)(vi)* For conversion of multifamily ownership units: Has at least an equal share of newly constructed multifamily rental units affordable to lower-income households been constructed within the current planning period or will be constructed by the of program completion as the number of ownership units to be converted? (Note: this could be demonstrated by providing certificates of occupancy) Specify the number of affordable multifamily rental units constructed in the planning period.	<input type="checkbox"/> Yes <input type="checkbox"/> No # of lower-income units: _____	
*NOTE: After January 1, 2015 foreclosed units acquired and converted must meet the requirements of GC 65583.1(c)(2)(B)(vi)		

PRESERVATION OF AFFORDABLE UNITS (65583.1(c)(2)(C))		
Include reference to specific program action in housing element.	Program #	HE Page #
65583.1(c)(2)(C)(i) Will affordability and occupancy restrictions be maintained for at least 40 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(C)(ii) Are the units located within an "assisted housing development" as defined in Government Code Section 65863.10(a)(3)? See definition on page 4.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(C)(iii) Did the local government hold a public hearing and make a finding that the units are eligible and are reasonably expected to convert to market rate during the next 5 years, due to termination of subsidies, prepayment, or expiration of use?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(C)(iv) Will units be decent, safe, and sanitary upon occupancy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
65583.1(c)(2)(C)(v) Were the units affordable to very low- and low-income households at the time the units were identified for preservation?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

NOTE:

By no later than July 1st of the third year of the planning period, local governments must report on the status of its program implementation for substantial rehabilitation, conversion, and/or preservation (of affordability) as described above (Government Code 65583.1(c)(7)).

The report must specify and identify those units for which committed assistance has been provided or which have been made available to low- and very low-income households and document how each unit complies with the substantial rehabilitation, conversion, and/or preservation provisions.

If the local government has not entered into an enforceable agreement of committed assistance for all units specified in the identified program(s), by the July 1st due date, it must amend its element to identify additional appropriately zoned and suitable sites, sufficient to accommodate the number of units for which committed assistance was not provided. This follow-up action must be taken no later than July 1st of the fourth year of the planning period.

If a local government fails to amend its element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, the local government cannot use the alternate adequate sites program provisions of Government Code Section 65583.1(c)(1) in its next housing element update, beyond the number of units actually provided or preserved due to committed assistance.

DEFINITIONS:

Committed Assistance: When a local government has entered into a legally enforceable agreement within a specific timeframe spanning from the beginning of the RHNA projection period through the end of the second year of the housing element planning period, obligating funds for affordable units available for occupancy within two years of the agreement.

Assisted Housing Development: A multifamily rental housing development that receives governmental assistance under any of the following programs:

- (A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).
- (B) The following federal programs:
 - (i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)).
 - (ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).
 - (iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).
- (C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).
- (D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).
- (E) Section 42 of the Internal Revenue Code.
- (F) Section 142(d) of the Internal Revenue Code (tax-exempt private activity mortgage revenue bonds).
- (G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).
- (H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program).
- (I) Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).
- (J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care program, and surplus federal property disposition program.
- (K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.
- (L) Chapter 1138 of the Statutes of 1987.
- (M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:
 - (i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).
 - (ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.
 - (iii) The sale or lease of public property at or below market rates.
 - (iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).

Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o)) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o), excluding subparagraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

**Appendix J: HCD Memorandum, SB 812 Persons with
Developmental Disabilities, June 21, 2012 (Interpreting the
Requirement to Analyze the Housing Needs of Persons with
Developmental Disabilities)**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/NoticeCoverLtrSB812Memo.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/NoticeCoverLtrSB812Memo.pdf>

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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**MEMORANDUM**

DATE: June 21, 2012

TO: Planning Directors
Interested Parties

Glen A. Campora

FROM: Glen Campora, Acting Deputy Director
Division of Housing Policy Development

SUBJECT: **Persons with Developmental Disabilities
SB 812 (Ashburn), Chapter 507, Statutes of 2010**

Housing elements must include an analysis of the special housing needs of the disabled including persons with developmental disabilities. Special needs groups often spend a disproportionate amount of their income to secure safe and decent housing and are sometimes subject to discrimination based on their specific needs or circumstances. Chapter 507, Statutes of 2010 (SB 812), which took effect January 2011, amended State housing element law to require the analysis of the disabled to include an evaluation of the special housing needs of persons with developmental disabilities. This analysis should include an estimate of the number of persons with developmental disabilities, an assessment of the housing need, and a discussion of potential resources.

A "developmental disability" is defined as a disability that originates before an individual becomes 18 years old, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. This includes Mental Retardation, Cerebral Palsy, Epilepsy, and Autism. The US Census does not have specific information regarding persons with developmental disabilities. However, each nonprofit regional center contracted with the California Department of Developmental Services (DDS) maintains an accounting of the number of persons served by zip code or city. This information can be used to estimate the number of persons residing in the jurisdiction which have developmental disabilities.

The development of affordable and accessible homes is critical to expand opportunities for persons with developmental disabilities to live in integrated community settings. One of the biggest obstacles to living independently in the community is a lack of financial resources. Income is often limited and affordable housing where people can rent homes, apartments, duplexes, or mobile homes is crucial to the long term stability of a person with developmental disabilities. In addition, access to various types of supported living services is critical for persons with developmental disabilities to live as independently as possible.

In accordance with Government Code Section 65583(e), any draft housing element submitted to the Department after March 31, 2011 will be required to comply with SB 812.

Further Resources

Attachment 1 is the amended statutory language, Attachment 2 includes the definition of developmental disabilities, a list of organizational resources, and a bibliography of relevant publications, and Attachment 3 includes a sample analysis and programs. For more information on the Special Housing Needs requirements including sample analyses, see the Department's *Building Blocks*' website at http://www.hcd.ca.gov/hpd/housing_element2/HN_SHN_home.php.

A copy of the legislation can be found on the Department's website at www.hcd.ca.gov. Copies of published bills from the 2010 session can be obtained from the Senate's website: www.assembly.ca.gov or the Legislative Bill Room at (916) 445-2323. If you have any questions or would like additional information or technical assistance, please contact Melinda Coy, of our staff, at (916) 445-5307.

ATTACHMENT 1

Changes to State Housing Element Law SB 812 (Chapter 507, Statutes of 2010)

Changes to State Housing Element Law SB 812 (Chapter 507, Statutes of 2010)

(Excerpts, changes indicated in bold and underlines.)

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

- (a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:
 - (1-6) *Omitted – Chapter 507 did not have major changes to these subsections*
 - (7) An analysis of any special housing needs, such as those of the elderly; persons with disabilities, **including a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code**; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.
 - (8-9) *Omitted – Chapter 507 did not have major changes to this subsection.*
 - (b-h) *Omitted – Chapter 507 did not have major changes to these subsections*

ATTACHMENT 2

Resources

Definition of "Developmental Disability" from the Section 4512 of the Welfare and Institutions Code

4512. As used in this division:

- (a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

List of Organizational Resources

California Department of Developmental Services

DDS is the agency through which the State of California provides services and supports to individuals with developmental disabilities.

P. O. Box 944202

Sacramento, CA 94244-2020

(916) 654-1690

<http://www.dds.ca.gov/>

(Web page includes a list of developmental and regional centers)

Community Placement Plan (CPP) funds

In collaboration with the regional center, DDS uses CPP funds to develop homes as an alternative for individuals with developmental disabilities to reside in the community instead of institutional settings. <http://www.dds.ca.gov/AH/CPP.cfm>

California Department of Rehabilitation

CDR works in partnership with consumers and stakeholders to provide services and advocacy resulting in employment, independent living and equality for individuals with disabilities.

P.O. Box 944222

2000 Evergreen Street

Sacramento, CA 95815

Phone: (916) 263-8981 (VOICE)

(916) 263-7477 (TTY)

www.dor.ca.gov

(Web page includes list of Independent Living Centers)

Disability Rights California

Disability Rights California provides advocacy help for Californians with disabilities.

Ms. Dara Schur
 1330 Broadway, Suite 500
 Oakland, CA 94612
 Phone: (510) 267-1200
<http://www.disabilityrightsca.org>

Mental Health Association in California (MHAC)

Provides advocacy, education, information and other assistance necessary to ensure that all people who require mental health services are able to receive the mental health and other services that they need

1127 11th Street, Suite 830
 Sacramento, CA 95814
 Phone: (916) 557-1167
<http://www.mhac.org>

California Mental Health Directors Association (CMHDA)

Represents the mental health directors from each of California's counties
 2030 'J' Street
 Sacramento, CA 95814
 Phone: (916) 556-3477
<http://www.cmhda.org>

Association of Regional Centers

Represents the autonomous regional centers
 915 L Street, Suite 1440
 Sacramento, CA 95814
 phone: (916) 446-7961
<http://www.arcanet.org/>

Bibliography of Publications and Reports

The following is a bibliography of publications relating to housing for persons with developmental disabilities.

California State Council on Developmental Disabilities
STATE STRATEGIC PLAN 2011-2016
<http://69.93.208.24/documents/DraftSCDDStatePlan2011-2016.pdf>

California Kern County Regional Center for Developmental Disabilities
Hand in Hand Kern Regional Center Online
 Homepage: <http://www.kernrc.org/>
 Welcome page for Consumers & Families <http://www.kernrc.org/#/welcome/4509341943>

California Ventura County, Santa Barbara, and San Luis Obispo Tri-Counties Regional Center (TCRC):
Housing Plan

TRI-COUNTIES REGIONAL CENTER 5-YEAR HOUSING BUSINESS PLAN (2008)

The TCRC Housing Plan is a comprehensive roadmap that focuses on: (1) Supporting people with developmental disabilities in their housing requirements, and (2) Increasing the housing stock of affordable housing units within the jurisdiction.

<http://www.tri-counties.org/attachments/article/138/TCRC5YrPlan-final1.pdf>

Adult Residential Care: Regional Centers of California, Residents and Regional Center for the Developmentally Disabled

EDUCATION & UNDERSTANDING Online

http://www.arf35.com/arf_residents_regional_center.html

WEBSITE DATABASES:

Cornell University, Employment and Disability Institute

DISABILITY STATISTICS: ONLINE RESOURCE FOR U.S. DISABILITY STATISTICS

(Select a statistic below to access the disability statistics interactive search tool)

<http://www.ilr.cornell.edu/edi/disabilitystatistics/index.cfm>

OTHER STATES REPORTS:

Alaska State Health and Social Services Department

2010 Disability Policy Seminar – Fact Sheet

HOUSING FOR PEOPLE WITH DISABILITIES: THE CRISIS & THE OPPORTUNITY

http://www.hss.state.ak.us/gcdse/committees/legislative/pdf/2010_factsheet_housing.pdf

Maryland State Department of Housing and Community Development

CONSOLIDATED PLAN 2010-2015: Persons with Special Needs

<http://www.mdhousing.org/Website/About/PublicInfo/Publications/Documents/2010-2015specialneeds2.pdf>

Oregon State Department of Human Services, Seniors and People with Disabilities Division. Oregon Administrative Rules: Chapter 411, Division 315

DEVELOPMENTAL DISABILITIES HOUSING TRUST ACCOUNT

http://www.dhs.state.or.us/policy/spd/rules/411_315.pdf

Washington State Dept. of Social and Health Services, Aging & Disabilities Services Admin
Strategic Plan for Housing Needs Assessment & Trust Fund Utilization for People with Developmental Disabilities

STRATEGIC ELEMENTS FOR FISCAL YEAR 2010-2011 (Economic Considerations, p.6)

<http://www.dshs.wa.gov/pdf/adsa/ddd/2010-11%20Housing%20Strategic%20Plan.pdf>

LIBRARY REPORTS:

Judge David L. Bazelon Center for Mental Health Law

WHAT “FAIR HOUSING” MEANS FOR PEOPLE WITH DISABILITIES

(Revised edition 2011)

<http://www.bazelon.org/News-publications/Publications/List/1/CategoryID/17/Level/a/ProductID/19.aspx?SortField=ProductNumber%2cProductNumber>

Call #: H58 4 W53 2011

California State Department of Housing and Community Development
Housing Policy Division

SB 812, Chapter 507, Statutes of 2010

Souza, Maria Teresa

WORST CASE HOUSING NEEDS OF PEOPLE WITH DISABILITIES (2011)

U.S. Dept. of Housing and Urban Development (HUD)

Available for viewing full text via the World Wide Web:

http://www.huduser.org/Publications/pdf/WorstCaseDisabilities03_2011.pdf

Call #: L74 4 R46d 2011

Turner, Margery A., [et al.]

DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (2005)

Prepared for: Office of Policy Development and Research, U.S. Department of Housing and Urban Development

Available for viewing full text via the World Wide Web:

http://www.huduser.org/Publications/pdf/DDS_Barriers.pdf

Call #: H58 2 D57 2005

California. Senate Select Committee on Developmental Disabilities & Mental Health

IMPROVING THE QUALITY OF COMMUNITY-BASED SERVICES AND SUPPORTS IN CALIFORNIA FOR PERSONS WITH DEVELOPMENTAL DISABILITIES (1998)

Collins, Peggy, Editor

Call #: H59 1 I47 1998

FEDERAL DOCUMENTS:

United States House of Representatives; Report 111-678 (H.R. 476)

VETERANS, WOMEN, FAMILIES WITH CHILDREN, AND PERSONS WITH DISABILITIES HOUSING FAIRNESS ACT OF 2010

<http://democrats.financialservices.house.gov/FinancialSvcsDemMedia/file/house%20reports/111-678.pdf>

United States, 111th Congress, 2nd Session – Senate (S. 1481)

FRANK MELVILLE SUPPORTIVE HOUSING INVESTMENT ACT OF 2010

(The law makes improvements to the Section 811 program and promotes integrated housing opportunities for people with disabilities)

<http://www.gpo.gov/fdsys/pkg/BILLS-111s1481enr/pdf/BILLS-111s1481enr.pdf>

ATTACHMENT 3

Sample Analysis

Sample Developmentally Disabled Analysis for the Housing Element

Developmentally Disabled

According to Section 4512 of the Welfare and Institutions Code a "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual which includes mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

Many developmentally disabled persons can live and work independently within a conventional housing environment. More severely disabled individuals require a group living environment where supervision is provided. The most severely affected individuals may require an institutional environment where medical attention and physical therapy are provided. Because developmental disabilities exist before adulthood, the first issue in supportive housing for the developmentally disabled is the transition from the person's living situation as a child to an appropriate level of independence as an adult.

The State Department of Developmental Services (DDS) currently provides community based services to approximately 243,000 persons with developmental disabilities and their families through a statewide system of 21 regional centers, four developmental centers, and two community-based facilities. The XXX Regional Center is one of 21 regional centers in the State of California that provides point of entry to services for people with developmental disabilities. The center is a private, non-profit community agency that contracts with local businesses to offer a wide range of services to individuals with developmental disabilities and their families.

The following information from the XXX Regional Center, charged by the State of California with the care of people with developmental disabilities, defined as those with severe, life-long disabilities attributable to mental and/or physical impairments provides a closer look at the disabled population.

Exhibit T: Developmentally Disabled Residents, by Age, for City XXX

Zip Code Area	0-14 Years	15-22 Years	23-54 Years	55-65 Years	65+ Years	Total
Total						

There are a number of housing types appropriate for people living with a development disability: rent subsidized homes, licensed and unlicensed single-family homes, inclusionary housing, Section 8 vouchers, special programs for home purchase, HUD housing, and SB 962 homes. The design of housing-accessibility modifications, the proximity to services and transit, and the availability of group living opportunities represent some of the types of considerations that are important in serving this need group. Approximately X percent of the City's affordable

housing units and X percent of the County's public housing units are reserved for seniors and disabled persons. Incorporating 'barrier-free' design in all, new multifamily housing (as required by California and Federal Fair Housing laws) is especially important to provide the widest range of choices for disabled residents. Special consideration should also be given to the affordability of housing, as people with disabilities may be living on a fixed income.

In order to assist in the housing needs for persons with Developmental Disabilities, the City will implement programs to coordinate housing activities and outreach with the Regional Center and , encourage housing providers to designate a portion of new affordable housing developments for persons with disabilities, especially persons with developmental disabilities, and pursue funding sources designated for persons with special needs and disabilities.

Sample Programs:

Program Sample 1: Work with the XXX regional center to implement an outreach program that informs families within the City on housing and services available for persons with developmental disabilities. The program could include the development of an informational brochure, including information on services on the City's website, and providing housing-related training for individuals/families through workshops.

Responsibility: Community Development Department
Timing: Development of Outreach Program by June, 2014

Program Sample 2: Develop a program to provide rental assistance to fill the gap between income levels and the cost of housing for persons with Developmental Disabilities. The program will include the following steps:

Step One: Work with the regional center to identify the housing needs of the clients and assist in identifying available housing that meets those criteria.

Step Two: Identify the gaps that limit access to housing for persons with developmental disabilities (i.e. financial, accessibility).

Step Three: Develop Guidelines and market program

Responsibility: Community Development Department
Timing: Begin Program Development January, 2013.
Objective: Assist 10 persons with developmental disabilities.

Program Sample 3: Explore models to encourage the creation of housing for persons with developmental disabilities and implement a program by 2015. Such models could include assisting in housing development through the use of set-asides, scattered site acquisition, new construction, and pooled trusts; providing housing services that educate, advocate, inform, and assist people to locate and maintain housing; and models to assist in the maintenance and repair of housing for persons with developmental disabilities. The City shall also seek State and Federal monies for direct support of housing construction and rehabilitation specifically targeted for housing for persons with disabilities.

Responsibility: Community Development Department
California State Department of Housing and Community Development
Housing Policy Division
SB 812, Chapter 507, Statutes of 2010

**Appendix K: HCD Memorandum, Default Density Standard 2010
Census Update, June 20, 2012 (Updating the Densities Deemed
Appropriate to Accommodate Housing for Lower Income
Households Based on the 2010 Census)**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Default_2010census_update.pdf) website at:
https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Default_2010census_update.pdf



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P. O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177 / FAX (916) 327-2643
www.hcd.ca.gov

June 20, 2012

MEMORANDUM FOR: Planning Directors
Interested Parties

Glen A. Campora

FROM: Glen A. Campora, Assistant Deputy Director
Division of Housing Policy Development

SUBJECT: **Default Density Standard Option – 2010 Census Update**

Background Information: Pursuant to Government Code Section 65583.2(c)(3), the housing element must include analysis of identified sites which must demonstrate density standards to accommodate a jurisdiction's regional need for all income levels, including lower-income households.

To meet this statutory requirement, local governments should provide an analysis demonstrating how adopted densities accommodate the regional housing need for lower income households. The analysis shall include, but is not 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.

As an option and alternative to preparing the analysis described above, Government Code Section 65583.2(c)(3)(B) allows local governments to elect the option of utilizing "default" density standards that are "deemed appropriate to accommodate housing for lower income households." The default density option is not a mandated density. The default density standard provides a streamlined option for local governments to meet the density requirement. No analysis to establish the appropriateness of the default density is required and the Department must accept that density as appropriate in its review.

