

CALIFORNIA HOUSING ELEMENT MANUAL

5th Edition

March 2023

Law, Advocacy, and Litigation



Acknowledgements

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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.

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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 \(December 2002, with Western Center on Law & Poverty\)*](#)

Surplus Land Act Material

- [*AB 1486 Frequently Asked Questions on the Surplus Land Act*](#)

Rural General Assistance Project

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



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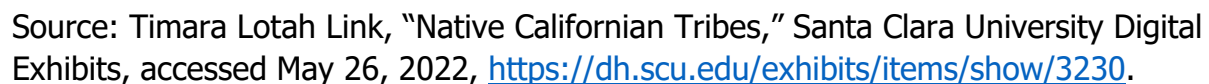
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We begin this manual, as must any discussion of place and power, with an acknowledgement of the racist and colonial origins of land possession and use in California. All lands were and are lands of Native Peoples.

NATIVE PEOPLE OF THIS PLACE



European colonists dispossessed the people and carved the land into artificial parcels, sold it, ultimately assigned zones for specified uses. The commodification and zoning of land enabled exclusion and segregation of the dispossessed and persons of color and relegated those without means to the fringes and least desirable places. The European systems of stratification and segregation by class, race and ethnicity thus

overlaid colonized lands, ensuring and entrenching them in California. It is the underlying context for the need for the Housing Element Law.

Why Housing Elements?

- **A Critical Tool to Dismantle Exclusionary Zoning and Segregation and to Plan for the Development & Preservation of Affordable Housing for All, Outside of the Speculative Real Estate Market.**

California Housing Element Law (Gov. Code §§ 65580-65589.8)¹ emerged from the national recognition during the Civil Rights movement that racial segregation was endemic to and greatly enabled by the power of local governments to zone their communities to serve discriminatory parochial interests. In the ensuing years, advocates have countered entrenched exclusionary zoning with efforts in state legislatures and courts to establish state and local mandates to zone for and include affordable housing in all communities.² Housing Element Law was part of California’s contribution.³ See the more detailed discussion of this background in Chapter I.

The Housing Element Law.

To foster adequate planning and to overcome NIMBYism (Not-In-My-Back-Yard), since 1980, California has mandated local planning for affordable housing, requiring each city and county as part of its general plan to revise and update a detailed housing element every five years, now every 8 years for most jurisdictions.⁴ The housing element must make adequate provision for the housing needs of all economic segments of the community. Although it does not require the community to develop the housing, Housing Element Law requires the community to **plan** for housing *and* to take concrete affirmative steps to facilitate the development and preservation of affordable housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community adopt a program of actions that will provide adequate sites to meet the needs for affordable housing and that it not engage in exclusionary zoning practices.

¹ **Unless otherwise indicated, all statutory citations in this manual are to the California Government Code.**

² See ABA Housing Committee, *Housing For All Under Law* (ABA 1978)

³ The United Nations Committee on the Elimination of Racial Discrimination (“CERD”) singled out California Housing Element Law as a national model and an important step towards reducing discrimination. *Concluding Observations*, UN CERD/C/USA/CO/6 (March 7, 2008) p. 2. It made these findings after review of the U.S. report to the Committee under the International Convention on the Elimination of All Forms of Racial Discrimination. The Housing Element Law was one of the few bright spots in findings that focused on substantial concerns.

⁴ §§ 65580-65589.8.

The preparation and update of the housing element occurs, generally, on eight-year cycles (five years for some rural counties). It begins with the state Department of Housing and Community Development (HCD) and Department of Finance (DOF) determining the Regional Housing Need Allocation (RHNA) and allocating to each region in the state its “fair share” of the need. Then the regional Council of Governments (COG) allocates a share of that need to each community in the region. The RHNA (pronounced “reena”) is determined for the income categories of very low, low, moderate and above moderate, and the locality must also determine what portion of the very low-income need is the need for extremely low-income households (50% being the default). In many cases the community must allow development at multifamily densities *by right* (i.e., without a conditional use permit or other discretionary permits).

The preparation of the housing element begins with each jurisdiction, starting with the RHNA, determining any additional existing or projected housing needs in the community. The locality then must prepare an inventory of land suitable for housing development and programs ensuring the zoning of sufficient sites at densities and with adequate infrastructure to meet the locality’s needs for affordable housing for all income levels. The element must specifically identify sites for multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. Each community must have a zone where emergency shelters are permitted by-right.

The element must also assess the housing needs of persons with disabilities, farmworkers, homeless persons, the elderly and large families. It must then establish the maximum number of units to be constructed, rehabilitated or conserved. Finally, it must include programs 1) to remove local governmental constraints to affordable housing development, housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters; 2) conserve and improve unsubsidized affordable housing; 3) further fair housing; and 4) preserve subsidized affordable housing.