The default density option was adopted in 2003 by consensus with local government representatives, builders, planners and advocates through the Housing Element Working Group which was convened by the Department in 2003. Default densities are established using population based criteria as detailed in 65583.2(b)(i) through (iv) and 65583.2(d) through (f) as summarized below (refer to Table A for detailed information):

- Incorporated cities within nonmetropolitan/rural counties and non-metropolitan counties with micropolitan areas (15 units or more per acre)
- Unincorporated areas in all non-metropolitan counties (10 units or more per acre)
- Suburban Jurisdiction (20 units or more per acre)
- Metropolitan Jurisdictions (30 units or more per acre)

Default Density Standard Option – 2010 Census Update Page 2

Revised Default Density Standards Based on 2010 Census Data Release: Based on the release of 2010 Census data, the Department has updated the default density standards set forth in the Department's June 9, 2005 technical assistance memo ([Amendment of State Housing Element Law – AB 2348](#)). Specifically, Table A and Appendix 1 of the June 9, 2005 memo have been revised based on current US Census Bureau population based criteria as established in Government Code Section 65583.2(c)(3)(d) thru (f).

The updated optional default density standards are based on either one of the following:

1. Increases in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census based estimates; or
2. Increases or decreases of an individual jurisdiction's population between the 2000 and 2010 Census based estimates.

Population changes to Metropolitan and Micropolitan Statistical Areas are reflected in Table A, below. Applicable jurisdiction level information on default densities for accommodating lower-income households is included as Appendix 1.

Timing and Applicability Regarding Future Housing Element Updates: Revised default densities will be effective for housing element updates for the fifth housing element planning period. Housing element amendments for the fourth planning period may continue to use default densities identified in the Department's June 9, 2005 technical assistance memo ([Amendment of State Housing Element Law – AB 2348](#)).

Housing element updates for the fifth planning period are due to be adopted at various dates beginning 2013. Please refer to *Housing Element Update Schedule* on the Department's website at http://www.hcd.ca.gov/hpd/hrc/plan/he/he_time.htm.

If you have any questions or need assistance, please contact Division of Housing Policy Development staff at (916) 445-4728 or cahouse@hcd.ca.gov.

Attachments

<p align="center">TABLE A Revised Default Densities Appropriate to Accommodate Housing for Lower-Income Households by Region <i>(note: changes are indicated by underline)</i> <u>Default Densities are optional and data is provided for informational purposes only</u></p>			
I	II	III	IV
<p>Incorporated Cities within nonmetropolitan/rural counties (as outlined in either Section I or II) and Nonmetropolitan counties with micropolitan areas (listed below)</p>	<p>Unincorporated areas in all nonmetropolitan counties not included under I</p>	<p>Suburban jurisdictions</p>	<p>Metropolitan jurisdictions</p>
<p>Nonmetropolitan counties with micropolitan areas include:</p> <p>Del Norte Humboldt Inyo Lassen Lake Mendocino Nevada Tehama Tuolumne</p>	<p>Nonmetropolitan/rural counties as listed below (list excludes those counties including micropolitan areas as outlined in section I)</p> <p>Alpine Amador Calaveras Colusa Glenn Mariposa Modoc Mono Plumas Sierra Siskiyou Trinity</p>	<p>Jurisdictions (cities/counties) located within a Metropolitan Statistical Area (MSA) with a population of less than 2 million as listed below <u>unless</u> a city has a population of greater than 100,000 in which case it would be considered metropolitan.</p> <p>Butte Imperial Fresno Kern Kings Madera Merced Monterey Napa San Benito San Joaquin San Luis Obispo Santa Barbara Santa Clara Santa Cruz Shasta Solano Sonoma Stanislaus Sutter Tulare Ventura Yuba</p>	<p>Jurisdictions (cities/counties) located within a Metropolitan Statistical Area (MSA) with a population of more than 2 million as listed below, <u>unless</u> a city has a population of less than 25,000 in which case it would be considered suburban.</p> <p>Alameda Contra Costa <u>El Dorado</u> Los Angeles Marin Orange <u>Placer</u> Riverside <u>Sacramento</u> San Bernardino San Diego San Francisco San Mateo <u>Yolo</u></p>
<p>at least 15 du/ac</p>	<p>at least 10 du/ac</p>	<p>at least 20 du/ac</p>	<p>at least 30 du/ac</p>

Source: OMB Bulletin No. 10-02 <http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf>

APPENDIX 1

**Housing Element Default Densities for Accommodating Lower-Income Households
Government Code Section 65583.2**

Default Densities are optional and data is provided for informational purposes only

NOTE: Changes are indicated in yellow below and are based on one of the following factors as indicated:

1. Increase in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census; OR
2. Increase or decrease in an individual locality's population between the 2000 and 2010 Census

COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
Alameda	IV	Alameda	72,927	73,812				X
		Alameda County	137,357	141,266				X
		Albany	16,628	18,539			X	
		Berkeley	103,640	112,580				X
		Dublin	34,345	46,036				X
		Emeryville	7,427	10,080			X	
		Fremont	206,856	214,089				X
		Hayward	142,718	144,186				X
		Livermore	76,629	80,968				X
		Newark	43,331	42,573				X
		Oakland	402,777	390,724				X
		Piedmont	11,036	10,667			X	
		Pleasanton	66,151	70,285				X
		San Leandro	80,609	84,950				X
Union City	69,879	69,516				X		
Alpine	II	Alpine County	1,200	1,175	X			
Amador	II	Amador	215	185		X		
		Amador County	21,524	21,831	X			
		Ione	7,450	7,918		X		
		Jackson	4,084	4,651		X		
		Plymouth	1,022	1,005		X		
		Sutter Creek	2,362	2,501		X		
Butte	III	Biggs	1,811	1,707			X	
		Butte County	95,971	83,758			X	
		Chico	65,904	86,187			X	
		Gridley	5,663	6,584			X	
		Oroville	13,111	15,546			X	
		Paradise	26,743	26,218			X	
Calaveras	II	Angels City	3,422	3,836		X		
		Calaveras County	39,556	41,742	X			
Colusa	II	Colusa	5,553	5,971		X		
		Colusa County	9,911	10,325	X			
		Williams	3,848	5,123		X		
Contra Costa	IV	Antioch	99,870	102,372				X
		Brentwood	31,527	51,481				X
		Clayton	11,037	10,897			X	

**Housing Element Default Densities for Accommodating Lower-Income Households
Government Code Section 65583.2**

Default Densities are optional and data is provided for informational purposes only

NOTE: Changes are indicated in yellow below and are based on one of the following factors as indicated:

1. Increase in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census; OR
2. Increase or decrease in an individual locality's population between the 2000 and 2010 Census

COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Concord	125,225	122,067				X
		Contra Costa County	157,569	159,785				X
		Danville	42,565	42,039				X
		El Cerrito	23,513	23,549			X	
		Hercules	20,232	24,060			X	
		Lafayette	24,546	23,893			X	
		Martinez	36,707	35,824				X
		Moraga	16,686	16,016			X	
		Oakley	26,206	35,432				X
		Orinda	18,069	17,643			X	
		Pinole	19,439	18,390			X	
		Pittsburg	60,525	63,264				X
		Pleasant Hill	33,537	33,152				X
		Richmond	102,553	103,701				X
		San Pablo	30,990	29,139				X
San Ramon	46,217	72,148				X		
Walnut Creek	65,345	64,173				X		
Del Norte	I	Crescent City	7,242	7,643		X		
		Del Norte County	20,240	20,967		X		
El Dorado ¹	IV	El Dorado County ¹	131,647	149,266			X	
		Placerville	10,124	10,389			X	
		South Lake Tahoe	23,973	21,403			X	
Fresno	III	Clovis	74,503	95,631			X	
		Coalinga	16,051	13,380			X	
		Firebaugh	5,993	7,549			X	
		Fowler	4,282	5,570			X	
		Fresno	445,227	494,665			X	
		Fresno County	167,936	171,705			X	
		Huron	6,917	6,754			X	
		Kerman	9,344	13,544			X	
		Kingsburg	10,060	11,382			X	
		Mendota	8,268	11,014			X	
		Orange Cove	8,678	9,078			X	
		Parlier	12,293	14,494			X	
		Reedley	21,231	24,194			X	
		San Joaquin	3,482	4,001			X	
		Sanger	19,829	24,270			X	
		Selma	20,538	23,219			X	

**Housing Element Default Densities for Accommodating Lower-Income Households
Government Code Section 65583.2**

Default Densities are optional and data is provided for informational purposes only

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1. Increase in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census; OR
2. Increase or decrease in an individual locality's population between the 2000 and 2010 Census

COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
Glenn	II	Glenn County	14,120	14,665	X			
		Orland	6,283	7,291		X		
		Willows	6,220	6,166		X		
Humboldt	I	Arcata	16,663	17,231		X		
		Blue Lake	1,141	1,253		X		
		Eureka	25,866	27,191		X		
		Ferndale	1,379	1,371		X		
		Fortuna	10,701	11,926		X		
		Humboldt County	67,960	71,916		X		
		Rio Dell	3,140	3,368		X		
		Trinidad	309	367		X		
Imperial	III	Brawley	21,842	24,953			X	
		Calexico	30,746	38,572			X	
		Calipatria	7,513	7,705			X	
		El Centro	37,684	42,598			X	
		Holtville	5,550	5,939			X	
		Imperial	8,093	14,758			X	
		Imperial County	32,715	37,778			X	
		Westmorland	2,105	2,225			X	
Inyo	I	Bishop	3,624	3,879		X		
		Inyo County	14,590	14,667		X		
Kern	III	Arvin	13,654	19,304			X	
		Bakersfield	260,969	347,483				X
		California City	9,351	14,120			X	
		Delano	42,092	53,041			X	
		Kern County	275,696	297,932			X	
		Maricopa	1,140	1,154			X	
		McFarland	9,974	12,707			X	
		Ridgecrest	25,332	27,616			X	
		Shafter	13,410	16,988			X	
		Taft	8,903	9,327			X	
		Tehachapi	11,042	14,414			X	
		Wasco	22,496	25,545			X	
Kings	III	Avenal	15,333	15,505			X	
		Corcoran	20,929	24,813			X	
		Hanford	44,350	53,967			X	
		Kings County	33,355	34,166			X	
		Lemoore	21,076	24,531			X	

**Housing Element Default Densities for Accommodating Lower-Income Households
Government Code Section 65583.2**

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NOTE: Changes are indicated in yellow below and are based on one of the following factors as indicated:

1. Increase in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census; OR
2. Increase or decrease in an individual locality's population between the 2000 and 2010 Census

COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
Lake	I	Clearlake	13,971	15,250		X		
		Lake County	42,895	44,662		X		
		Lakeport	5,104	4,753		X		
Lassen	I	Lassen County	16,296	16,948		X		
		Susanville	17,711	17,947		X		
Los Angeles	IV	Agoura Hills	21,704	20,330			X	
		Alhambra	87,655	83,089				X
		Arcadia	54,904	56,364				X
		Artesia	16,755	16,522			X	
		Avalon	3,315	3,728			X	
		Azusa	46,323	46,361				X
		Baldwin Park	77,828	75,390				X
		Bell	37,359	35,477				X
		Bell Gardens	45,270	42,072				X
		Bellflower	74,525	76,616				X
		Beverly Hills	34,857	34,109				X
		Bradbury	922	1,048			X	
		Burbank	102,913	103,340				X
		Calabasas	20,689	23,058			X	
		Carson	92,929	91,714				X
		Cerritos	52,620	49,041				X
		Claremont	34,831	34,926				X
		Commerce	13,118	12,823			X	
		Compton	95,559	96,455				X
		Covina	48,019	47,796				X
		Cudahy ²	25,164	23,805				X
		Culver City	39,698	38,883				X
		Diamond Bar	57,919	55,544				X
		Downey	109,840	111,772				X
		Duarte	22,072	21,321			X	
		El Monte	119,918	113,475				X
		El Segundo	16,385	16,654			X	
		Gardena	59,657	58,829				X
		Glendale	199,430	191,719				X
		Glendora	50,567	50,073				X
		Hawaiian Gardens	15,236	14,254			X	
		Hawthorne	85,934	84,293				X
		Hermosa Beach	19,281	19,506			X	

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COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Hidden Hills	1,959	1,856			X	
		Huntington Park	62,976	58,114				X
		Industry	787	219			X	
		Inglewood	114,959	109,673				X
		Irwindale	1,476	1,422			X	
		La Cañada Flintridge	20,857	20,246			X	
		La Habra Heights	5,916	5,325			X	
		La Mirada	48,478	48,527				X
		La Puente	42,007	39,816				X
		La Verne	32,711	31,063				X
		Lakewood	81,051	80,048				X
		Lancaster	124,592	156,633				X
		Lawndale	32,388	32,769				X
		Lomita	20,482	20,256			X	
		Long Beach	472,412	462,257				X
		Los Angeles	3,798,981	3,792,621				X
		Los Angeles County	1,025,890	1,057,426				X
		Lynwood	71,387	69,772				X
		Malibu	13,086	12,645			X	
		Manhattan Beach	35,501	35,135				X
		Maywood	28,710	27,395				X
		Monrovia	37,848	36,590				X
		Montebello	63,607	62,500				X
		Monterey Park	61,822	60,269				X
		Norwalk	106,084	105,549				X
		Palmdale	124,346	152,750				X
		Palos Verdes Estates	13,750	13,438			X	
		Paramount	56,489	54,098				X
		Pasadena	139,712	137,122				X
		Pico Rivera	64,859	62,942				X
		Pomona	153,555	149,058				X
		Rancho Palos Verdes	42,126	41,643				X
		Redondo Beach	65,793	66,748				X
		Rolling Hills	1,918	1,860			X	
		Rolling Hills Estates	7,922	8,067			X	
		Rosemead	54,955	53,764				X
		San Dimas	35,876	33,371				X
		San Fernando	24,175	23,645			X	

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COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		San Gabriel	40,784	39,718				X
		San Marino	13,217	13,147			X	
		Santa Clarita	160,554	176,320				X
		Santa Fe Springs	17,938	16,223			X	
		Santa Monica	86,799	89,736				X
		Sierra Madre	10,878	10,917			X	
		Signal Hill	10,005	11,016			X	
		South El Monte	21,675	20,116			X	
		South Gate	98,791	94,396				X
		South Pasadena ²	24,840	25,619				X
		Temple City	35,616	35,558				X
		Torrance	141,615	145,438				X
		Vernon	93	112			X	
		Walnut	30,773	29,172				X
		West Covina	107,694	106,098				X
		West Hollywood	36,670	34,399				X
Westlake Village	8,550	8,270			X			
Whittier	85,446	85,331				X		
Madera	III	Chowchilla	14,310	18,720			X	
		Madera	46,214	61,416			X	
		Madera County	69,741	70,729			X	
Marin	IV	Belvedere	2,111	2,068			X	
		Corte Madera	9,306	9,253			X	
		Fairfax	7,263	7,441			X	
		Larkspur	11,931	11,926			X	
		Marin County	68,378	67,427				X
		Mill Valley	13,557	13,903			X	
		Novato	48,131	51,904				X
		Ross	2,324	2,415			X	
		San Anselmo	12,252	12,336			X	
		San Rafael	56,288	57,713				X
		Sausalito	7,294	7,061			X	
		Tiburon	8,746	8,962			X	
		Mariposa	II	Mariposa County	17,195	18,251	X	
Mendocino	I	Fort Bragg	7,029	7,273		X		
		Mendocino County	59,096	59,156		X		
		Point Arena	475	449		X		
		Ukiah	15,544	16,075		X		

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COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
Merced	III	Willits	5,096	4,888		X		
		Atwater	24,677	28,168			X	
		Dos Palos	4,585	4,950			X	
		Gustine	5,236	5,520			X	
		Livingston	11,246	13,058			X	
		Los Banos	29,525	35,972			X	
		Merced	68,225	78,958			X	
		Merced County	81,904	89,167			X	
Modoc	II	Alturas	2,842	2,827		X		
		Modoc County	6,447	6,859	X			
Mono	II	Mammoth Lakes	7,404	8,234		X		
		Mono County	5,713	5,968	X			
Monterey	III	Carmel-by-the-Sea	4,133	3,722			X	
		Del Rey Oaks	1,658	1,624			X	
		Gonzales	8,307	8,187			X	
		Greenfield	12,935	16,330			X	
		King City	11,283	12,874			X	
		Marina	21,146	19,718			X	
		Monterey	29,649	27,810			X	
		Monterey County	103,851	100,213			X	
		Pacific Grove	15,648	15,041			X	
		Salinas	148,744	150,441				X
		Sand City	287	334			X	
		Seaside	32,327	33,025			X	
		Soledad	23,440	25,738			X	
Napa	III	American Canyon	12,152	19,454			X	
		Calistoga	5,296	5,155			X	
		Napa	75,032	76,915			X	
		Napa County	28,406	26,213			X	
		St. Helena	6,069	5,814			X	
		Yountville	3,313	2,933			X	
Nevada	I	Grass Valley	11,131	12,860		X		
		Nevada City	3,019	3,068		X		
		Nevada County	66,267	66,656		X		
		Truckee	14,630	16,180		X		
Orange	IV	Aliso Viejo	40,596	47,823				X
		Anaheim	332,642	336,265				X
		Brea	37,023	39,282				X

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		Buena Park	79,015	80,530				X
		Costa Mesa	110,126	109,960				X
		Cypress	47,249	47,802				X
		Dana Point	35,804	33,351				X
		Fountain Valley	55,553	55,313				X
		Fullerton	128,842	135,161				X
		Garden Grove	167,429	170,883				X
		Huntington Beach	193,799	189,992				X
		Irvine	162,122	212,375				X
		La Habra	59,984	60,239				X
		La Palma	15,774	15,568			X	
		Laguna Beach	24,169	22,723			X	
		Laguna Hills	33,627	30,344				X
		Laguna Niguel	63,057	62,979				X
		Laguna Woods	16,514	16,192			X	
		Lake Forest	76,942	77,264				X
		Los Alamitos	11,710	11,449			X	
		Mission Viejo	96,307	93,305				X
		Newport Beach	78,096	85,186				X
		Orange	131,606	136,416				X
		Orange County	122,764	121,160				X
		Placentia	47,798	50,533				X
		Rancho Santa Margarita	48,161	47,853				X
		San Clemente	55,986	63,522				X
		San Juan Capistrano	34,637	34,593				X
		Santa Ana	343,413	324,528				X
		Seal Beach	24,527	24,168			X	
		Stanton	37,958	38,186				X
		Tustin	68,637	75,540				X
		Villa Park	6,060	5,812			X	
		Westminster	89,515	89,701				X
		Yorba Linda	61,065	64,234				X
Placer¹	IV	Auburn	12,546	13,330			X	
		Colfax	1,623	1,963			X	
		Lincoln ¹	19,676	42,819				X
		Loomis	6,316	6,430			X	
		Placer County ¹	103,324	108,128				X

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		Rocklin ¹	43,263	56,974				X
		Roseville ¹	91,761	118,788				X
Plumas	II	Plumas County	18,701	17,903	X			
		Portola	2,189	2,104		X		
Riverside	IV	Banning	25,590	29,603				X
		Beaumont ²	13,274	36,877				X
		Blythe	21,376	20,817			X	
		Calimesa	7,469	7,879			X	
		Canyon Lake	10,642	10,561			X	
		Cathedral City	46,295	51,200				X
		Coachella	27,178	40,704				X
		Corona	138,326	152,374				X
		Desert Hot Springs ²	17,310	25,938				X
		Hemet	63,367	78,657				X
		Indian Wells	4,405	4,958			X	
		Indio	54,221	76,036				X
		La Quinta	30,043	37,467				X
		Lake Elsinore	31,866	51,821				X
		Menifee ²	n/a	77,519				X
		Moreno Valley	150,773	193,365				X
		Murrieta	54,100	103,466				X
		Norco	25,838	27,063				X
		Palm Desert	44,327	48,445				X
		Palm Springs	44,526	48,445				X
		Perris	38,298	68,386				X
		Rancho Mirage	14,614	17,218			X	
		Riverside	274,226	303,871				X
		Riverside County	461,566	504,392				X
		San Jacinto	25,689	44,199				X
		Temecula	73,793	100,097				X
		Wildomar ²	n/a	32,176				X
Sacramento ¹	IV	Citrus Heights ¹	88,567	83,301				X
		Elk Grove ¹	75,175	153,015				X
		Folsom ¹	61,256	72,203				X
		Galt	22,321	23,647			X	
		Isleton	849	804			X	
		Rancho Cordova ¹	57,718	64,776				X
		Sacramento ¹	435,245	466,488				X

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		Sacramento County ¹	621,669	554,554				X
San Benito	III	Hollister	36,449	34,928			X	
		San Benito County	17,916	18,479			X	
		San Juan Bautista	1,573	1,862			X	
		Adelanto ²	18,869	31,765				X
San Bernardino	IV	Apple Valley	57,925	69,135				X
		Barstow	22,554	22,639			X	
		Big Bear Lake	5,752	5,019			X	
		Chino	69,961	77,983				X
		Chino Hills	72,295	74,799				X
		Colton	49,833	52,154				X
		Fontana	143,607	196,069				X
		Grand Terrace	12,067	12,040			X	
		Hesperia	67,021	90,173				X
		Highland	47,085	53,104				X
		Loma Linda	19,813	23,261			X	
		Montclair	34,377	36,664				X
		Needles	5,193	4,844			X	
		Ontario	165,064	163,924				X
		Rancho Cucamonga	143,711	165,269				X
		Redlands	66,749	68,747				X
		Rialto	96,616	99,171				X
		San Bernardino	191,631	209,924				X
		San Bernardino County	293,362	291,776				X
		Twentynine Palms	29,186	25,048				X
		Upland	70,983	73,732				X
		Victorville	70,828	115,903				X
		Yucaipa	43,830	51,367				X
Yucca Valley	17,760	20,700				X		
San Diego	IV	Carlsbad	86,639	105,328				X
		Chula Vista	193,919	243,916				X
		Coronado	23,862	18,912			X	
		Del Mar	4,442	4,161			X	
		El Cajon	95,555	99,478				X
		Encinitas	59,796	59,518				X
		Escondido	135,908	143,911				X
		Imperial Beach	27,235	26,324				X
		La Mesa	54,966	57,065				X

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		Lemon Grove	25,057	25,320				X
		National City	55,541	58,582				X
		Oceanside	165,880	167,086				X
		Poway	49,115	47,811				X
		San Diego	1,259,532	1,307,402				X
		San Diego County	449,217	486,604				X
		San Marcos	62,133	83,781				X
		Santee	53,230	53,413				X
		Solana Beach	13,068	12,867			X	
		Vista	91,565	93,834				X
San Francisco	IV	San Francisco City & County	764,049	805,235				X
San Joaquin	III	Escalon	6,572	7,132			X	
		Lathrop	11,753	18,023			X	
		Lodi	60,656	62,134			X	
		Manteca	56,904	67,096			X	
		Ripon	11,470	14,297			X	
		San Joaquin County	136,094	141,995			X	
		Stockton	262,835	291,707				X
		Tracy	68,018	82,922			X	
San Luis Obispo	III	Arroyo Grande	16,290	17,252			X	
		Atascadero	26,912	28,310			X	
		El Paso de Robles	26,358	29,793			X	
		Grover Beach	13,077	13,156			X	
		Morro Bay	10,504	10,234			X	
		Pismo Beach	8,646	7,655			X	
		San Luis Obispo	44,256	45,119			X	
		San Luis Obispo County	107,365	118,118			X	
San Mateo	IV	Atherton	7,096	6,914			X	
		Belmont ²	24,816	25,835				X
		Brisbane	3,531	4,282			X	
		Burlingame	27,773	28,806				X
		Colma	1,179	1,792			X	
		Daly City	101,901	101,123				X
		East Palo Alto	31,709	28,155				X
		Foster City	29,194	30,567				X
		Half Moon Bay	11,982	11,324			X	
		Hillsborough	10,703	10,825			X	

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		Menlo Park	30,277	32,026				X
		Millbrae	20,317	21,532			X	
		Pacifica	37,771	37,234				X
		Portola Valley	4,424	4,353			X	
		Redwood City	74,453	76,815				X
		San Bruno	39,366	41,114				X
		San Carlos	27,165	28,406				X
		San Mateo	91,935	97,207				X
		San Mateo County	62,356	61,222				X
		South San Francisco	59,955	63,632				X
		Woodside	5,299	5,287			X	
Santa Barbara	III	Buellton	3,835	4,828			X	
		Carpinteria	14,234	13,040			X	
		Goleta	28,626	29,888			X	
		Guadalupe	5,778	4,828			X	
		Lompoc	41,389	13,040			X	
		Santa Barbara	89,382	29,888			X	
		Santa Barbara County	134,502	133,417			X	
		Santa Maria	80,006	99,553			X	
		Solvang	5,332	5,245			X	
Santa Clara	III	Campbell	37,474	39,349			X	
		Cupertino	50,005	58,302			X	
		Gilroy	43,145	48,821			X	
		Los Altos	27,314	28,976			X	
		Los Altos Hills	8,002	7,922			X	
		Los Gatos	28,209	29,413			X	
		Milpitas	63,700	66,790			X	
		Monte Sereno	3,453	3,341			X	
		Morgan Hill	33,791	37,882			X	
		Mountain View	70,046	74,066			X	
		Palo Alto	57,543	64,403			X	
		San Jose	900,443	945,942				X
		Santa Clara	101,867	116,468				X
		Santa Clara County	99,330	89,960			X	
		Saratoga	29,496	29,926			X	
Sunnyvale	129,687	140,081				X		
Santa Cruz	III	Capitola	9,949	9,918			X	
		Santa Cruz	53,836	59,946			X	

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Shasta	III	Santa Cruz County	131,947	129,739			X	
		Scotts Valley	11,438	11,580			X	
		Watsonville	46,644	51,199			X	
		Anderson	9,420	9,932			X	
		Redding	85,660	89,861			X	
		Shasta County	67,026	67,266			X	
		Shasta Lake	9,693	10,164			X	
Sierra	II	Loyalton	861	769		X		
		Sierra County	2691	2471	X			
Siskiyou	II	Dorris	874	939		X		
		Dunsmuir	1,894	1,650		X		
		Etna	771	737		X		
		Fort Jones	650	839		X		
		Montague	1,439	1,443		X		
		Mount Shasta	3,586	3,394		X		
		Siskiyou County	23,795	24,156	X			
		Tulelake	1,006	1,010		X		
		Weed	2,912	2,967		X		
		Yreka	7,176	7,765		X		
Solano	III	Benicia	27,159	26,997			X	
		Dixon	16,261	18,351			X	
		Fairfield	101,935	105,321				X
		Rio Vista	5,684	7,360			X	
		Solano County	19,683	18,834			X	
		Suisun City	26,979	28,111			X	
		Vacaville	93,573	92,428			X	
		Vallejo	119,798	115,942				X
Sonoma	III	Cloverdale	7,275	8,618			X	
		Cotati	6,706	7,265			X	
		Healdsburg	11,101	11,254			X	
		Petaluma	55,252	57,941			X	
		Rohnert Park	42,342	40,971			X	
		Santa Rosa	153,489	167,815				X
		Sebastopol	7,787	7,379			X	
		Sonoma	9,354	10,648			X	
		Sonoma County	150,900	145,186			X	
		Windsor	24,180	26,801			X	
Stanislaus	III	Ceres	36,707	45,417			X	

**Housing Element Default Densities for Accommodating Lower-Income Households
Government Code Section 65583.2**

Default Densities are optional and data is provided for informational purposes only

NOTE: Changes are indicated in yellow below and are based on one of the following factors as indicated:

1. Increase in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census; OR
2. Increase or decrease in an individual locality's population between the 2000 and 2010 Census

COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Hughson	5,033	6,640			X	
		Modesto	203,555	201,165				X
		Newman	7,516	10,224			X	
		Oakdale	16,895	20,675			X	
		Patterson	13,521	20,413			X	
		Riverbank	17,640	22,678			X	
		Stanislaus County	112,396	110,236			X	
		Turlock	61,647	68,549			X	
		Waterford	7,530	8,456			X	
Sutter	III	Live Oak	6,405	8,392			X	
		Sutter County	28,962	21,420			X	
		Yuba City	47,213	64,925			X	
Tehama	I	Corning	6,823	7,663		X		
		Red Bluff	13,508	14,076		X		
		Tehama	438	418		X		
		Tehama County	36703	41306		X		
Trinity	II	Trinity County	13,174	13,786	X			
Tulare	III	Dinuba	17,587	21,453			X	
		Exeter	9,504	10,334			X	
		Farmersville	9,033	10,588			X	
		Lindsay	10,524	11,768			X	
		Porterville	41,309	54,165			X	
		Tulare	45,979	59,278			X	
		Tulare County	144,118	142,872			X	
		Visalia ²	96,889	124,442				X
Tuolumne	I	Sonora	4,552	4,903		X		
		Tuolumne County	51,298	50,462		X		
Ventura	III	Camarillo	59,444	65,201			X	
		Fillmore	14,919	15,002			X	
		Moorpark	34,577	34,421			X	
		Ojai	7,943	7,461			X	
		Oxnard	177,984	197,899				X
		Port Hueneme	22,249	21,723			X	
		San Buenaventura (Ventura)	103,619	106,433				X
		Santa Paula	28,835	29,321			X	
		Simi Valley	116,562	124,237				X

**Housing Element Default Densities for Accommodating Lower-Income Households
Government Code Section 65583.2**

Default Densities are optional and data is provided for informational purposes only

NOTE: Changes are indicated in yellow below and are based on one of the following factors as indicated:

1. Increase in population of a Metropolitan Statistical Area above 2 million between the 2000 and 2010 Census; OR
2. Increase or decrease in an individual locality's population between the 2000 and 2010 Census

COUNTY	MSA Classification (see Table A)	PLACE	2002 Census Population	2010 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Thousand Oaks	122,700	126,683				X
		Ventura County	95,088	94,937			X	
Yolo ¹	IV	Davis ¹	64,221	65,622				X
		West Sacramento ¹	36,544	48,744				X
		Winters	6,550	6,624			X	
		Woodland ¹	50,850	55,468				X
		Yolo County	22,691	24,391			X	
Yuba	III	Marysville	12,520	12,072			X	
		Wheatland	2,476	3,456			X	
		Yuba County	47,343	56,627			X	

Sources:

Census 2002 Population: http://www.census.gov/popest/archives/2000s/vintage_2002/SUB-EST2002-10.html

Census 2010 Population: Department of Finance, Demographic Research Unit, Census 2010 Redistricting Data (Public Law 94) Summary File, [Table 1—Total Population and Change: 2000 and 2010](#)

Metropolitan and Micropolitan Statistical Areas:

OMB Bulletin No 10-02 <http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf>

Appendix L: HCD Memorandum, SB 2, May 7, 2008 (Updated April 10, 2013) (Interpreting the Requirement to Zone for “By Right” Approval of Emergency Shelters, Transitional and Supportive Housing and Limiting the Authority of Local Government to Deny Approval of Those Facilities)

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-2-combined-update-mca11y.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-2-combined-update-mca11y.pdf>

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**


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**MEMORANDUM**

Updated: April 10, 2013

DATE: May 7, 2008

TO: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 2 -- Legislation Effective January 1, 2008:
*Local Planning and Approval for Emergency Shelters and
Transitional and Supportive Housing***

Chapter 633, Statutes of 2007 (SB 2) clarifies and strengthens housing element law to ensure zoning encourages and facilitates emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act. The law will facilitate efforts to address the critical needs of homeless populations and persons with special needs throughout all communities in California. Generally, SB 2 amends housing element law regarding planning and approval for emergency shelters and transitional and supportive housing as follows:

Planning (Government Code Section 65583)

- At least one zone shall be identified to permit emergency shelters without a conditional use permit or other discretionary action.
- Sufficient capacity must be identified to accommodate the need for emergency shelters and at least one year-round emergency shelter.
- Existing or proposed permit procedures, development and management standards must be objective and encourage and facilitate the development of or conversion to emergency shelters.
- Emergency shelters shall only be subject to development and management standards that apply to residential or commercial within the same zone.
- Written and objective standards may be applied as specified in statute, including maximum number of beds, provision of onsite management, length of stay and security.
- Includes flexibility for jurisdictions to meet zoning requirements with existing ordinances or demonstrate the need for emergency shelters can be accommodated in existing shelters or through a multi-jurisdictional agreement.

Chapter 633, Statutes of 2007 (SB 2)**Page 2**

- Transitional and supportive housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone.

Local Approval (Government Code Section 65589.5: Housing Accountability Act)

- Limits denial of emergency shelters, transitional housing or supportive housing by requiring specific findings.
- Some findings shall not be utilized if new planning requirements of SB 2 are not met; such as identifying a zone without a conditional use permit,

Attached is a briefing paper informing local governments of SB 2, providing assistance in evaluating these new provisions to effectively implement this important new State law; in addition to a copy of the legislation. Electronic copies of these can be found on the Department's website at www.hcd.ca.gov or the Senate's website at www.senate.ca.gov. You may also obtain copies of published bills from the Legislative Bill Room by calling (916) 445-2323. If you have any questions, or seek additional technical assistance, please contact Paul McDougall, HPD Manager, at (916) 445-4728.

Attachments

Chapter 633, Statutes of 2007 (Senate Bill 2)

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Introduction

Homeless Needs

Homelessness in California is a continuing and growing crisis. On any given day, there are at least 361,000 homeless individuals in California – or 1.1 percent of the State’s total population. Of this number, two-thirds are estimated to be single adults, while the other third are families. Some 30 percent of California’s homeless – 108,000 – are so-called “chronic” homeless who have been homeless for six months or more. This population tends to be comprised of single adults who face such obstacles as mental illness, substance abuse problems and chronic physical health problems or disabilities that prevent them from working. Homeless individuals and families are without permanent housing largely because of a lack of affordable housing, often compounded by limited education or skills, mental illness and substance abuse issues, domestic violence and the lack of family or other support networks.¹

California’s homelessness crisis demands the effective involvement of both the public and private sectors. A housing element can be an effective and powerful tool in combating homelessness. Passage of SB 2 strengthened the law to increase its effectiveness in addressing the needs of California’s homeless population. The upcoming housing element update presents an important opportunity to make ending homelessness a critical priority.

Purpose and Objectives of SB 2

The framework of SB 2 resulted from a collaborative effort by key stakeholders including housing and homeless advocates and providers, local governments, planners, and the building industry. SB 2 strengthens existing housing element requirements to provide the opportunity for the development of emergency shelters and transitional and supportive housing. SB 2 ensures zoning, development and management standards and permit procedures encourage emergency shelters while allowing flexibility for existing local strategies and cooperative efforts.

SB 2 focuses on the impacts of zoning requirements on the development of emergency shelters. While the new statute requires that every local government zone for the development of emergency shelters, it does not restrict how local governments allocate resources to address local priority needs. For example, nothing in SB 2 prohibits communities from also adopting a “Housing First” strategy to provide homeless persons with housing immediately and then providing services as needed.

¹ *Governor’s Interagency Task Force on Homelessness, Progress Report and Work Plan for 2003*. Health and Human Services Agency and Business, Transportation and Housing Agency, December 2002

Section 1

Planning

(Government Code Section 65583)

Identifying and Analyzing Needs and Resources

Current law, Government Code Section 65583(a)(7), requires an identification and analysis of the needs of homeless persons and families. The analysis is an essential component of an effective housing element; however data sources can be limited and vary in estimates of need. As a result, an analysis should consider a variety of data sources and include proactive outreach with service providers to examine the degree and characteristics of homeless needs in the community and surrounding communities. A thorough analysis includes:

- An estimate or count of the daily average number of persons lacking shelter. Wherever possible, and to better describe the characteristics of needs, this figure could be divided into single males, single females and families (one or more adults with children) as the needs of each subgroup differ significantly.
- As local data or other existing sources permit (see list below), a description of the percentage of the homeless population who are mentally ill, developmentally disabled, veterans, runaway or emancipated foster youth, substance abusers, survivors of domestic violence, and other subpopulations of homeless considered significant by the jurisdiction.
- An inventory of the resources available within the community including shelters, transitional housing and supportive housing units by type. The analysis should estimate the number and type of existing shelter beds, and units of transitional and supportive housing available.
- Assess the degree of unmet homeless needs, including the extent of need for emergency shelters. As part of this analysis, SB 2 now clarifies the need assessment for emergency shelters must consider seasonal and year-round need. In recognition of local efforts to encourage supportive housing, SB 2 allows jurisdictions with 10 Year Plans to End Chronic Homelessness to reduce the need for emergency shelters by the number of supportive housing units identified in an adopted 10-year plan and that are either vacant or funding has been identified to allow construction in the housing element planning period.

Resources to identify and analyze homeless needs, include:

- Consolidated plans
- Continuum of care plans
- 10 Year Plans to End Chronic Homelessness
- Interagency Council on Homelessness, Guide to Developing Plans and Examples (<http://www.ich.gov/slocal/index.html>)

- Local service providers such as continuum of care providers, local homeless shelter and service providers, food programs, operators of transitional housing programs, local drug and alcohol program service providers, county mental health and social service departments, local Salvation Army, Goodwill Industries, churches and schools, and
- 15 countywide Designated Local Boards certified by the Department's Emergency Housing and Assistance Program (<http://www.hcd.ca.gov/fa/ehap/cntys-with-dlb.html>).