As an element of the local general plan, the housing element is part of the community’s **constitution** for future community action. Accordingly, the local government has a legal obligation to implement the policies and programs of the element, and all local government actions, laws and other plans, including other elements of the general plan, generally must be consistent with the housing element.

Importance of the Housing Element to Affordable Housing & Undoing Exclusionary Zoning.

Community Input. When the local government is preparing its housing element, it *must include residents and community groups in the process*. This requirement provides an opportunity for affordable housing advocates to urge the

inclusion of policies and programs that promote affordable housing and to forge partnership with other groups in the community. Some important programs advocates have won include inclusionary zoning, affordable housing trust funds and policies prohibiting discrimination against Section 8 housing assistance. The opportunity for community input, however, also presents an opportunity for NIMBY opposition to affordable housing.

Sites for Affordable Housing, Transitional and Supportive Housing and Emergency Shelters. As explained above, an adopted housing element *must identify and zone enough appropriate sites to accommodate its need for affordable housing* and include a program mandating the locality to amend its zoning ordinance to permit the development of *homeless shelters* and to allow development of *supportive and transitional housing*. If the community failed to zone enough sites to meet its affordable housing needs from its last housing element period, the housing element also must include a program in its new housing element to rezone enough sites to meet the *carryover* within one year of the due date of the new element. Finally, the ***No-Net-Loss (§ 65863)*** and ***Least Cost Zoning (§ 65913.1)*** laws require that community must always have sufficient sites available and appropriately zoned to meet the remaining RHNA.

Significant Legal Leverage. The law provides housing proponents with *substantial legal leverage* in gaining approval of developments. If the locality fails to adopt a housing element or adopts one that is inadequate, **a court must order the local government to halt some or all development approvals or order approval of a specific affordable housing development until the local government adopts an adequate housing element.** If the local government *fails to implement a program* by the date specified in the element, **a court can order the jurisdiction to carry out the program.** And, if the court finds the jurisdiction is acting inconsistently with a valid housing element, in most **cases the court must issue an order enjoining the inconsistent action.**

Local advocates, therefore, possess significant legal clout to use against recalcitrant or exclusionary communities. In the housing element obligation, California affordable housing advocates have a potent weapon in their efforts to bring affordable housing their communities and dismantle exclusionary laws and practices. We intend this manual to enable advocates to use this law effectively. Although the housing element obligation mandates planning and zoning actions, these strict and specific requirements coupled with significant legal consequences for failure to comply often provides sufficient incentive for advocates to push localities to do a lot more than plan, including making commitments in their housing elements to provide land, affordable housing and financial resources.

This Manual.

This manual provides affordable housing advocates and attorneys with the tools for analyzing, advocating, and litigating around California’s laws mandating comprehensive planning for housing needs by local governments. Without affirmative local planning for production and preservation of affordable housing, we risk losing the affordable housing we have and forgoing new affordable housing development. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential predicates to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community.⁵

Since the initial publication of this manual in 2000, California housing advocates and nonprofit developers have made substantial progress in the movement to increase the supply of below-market-rate housing, to open up exclusionary communities and to win a permanent source of funding for affordable housing.

- With the Legislature’s “Housing Package” of 2017 we won substantial strengthening of Housing Element Law (AB 1397) and other affordable housing laws, the beginnings of a permanent source of affordable housing (SB 2) and restoration of local authority to apply inclusionary zoning to rental housing development (AB 1505). It also included AB 72, which provided HCD with express authority to revoke its certification of a housing element when a community fails to implement core programs.
- AB 686 followed in 2018 establishing and incorporating in the Housing Element Law a state obligation of all government agencies to “affirmatively further fair housing.” This duty is independent of and stronger than the its federal counterpart, and as strengthened by AB 1304 in 2021, it will ensure that the housing elements of all communities reckon with the sordid history of racist discriminatory zoning include programs in their housing elements to dismantle it.
- AB 166, enacted in strengthened the No Net Loss Law (§ 65863) to forbid any jurisdiction’s inventory of available sites from falling below the number necessary to accommodate its share of lower income Regional Housing Need Allocation.
- The passage of SB 1333 in 2018 survived multiple court challenges and eliminated, once and for all, provisions in statutes that purported to exempt charter cities from the general laws requiring consistency between local land use plans, zoning and decisions.

⁵ The Department of Housing and Urban Development (HUD) singled out California’s Housing Element Law as a model for elimination of barriers to affordable housing production in 2007: <https://archives.huduser.gov/rbc/archives/strategy/1498.html>.