Identifying Zoning for Emergency Shelters

Prior to enactment of SB 2, housing element law required local governments to identify zoning to encourage and facilitate the development of emergency shelters. SB 2 strengthened these requirements. Most prominently, housing element law now requires the identification of a zone(s) where emergency shelters are permitted without a conditional use permit or other discretionary action. To address this requirement, a local government may amend an existing zoning district, establish a new zoning district or establish an overlay zone for existing zoning districts. For example, some communities may amend one or more existing commercial zoning districts to allow emergency shelters without discretionary approval. The zone(s) must provide sufficient opportunities for new emergency shelters in the planning period to meet the need identified in the analysis and must in any case accommodate at least one year-round emergency shelter (see more detailed discussion below).



Cloverfield Services Center – Emergency Shelter by OPCC in Santa Monica, CA
Photo courtesy of OPCC in Santa Monica

When identifying a zone or analyzing an existing zone for emergency shelters, the element should address the compatibility and suitability of the zone. The element should consider what other uses are permitted in the zone and whether the zone is suitable for residential or emergency shelters. For example, an industrial zone with heavy manufacturing may have environmental conditions rendering it unsuitable for residential or shelter uses. In some localities, manufacturing or industrial zones may be in transition, where older industrial uses are redeveloping to residential, office or commercial. Transitioning zones may be compatible

with residential uses and suitable for emergency shelters. Also, a commercial zone allowing residential or residential compatible services (i.e., social services, offices) would be suitable for shelters. For example, Sacramento County permits emergency shelters in its commercial zone along with other residential uses and uses such as retail that are compatible with residential.

SB 2 clarifies existing law by requiring zoning identified for emergency shelters to include sufficient capacity to accommodate the need. The identified zone(s) must have sufficient capacity, when taken as a whole, to meet the need for shelters identified in the housing element, and have a realistic potential for development or reuse opportunities in the planning period. Further, capacity for emergency shelters must be suitable and available and account for physical features (flooding, seismic hazards, chemical contamination, other environmental constraints, and slope instability or erosion) and location (proximity to transit, job centers, and public and community services). The element should also address available acreage (vacant or underutilized) and the realistic capacity for emergency shelters in the zone. For example, if a jurisdiction identifies the public institution zoning district as the zone where emergency shelters will be allowed without a conditional use permit, the element should demonstrate sufficient acreage within the zoning district that could accommodate the actual development of an emergency shelter. The element could also discuss the potential for reuse or conversion of existing buildings to emergency shelters.

SB 2 ensures that each local government shares the responsibility to provide opportunities for the development of emergency shelters. Regardless of the extent of need identified in the element, local governments must provide zoning to allow at least one year round emergency shelter, unless the need for emergency shelters is accommodated through existing shelters or a multi-jurisdictional agreement (see discussion below). This is especially important given the fact that the homeless population is not always visible in the community; is sometimes transitory; data resources are frequently inadequate and the availability and adequacy of services and programs vary significantly by community and can impact the homeless count.

If a local government's existing zoning does not allow emergency shelters without a conditional use permit or other discretionary action, the housing element must include a program to identify a specific zone(s) and amend the zoning code within one year of adoption of the housing element (65583(a)(4)). The only exceptions permitted to the non-discretionary zoning requirement are where a jurisdiction demonstrates their homeless needs can be accommodated in existing shelters; or where the jurisdiction meets all of its need through a multi-jurisdictional agreement (discussed in later sections).

Where a local government has identified a zone and sufficient capacity to encourage emergency shelters consistent with the provisions of SB 2, a local government may also identify additional zones for the development of emergency shelters that require a conditional use permit.

Permitting Emergency Shelters without Discretionary Action

To comply with SB 2, localities must have or adopt a zoning classification that permits emergency shelters in a non-discretionary manner (localities may however apply development standards pursuant to Section 65583(a)(4)). In such zones, permitted uses, development standards and permit procedures must include:

- Objective development standards that encourage and facilitate the approval of emergency shelters.
- Decision-making criteria such as standards that do not require discretionary judgment.
- Standards that do not render emergency shelters infeasible, and only address the use as an emergency shelter, not the perceived characteristics of potential occupants.

Requiring a variance, minor use permit, special use permit or any other discretionary process does not constitute a non-discretionary process. However, local governments may apply non-discretionary design review standards.



Emergency Shelter – Jackson, California
Photo courtesy of Amador-Tuolumne Community Action

A local government should not require public notice of its consideration of emergency shelter proposals unless it provides public notice of other non-discretionary actions. For example, if a local government permits new construction of a single-family residence without discretionary action and public notice is not given for these applications, then a local government should employ the same procedures for emergency shelter applications. The appropriate point for public comment and discretionary action is when zoning is being amended or adopted for emergency shelters, not on a project-by-project basis.

Development Standards to Encourage and Facilitate Emergency Shelters

SB 2 requires that emergency shelters only be subject to those development and management standards that apply to residential or commercial use within the same zone, except the local government may apply certain objective standards discussed on the next page (Government Code Section 65583(a)(4)). For example, a light commercial zone might permit a range of wholesaler, service repair and business services subject to buildable area and lot area requirements. In this case, the emergency shelter may be subject only to the same buildable area and lot area requirements. The same zone might permit residential uses subject to certain development standard (i.e., lot area, heights, and setbacks) requirements. In this case, emergency shelters should only be subject to the same development standards.

To demonstrate that processing procedures and standards are objective and encourage and facilitate development of emergency shelters, the housing element must address how:

- zoning explicitly allows the use (meaning the use is specifically described in the zoning code);
- development standards and permit procedures do not render the use infeasible;
- zoning, development and management standards, permit procedures and other applicable land-use regulations promote the use through objective; and predictable standards.

SB 2 allows flexibility for local governments to apply written, objective development and management standards for emergency shelters as described in statute and below.

- The maximum number of beds or persons permitted to be served nightly by the facility.
- Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
- The size and location of exterior and interior on-site waiting and client intake areas.
- The provision of on-site management.
- The proximity to other emergency shelters provided that emergency shelters are not required to be more than 300 feet apart.
- The length of stay.
- Lighting.
- Security during hours that the emergency shelter is in operation.



These standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. For example, a standard establishing the maximum number of beds should act to encourage the development of an emergency shelter; local governments should establish flexible ranges for hours of operation; length of stay provision should be consistent with financing programs or statutory definitions limiting occupancy to six months (Health and Safety Code Section 50801) and should not unduly impair shelter operations. Appropriate management standards are reasonable and limited to ensure the operation and maintenance of the property.

Encouraging Multi-Jurisdictional Cooperation and Coordination

SB 2 recognizes and encourages multi-jurisdictional coordination by allowing local governments to satisfy all or part of their obligation to zone for emergency shelters by adopting and implementing a multi-jurisdictional agreement, with a maximum of two adjacent communities. The agreement must commit the participating jurisdictions to develop at least one year-round shelter within two years of the beginning of the housing element planning period. For example, jurisdictions in Southern California Association of Governments (SCAG) region with a statutory due date of June 30, 2008 would need to ensure the development of shelter(s) by June 30, 2010. To utilize this provision, local governments must adopt an agreement that allocates a portion of the new shelter capacity to each jurisdiction as credit towards the jurisdiction's emergency shelter need. The housing element for each participating local government must describe how the capacity was allocated. In addition, the housing element of each participating jurisdiction must describe:

- How the joint facility will address the local governments need for emergency shelters.
- The local government's contribution for both the development and ongoing operation and management of the shelter.
- The amount and source of the funding to be contributed to the shelter.
- How the aggregate capacity claimed by all of the participating jurisdictions does not exceed the actual capacity of the shelter facility.

If the local government can demonstrate that the multi-jurisdictional agreement can accommodate the jurisdiction's need for emergency shelter, the jurisdiction is authorized to comply with the zoning requirements for emergency shelters by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit.



Quinn Cottages, Transitional Housing in Sacramento, CA
Photo courtesy of Cottage Housing, Inc.

Existing Ordinances and Existing Shelters that Accommodate Need

Existing Ordinances Permitting Emergency Shelters

Many local governments have a record of effective actions to address the homeless needs in their community. SB 2 recognizes and provides flexibility for jurisdictions that have already adopted an ordinance(s) that complies with the new zoning requirements. For those local governments with existing ordinances and zoning consistent with requirements of SB 2, no further action will be required to identify zones available



Hendley Circle Apartments – Supportive SRO Housing in Burbank
Photo courtesy of Burbank Housing

for emergency shelters. The housing element must however, describe how the existing ordinance, policies and standards are consistent with the requirements of SB 2.

Existing Shelters That Accommodate the Need for Emergency Shelters

Local governments that can demonstrate, to the satisfaction of the Department, the existence of one or more emergency shelters either within the jurisdiction or pursuant to a multi-jurisdictional agreement that can accommodate the need for emergency shelters identified in the housing element may comply with the zoning requirements of SB 2 by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit. To demonstrate homeless needs can be accommodated in existing shelters, an element must at minimum list existing shelters including the total number of beds and the number vacant. The analysis should support and document the estimate of vacant beds and must consider seasonal fluctuations in the need for emergency shelters.

Transitional and Supportive Housing

Transitional housing is defined in Section 50675.2 of the Health & Safety Code as rental housing for stays of at least six months but where the units are re-circulated to another program recipient after a set period. Transitional housing may be designated for a homeless individual or family transitioning to permanent housing. This housing can take several forms,

such as single family or multifamily units, and may include supportive services to allow individuals to gain necessary life skills in support of independent living. *Supportive housing* as defined at Section 50675.14 of the Health & Safety Code has no limit on the length of stay, is linked to onsite or offsite services, and is occupied by a target population as defined in Health & Safety Code Section 53260. Services typically include assistance designed to meet the needs of the target population in retaining housing, living and working in the community, and/or improving health and may include case management, mental health treatment, and life skills.

The housing element must demonstrate that transitional housing and supportive housing are permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone (Government Code Section 65583(a)(5)). In other words, transitional housing and supportive housing are permitted in all zones allowing residential uses and are not subject to any restrictions (e.g., occupancy limit) not imposed on similar dwellings (e.g., single family home, apartments) in the same zone in which the transitional housing and supportive housing is located. For example, transitional housing located in an apartment building in a multifamily zone is permitted in the same manner as an apartment building in the same zone and supportive housing located in a single family home in a single family zone is permitted in the same manner as a single family home in the same zone.

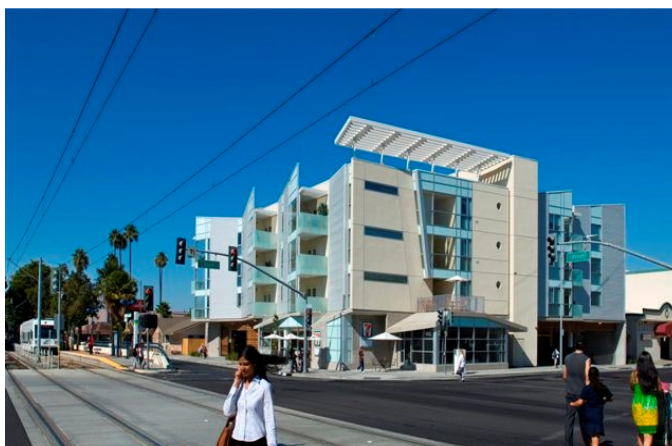
If jurisdictions do not explicitly permit transitional and supportive housing as previously described, the element must include a program to ensure zoning treats transitional and supportive housing as a residential use, subject only to those restrictions on residential uses contained in the same type of structure.

Housing Element Policies and Programs

Effective programs reflect the results of the local housing need analyses, identification of available resources, including land and financing, and the mitigation of identified governmental and nongovernmental constraints.

Programs consist of specific action steps the locality will take to implement its policies and achieve goals and objectives. Programs must include a specific timeframe for implementation, identify the agencies or officials responsible for implementation, and describe the jurisdiction's specific role in implementation.

Where a jurisdiction does not provide an analysis demonstrating compliance with the provisions of SB 2 through existing zoning, the element must have a program(s) to address the results of that analysis. For example, if the element does not identify an existing zone to



Gish Apartments – Supportive Housing, San Jose, CA
Photo courtesy of First Community Housing and Bernard Andre

permit emergency shelters without a conditional use permit or other discretionary action, the element must include a program to establish the appropriate zoning, unless the jurisdiction has satisfied its needs through existing emergency shelters or a multi-jurisdictional agreement. If development and management standards do not encourage and facilitate emergency shelters or zoning does not treat transitional and supportive housing as a residential use, the element must include a program(s) to amend existing zoning or processing requirements to comply with SB 2.

Programs to address the requirements of SB 2 for emergency shelters must be implemented within one year of adoption of the housing element. Programs to address requirements for transitional and supportive housing should be implemented early in the planning period. Further, since the program for emergency shelters must be implemented within one year of adoption, the housing element should provide analysis to support and assure effective implementation of the program. For example, the analysis should examine the suitability of zones to be included in the program and whether sufficient and suitable capacity is available. The same type of analysis could evaluate development and management standards that will be considered as part of establishing or amending zoning. This analysis should demonstrate the necessary commitment to ensure zoning, permit procedures and development standards encourage and facilitate emergency shelters.

******* UPDATED*******

Please be aware, if the adopted housing element from the previous cycle (4th cycle) included a program to address the requirements of SB 2 for emergency shelters, and the required timeframe has lapsed, the Department will not be able to find future housing elements in compliance until the required rezoning is complete and the element is amended to reflect that rezoning.

Timing: When SB 2 Applies

In accordance with Government Code Section 65583(e), any draft housing element submitted to the Department after March 31, 2008 will be required to comply with SB 2.

Section 2

Local Approval

(Government Code Section 65589.5)

The Housing Accountability Act

To promote predictability for the development of housing affordable to lower- and moderate-income households, the Housing Accountability Act (Government Code Section 65589.5) prohibits a jurisdiction from disapproving a housing development project, including housing for farmworkers and for very low-, low-, or moderate-income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low-, low-, or moderate-income households, including through the use of design review standards, unless it makes at least one of five specific written findings based on substantial evidence in the record (Government Code Section 65589.5).

SB 2 adds emergency shelters to the list of uses protected under the Housing Accountability Act. In addition, SB 2 clarifies that the definition of a housing development project includes transitional or supportive housing (see Attachment 1: SB 2 - changes are underlined).

Zoning Inconsistency

Pursuant to the Housing Accountability Act, a local government is prohibited from making the finding regarding zoning and general plan inconsistency (Section 65589.5(d)(5)) to disapprove a development if the jurisdiction identified the site in its general plan (e.g., housing or land-use element) as appropriate for residential use at the density proposed or failed to identify adequate sites to accommodate its share of the regional housing need for all income groups. In addition to extending these provisions to emergency shelters and transitional housing, SB 2 prohibits the use of the zoning and general plan inconsistency finding to disapprove an emergency shelter if the jurisdictions have:

- not identified a zone(s) where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit,
- not demonstrated the identified zone(s) include sufficient capacity to accommodate the need for emergency shelter, or
- not demonstrated the identified zone(s) can accommodate at least one emergency shelter.

This provision applies to any site identified in any element of the general plan for industrial, commercial, or multifamily residential uses. In any court action, the burden of proof is on the local jurisdiction to demonstrate its housing element satisfies the above requirements of SB 2.

Attachment 1

**Statutory Changes to
Housing Element Law
(underline version)**

[omitted]

*See on-line version
at HCD web site*

Attachment 2

Definitions

Attachment 2

Definitions

Emergency Shelters (Health and Safety Code Section 50801(e))

"Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Transitional Housing (Health and Safety Code Section 50675.2)(h)

"Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

Supportive Housing (Health and Safety Code 50675.14(b))

Housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260, and that is linked to on- or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Target Population Definition per HSC 53260(d)

(d) "Target population" means adults with low-income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with [Section 4500 of the Welfare and Institutions Code](#)) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.

Attachment 3

Helpful Links

Attachment 3

Helpful Links

National Alliance to End Homelessness

<http://www.endhomelessness.org/section/tools/tenyearplan>

Interagency Council on Homelessness

<http://www.ich.gov/>

Interagency Council on Homelessness, Guide to Developing Plans and Examples

<http://www.ich.gov/slocal/index.html>

U.S. Department of Health and Human Services, Homelessness Resource Center

[http://www.nrchmi.samhsa.gov/\(X\(1\)S\(axpyp555dhn54z45qhpqvnj4\)\)/Default.aspx?AspxAutoDetectCookieSupport=1](http://www.nrchmi.samhsa.gov/(X(1)S(axpyp555dhn54z45qhpqvnj4))/Default.aspx?AspxAutoDetectCookieSupport=1)

The National Coalition for the Homeless – Local Resources in California

<http://www.nationalhomeless.org/resources/local/california.html>

HCD Selected Bibliography on Homeless Issues

<http://www.hcd.ca.gov/hpd/biblio.html>

Building Blocks for Effective Housing Elements

(links to funding resources, data, policy and research on homelessness)

http://www.hcd.ca.gov/hpd/housing_element/index.html

**Appendix M: HCD Memorandum, Rezoning Deadlines for
Jurisdictions That Failed to Make Sites Available in Prior
Planning Period (AB 1233), June 20, 2007**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab-1233-final-dt.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab-1233-final-dt.pdf>

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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Updated: June 3, 2010

June 20, 2007

MEMORANDUM FOR: Planning Directors
Interested Parties

Cathy E. Creswell

FROM: Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Application of Government Code Section 65584.09
(Chapter 614, Statutes of 2005 [AB 1233])**

Chapter 614, Statutes of 2005 (AB 1233), amended State housing element law to promote effective and timely implementation of local housing elements. This bill requires sites to be rezoned by prescribed deadlines when a jurisdiction fails to adopt a housing element that identifies adequate sites or fails to timely implement programs in its housing element to identify adequate sites pursuant to Government Code Section 65583(c)(1). Government Code Section 65584.09, took effect on January 1, 2006, requires local governments to zone or rezone adequate sites, within the first year of the new planning period, to address any portion of the Regional Housing Needs Allocation (RHNA) for which the jurisdiction failed to identify or make available sites in the prior planning period. This memorandum is provided to assist local government in addressing the new requirement.

Government Code Section 65584.09 generally will not apply to local governments where the current element was found in compliance by the Department and either:

- the inventory of sites required by Section 65583(a)(3) identified adequate sites; or
- the program actions in the element to rezone or provide adequate sites were fully implemented and made available adequate sites.

Government Code Section 65584.09 will apply to local governments that:

- failed to adopt an updated housing element for the prior planning period;
- adopted a housing element found out of compliance by the Department due to failure to substantially comply with the adequate sites requirement;
- failed to implement the adequate sites programs to make sites available within the planning period; or
- failed to identify or make available adequate sites to accommodate a portion of the regional housing need.

Key Provisions of Government Code Section 65584.09:

- Where a local government failed to identify or make adequate sites available in the prior planning period, the jurisdiction must zone or rezone adequate sites to address the unaccommodated housing need within the first year of the new planning period. In addition to demonstrating adequate sites for the new planning period, the updated housing element must identify the unaccommodated housing need by income level. To determine the unaccommodated need, jurisdictions could take the following steps:
 - Subtract the number of units approved or constructed (by income) since the beginning of the previous planning period's RHNA baseline date.
 - Subtract the number of units that could be accommodated on any appropriately zoned sites specifically identified in the element adopted for the previous planning period (not counted above).
 - Subtract the number of units accommodated on sites that have been rezoned for residential development pursuant to the site identification programs in the element adopted for the prior planning period.
 - Subtract the number of units accommodated on sites rezoned for residential development independent of the sites rezoned in conjunction with the element's site identification programs as described above.

Equals (=) the "unaccommodated housing need"Example:

City "A" had a RHNA of 1,000 housing units. While the element demonstrated it had sufficient sites to accommodate 850 units, it contained a rezone program to accommodate the 150 unit remaining need for lower-income households. By the time of the next housing element update, the City had not completed the rezoning as described in the housing element program action. Over the previous 5 years, 1,025 units were constructed (including 175 units affordable to lower-income households). Although the rezoning program was not completed using sites described in the element, the City was able to rezone a smaller 2-acre parcel to high density residential, which could accommodate 40 lower-income units.

	<i>Very Low</i>	<i>Low</i>	<i>Moderate</i>	<i>Above Moderate</i>
<i>RHNA</i>	<i>150</i>	<i>250</i>	<i>200</i>	<i>400</i>
<i>1) Units constructed</i>	<i>50</i>	<i>125</i>	<i>100</i>	<i>750</i>
<i>2) Previously identified sites currently available (Capacity)</i>	<i>25</i>	<i>50</i>	<i>100</i>	<i>N/A</i>
<i>3) Sites rezoned pursuant to Housing Element Program</i>	<i>0</i>	<i>0</i>	<i>N/A</i>	<i>N/A</i>
<i>4) Sites rezoned (other)</i>	<i>20</i>	<i>20</i>	<i>0</i>	<i>N/A</i>
<i>Remaining Need</i>	<i>55</i>	<i>55</i>	<i>0</i>	<i>N/A</i>
<i>Total Remaining Need = 110</i>				

As a result, City "A" has an unaccommodated need of 110 units for lower-income households and must identify or rezone sufficient sites to address this need within the first year of the new planning period.

AB 1233 Update: June 3, 2010

Page 3

- Once a determination has been made that an unaccommodated housing need exists, cities and counties must identify sites that are appropriately zoned or adopt and complete program to zone and/or rezone sites within the first year of the new planning period, to meet the unaccommodated housing need pursuant to Government Code 65584.09 and 65583(c)(1). For example, for local governments within the Southern California Association of Governments (SCAG) region, whose housing element updates were due June 30, 2008, rezones must be complete by June 30, 2009. **Please note, once this timeframe has lapsed, the Department cannot find a jurisdiction's element in compliance until the required zoning or rezoning is complete and the element is amended to reflect conformance with the requirement.**
- The sites "made available" as part of the rezone program must comply with the site suitability requirements set forth in Government Code Section 65583.2 (Chapter 724, Statutes of 2004 [AB 2348]). Specifically, the sites must permit owner-occupied and rental multifamily uses by-right during the planning period and be zoned with minimum density and development standards that permit at least 16 units per site at the specified minimum density. Also, at least 50 percent of the remaining need must be planned on sites that exclusively allow residential uses. Refer to the Department's AB 2348 technical assistance publication (dated June 9, 2005).
<http://www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf>
- The requirement to address the unaccommodated housing need for the previous planning period is **in addition** to the requirement to identify other specific sites to accommodate the RHNA for the new planning period. To address this requirement, the jurisdiction may not count capacity on the same sites for both planning periods. This requirement is set forth in Government Code Section 65584.09(b) which states, *"the requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period"*.
- The jurisdiction should report on the completion of the program to zone and/or rezone sites through the Housing Element Annual Progress Report, required pursuant to Government Code Section 65400.

The Department hopes this information is helpful. For your assistance, the specific language of Government Code Section 65584.09 is attached. If you have any questions or would like additional information or technical assistance, please contact Melinda Benson or Paul McDougall, of our staff, at (916) 445-4728.

Government Code Section 65584.09

- (a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.
- (b) The requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.
- (c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need.

**Appendix N: HCD Memorandum, SB 1087, Water and Sewer
Service Priority for Housing Affordable to Lower Income
Households, May 22, 2006**

See also http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/memo_sb1087.pdf


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**MEMORANDUM**

DATE: May 22, 2006

TO: Planning Directors
Public Works Directors
Water and Sewer Service Providers
Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 1087, Legislation Effective January 1, 2006:
Water and Sewer Service Priority for Housing Affordable
to Lower-Income Households**

Chapter 727, Statutes of 2005 (SB 1087) establishes processes to ensure the effective implementation of Government Code Section 65589.7. This statute requires local governments to provide a copy of the adopted housing element to water and sewer providers. In addition, water and sewer providers must grant priority for service allocations to proposed developments that include housing units affordable to lower-income households. Chapter 727 was enacted to improve the effectiveness of the law in facilitating housing development for lower-income families and workers. This memorandum notifies pertinent agencies of these existing and new responsibilities.

For local governments, Chapter 727 now requires all cities and counties to immediately deliver the adopted housing elements of the local general plan and any amendments to water and sewer service providers. The Department recommends that copies of existing housing elements and amendments be submitted to service providers within a month of receipt of this notice. Future updates or amendments to the housing element should be sent within a month after adoption. When submitting copies of housing elements to service providers the Department further recommends inclusion of a summary/quantification of the local government's regional housing need allocation and any other appropriate housing information. Moreover, to effectively implement the law, local governments should consult with water and sewer providers during the development and update of the housing element, as well as sending copies of the adopted plan. This will facilitate effective coordination between local planning and water and sewer service functions to ensure adequate water and sewer capacity is available to accommodate housing needs, especially housing for lower-income households.

Chapter 727, Statutes of 2005 – Water and Sewer Service Priority
Page 2

For water and sewer providers, Chapter 727 establishes specific procedural requirements to facilitate implementation, such as:

1. Requiring water and sewer providers to adopt written policies and procedures, **no later than July 1, 2006**, that grant priority to proposed development that includes housing affordable to lower-income households. For private water and sewer companies regulated by the Public Utilities Commission, the commission shall adopt written policies and procedures for use by those companies in a manner consistent with the statute.
2. Prohibiting water and sewer providers from denying or conditioning the approval or reducing the amount of service for an application for development that includes housing affordable to lower-income households, unless specific written findings are made.
3. Requiring Urban Water Management Plans to include projected water use for single-family and multifamily housing needed for lower-income households.

The Department hopes this information is helpful. The amended statutory language is enclosed as Attachment 1. Attachments 2 and 3 contain a summary of California's deepening housing crisis and an overview of housing element law, respectively. Also, a copy of the legislation can be found on the Department's website: www.hcd.ca.gov/hpd. Copies of published bills from the 2005 session can be obtained from the Senate's website: www.senate.ca.gov or the Legislative Bill Room at (916) 445-2323. If you have any questions or would like additional information or technical assistance, please contact Paul Mc Dougall, of our staff, at (916) 445-4728.

Attachments

ATTACHMENT 1

**Statutory Language: Chapter 727, Statutes of 2005
(SB 1087)**

CHAPTER 727 amended Government Code Section 65589.7 and amended Water Code Section 10631.1. The following shows changes or additions in italics/underlined and deletions indicated by asterisks.

Government Code Section 65589.7

- (a) The housing element adopted by the legislative body and any amendments made to that element shall be *immediately* delivered to all public agencies or private entities that provide water **** or sewer services *for municipal and industrial uses, including residential*, within the territory of the legislative body. Each public agency or private entity providing water or sewer services shall grant a priority for the provision of these services to proposed developments that ***** *include housing units affordable to lower income households*.
- (b) *A public agency or private entity providing water or sewer services shall adopt written policies and procedures, not later than July 1, 2006, and at least once every five years thereafter, with specific objective standards for provision of services in conformance with this section. For private water and sewer companies regulated by the Public Utilities Commission, the commission shall adopt written policies and procedures for use by those companies in a manner consistent with this section. The policies and procedures shall take into account all of the following:*
- (1) *Regulations and restrictions adopted pursuant to Chapter 3 (commencing with Section 350) of Division 1 of the Water Code, relating to water shortage emergencies.*
 - (2) *The availability of water supplies as determined by the public agency or private entity pursuant to an urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.*
 - (3) *Plans, documents, and information relied upon by the public agency or private entity that is not an "urban water supplier," as defined in Section 10617 of the Water Code, or that provides sewer service, that provide a reasonable basis for making service determinations.*
- (c) *A public agency or private entity that provides water or sewer services shall not deny or condition the approval of an application for services to, or reduce the amount of services applied for by, a proposed development that includes housing units affordable to lower income households unless the public agency or private entity makes specific written findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following:*

- (1) The public agency or private entity providing water service does not have "sufficient water supply," as defined in paragraph (2) of subdivision (a) of Section 66473.7, or is operating under a water shortage emergency as defined in Section 350 of the Water Code, or does not have sufficient water treatment or distribution capacity, to serve the needs of the proposed development, as demonstrated by a written engineering analysis and report.
 - (2) The public agency or private entity providing water service is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections.
 - (3) The public agency or private entity providing sewer service does not have sufficient treatment or collection capacity, as demonstrated by a written engineering analysis and report on the condition of the treatment or collection works, to serve the needs of the proposed development.
 - (4) The public agency or private entity providing sewer service is under an order issued by a regional water quality control board that prohibits new sewer connections.
 - (5) The applicant has failed to agree to reasonable terms and conditions relating to the provision of service generally applicable to development projects seeking service from the public agency or private entity, including, but not limited to, the requirements of local, state, or federal laws and regulations or payment of a fee or charge imposed pursuant to Section 66013.
- (d) The following definitions apply for purposes of this section:
- (1) "Proposed developments that include housing units affordable to lower income households" means that dwelling units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code.
 - (2) "Water or sewer services" means supplying service through a pipe or other constructed conveyance for a residential purpose, and does not include the sale of water for human consumption by a water supplier to another water supplier for resale. As used in this section, "water service **** " provided by a public agency or private entity applies only to water supplied from public water systems subject to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(e) This section is intended to neither enlarge nor diminish the existing authority of a city, county, or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water **** or sewer services shall neither invalidate any action or approval of a development project nor exempt a public agency or private entity from the obligations under this section. The special districts which provide water or sewer services related to development, as defined in subdivision (e) of Section 56426, are included within this section.

70 The Legislature finds and declares that this section shall be applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is a matter of vital statewide importance.

Water Code Section 10631.17

(a) The water use projections required by Section 10631 shall include projected water use for single-family and multifamily residential housing needed for lower income households, as defined in Section 50079.5 of the Health and Safety Code, as identified in the housing element of any city, county, or city and county in the service area of the supplier.

70 It is the intent of the Legislature that the identification of projected water use for single-family and multifamily residential housing for lower income households will assist a supplier in complying with the requirement under Section 65589.7 of the Government Code to grant a priority for the provision of service to housing units affordable to lower income households.

Legislative Finding and Declaration

SECTION 3 of CHAPTER 727:

The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

ATTACHMENT 2

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California's Deepening Housing Crisis

High Demand/Low Supply

California continues to experience very high rates of population growth and further tightening of its housing markets. Even encompassing the recession of the early 1990s, California's population grew by an average approximating 450,000 people annually and is projected to gain around 600,000 annually over the next decade.¹ As of January 1, 2005, California's population was 36,810,358 which increased by 539,267 people in 2004.² The population increased 1.5 percent from the calendar year 2004, which was lower than the 1.8 percent growth between 2003 and 2004.³ As in 2001, the United States became home to more than one million immigrants in 2002. California was home to the largest number (291,191 or 27.4 percent) of the 2002 immigrants.⁴

Housing production has not kept pace with the State's housing needs, particularly in the coastal metropolitan areas and housing need has worsened, especially for renter households and low-income owner households throughout the State. During the 1980s, 2.1 million units were built whereas the 1990s saw only 1.1 million units built. While the average annual need is projected at approximately 220,000 housing units, construction has lagged substantively below the need. Since 1999, less than 170,000 residential new construction permits have been issued each year. During 2004, 212,960 new homes and apartments were built, representing the highest production since 1989.⁵

The greatest production gap is in multifamily housing. Multifamily development only accounted for approximately a quarter of all new units during the 1990s, a drop of nearly 70 percent from the levels of the 1980s. Since 2000, the number of multifamily units has increased slightly, totaling approximately 28 percent of all new units constructed.⁶

¹ State of California, Department of Finance, Population Projections by Race/Ethnicity for California and Its Counties 2000–2050, Sacramento, California, May 2004.

² State of California, Department of Finance, *E-5 City/county Population and Housing Estimates, 2005, Revised 2001-2004 DRU Benchmark*. Sacramento, California, May 2005.

³ State of California, Department of Finance, *E-1 City/County Population Estimates, with Annual Percent Change, January 1, 2004 and 2005*. Sacramento, California, May 2005.

⁴ State of California, Department of Finance, *Legal Immigration of California in 2002*. Sacramento, California, October 2003.

⁵ Construction Industry Research Board, California Construction Review, May 31, 2005.

⁶ Ibid

Increasing Housing Costs/Decreasing Homeownership

California's homeownership rate in 2004 was the second lowest in the nation (59.7 percent) and 10 percentage points lower than the national homeownership rate (69 percent).⁷ As of December 2005, only 14 percent of California's households could afford to buy the median priced single-family home, while nationwide, affordability was 49 percent.⁸ The California Association of Realtors reported December 2005's median price of an existing, single-family detached home in California was \$548,430 representing a 16 percent increase over December 2004's median price of \$474,270.⁹ The disparity between housing production and need has resulted in double-digit year-to-year percentage increases in the median price over recent years.¹⁰ California households, with a median household income of \$54,140, are \$73,810 short of the \$127,950 qualifying income needed to purchase a median-priced home at \$545,910 in California, according to the California Association of Realtors Homebuyer Income Gap Index™ (HIGI) report for the third quarter of 2005.¹¹ Following is a comparison of several county and community median home prices reported for December 2005 and 2004 to reflect regional differences in the State.¹²

County	Median Price	% Change from Prior Year
Riverside/San Bernardino	\$394,790	20.7%
Los Angeles	\$552,760	19.3%
Central Valley	\$354,790	17.0%
Orange	\$702,290	12.0%
Santa Clara	\$734,950	11.4%
Sacramento	\$379,010	9.0%

Growing Income Inequality

While housing prices have been escalating, numerous studies have documented a widening gap in earnings reported by low-income versus high-income households throughout the nation. The share of reported earned income attributable to the top 20 percent of taxpayers has been rising whereas it has been falling for the bottom 80 percent.¹³

⁷ US Census Bureau, Housing Vacancies and Homeownership Annual Statistics, 2004.

⁸ California Association of Realtors, *Press Release*, February 9, 2006, <http://www.car.org/index.php?id=MzU5Mjg=>.

⁹ Ibid

¹⁰ California Association of Realtors, *Press Release*, February 25, 2005.

¹¹ California Association of Realtors, *Press Release*, November 1, 2005, <http://www.car.org/index.php?id=MzU2MjY=>.

¹² California Association of Realtors, *Press Release*, February 9, 2006

¹³ *California's Changing Income Distribution*, Office of the Legislative Analyst, State of California, August 2000.

Rent/Wage Gap/Tight Housing Market

California is second only to Massachusetts in terms of the hourly wage needed to afford a two-bedroom apartment at fair market rent (FMR). In California, an extremely low-income household (earning \$19,327, 30 percent of the Area Median Income of \$64,422) can afford monthly rent up to \$483, while the FMR for a two bedroom unit is \$1,104. A worker earning minimum wage (\$6.75 per hour) must work 126 hours per week in order to afford the average two-bedroom unit. The Housing Wage in California is \$21.24; this is the amount a full time (40 hours per week) worker must earn per hour in order to afford the average two-bedroom unit, and is more than three times (315 percent) the minimum wage (\$6.75 per hour).¹⁴

One of the main factors that accommodated the housing shortfall in the 1990s was a reduction in both homeowner and rental vacancy rates, demonstrated by the significant drop in vacancy rates between 1990 and 2001. The homeowner vacancy rate decreased from 1.8 to 1.2 percent, while the rental vacancy rate decreased from 6.0 percent to 5.4 percent during the same time period.¹⁵ Vacant units were used to absorb a significant amount of the housing demand during the later half of the 1990s, resulting in extremely tight housing markets limiting mobility in many populous metropolitan areas; an option that is no longer available to help address California's housing shortage.

Overpaying

Over four out of ten of all California households are renters, and renters face the greatest affordability challenges. In 1997, nearly a quarter of the renter households in the State's metropolitan areas (1 million out of 4.2 million households) spent more than half of their income on rent.¹⁶ HUD (Census 2000) data indicates that 35 percent of California households and 40 percent of renters spend more than 30 percent of their income on housing.¹⁷ In 2002, almost half a million of California's working families were "officially" poor with incomes below the federal poverty level (FPL). Many more families (nearly 1.4 million) with incomes above the FPL, up to twice the FPL, still fell short of earning an income level to provide an adequate standard of living.¹⁸

¹⁴ *Out of Reach 2004*, National Low Income Housing Coalition.

¹⁵ U.S. Census Bureau, *Housing Vacancies and Homeownership Statistics 2002*; Homeowner and Rental Vacancies by State 1986 to 2003 (Tables 3 and 4).

¹⁶ *Locked Out: California's Affordable Housing Crisis*, California Budget Project, May 2000.

¹⁷ State of the Cities Data Systems: *Comprehensive Housing Affordability Strategy (CHAS) Data*, Census 2000.

¹⁸ *Working Hard, Falling Short: Investing in California's Working Families*, California Budget Project, January 2005

In many counties, fair market rents exceed the monthly payments families receive from CalWORKs, (the State's cash assistance program for poor families), or the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program, which provides cash assistance to the elderly, blind, and disabled.¹⁹ The two-bedroom FMR exceeds the CalWORKs grant for a family of three in 31 counties, and equals at least 80 percent of the grant level in every California county. In 2003, FMR for a studio apartment exceeds the SSI/SSP grant for an elderly, blind, or disabled recipient in 13 counties, and exceeds 50 percent of the grant in 40 counties.²⁰

Overcrowding

Between 1980 and 1990, the percentage of overcrowded households in California nearly doubled from 6.9 percent to 12.3 percent. Census 2000 reports more than 15 percent of California households were overcrowded with overcrowding most common among low-income households, and most prevalent in renter housing. Roughly 24 percent of renter households statewide were overcrowded; in some counties, nearly a third of renter households are overcrowded. One quarter of all overcrowded renter households contained more than one family. Of all owner and renter overcrowded households, estimates are that more than half are severely overcrowded (more than 1.5 persons per room). Overcrowding increases health and safety concerns and stresses the condition of the housing stock and infrastructure.