- And most recently, the Legislature adopted AB 1398 (as amended by 2022 trailer bill SB 197), which generally changed the consequence for failure to timely adopt a housing element from requiring a new element in four years to expediting the obligation to rezone sites from three years to one year.

Recent years, however, also brought setbacks: the dissolution of redevelopment agencies and attendant loss of the annual tax increment set aside for affordable housing, and substantial cutbacks in federal assistance for affordable housing. And these losses occurred as the economy boomed for some but created tsunami of rising rents and displacement for lower income communities and communities of color. Unfortunately, what we said in 2000 continues today:

California remains in a prolonged and systemic housing crisis of staggering proportion. Thousands of California households pay more than 50% of their income for housing while thousands more wander homeless among us. The crisis stems from the failure of American society to devote sufficient resources to nonprofit affordable housing development. The for-profit private sector is unable to produce housing affordable to lower income households and the state and federal governments have lacked the political will to redirect public revenues to affordable housing programs. In the face of this, some local governments and a growing and effective nonprofit sector struggle daily to parlay what meager affordable housing resources exist into attractive and creative developments.⁶

Although state and local government attention to the crisis in affordable housing has increased, and nonprofit housing developers have produced thousands of units of housing affordable to a broad range of incomes, we still have a long, long way to go. Even if financial resources became available to produce, acquire or preserve housing affordable to all in need, the nonprofit sector could not build for that need without adequate planning by local communities. Local governments play a crucial role in the affordable housing development equation. They must provide appropriate zoning and infrastructure to make nonprofit development feasible and mandatory, and they must maintain a development approval process that encourages, mandates, and facilitates approval of plans and permits for affordable housing. Uncooperative local governments or NIMBY residents can effectively shutout affordable housing if allowed to do so.

⁶ The California Supreme Court said much the same in its decision upholding the constitutionality of inclusionary zoning in 2015: "It will come as no surprise to anyone familiar with California's current housing market that the significant problems arising from the scarcity of affordable housing have not been solved over the past three decades. Rather, these problems have become more severe and have reached what might be described as epic proportions in many of the state's localities." *Cal. Bldg. Indus. Assn. v. City of San José* (2015) 61 Cal.4th 435, 441, (2016) 577 U.S. 1179

Adequate resources cannot produce below market affordable housing without adequate local planning.

Laws & Interpretive Guidelines Included.

Throughout the manual, we will refer to Housing Element Law statutes along with related statutes affecting the planning for and approval of affordable housing. A list of relevant Government Code statutes is included in **Appendix A**. We will also refer to and link to the relevant Department of Housing and Community Development (HCD) interpretive guidelines, memoranda, and other information from HCD. *See Appendix B*. HCD Memoranda are also available directly on [HCD's website](#).⁷

The manual includes links to HCD's extensive [Building Blocks: A Comprehensive Housing Element Guide \("HCD Building Blocks"\)](#)⁸ for each housing element requirement covered in the guidance. The HCD Building Blocks are an online resource guide designed to help local governments understand the requirements of State housing element law and meet community housing needs. They include sample programs, charts, and links to data sources and other resources. Citations to the HCD Building Blocks have been added throughout the manual.⁹

⁷ <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>

⁸ <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>

⁹ Please note that because the Department of Housing and Community Development makes periodic navigation and content updates to its website, the HCD Building Blocks citations in this manual may not reflect the latest version.

I. BACKGROUND & OVERVIEW – EVOLUTION OF STATE MANDATED PLANNING FOR AFFORDABLE HOUSING – FROM EXCLUSION TO INCLUSION?

The story of California’s Housing Element Law, as discussed in the Introduction, begins with the origins of the entrenched racial and economic segregation endemic to American life. It began with the wholesale slaughter and dispossession of Native people, the enslavement of Africans, and forced labor and segregation of Chinese immigrants. It continued through the enactment of state and federal laws and property covenants making residence and land ownership by persons of color illegal. And it abides to this day through exclusionary land use policies define American living patterns. No matter where people live, they live where they do because of our racist system of land use and ownership. Some markers:

- 1787: United States Constitution – Black people are 3/5 of a person
- 1850: California Alien Lands Acts/Alien Land Laws
- Post-Civil War: “Freed” slaves promised but denied forty acres
- Homestead Laws: White people given 160 acres of stolen Native land
- 1896: *Plessy v. Ferguson* (1896) 163 U.S. 537 (“separate but equal” Jim Crow Laws are constitutional)
 - “Black Codes” – Residence and/or ownership prohibited by law
- 1917: *Buchanan v. Warley* (1917) 245 U.S. 60 --racial zoning is unconstitutional, but not:
 - Deed Restrictions – Racial zoning by private contract: Residence and ownership of non-whites prohibited by deed
 - 1924 Standard State Zoning Enabling Act: Segregation through zoning, authorizing comprehensive zoning prohibiting multi-family housing in single-family zones.
- 1926: *Euclid v. Amber Realty Company* (1926) 272 U.S. 365 (upholds local zoning power, approving ban on multi-family zoning)
- A “New Deal” – But not for all:
 - Subsidized housing BUT mandatory segregation
 - Federal Housing Act (FHA): Loans & mortgage insurance denied persons of color by banks & federal government

- Home Owners' Loan Corporation (HOLC): "Redlined" maps prohibiting loans in neighborhoods of color
- 1942-1946 World War II Incarceration, Internment, and Dispossession: US incarcerated over 120,000 Japanese Americans during World War II
- GI Bill denied to persons of color
- Urban "Renewal": Resulting in demolition of neighborhoods of color (deemed "Negro removal" by James Baldwin)

Historically then, local government power over land use was subject to few constraints and was abetted by state and national law. After the Supreme Court declared racial zoning unconstitutional in *Buchanan v. Warley* (1917) 245 U.S. 60 *many cities turned to other forms of zoning to achieve the same goal of excluding persons of color*. It provided largely unfettered discretion to communities to enact land use and zoning laws that intentionally or effectively created and maintained entrenched patterns of racial and economic exclusion.¹⁰

Yet, the breadth of the power, even while bestowing the power to exclude, also affords communities the opportunity and the power to require inclusion. It is from the police power that communities derive their power to enact inclusionary zoning laws and rent control.¹¹ And out of the Civil Rights Movement in the 1950's and 1960's came the recognition and call for local, state, and national governments to mandate desegregation, inclusion and affordable housing.

A. The Origins of "Fair Share" Planning and Zoning Laws.

Under long standing U.S. Supreme Court precedent, the police power entitles communities to take actions and adopt laws and policies the protect the public's health, safety and welfare. See *Euclid v. Amber Realty Company* (1926) 272 U.S. 365.¹² Even before *Euclid*, the California Supreme Court found that local governments could legitimately employ their police powers to protect the general welfare by enacting zoning ordinances creating residential zones reserved for single-family housing. *Miller v. Board of Public Works* (1925) 195 Cal. 477. These cases, however, arose from attacks on efforts to open up exclusionary communities to the development of multifamily

¹⁰ See Rothstein, Richard, *The Color of Law: A Forgotten History of How Our Government Segregated America* at 43-54 (Liveright/W.W. Norton 2017) and Trounstein, *Segregation By Design: Local Politics and Inequality in American Cities* at 73-97 (Cambridge University Press 2018).

¹¹ See generally *Cal. Bldg. Indus. Assn. v. City of San José* (2015) 61 Cal.4th 435, (2016) 577 U.S. 1179.

¹² Although the lower court found exclusive single-family zoning unconstitutional, the Supreme Court overturned that ruling.

rental housing – communities that had zoned themselves as citadels for single family homes. The courts of almost a century ago were clear that this form of superficially race-neutral exclusionary zoning was constitutional despite the clear intent to separate people by race and class.¹³

Resting firmly on the police power, “exclusionary zoning” as it came to be called, manifested over the years in the form of policies and practices that have excluded affordable housing and further exacerbated patterns of racial and economic segregation. This contributed substantially to a significant regional imbalance between the location of jobs and housing affordable to the workforce.

Beginning with the Civil Rights and Poor People’s movements in the 1960s, however, there have been significant judicial decisions and statutes that place important limitations the power of local government to exclude affordable housing. The assassination of Martin Luther King, Jr., uprisings in response, and the adoption of the Fair Housing Act in 1968 launched two beachheads of change in American land use. First, the Kerner Commission report on the state of civil rights in the country found that we remained two societies, separate and unequal, and it identified the land use segregation and the lack of affordable housing as primary culprits. At the same time the Civil Rights Movement inspired the call for “state-mandated” local planning as a means of bringing racial and economic integration and affordable housing to all communities.¹⁴ Indeed, the Fair Housing Act contained an obligation that entities receiving federal funding must “affirmatively further fair housing.”¹⁵

State courts took the lead with the New Jersey Supreme Court holding that the New Jersey Constitution obligated local governments to use their land use powers to affirmatively plan for and make available the reasonable opportunity for low and moderate cost housing to meet the needs of people desiring to live within the community. *See Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mount Laurel I)* (N.J. 1975) 336 A.2d 713, *appeal dismissed and cert. denied*, (1975) 423 U.S. 808 and most recently *In re Decl. Judgment Actions* (N.J. 2017) 152 A.3d 915.

Following New Jersey’s lead, the California Supreme Court adopted the regional welfare standard in *Associated Homebuilders of the Greater East Bay, Inc. v. City of Livermore (Associated Homebuilders)* (1976) 18 Cal.3d 582:

[If] a restriction significantly affects residents of surrounding communities, the constitutionality of the restriction must be measured by its impact not only upon

¹³ *See also*, The Color of Law, *supra*, note 12.

¹⁴ *See* Housing for All Under Law, *supra*, note 2.

¹⁵ 42 U.S.C. § 3608.

the welfare of the enacting community, but upon the welfare of the surrounding region.

Id. at 601.

The local power to exclude through land use also has been limited by statute. Recognizing the disastrous effects that unfettered local discretion can have on racial integration, the environment, and the provision of affordable housing, Congress and state legislatures began to enact laws – especially state mandated local planning laws and fair housing laws – that placed significant limitations on local power to exclude housing, balancing the need for affordable housing and equal opportunity with the need for local decision making. Generally, these laws not only restrict exclusionary or discriminatory land use policies, but also require communities to affirmatively plan for inclusion of affordable housing.

The California Legislature took the lead nationally, adopting the comprehensive Housing Element Law in 1980¹⁶ mandating that all local governments adopt a housing element as part of the local general plan, which “make[s] adequate provision for the housing needs of all economic segments of the community.” § 65583.¹⁷ Despite this wording, the law does not obligate a community to actually *provide* housing to all in need, but it requires the community to *plan* for meeting its “fair share” of the regional housing needs and to reduce regulatory barriers to meeting those needs.¹⁸ More specifically, through its zoning and land use plans and laws the community must “make available” sufficient sites zoned at appropriate densities and with sufficient public

¹⁶ Stats. 1980, ch. 1143, §3, pp. 3697-3703.

¹⁷ California adopted fair housing laws to expressly prohibit discriminatory land use policies (§ 12955.8) and discrimination against affordable housing (§ 65008). In 2018 the Legislature adopted AB 686, which added a state version of the federal Fair Housing Act’s obligation that state and local communities “affirmatively further fair housing (AFFH).” [Stats. 2018, ch. 958.] (The bill and subsequent legislation (AB 1304, Stats. 2021, ch. 37) amended the Housing Element Law to require that elements included of a program to affirmatively further fair housing. See § 65583(c)(10).) And the state’s “anti-NIMBY” law requires local government to approve housing developments that include affordable housing unless certain rigorous findings are made. (§ 65589.5 (the Housing Accountability Act).)

¹⁸ As discussed *infra*, since the initial enactment of the Housing Element Law, the Legislature has adopted some regulatory consequences for jurisdictions that have not produced sufficient housing to accommodate their RHNA. The Housing Accountability Act (*supra*, note 15) provides an exception to its mandate that jurisdictions approve affordable housing development for those that have “met or exceeded” their RHNA for any income category that is proposed for the development. (§ 65589.5(d)(1).) And, section 65913.4 (SB 35, 2017) requires that multifamily urban development proposed where the jurisdiction has not met its lower income or above moderate-income RHNA must be permitted on ministerial approval (by-right) if the developer proposes to include the requisite percentage of affordable housing and pay prevailing wages.

facilities and infrastructure to make feasible the development of housing to accommodate the regional need in each income category. (§ 65583(c)(1).)

The Housing Element Law is part of the California Planning and Zoning Law, (§ 65000 *et seq.*) which sets the legal parameters for local governments to exercise their “police power” over land use and zoning. The police power is the authority delegated to local government by Article XI, section 7 of the California Constitution to regulate within its jurisdiction – including land use, pricing, health and safety, commercial and industrial activity, transportation and the public peace. The power is inherently broad because it emanates from the Tenth Amendment to the United States Constitution, which reserved to the states their inherent powers. Accordingly, “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.)

This planning mandate has come to be referred to as “density as a proxy for affordability” because higher density multifamily zoning is critical to make below market housing development feasible. And, even if the financial resources are available, it is not possible for a nonprofit or governmental housing developer to build housing for people lower incomes unless per unit costs are decreased by increasing density. Of course, both the financial resources *and* denser zoning are necessary to make housing available at below-market rent or price levels, so increased densities alone are not, in fact, a proxy for affordability. Although higher densities make the per unit development costs lower, the increase in the number of units permitted make the high-density sites more attractive to market rate housing developers and, therefore, the high density will not by itself necessarily yield affordable units unless affordability is mandated.