Homeless

Although reliable counts of homeless persons are illusive, in 1997 as many as 360,000 Californians were estimated to be homeless.²¹ In the worst circumstances, homeless persons live in places not meant for human habitation: cars, parks, sidewalks, stairwells, and door stoops. An estimated 80,000 to 95,000 children are homeless in California, making the percentage of homeless children greater today than at any time since the Great Depression.²² Many persons in need of emergency shelter and transitional housing are employed but can not find permanent housing that is affordable.

¹⁹ *Locked Out 2004: California's Affordable Housing Crisis*, California Budget Project, January 2004.

²⁰ *Ibid*

²¹ *California Housing Markets 1990-1997*, State Housing Plan Update, State of California Department of Housing & Community Development, 1998.

²² California Housing Law Project, Facts and Issues; Homeless Children; www.housingadvocates.org/default.asp?ID=170

Farmworkers

Employment in California agriculture increased 22 percent between 1985 and 2000. As of September 2000, California farm employment peaked at 486,000.²³ California's total farmworker population (including family members) is estimated to exceed 900,000. Approximately 60 percent of farmworkers are accompanied by a spouse, child or parent. The median number of children in families of farmworker parents is two.²⁴ Farmworkers and their families cope with substandard housing conditions fraught with serious health and sanitation problems. To avoid harassment, they often live out of sight in undeveloped canyons, fields, squatter camps, and back houses.

Privately owned employee housing (licensed by California) has been steadily diminishing. In 1976, employers owned 1,254 employee housing developments sheltering an estimated 45,000 farmworkers and household members. In 2000, there were only approximately 1,000 licensed employee housing developments with capacity for 23,000 farmworkers and household members.

Assisted Housing/Preservation of At-Risk Units

California received fewer federal housing assistance dollars in 1999 for each individual living below the federal poverty level than all but one of the ten largest states. While the federal government spent, on average, \$286 on housing assistance for each impoverished person, California received only \$171 per impoverished person.²⁵ In 2000, 465,340 families were on waiting lists for public housing and rental subsidies in 20 local jurisdictions; only about 130,000 families now live in existing public housing or receive federal tenant-based subsidies in these same 20 jurisdictions. At the rate of two children in each family waiting for housing, almost a million children are on California's housing waiting lists.²⁶

The shortage of subsidized housing and the potential loss of affordability restrictions on a substantial portion of the government-assisted rental housing stock estimated to house more than 375,000 persons is one of California's foremost housing problems. Over the 1990's, thousands of federally-assisted privately-owned rental housing developments have terminated affordability restrictions. Since 1996, California has lost more than 29,000 affordable units due to owners electing to opt-out of subsidy contracts and prepay loans.²⁷ The risk of owners converting units with subsidized rents for market-rate rents is greatest in the State's highest cost rental markets and is both immediate and continuing beyond 2010. In California, the number of federally assisted units approximates

²³ http://migration.ucdavis.edu/rmn/rural_data/housing/housing.html

²⁴ *California's Housing Markets 1990-1997*; California Department of Housing & Community Development, January 1999.

²⁵ *Ibid*

²⁶ "The Long Wait, The Critical Shortage of Housing in California," K. Williams, Corp. for Supportive Housing, June 2000.

²⁷ California Housing Partnership Corporation, June 2003.

150,000.²⁸ California's experience with market-rate conversion of the older-assisted stock suggests that unless new incentives are created to retain Section 8 assistance, 15 to 20 percent of owners of Section 8 inventory are likely to opt-out and terminate their relationship with HUD. Due to tight rental markets in many parts of California, the State has had a level of prepayment and conversion among older-assisted HUD properties that is triple the amount of any other State.

²⁸ California Housing Partnership Corporation, June 2003.

ATTACHMENT 3

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Division of Housing Policy Development

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OVERVIEW OF STATE HOUSING ELEMENT LAW

State law requires each city and county to adopt a general plan containing at least seven elements including housing. Unlike the other mandatory general plan elements, the housing element, required to be updated every five years, is subject to detailed statutory requirements and mandatory review by a State agency (Department of Housing and Community Development). Housing elements have been mandatory portions of general plans since 1969. This reflects the statutory recognition that the availability of housing is a matter of statewide importance and that cooperation between government and the private sector is critical to attainment of the State's housing goals. The regulation of the housing supply through planning and zoning powers affects the State's ability to achieve its housing goal of "decent housing and a suitable living environment for every California family" and is critical to the State's long-term economic competitiveness.

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. Housing element law is the State's primary market-based strategy to increase housing supply and choice. The law recognizes that in order for the private sector to adequately address housing needs and demand, local governments must adopt land-use plans and regulatory schemes that provide opportunities for, and do not unduly constrain, housing development.

The Department is required to allocate the region's share of the statewide housing need to Councils of Governments (COG) based on Department of Finance population projections and regional population forecasts used in preparing regional transportation plans. The COG develops a Regional Housing Need Plan (RHNP) allocating the region's share of the statewide need to the cities and counties within the region. The RHNP should promote the following objectives to:

- (1) Increase the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner;
- (2) Promote infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns; and
- (3) Promote an improved intraregional relationship between jobs and housing.

Housing element law recognizes the most critical decisions regarding housing development occur at the local level within the context of the periodically updated general plan. The RHNP component of the general plan requires local governments to balance the need for growth, including the need for additional housing, against other competing local interests. The RHNP process of housing element law promotes the State's interest in encouraging open markets and providing opportunities for the private sector to address the State's housing demand, while leaving the ultimate decision about how and where to plan for growth at the regional and local levels. While land-use planning is fundamentally a local issue, the availability of housing is a matter of statewide importance. The RHNP process requires local governments to be accountable for ensuring that projected housing needs can be accommodated. The process maintains local control over where and what type of development should occur in local communities while providing the opportunity for the private sector to meet market demand.

In general, a housing element must at least include the following components:

 **A Housing Needs Assessment including:**


- **Existing Needs** - The number of households overpaying for housing, living in overcrowded conditions, or with special housing needs (e.g., the elderly, large families, homeless) the number of housing units that need rehabilitation, and assisted affordable units at-risk of converting to market-rate.
- **Projected Needs** - The city or county's share of the regional housing need as established in the RHNP prepared by the COG. The allocation establishes the number of new units needed, by income category, to accommodate expected population growth over the planning period of the housing element. The RHNP provides a benchmark for evaluating the adequacy of local zoning and regulatory actions to ensure each local government is providing sufficient appropriately designated land and opportunities for housing development to address population growth and job generation.

 **A Sites Inventory and Analysis:**

The element must include a detailed land inventory and analysis including a sites specific inventory listing properties, zoning and general plan designation, size and existing uses; a general analysis of environmental constraints and the availability of infrastructure, and evaluation of the suitability, availability and realistic development capacity of sites to accommodate the jurisdiction's share of the regional housing need by income level. If the analysis does not demonstrate adequate sites, appropriately zoned to meet the jurisdictions share of the regional housing need, by income level, the element must include a program to provide the needed sites including providing zoning that allows owner-occupied and rental multifamily uses "by-right" with minimum densities and development standards that allow at least 16 units per site for sites needed to address the housing need for lower-income households.

 **An Analysis of Constraints on Housing:**

Governmental - Includes land-use controls, fees and exactions, on- and off-site improvement requirements, building codes and their enforcement, permit and processing procedures, and potential constraints on the development or improvement of housing for persons with disabilities.

 **Housing Programs:**

Programs are required to identify adequate sites to accommodate the locality's share of the regional housing need; assist in the development of housing for low- and moderate-income households; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote equal housing opportunity; and preserve the at-risk units identified.

 **Quantified Objectives:**

Estimates the maximum number of units, by income level, to be constructed, rehabilitated, and conserved over the planning period of the element.

**Appendix "O": HCD Memorandum, Inventory and Suitability of
Sites/Default Densities (AB 2348), June 9, 2005**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/grants-funding/active-funding/iigp/docs/ab2348stat04ch724.pdf) website at:
<https://www.hcd.ca.gov/grants-funding/active-funding/iigp/docs/ab2348stat04ch724.pdf>

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Division of Housing Policy Development

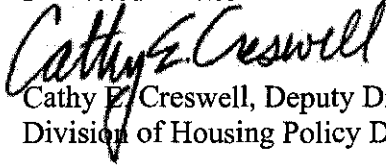
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MEMORANDUM

DATE: June 9, 2005

TO: Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: Amendment of State Housing Element Law – AB 2348

INTRODUCTION

AB 2348 (Mullin), Chapter 724, Statutes of 2004, amended State housing element law to clarify the land inventory requirements and to provide greater residential development certainty. The amendments reflect consensus reform proposals and represents the culmination of over a year's work by a Housing Element Working Group (HEWG), convened by the Department. HEWG members included diverse stakeholders representing local governments, Council of Governments (COG), planners, builders, and affordable housing advocates. The HEWG met regularly between June 2003 and April 2004 and was able to reach consensus on the reform proposals included in Chapter 724 as well as significant reforms to the regional housing needs process signed into law in 2004 (Chapter 696, Statutes of 2004 [AB 2158-Lowenthal]). A collaborative spirit and commitment to improving housing opportunities in California enabled the HEWG to develop significant reform proposals and to break new ground on issues which had previously divided stakeholders. For more information about the HEWG process and membership, please see the *Housing Element Working Group Final Report - April 2004* posted on the Department's website at:

<http://www.hcd.ca.gov/hpd/hrc/plan/he/hewrkgrprpt.pdf>.

Chapter 724 includes amendments to State housing element law (Government Code Section 65583), and the Anti-NIMBY law (Government Code Section 65589.5). This technical assistance paper focuses on the revisions to housing element law and is provided to assist in evaluating how the new provisions of State law affect local government. Attachments to this paper (Appendix 1 & 2) describe all of the amendments enacted by Chapter 724. In addition, copies of published bills are available from the Legislative Bill Room by calling (916) 445-2323 or from the Senate's website at: www.senate.ca.gov. If you have any questions or would like additional information, please contact Paul McDougall or Don Thomas, of our staff, at (916) 445-4728.

Amendment of State Housing Element Law (Chapter 724, Statutes of 2004 [AB 2348])

IDENTIFYING ADEQUATE SITES

Chapter 724 amended housing element law to clarify the relationship between the land inventory and adequate sites requirement (i.e., land resources), provide more specific guidance on the content of an adequate land inventory, and provide greater development certainty.

A. Inventory of Land Suitable for Residential Development:

The first step in identifying adequate sites is preparing an inventory of land suitable for residential development. Chapter 724 established Government Code Section 65583.2(a)¹ to specifically provide that land suitable for residential development includes the following:

- Vacant residentially zoned sites.
- Vacant non-residentially zoned sites that allow residential uses.
- Underutilized residentially zoned sites which are capable of being developed at a higher density or with greater intensity.
- Non-residential zoned sites that can be redeveloped for, and/or rezoned for, residential use (via program actions).

The land inventory must specifically include (Section 65583.2(b)):

- Parcel-specific listing of available sites, including parcel number or other “unique” reference. The element should also include a map showing the location of sites. In terms of scale, a jurisdiction’s general plan land-use map will suffice.
- The general plan and zoning designations, along with a description of the size of each parcel listed in the inventory. An indication of parcel size is important as it can be a key factor in determining development viability, capacity and affordability. The inventory should evaluate the realistic potential for additional residential development of very small sites. For example, the inventory analysis should evaluate whether sites as small as ¼ acre, zoned for multifamily, can encourage and facilitate development of housing affordable to lower-income households. To demonstrate the development viability of small or substandard parcels, the element must describe the jurisdiction’s role or track record in facilitating small-lot development and where necessary include program actions for lot consolidation and/or parcel assemblage.
- If a jurisdiction includes non-vacant sites in the inventory, the housing element must describe the existing uses.
- Environmental Constraints: The element should include a general description of any constraints to the development of residential projects. The element need only describe those environmental constraints where documentation of such conditions has been made available to the local government. This information does not have to be provided on a site specific basis. However, the analysis must clearly demonstrate the identified sites can accommodate projected residential capacities and future residential development (i.e., within the planning period).

¹ All future code references refer to the Government Code unless otherwise noted.

- Infrastructure: The element must include a general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities, and indicate whether public or private. A site specific analysis is not required. The element must include sufficient detail to determine whether water delivery systems and sewer treatment capacity is or will be (i.e., within the planning period) available to the identified sites. However, if parcel specific detail is available, this information could be included in the element.
- Sites identified in the inventory as being available for housing to accommodate the regional housing need for above moderate-income households, but located in areas not served by public sewer systems, need not be listed parcel by parcel.

B. Land Inventory Analysis

The second step in identify adequate sites involves determining which sites identified in the inventory are available and suitable to accommodate a portion of the jurisdiction's share of the regional housing need, by income level, during the planning period of the element (Section (65583.2(c))).

The analysis must also demonstrate the inventory can provide for a variety of housing types including multifamily rental, factory-built, mobilehomes, farmworker, and transitional housing and emergency shelters.

1. Capacity

To establish the number of housing units that can potentially be accommodated on each site the analysis should include the following:

A description of how the capacity of the identified sites has been established. If a jurisdiction has adopted, through regulations or ordinance, minimum density requirements that explicitly prohibit development below the minimum density, the Department will accept the local government's calculation of the total housing unit capacity on that site based on the established minimum density.

However, if minimum densities have not been adopted the element must describe the methodology used to establish the number of units. The estimates of capacity must be adjusted based on the land-use controls and site improvement requirements imposed. For example, a jurisdiction must consider the imposition of maximum lot coverage requirements, open space, parking, and FARs, when establishing its realistic unit capacity, rather than relying on a theoretical number based on maximum buildout.

2. Affordability

To establish the number of units that can accommodate the local government's share of the regional housing need for lower-income households, the analysis must demonstrate the identified zone/densities encourage and facilitate the development of housing for lower-income households.

The element's analysis must consider, but need not be limited to: (1) market demand and trends, (2) financial feasibility, and (3) information based on residential project experience within a zone(s) where the densities facilitated the development of housing for lower-income households. For example information garnered from local developers, and examples of recent residential projects that currently provide housing for lower-income households may be helpful in establishing the appropriateness of the zone. Also, it is recognized that cities and counties rely on subsidies to increase the affordability of residential projects. However, identifying examples of low density subsidized projects, alone, is not appropriate to demonstrate the adequacy of a zone and/or density to accommodate the projected needs of lower-income households. It should also be noted that residential buildout projections resulting from the implementation of a jurisdiction's inclusionary program are not a substitute for addressing the "adequate sites" requirement.

As an alternative to the above analyses, Chapter 724 established "default" density standards. Specifically, if a local government has adopted density standards consistent with the population based criteria summarized in Table A (as described in Appendix 1), the Department is obligated to accept sites with those density standards as appropriate for accommodating the jurisdictions share of regional housing need for lower-income households. For example, a city within Sacramento County with a population less than 100,000 will be presumed to have sites appropriate to accommodate lower-income households if the zone allows **at least 20 units per acre**. A jurisdiction specific listing is found in Appendix 1.

3. Suitability Analysis for Non-Vacant Sites

Pursuant to Section 65583.2(g), if the inventory identifies non-vacant sites to address a portion of the regional housing need, the element must describe the additional realistic development potential within the planning period. The analysis must describe the methodology used to establish the development potential of non-vacant sites including:

- The extent to which existing (active) uses may constitute an impediment to additional residential development. For example, if the site is occupied by an existing operating use, such as school, a nursery, etc., the element should describe the condition or age of existing development and describe the potential for such uses to be discontinued and replaced with housing, or provide a clear indication of whether housing could be added to the existing use (such as adding second story residential to ground floor retail). Also, the analysis should evaluate whether the reuse or redevelopment of such a site would require lot consolidation to allow additional residential development.

- Describe recent development trends. The element should describe the jurisdiction's current recycling or redevelopment trends, as well as a description of its track record in encouraging and facilitating redevelopment, adaptive reuse or recycling.
- Market conditions. The analysis should describe if the market is ripe for redevelopment or reuse. For example, high land and construction costs in concert with limited supplies of available and developable land resources could promote the market conditions necessary to facilitate more compact and efficient residential development.
- Describe existing or proposed incentives. The analysis should describe any existing or planned financial assistance or regulatory relief from development standards to encourage and facilitate additional or more intensive residential development on the identified underutilized sites.

TABLE "A"

Default Densities Appropriate to Accommodate Housing for Lower-Income Households by Region

<p>I Incorporated Cities within nonmetropolitan/rural counties (as outlined in either Section I or II) and Nonmetropolitan counties with micropolitan areas (listed below)</p>	<p>II Unincorporated areas in all nonmetropolitan counties not included under I</p>	<p>III Suburban jurisdictions</p>	<p>IV Metropolitan jurisdictions</p>
<p>Nonmetropolitan counties with micropolitan areas include: Del Norte Humboldt Inyo Lassen Lake Mendocino Nevada Tehama Tuolumne</p>	<p>Nonmetropolitan/rural counties as listed below (list excludes those counties including micropolitan areas as outlined in section I) Alpine Amador Calaveras Colusa Glenn Mariposa Modoc Mono Plumas Sierra Siskiyou Trinity</p>	<p>Jurisdictions (cities/counties) located within a Metropolitan Statistical Area (MSA) with a population of less than 2 million as listed below <u>unless</u> a city has a population of greater than 100,000 in which case it would be considered metropolitan. Butte El Dorado Fresno Imperial Kern Kings Madera Merced Monterey Napa Placer Sacramento San Benito San Joaquin San Luis Obispo Santa Barbara Santa Clara Santa Cruz Shasta Solano Sonoma Stanislaus Sutter Tulare Ventura Yolo Yuba</p>	<p>Jurisdictions (cities/counties) located within a Metropolitan Statistical Area (MSA) with a population of more than 2 million as listed below <u>unless</u> a city has a population of less than 25,000 in which case it would be considered suburban. Alameda Contra Costa Los Angeles Marin Orange Riverside San Bernardino San Diego San Francisco San Mateo</p>
<p>at least 15 du/ac</p>	<p>at least 10 du/ac</p>	<p>at least 20 du/ac</p>	<p>at least 30 du/ac</p>

Metropolitan Statistical Area: Qualification of an MSA requires the presence of a city with 50,000 or more inhabitants, or the presence of an Urbanized Area (UA) and a total population of at least 100,000

Mircopolitan: Urban cluster of at least 10,000 population but fewer than 50,000 population

Source: OMB Bulletin No. 04-03 <http://www.whitehouse.gov/omb/bulletins/fy04/b04-03.html>

C. Adequate Sites Program:

The final step in the adequate sites analysis should determine whether the inventory has identified sufficient sites to accommodate the local government's regional housing need, in total and by income level, within the planning period. As specified in Government Code Sections 65583, this includes sites that will allow for the development of a variety of housing types including multifamily rental housing, factory-built or mobilehomes, housing for farmworkers, and transitional housing and emergency shelters. Pursuant to Government Code Sections 65583(c)(1) (A), and 65583(c)(1) (B), if the inventory identifies a shortfall of sites, the element must include a program to identify sites that can be developed with housing within the planning period. These sites must be appropriately zoned, early enough in the planning period, to provide realistic and viable development opportunities.