The hope of proponents of mandatory “fair share” housing element planning was that it would instigate mandatory inclusion of affordable housing through local or state inclusionary zoning requirements.¹⁹ In New Jersey, because the New Jersey Supreme Court found an obligation for communities to provide affordable housing in the state constitution, the resulting court decision required programs that mandate the development of affordable housing in communities lacking a sufficient supply. In California, though, the courts have not found an obligation in the California Constitution, and it has been up to the Legislature to legislate affordable housing obligations. And while the Legislature has enacted some mandatory inclusionary housing programs for housing built in redevelopment areas and the Coastal Zone,²⁰ so far there has been insufficient political support for a statewide inclusionary zoning

¹⁹ Burton, Carolyn, *California Legislature Prohibits Exclusionary Zoning, Mandates Fair Share: Inclusionary Housing Programs a Likely Response*, 9 San. Fern. V. L. Rev. 19 (1981).

²⁰ Health & Saf. Code §§ 33413(b)(1) & (2)(A)(i) [redevelopment areas]; § 65590(d) [coastal zone].

mandate. At least 170 local jurisdictions, though, have enacted local inclusionary zoning requirements, often siting the obligations of Housing Element Law as a basis.²¹

B. The General Plan Obligation.

The housing element is one element of a community's general plan. All general law and charter cities and counties in California must have a general plan. The general plan provides the basic long-range plan for the future development of the community. (*See* § 65000 *et seq.*) It must include seven mandatory elements: land use, circulation, housing, conservation, open space, noise and safety (seismic and fire).²² (§ 65302.) Following standard planning methodology, each element normally will consist of three parts: 1) an analysis of needs, resources, and constraints; 2) a declaration of goals and quantified objectives; and 3) programs addressing the needs and constraints and devised to achieve the goals and objectives. Housing elements must also evaluate the appropriateness, effectiveness and progress in implementation of the previous housing element. (*See generally* § 65583.)

The general plan is more than a vision of possibilities – it is the charter guiding all development decisions. The courts have deemed it the "*constitution*" for future development in the community. It is the preeminent planning document, sitting atop the hierarchy of local land use measures. Once adopted, it has binding effect on the locality. All actions taken by the jurisdiction must be *consistent* with the general plan.²³ This is known as the "consistency doctrine," and it imbues the general plan with the force of law. *See* § 65300.5 and *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531; *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553; *Committee for Responsible Planning v. City of Indian Wells* (1989) 209 Cal.App.3d 1005, 1013; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176; *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774.

²¹ *Cal. Bldg. Indus. Assn., supra*, 61 Cal.4th at fn. 11, 442.

²² And whenever two or more other elements are amended concurrently after January 1, 2018, the general plan for jurisdictions with "disadvantaged communities" must include an environmental justice element, or related goals, policies, and objectives in other elements. (§ 65302(h).)

²³ The Legislature in 2018 adopted SB 1333 [Stats. 2018, ch. 856] amending most planning and zoning related statutes and effectively overturning the cases that had exempted the zoning ordinances and specific plans of *charter* cities from the consistency requirement. (*See, e.g.,* § 65860 (zoning), §§ 65700, 65454 (specific plans); and *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259; *Kennedy Commission v. City of Huntington Beach* (2017) 16 Cal.App.5th 841.) The legislation was a welcome and long overdue change to this legislative anomaly that made little sense in this era. In fact, it was unlikely that HCD would approve a housing element that did not include a program requiring consistency between the element and the zoning ordinance and specific plans.

C. The Consistency Requirements.

There are two kinds of consistency. First, the general plan must be an **“internally consistent”** document. (§ 65300.5.) That means that no general plan element, including the housing element, may contain provisions inconsistent with provisions in other elements. For example, the land use element may not designate the same parcel for commercial use that the housing element designates as available for residential use.

The second part of the consistency doctrine relates to the “constitutional” status of the general plan in relation to all other local land use and zoning laws: **all development-related local actions must be consistent with all the elements of the general plan.** Because the general plan is the community’s constitution for development, the local government may not take actions inconsistent with the plan. Actions required to be consistent with the general plan of all charter and general law cities and counties include *zoning ordinances, subdivision maps, specific plans, building permits, developer agreements, and redevelopment plans.* (§§ 65860, 65454, 66473.5, and 65583(c); and Health & Saf. Code §§ 33300-33002.)

D. The Housing Element & “Fair Share” Needs Obligations.

The housing element of the general plan must make “adequate provision for the existing and projected housing needs of all economic segments of the community.” (§ 65583 and *see* §§ 65302(c) & 65580.) As discussed above, this is an obligation to make adequate sites available to meet the need for below-market income housing and to eliminate barriers to development, not an obligation to produce the housing. Unlike the other elements, the housing element must be revised and updated at regular intervals (every eight years for the fifth revision for most jurisdictions).²⁴ (§ 65588.)