As with the prior requirements, where the analysis of a local government's land inventory does not demonstrate the supply of suitable, available, and appropriately zoned sites are sufficient to accommodate the regional housing need by income level, the element must include a program that provides sufficient sites within the planning period. Chapter 724 clarified the adequate sites program and strengthened the requirement to provide sites with zoning that permits owner-occupied and rental multifamily residential uses by-right.

More specifically, an "adequate sites" program action must commit a jurisdiction to accommodating 100 percent of the shortfall of sites necessary to accommodate the remaining housing need for housing for very low- and low-income households during the planning period. Further, the program action must ensure the jurisdiction's zoning ordinance allows owner-occupied and rental multifamily residential uses "by right". In addition, Chapter 724 requires the adequate site program provided minimum densities and development standards that permit the development of at least 16 units per site. Incorporated cities within nonmetropolitan counties and (2) nonmetropolitan counties that have micropolitan areas must allow **densities of at least 16 dwelling units per acre**. These counties include Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne. Suburban and metropolitan jurisdictions as defined in Government Code Section 65583.2(c)(3)(B)(iii) and (iv) (refer to Table "A") must provide sites that allow at least **20 dwelling units per acre**.

When relying on program(s) to accommodate the regional share need for lower-income households, Chapter 724 requires that at least 50 percent of the low- and very low-income regional housing need be accommodated on sites designated for exclusively residential uses, at appropriate densities.

"By right" Program Requirement: Current law requires a local government, with a shortfall of appropriately zoned land to accommodate its regional share need for lower-income households, to include a program to provide sites with zoning that permits owner-occupied and rental multifamily development by right. Chapter 724 strengthened the requirement to establish that for the purposes of housing element law, by-right shall mean the local government's review may not require:

- a conditional use permit,
- a planned unit development permit, or

- other discretionary local government review or approval that would constitute a “project” for the purposes of Division 13 (commencing with Section 21100) of the Public Resources Code.

This provision does not preclude local planning agencies from imposing design review standard. However, the review and approval process must remain ministerial and the design review must not constitute a “project” as defined in the Section 21100 of the Public Resources Code. For example, a hearing officer (e.g., Zoning Administrator) or other hearing body (e.g., Planning Commission) can review the design merits of a project and call for a project proponent to make design-related modifications, but cannot deliberate the project’s merits or exercise judgment to reject or deny the “residential use” itself.

D. Counting Existing Units towards the Adequate Sites Requirement

Chapter 724 also amended the provisions of the law (Section 65583.1) that allow local governments to count existing units toward meeting up to 25 percent of their regional housing need. Under limited circumstances, a local government may credit existing units that will be: (1) substantially rehabilitated, (2) units in a multifamily rental housing complex of 4 or more units that are converted from non-affordable to affordable, or (3) units that will be preserved at affordable housing costs to low- or very low-income households, where the local government has provided those units with committed assistance. Please see the attached copy of the statute for complete descriptions of this section of the law. The amendments of Chapter 724 provide some additional flexibility to facilitate the usefulness and applicability of the provisions. These changes include:

Substantial Rehabilitation: Previously, local governments could only count units that had been cited and found to be unfit for human habitation and vacant for not less than 120 day. Chapter 724 no longer requires the unit to be vacant. However, local governments must now commit to providing displaced tenants not otherwise eligible for relocation assistance under State relocation law, with assistance consistent with that required under Health and Safety Code Section 17975, including a minimum of four months rent and moving expenses and comparable replacement housing.

Prior requirements mandated rehabilitated units have long term affordability restrictions for at least 20 years or the period of time required by any applicable federal or State law or regulation. If the affordability term was between 20 and 10 years, local governments could only receive credit for one unit for every three provided, and for units with less than 10 years affordability, no credit was provided. Chapter 724 eliminated the last two provisions. Now local governments will get full credit for any substantially rehabilitated units with 20-year terms of affordability or any other term applicable to the federal or State funding law or regulation.

Conversion from Market-Rate to Affordable: Previously, only projects of 16 or more units could qualify for crediting. Chapter 724 reduced the qualifying size threshold from 16 units to 4 to provide credit for local government’s efforts to provide affordable housing opportunities in smaller projects. Chapter 724 also eliminated the requirement that limited jurisdictions from spending “greater than 120 percent of the area median price for housing” for the units to be acquired and extended the affordability restrictions from 30 to 55 years (consistent with most funding resources).

6/13/2005

APPENDIX 1

Listing of Default Densities by Jurisdiction

APPENDIX 1

Housing Element Default Densities for Accomodating Lower-Income Households

Government Code § 65583.2

(Data is provided for informational purposes only)

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
Alameda	IV	Alameda	72,927				X
		Alameda County	137,357				X
		Albany	16,628			X	
		Berkeley	103,640				X
		Dublin	34,345				X
		Emeryville	7,427			X	
		Fremont	206,856				X
		Hayward	142,718				X
		Livermore	76,629				X
		Newark	43,331				X
		Oakland	402,777				X
		Piedmont	11,036			X	
		Pleasanton	66,151				X
		San Leandro	80,609				X
Union City	69,879				X		
Alpine	II	Alpine County	1,200	X			
Amador	II	Amador	215		X		
		Amador County	21,524	X			
		Ione	7,450		X		
		Jackson	4,084		X		
		Plymouth	1,022		X		
		Sutter Creek	2,362		X		
Butte	III	Biggs	1,811			X	
		Butte County	95,971			X	
		Chico	65,904			X	
		Gridley	5,663			X	
		Oroville	13,111			X	
		Paradise	26,743			X	
Calaveras	II	Angels City	3,422		X		
		Calaveras County	39,556	X			
Colusa	II	Colusa	5,553		X		
		Colusa County	9,911	X			
		Williams	3,848		X		
Contra Costa	IV	Antioch	99,870				X
		Brentwood	31,527				X
		Clayton	11,037			X	
		Concord	125,225				X
		Contra Costa County	157,569				X
		Danville	42,565				X
		El Cerrito	23,513			X	
		Hercules	20,232			X	
		Lafayette	24,546			X	
		Martinez	36,707				X
		Moraga	16,686			X	
		Oakley	26,206				X
Orinda	18,069			X			

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Pinoie	19,439			X	
		Pittsburg	60,525				X
		Pleasant Hill	33,537				X
		Richmond	102,553				X
		San Pablo	30,990				X
		San Ramon	46,217				X
		Walnut Creek	65,345				X
Del Norte	I	Crescent City	7,242		X		
		Del Norte County	20,240		X		
El Dorado	III	El Dorado County	131,647			X	
		Placerville	10,124			X	
		South Lake Tahoe	23,973			X	
Fresno	III	Clovis	74,503			X	
		Coalinga	16,051			X	
		Firebaugh	5,993			X	
		Fowler	4,282			X	
		Fresno	445,227				X
		Fresno County	167,936			X	
		Huron	6,917			X	
		Kerman	9,344			X	
		Kingsburg	10,060			X	
		Mendota	8,268			X	
		Orange Cove	8,678			X	
		Parlier	12,293			X	
		Reedley	21,231			X	
		San Joaquin	3,482			X	
		Sanger	19,829			X	
		Selma	20,538			X	
Glenn	II	Glenn County	14,120	X			
		Orland	6,283		X		
		Willows	6,220		X		
Humboldt	I	Arcata	16,663		X		
		Blue Lake	1,141		X		
		Eureka	25,866		X		
		Ferndale	1,379		X		
		Fortuna	10,701		X		
		Humboldt County	67,960		X		
		Rio Dell	3,140		X		
		Trinidad	309		X		
Imperial	III	Brawley	21,842			X	
		Calexico	30,746			X	
		Calipatria	7,513			X	
		El Centro	37,684			X	
		Holtville	5,550			X	
		Imperial	8,093			X	
		Imperial County	32,715			X	
		Westmorland	2,105			X	
Inyo	I	Bishop	3,624		X		
		Inyo County	14,590		X		
Kern	III	Arvin	13,654			X	
		Bakersfield	260,969				X
		California City	9,351			X	

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Delano	42,092			X	
		Kern County	275,696			X	
		Maricopa	1,140			X	
		McFarland	9,974			X	
		Ridgecrest	25,332			X	
		Shafter	13,410			X	
		Taft	8,903			X	
		Tehachapi	11,042			X	
		Wasco	22,496			X	
Kings	III	Avenal	15,333			X	
		Corcoran	20,929			X	
		Hanford	44,350			X	
		Kings County	33,355			X	
		Lemoore	21,076			X	
Lake	I	Clearlake	13,971		X		
		Lake County	42,895		X		
		Lakeport	5,104		X		
Lassen	I	Lassen County	16,296		X		
		Susanville	17,711		X		
Los Angeles	IV	Agoura Hills	21,704			X	
		Alhambra	87,655				X
		Arcadia	54,904				X
		Artesia	16,755			X	
		Avalon	3,315			X	
		Azusa	46,323				X
		Baldwin Park	77,828				X
		Bell	37,359				X
		Bell Gardens	45,270				X
		Bellflower	74,525				X
		Beverly Hills	34,857				X
		Bradbury	922			X	
		Burbank	102,913				X
		Calabasas	20,689			X	
		Carson	92,929				X
		Cerritos	52,620				X
		Claremont	34,831				X
		Commerce	13,118			X	
		Compton	95,559				X
		Covina	48,019				X
		Cudahy	25,164				X
		Culver City	39,698				X
		Diamond Bar	57,919				X
		Downey	109,840				X
		Duarte	22,072			X	
		El Monte	119,918				X
		El Segundo	16,385			X	
		Gardena	59,657				X
		Glendale	199,430				X
		Glendora	50,567				X
		Hawaiian Gardens	15,236			X	
		Hawthorne	85,934				X
		Hermosa Beach	19,281			X	
		Hidden Hills	1,959			X	

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Huntington Park	62,976				X
		Industry	787			X	
		Inglewood	114,959				X
		Irwindale	1,476			X	
		La Canada Flintridge	20,857			X	
		La Habra Heights	5,916			X	
		La Mirada	48,478				X
		La Puente	42,007				X
		La Verne	32,711				X
		Lakewood	81,051				X
		Lancaster	124,592				X
		Lawndale	32,388				X
		Lomita	20,482			X	
		Long Beach	472,412				X
		Los Angeles	3,798,981				X
		Los Angeles County	1,025,890				X
		Lynwood	71,387				X
		Malibu	13,086			X	
		Manhattan Beach	35,501				X
		Maywood	28,710				X
		Monrovia	37,848				X
		Montebello	63,607				X
		Monterey Park	61,822				X
		Norwalk	106,084				X
		Palmdale	124,346				X
		Palos Verdes Estates	13,750			X	
		Paramount	56,489				X
		Pasadena	139,712				X
		Pico Rivera	64,859				X
		Pomona	153,555				X
		Rancho Palos Verdes	42,126				X
		Redondo Beach	65,793				X
		Rolling Hills	1,918			X	
		Rolling Hills Estates	7,922			X	
		Rosemead	54,955				X
		San Dimas	35,876				X
		San Fernando	24,175			X	
		San Gabriel	40,784				X
		San Marino	13,217			X	
		Santa Clarita	160,554				X
		Santa Fe Springs	17,938			X	
		Santa Monica	86,799				X
		Sierra Madre	10,878			X	
		Signal Hill	10,005			X	
		South El Monte	21,675			X	
		South Gate	98,791				X
		South Pasadena	24,840			X	
		Temple City	35,616				X
		Torrance	141,615				X
		Vernon	93			X	
		Walnut	30,773				X
		West Covina	107,694				X
		West Hollywood	36,670				X

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Westlake Village	8,550			X	
		Whittier	85,446				X
Madera	III	Chowchilla	14,310			X	
		Madera	46,214			X	
		Madera County	69,741			X	
Marin	IV	Belvedere	2,111			X	
		Corte Madera	9,306			X	
		Fairfax	7,263			X	
		Larkspur	11,931			X	
		Marin County	68,378				X
		Mill Valley	13,557			X	
		Novato	48,131				X
		Ross	2,324			X	
		San Anselmo	12,252			X	
		San Rafael	56,288				X
		Sausalito	7,294			X	
		Tiburon	8,746			X	
		Mariposa	II	Mariposa County	17,195	X	
Mendocino	I	Fort Bragg	7,029		X		
		Mendocino County	59,096		X		
		Point Arena	475		X		
		Ukiah	15,544		X		
		Willits	5,096		X		
Merced	III	Atwater	24,677			X	
		Dos Palos	4,585			X	
		Gustine	5,236			X	
		Livingston	11,246			X	
		Los Banos	29,525			X	
		Merced	68,225			X	
		Merced County	81,904			X	
Modoc	II	Alturas	2,842		X		
		Modoc County	6,447	X			
Mono	II	Mammoth Lakes	7,404		X		
		Mono County	5,713	X			
Monterey	III	Carmel-by-the-Sea	4,133			X	
		Del Rey Oaks	1,658			X	
		Gonzales	8,307			X	
		Greenfield	12,935			X	
		King City	11,283			X	
		Marina	21,146			X	
		Monterey	29,649			X	
		Monterey County	103,851			X	
		Pacific Grove	15,648			X	
		Salinas	148,744				X
		Sand City	287			X	
		Seaside	32,327			X	
		Soledad	23,440			X	
Napa	III	American Canyon	12,152			X	
		Calistoga	5,296			X	
		Napa	75,032			X	
		Napa County	28,406			X	
		St. Helena	6,069			X	

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Yountville	3,313			X	
Nevada	I	Grass Valley	11,131		X		
		Nevada City	3,019		X		
		Nevada County	66,267		X		
		Truckee	14,630		X		
Orange	IV	Aliso Viejo	40,596				X
		Anaheim	332,642				X
		Brea	37,023				X
		Buena Park	79,015				X
		Costa Mesa	110,126				X
		Cypress	47,249				X
		Dana Point	35,804				X
		Fountain Valley	55,553				X
		Fullerton	128,842				X
		Garden Grove	167,429				X
		Huntington Beach	193,799				X
		Irvine	162,122				X
		La Habra	59,984				X
		La Palma	15,774			X	
		Laguna Beach	24,169			X	
		Laguna Hills	33,627				X
		Laguna Niguel	63,057				X
		Laguna Woods	16,514			X	
		Lake Forest	76,942				X
		Los Alamitos	11,710			X	
		Mission Viejo	96,307				X
		Newport Beach	78,096				X
		Orange	131,606				X
		Orange County	122,764				X
		Placentia	47,798				X
		Rancho Santa Margarita	48,161				X
		San Clemente	55,986				X
		San Juan Capistrano	34,637				X
		Santa Ana	343,413				X
		Seal Beach	24,527			X	
Stanton	37,958				X		
Tustin	68,637				X		
Villa Park	6,060			X			
Westminster	89,515				X		
Yorba Linda	61,065				X		
Placer	III	Auburn	12,546			X	
		Colfax	1,623			X	
		Lincoln	19,676			X	
		Loomis	6,316			X	
		Placer County	103,324			X	
		Rocklin	43,263			X	
		Roseville	91,761			X	
Plumas	II	Plumas County	18,701	X			
		Portola	2,189		X		
Riverside	IV	Banning	25,590				X
		Beaumont	13,274			X	
		Blythe	21,376			X	
		Calimesa	7,469			X	

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Canyon Lake	10,642			X	
		Cathedral City	46,295				X
		Coachella	27,178				X
		Corona	138,326				X
		Desert Hot Springs	17,310			X	
		Hemet	63,367				X
		Indian Wells	4,405			X	
		Indio	54,221				X
		La Quinta	30,043				X
		Lake Elsinore	31,866				X
		Moreno Valley	150,773				X
		Murrieta	54,100				X
		Norco	25,838				X
		Palm Desert	44,327				X
		Palm Springs	44,526				X
		Perris	38,298				X
		Rancho Mirage	14,614			X	
		Riverside	274,226				X
		Riverside County	461,566				X
		San Jacinto	25,689				X
Temecula	73,793				X		
Sacramento	III	Citrus Heights	88,567			X	
		Elk Grove	75,175			X	
		Folsom	61,256			X	
		Galt	22,321			X	
		Isleton	849			X	
		Rancho Cordova*	57,718			X	
		Sacramento	435,245				X
		Sacramento County	621,669			X	
San Benito	III	Hollister	36,449			X	
		San Benito County	17,916			X	
		San Juan Bautista	1,573			X	
San Bernardino	IV	Adelanto	18,869			X	
		Apple Valley	57,925				X
		Barstow	22,554			X	
		Big Bear Lake	5,752			X	
		Chino	69,961				X
		Chino Hills	72,295				X
		Colton	49,833				X
		Fontana	143,607				X
		Grand Terrace	12,067			X	
		Hesperia	67,021				X
		Highland	47,085				X
		Loma Linda	19,813			X	
		Montclair	34,377				X
		Needles	5,193			X	
		Ontario	165,064				X
		Rancho Cucamonga	143,711				X
		Redlands	66,749				X
		Rialto	96,616				X
		San Bernardino	191,631				X
		San Bernardino County	293,362				X
Twentynine Palms	29,186				X		

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Upland	70,983				X
		Victorville	70,828				X
		Yucaipa	43,830				X
		Yucca Valley	17,760			X	
San Diego	IV	Carlsbad	86,639				X
		Chula Vista	193,919				X
		Coronado	23,862			X	
		Del Mar	4,442			X	
		El Cajon	95,555				X
		Encinitas	59,796				X
		Escondido	135,908				X
		Imperial Beach	27,235				X
		La Mesa	54,966				X
		Lemon Grove	25,057				X
		National City	55,541				X
		Oceanside	165,880				X
		Poway	49,115				X
		San Diego	1,259,532				X
		San Diego County	449,217				X
		San Marcos	62,133				X
		Santee	53,230				X
Solana Beach	13,068			X			
Vista	91,565				X		
San Francisco	IV	San Francisco City & County	764,049				X
San Joaquin	III	Escalon	6,572			X	
		Lathrop	11,753			X	
		Lodi	60,656			X	
		Manteca	56,904			X	
		Ripon	11,470			X	
		San Joaquin County	136,094			X	
		Stockton	262,835				X
Tracy	68,018			X			
San Luis Obispo	III	Arroyo Grande	16,290			X	
		Atascadero	26,912			X	
		El Paso de Robles	26,358			X	
		Grover Beach	13,077			X	
		Morro Bay	10,504			X	
		Pismo Beach	8,646			X	
		San Luis Obispo	44,256			X	
		San Luis Obispo County	107,365			X	
San Mateo	IV	Atherton	7,096			X	
		Belmont	24,816			X	
		Brisbane	3,531			X	
		Burlingame	27,773				X
		Colma	1,179			X	
		Daly City	101,901				X
		East Palo Alto	31,709				X
		Foster City	29,194				X
		Half Moon Bay	11,982			X	
		Hillsborough	10,703			X	
		Menlo Park	30,277				X
		Millbrae	20,317			X	

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Pacifica	37,771				X
		Portola Valley	4,424			X	
		Redwood City	74,453				X
		San Bruno	39,366				X
		San Carlos	27,165				X
		San Mateo	91,935				X
		San Mateo County	62,356				X
		South San Francisco	59,955				X
		Woodside	5,299			X	
Santa Barbara	III	Buellton	3,835			X	
		Carpinteria	14,234			X	
		Goleta	28,626			X	
		Guadalupe	5,778			X	
		Lompoc	41,389			X	
		Santa Barbara	89,382			X	
		Santa Barbara County	134,502			X	
		Santa Maria	80,006			X	
		Solvang	5,332			X	
Santa Clara	III	Campbell	37,474			X	
		Cupertino	50,005			X	
		Gilroy	43,145			X	
		Los Altos	27,314			X	
		Los Altos Hills	8,002			X	
		Los Gatos	28,209			X	
		Milpitas	63,700			X	
		Monte Sereno	3,453			X	
		Morgan Hill	33,791			X	
		Mountain View	70,046			X	
		Palo Alto	57,543			X	
		San Jose	900,443				X
		Santa Clara	101,867				X
		Santa Clara County	99,330			X	
		Saratoga	29,496			X	
		Sunnyvale	129,687				X
Santa Cruz	III	Capitola	9,949			X	
		Santa Cruz	53,836			X	
		Santa Cruz County	131,947			X	
		Scotts Valley	11,438			X	
		Watsonville	46,644			X	
Shasta	III	Anderson	9,420			X	
		Redding	85,660			X	
		Shasta County	67,026			X	
		Shasta Lake	9,693			X	
Sierra	II	Loyalton	861		X		
		Sierra County	2691	X			
Siskiyou	II	Dorris	874		X		
		Dunsmuir	1,894		X		
		Etna	771		X		
		Fort Jones	650		X		
		Montague	1,439		X		
		Mount Shasta	3,586		X		
		Siskiyou County	23,795	X			
		Tulelake	1,006		X		

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Weed	2,912		X		
		Yreka	7,176		X		
Solano	III	Benicia	27,159			X	
		Dixon	16,261			X	
		Fairfield	101,935				X
		Rio Vista	5,684			X	
		Solano County	19,683			X	
		Suisun City	26,979			X	
		Vacaville	93,573			X	
		Vallejo	119,798				X
Sonoma	III	Cloverdale	7,275			X	
		Cotati	6,706			X	
		Healdsburg	11,101			X	
		Petaluma	55,252			X	
		Rohnert Park	42,342			X	
		Santa Rosa	153,489				X
		Sebastopol	7,787			X	
		Sonoma	9,354			X	
		Sonoma County	150,900			X	
		Windsor	24,180			X	
Stanislaus	III	Ceres	36,707			X	
		Hughson	5,033			X	
		Modesto	203,555				X
		Newman	7,516			X	
		Oakdale	16,895			X	
		Patterson	13,521			X	
		Riverbank	17,640			X	
		Stanislaus County	112,396			X	
		Turlock	61,647			X	
		Waterford	7,530			X	
Sutter	III	Live Oak	6,405			X	
		Sutter County	28,962			X	
		Yuba City	47,213			X	
Tehama	I	Corning	6,823		X		
		Red Bluff	13,508		X		
		Tehama	438		X		
		Tehama County	36,703		X		
Trinity	II	Trinity County	13,174	X			
Tulare	III	Dinuba	17,587			X	
		Exeter	9,504			X	
		Farmersville	9,033			X	
		Lindsay	10,524			X	
		Porterville	41,309			X	
		Tulare	45,979			X	
		Tulare County	144,118			X	
		Visalia	96,889			X	
		Woodlake	6,829			X	
Tuolumne	I	Sonora	4,552		X		
		Tuolumne County	51,298		X		
Ventura	III	Camarillo	59,444			X	
		Fillmore	14,919			X	
		Moorpark	34,577			X	
		Ojai	7,943			X	

COUNTY	MSA classification (see Table A for clarification)	PLACE	2002 Census Population	at least 10 du/ac	at least 15 du/ac	at least 20 du/ac	at least 30 du/ac
		Oxnard	177,984				X
		Port Hueneme	22,249			X	
		San Buenaventura (Ventura)	103,619				X
		Santa Paula	28,835			X	
		Simi Valley	116,562				X
		Thousand Oaks	122,700				X
		Ventura County	95,088			X	
Yolo	III	Davis	64,221			X	
		West Sacramento	36,544			X	
		Winters	6,550			X	
		Woodland	50,850			X	
		Yolo County	22,691			X	
Yuba	III	Marysville	12,520			X	
		Wheatland	2,476			X	
		Yuba County	47,343			X	
Sources:							
Census 2002 Population: http://www.census.gov/popest/archives/2000s/vintage_2002/SUB-EST2002-10.html							
Metropolitan and Micropolitan Statistical Areas: OMB Bulletin No 04-03 http://www.whitehouse.gov/omb/bulletins/fy04/b04-03.html							

APPENDIX 2

Changes to State Housing Element Law
AB 2348 (Chapter 724, Statutes of 2004)

See HCD Website

[This is the redlined version
of the 2004 changes
to the law]

**Appendix P: HCD Memorandum, Analysis of Constraints on
Development of Housing for Persons with Disabilities (SB 520),
June 17, 2002**

See also [California Department of Housing and Community Development \(HCD\) Housing Element Memos](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb520-hpd-a11y.pdf) website at:
<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb520-hpd-a11y.pdf>

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Division of Housing Policy Development

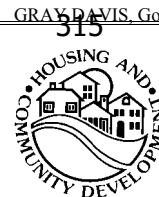
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June 17, 2002

MEMORANDUM TO: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Housing Element Legislation Effective January 1, 2002**

As you know, all localities are required to prepare and adopt a housing element as a part of their general plan. The housing element must include, among other things, identification and analysis of existing and projected housing needs, an identification of resources and constraints to address these needs and, goals, policies and scheduled programs for the maintenance improvement and development of housing for all economic segments of the community. For your information, Chapter 671, Statutes of 2001 (Senate Bill 520-Chesbro) effective on January 1, 2002, amended housing element law and Government Code Section 65008. As a result, State housing element law now requires localities to include the following in the preparation and adoption of a housing element:

1. As part of a governmental constraints analysis, an element must analyze potential and actual constraints upon the development, maintenance and improvement of housing for *persons with disabilities and demonstrate local efforts to remove governmental constraints that hinder the locality from meeting the need for housing for persons with disabilities* (Section 65583(a)(4)).
2. As part of the required constraints program, the element must include programs that *remove constraints or provide reasonable accommodations for housing designed for persons with disabilities* (Section 65583(c)(3)).

All elements adopted after January 1, 2002 should comply with the requirements of Chapter 671. The Department is developing technical assistance materials to assist localities in the implementation of these new provisions.

The attached information is provided to inform localities and to assist in evaluating how these new provisions of law effect your communities. A copy of the legislation can be found on the Department's website at www.hcd.ca.gov. You may obtain copies of published bills from the 2001 session from the Legislative Bill Room at (916) 445-2323 or from the Senate's website at: www.senate.ca.gov. If you have any questions or would like additional information on housing element requirements, please contact Paul Mc Dougall, of our staff, at (916) 322-7995.

Attachments

Chapter 671, Statutes of 2001 (Senate Bill 520)

Section 1 of Chapter 671 of 2001 statutes (SB 520) imparts the following:

It is the intent of the legislature in enacting this act only to clarify existing state requirements and not to establish any new reimbursable state mandate.

In addition, Chapter 671 amends two areas of planning and land use law within the Government Code: Chapter 1 - General Provisions (Section 65008) and Chapter 3 – Local Planning (Article 10.6, starting with Section 65580), specifically, as follows, excluding minor clean-up amendments.

Government Code Section 65008 Excerpts (additions or changes in italics/underlined and deletions indicated by asterisks)

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the *individual* or group of individuals. *For purposes of this section, both of the following definitions apply:*

(A) "Familial status" as defined in Section 12955.2.

(B) "Disability" as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) Omitted – Chapter 671 did not have major changes to this subsection

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

Chapter 671, Statutes of 2001 (Senate Bill 520)

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e-g) – Omitted - Chapter 671 did not have major changes to these subsections

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

Government Code Section 65583, Excerpts from Housing Element Law (additions or changes in italics/underlined and deletions indicated by asterisks)

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1 - 3) Omitted – Chapter 671 did not have major changes to these subsections.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels *and for persons with disabilities as identified in the analysis pursuant to paragraph (4) of subdivision (a)*, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 *and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6)*.

(5) Omitted – Chapter 671 did not have major changes to this subsection.

(6) An analysis of any special housing needs, such as those of the *** “handicapped” omitted*** elderly, *persons with disabilities*, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

Chapter 671, Statutes of 2001 **(Senate Bill 520)**

(7 - 8) *Omitted – Chapter 671 did not have major changes to these subsections.*

(b) *Omitted – Chapter 671 did not have major changes to this subsection.*

(c) *Omitted – Chapter 671 did not have major changes to this subsection.*

(1-2) *Omitted – Chapter 671 did not have major changes to this subsection.*

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) *Omitted – Chapter 671 did not have major changes to this subsection.*

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, *** “or” omitted*** color, familial status, or disability.

(6) *Omitted – Chapter 671 did not have major changes to this subsection.*

(d-e) *Omitted – Chapter 671 did not have major changes to these subsections.*

Chapter 671, Statutes of 2001 **(Senate Bill 520)**

IMPLEMENTATION ISSUES

The following is a list of potential issues in a question and answer format to assist localities in implementing the provisions of Chapter 671 (SB 520).

Question #1: What requirements does Chapter 671 add to the housing element process?

Answer: Prior to January 1, 2002 local governments were required to include an analysis of special housing needs in the housing element, including the needs of handicapped persons. SB 520 requires that in addition to the needs analysis for persons with disabilities, the housing element must analyze potential governmental constraints to the development, improvement and maintenance of housing for persons with disabilities and to include a program to remove constraints to, or provide reasonable accommodations for housing designed for occupancy by, or with supportive services for persons with disabilities.

Question #2: What does the law mean by "housing designed for occupancy by, or with supportive services for, persons with disabilities"?

Answer: The new law incorporates the definition of "disability" from the California Fair Employment and Housing Act, Government Code Section 12955.3. See the attached pertinent sections of the Government Code. Housing designed for occupancy by, or with supportive services for persons with disabilities includes a wide range of housing types. For example, housing that is physically accessible to people with mobility impairments, residential care facilities for individuals with disabilities or for the elderly, group homes, housing for individuals with Alzheimer's, housing for persons with AIDS/HIV, housing with support services and transitional housing that serve homeless with disabilities are within the meaning of "housing designed for occupancy by, or with supportive services for, persons with disabilities."

Question #3: Does Chapter 671 apply to jurisdictions that adopted elements prior to January 1, 2002?

Answer: No. The new law applies to any jurisdiction that adopts a housing element after January 1, 2002.

Chapter 671, Statutes of 2001 **(Senate Bill 520)**

Question #4: What does the law require of a jurisdiction, as part of its governmental constraints program?

Answer: The law requires local governments to remove constraints to housing for persons with disabilities or provide reasonable accommodation to housing for persons with disabilities. Among other things, provisions in a local government's zoning and land use ordinances which restrict or limit housing for persons with disabilities should be identified in the jurisdiction's analysis of potential and actual governmental constraints to housing for persons with disabilities. The Department will be developing a list of examples to assist jurisdictions in the implementation of this requirement. In the meantime, the California Attorney General issued a letter on May 15, 2001 to all mayors and the County Supervisors Association of California that could be useful in understanding "reasonable accommodation" in the zoning and land use context. A copy of this has been attached for your reference.

Question #5: Are there examples of "reasonable accommodation" ordinances that local governments have adopted in California recently?

Answer: While adopting a reasonable accommodation ordinance is not the only means of complying with the provisions of Chapter 671, the Attorney General's Letter cites examples of local ordinances, Long Beach and San Jose, and includes a reference to an organization that can provide more examples.

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

12955.3. For purposes of this part, "disability" includes, but is not limited to, any physical or mental disability as defined in Section 12926.

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

"Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(p) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

(q) "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

(r) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the workforce of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SB 520 Analysis Tool

The following list of questions has been developed to guide an analysis of constraints on the development, maintenance and improvement of housing for persons with disabilities. These questions are meant as a device for a locality to develop an analysis that is unique to its own set of circumstances. However, a thorough analysis should touch upon each of the three general categories (i.e., Zoning/Land Use, Permit and Processing Procedures and Building Codes). Also, entitlement jurisdictions should have conducted an analysis of impediments to fair housing for the purposes of receiving funds from Housing and Urban Development (HUD). This impediments analysis contains similar elements and may be a useful resource for a SB 520 constraints analysis.

If you have any questions, please contact Paul Mc Dougall at (916) 322-7995

Over-arching and General

- Does the locality have any processes for individuals with disabilities to make requests for reasonable accommodation with respect to zoning, permit processing, or building laws?
- Describe the process for requesting a reasonable accommodation.
- Has the locality made any efforts to remove constraints on housing for persons with disabilities, such as accommodating procedures for the approval of group homes, ADA retrofit efforts, an evaluation of the zoning code for ADA compliance or other measures that provide flexibility?
- Does the locality make information available about requesting a reasonable accommodation with respect to zoning, permit processing, or building laws?

Zoning and Land Use

- Has the locality reviewed all of its zoning laws, policies and practices for compliance with fair housing law?
- Are residential parking standards for persons with disabilities different from other parking standards? Does the locality have a policy or program for the reduction of parking requirements for special needs housing if a project proponent can demonstrate a reduced need for parking?
- Does the locality restrict the siting of group homes? How does this effect the development and cost of housing?
- What zones allow groups homes other than those residential zones covered by state law. Are group homes over six persons also allowed?
- Does the locality have occupancy standards in the zoning code that apply specifically to unrelated adults and not to families? Do the occupancy standards comply with Fair Housing Laws?
- Does the land-use element regulate the siting of special need housing in relationship to one another? Specifically, is there a minimum distance required between two (or more) special needs housing?

SB 520 Analysis Tool

Permits and Processing

- How does the locality process a request to retrofit homes for accessibility (i.e., ramp request)?
- Does the locality allow group homes with fewer than six persons by right in single-family zones? What permits, if any, are required?
- Does the locality have a set of particular conditions or use restrictions for group homes with greater than 6 persons? What are they? How do they effect the development of housing for persons with disabilities?
- What kind of community input does the locality allow for the approval of group homes? Is it different than from other types of residential development?
- Does the locality have particular conditions for group homes that will be providing services on-site? How may these conditions affect the development or conversion of residences to meet the needs of persons with disabilities?

Building Codes

- Has the locality adopted the Uniform Building Code? What year? Has the locality made amendments that might diminish the ability to accommodate persons with disabilities?
- Has the locality adopted any universal design elements in the building code?
- Does the locality provide reasonable accommodation for persons with disabilities in the enforcement of building codes and the issuance of building permits?

Tentative List of Organizational Resources

The Department is in the process of creating a list of organizations that can assist localities in the implementation of provisions under Chapter 671. The following list consists of a few organizations in the housing for persons with disabilities arena and represents a starting point for a list of organizational resources that will be added to in the future. In the meantime, the department was provided with a list of affiliates to the Mental Health Association in California (MHAC), MHAC roster by County and list of County Mental Health Directors (Courtesy of California Mental Health Directors Association). These lists are available upon request and will be incorporated into the comprehensive list once more complete information is gathered. If you have any suggestions for potential organizations to be added or would like the lists mentioned above, please contact Paul Mc Dougall at (916) 322-7995.

California Department of Rehabilitation

P.O. Box 944222
 2000 Evergreen Street
 Sacramento, CA 95815
 Phone: (916) 263-8981 (VOICE)
 (916) 263-7477 (TTY)

www.dor.ca.gov

(Web page includes list of Independent Living Centers)

Protection & Advocacy, Inc.

Ms. Dara Schur
 433 Hegenberger Road, Suite 220
 Oakland, CA 94621
 Phone: (510) 430-8033
www.pai-ca.org

Law Office of Kim Savage

Ms. Kim Savage
 263 Park Avenue
 Long Beach, CA 90803
 Phone: (562) 930-1113

Law Office of David Grabill

1930 Alderbrook Lane
 Santa Rosa, CA 95405
 Phone: (707) 528-6839

Mental Health Association in California (MHAC)

1127 11th Street, Suite 830
 Sacramento, CA 95814
 Phone: (916) 557-1167

California Mental Health Directors Association (CMHDA)

2030 'J' Street
 Sacramento, CA 95814
 Phone: (916) 556-3477



STATE OF CALIFORNIA
 OFFICE OF THE ATTORNEY GENERAL
 BILL LOCKYER
 ATTORNEY GENERAL

May 15, 2001

RE: Adoption of A Reasonable Accommodation Procedure

Dear

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(l).)¹ Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community.²

¹ Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

² A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at <<http://www.bazelon.org/cpfha/cpfha.html>> [as of February 27, 2001].)

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It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.³ The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.⁴ Further, most of this increase will likely be concentrated in California's nine largest counties.⁵
- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

³See Tootelian & Gaedeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <<http://www.calsilc.org/housing.html>> [as of February 27, 2001].

⁴The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (*i.e.*, one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (*i.e.*, one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

⁵These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

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discriminatory procedures such as these is not of itself a violation of the FHA.⁶ Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.⁷ This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.⁸

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential—Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

⁶See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.)

⁷ See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

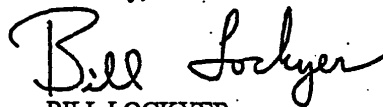
⁸ Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

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Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.⁹ Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step¹⁰ and from various nonprofit groups which provide services to people with disabilities, among others.¹¹ It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,



BILL LOCKYER

Attorney General

⁹Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

¹⁰ Within California, these include the cities of Long Beach and San Jose.

¹¹ Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.