The housing element process begins two years before the housing element is due. At that time, the state Department of Housing and Community Development

²⁴ More stringent rules apply to local governments who fail to meet update deadlines. These local governments are required to complete any rezoning necessary to accommodate the low and very low income RHNA within one year for elements due after January 1, 2022. (§ 65588(e)(4).)

(HCD) determines the total regional housing need for the next *projection* period²⁵ for each region in the state and allocates that need to the regional Council of Governments (COG). (*See* §§ 65584-65584.09.) [For example, there is a COG covering the Bay Area: the Association of Bay Area Governments (ABAG).] This allocation is termed the “Regional Housing Needs Allocation” or “RHNA.” **The need is assessed for low, very low, moderate and above moderate-income households.**

Next, the COGs (or HCD for cities and counties not covered by a COG), after input from local governments (including an appeal process), allocate to each local jurisdiction its “fair share” of the RHNA for the housing element planning period. Generally, each jurisdiction receives its assignment of need one year prior to the date by which it must revise its housing element (the COG having received the regional allocation from the state the year before). It is this regional housing needs determination that communities must begin with when planning to make adequate provision for their housing needs in their housing elements. (*See* Chapter II, § A.) In *addition* to the needs of the four income categories determined by the COGs (or HCD), the local jurisdiction must determine what portion of the allocated very low-income need is comprised of the need for housing affordable to *extremely low-income* households. (*See* § 65583(a)(1).)

E. The Contents of the Housing Element.

The housing element must contain four basic sections:

- “An assessment of housing needs and an inventory of resources and constraints relevant to meeting these needs.” (§ 65583(a).)
- “A statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.” (§ 65583(b).)
- “A program which sets forth a five-year schedule of actions...to implement the policies and achieve the goals and objectives....” (§ 65583(c).)

²⁵ The “projection period” is the period beginning two years before the housing element due date and extending to the end of the period covered by the housing element. (§ 65588(f)(2).) The “planning period” is the time between the due date of the housing element and the due date for subsequent housing element. (§ 65588(f)(1).) For example, the planning period for an eight-year housing element due June 30, 2014 is the eight-year period beginning with that date and ending June 30, 2022. The projection period for a housing element due June 30, 2014 is the period beginning with the allocation of the RHNA to the COG by HCD – two years before the housing element due date (June 30, 2012) – and ending when the subsequent housing element is due June 30, 2022 – ten years. In other words, the projection period includes the planning period.

- A review and evaluation of the previous element, including an evaluation of the appropriateness of the goals and policies, the effectiveness in attaining the goals and objectives, and the progress in the implementation of the element's programs. (§ 65588(a).)

1. Twelve Critical Components of the Housing Element.

The Housing Element Law, particularly sections 65583, 65583.1, and 65583.2, sets out detailed requirements for the preparation on contents of the housing element. Of the many things the housing element must include, the following are probably the most important:

- 1) An Analysis of Existing and Project Housing Needs.** The analysis must begin with the needs identified in the RHNA allocated to the jurisdiction and also must analyze the special housing needs of seniors, persons with disabilities, large families, farmworkers, families with female heads of households, and families with persons in need of emergency shelter. (§ 65583(a)(1) & (a)(7).)
- 2) A Site-specific Land Inventory.** The inventory must identify suitable sites for housing development, including vacant sites and sites with redevelopment potential, and it must include an analysis of the zoning and public infrastructure available to these sites. The analysis must also demonstrate address prospect for actual development of sites with existing uses and any environmental factors that would make the site unsuitable. (§ 65583(a)(3); § 65583.2(a) & (b).) This is a snapshot of the sites currently available and their existing zoning.
- 3) Mandate to Zone for Emergency Shelters ("SB 2" [as amended by AB 2339 (2022)]).** The land inventory must also must demonstrate that the jurisdiction *one or more zoning designations* where emergency shelters are permitted without other discretionary permits (i.e., "by right") and that have sufficient capacity to accommodate the need for shelter beds identified in the element. If the land inventory does not have appropriate zoning or capacity, the jurisdiction must adopt a zone and rezone within one year. (§ 65583(a)(4).)
- 4) An Analysis of Governmental Constraints to Development of Housing.** The element must assess the extent to which local laws and programs, including land use laws and building codes, impede the development of housing for all types of housing. It must evaluate barriers to development of housing for all income levels, housing for persons with disabilities, transitional housing, supportive housing, and emergency

shelters. It must also demonstrate attempts to remove constraint for housing for these categories and for transitional housing, supportive housing and emergency shelters. (§ 65583(a)(5).)

- 5) **An Analysis of Existing Assisted Housing Developments Eligible for Conversion.** The analysis must include all assisted units eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. And it must analyze the cost of preservation and the availability of financing and nonprofits to assist with preservation.
- 6) **A Program to Identify Adequate Sites.** The program must identify sites that will be *made available* during the planning period to meet the community's RHNA at each income level and its need for mobilehomes, farmworker housing and emergency shelters. The sites must be zoned at appropriate densities and served by adequate infrastructure. (§ 65583(c)(1) & § 65583.2.)
- 7) **A Program to Make Sites Available for Lower Income Housing & Farmworker Housing "By Right."** Where the inventory demonstrates the jurisdiction lacks sufficient sites to accommodate its need for low- and very low-income housing, the element must contain a program that will make sufficient sites available at minimum multifamily densities for development without discretionary approval and with adequate infrastructure and with 20% affordable housing. (§ 65583(c)(1); § 65583.2(h) & (i).) If the element demonstrates the lack of sufficient sites for farmworker housing, the program must provide sufficient sites to meet the unmet farmworker housing need by right. (§ 65583(c)(1)(C).)
- 8) **A Program to Zone Sites to Accommodate Any "Carry Over" Lower Income RHNA Not Zoned to Accommodate the Previous Planning Period RHNA.** If a jurisdiction failed to rezone sufficient sites developable "by-right" to accommodate its RHNA for the previous planning period, its housing element must include a program demonstrating that the zoning will be accomplished within one year of the due date of the new housing element. (§ 65584.09; § 65583(c)(1).)

NOTE: the jurisdiction must rezone sufficient sites to accommodate this need regardless of whether the housing element includes such a program. (§ 65584.09(b).)

- 9) **A Program to "Address, and where appropriate and legally possible, remove governmental constraints" to housing**

development. The obligation to remove governmental constraints compels local government to deal with exclusionary zoning practices, policies restricting affordable housing and shelter development, unreasonable processing requirements, prohibitive development fees and standards, and NIMBY opposition. It must also provide *reasonable accommodations* for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (§ 65583(c)(3).)

10) Programs to Conserve Existing Private Market Affordable

Housing. These programs must focus on conserving *non-assisted* housing that remains affordable and can include programs such as rent control and condominium conversion regulation, and must expressly address mitigation of demolition. (§ 65583(c)(4).)

11) Programs to Promote and Affirmatively Further Fair Housing.

These can include support of local fair housing organizations and local regulations adding protected classes such as holders of Section 8 Housing Choice Vouchers. (§ 65583(c)(5).) There must also be a specific program to affirmatively further fair housing consistent with the local jurisdiction's duty to affirmatively further fair housing under the federal Fair Housing Act (42 U.S.C. § 3608), including the obligation to prepare a Fair Housing Assessment. (§ 65583(c)(10).) The Fair Housing Assessment must analyze the patterns of segregation and their origins and provide a strategy to remove barriers to undoing segregation.

12) Programs to Preserve Assisted Affordable Housing. Based on the analysis of loss of assisted housing provide programs to preserve the units at risk, utilizing available federal, state, and local financing and local regulatory strategies. (§ 65583(c)(6).)

It is through the implementation of these twelve requirements that the housing element process can increase the opportunities for the development of affordable housing.

F. Housing Element Preparation, HCD Review, & Annual Reporting.

In preparing the housing element, the local government must "make a diligent effort to achieve public participation of all economic segments of the community...." (§ 65583(c)(8).) This includes involving members of the community prior to and during preparation of the *draft* housing element. (§ 65585(b).)

Prior to the adoption of a housing element or the amendment to a housing element, the local government must submit a draft to HCD for review. HCD reviews the

draft and issues written findings determining whether the draft substantially complies with the housing element law. If HCD finds the element out of compliance, the local government then must either change the draft or adopt the draft without changes, making findings indicating why the locality believes the element complies with the law. Once adopted, the jurisdiction must immediately submit the final element to HCD, and HCD must issue a written determination indicating whether the element substantially complies with the law. (§ 65585.)

1. Adoption Schedule.

The housing element and more recently the safety element are the only elements of the general plan for which regular revision is mandated. And the adoption of *any* two elements of the general plan triggers an obligation to adopt an *environmental justice element* (which can be a separate element or its provisions incorporated in other elements). (§ 65302(h).)

The housing element is the only element with a separate statutory scheme (§§ 65580-65589.8) delineating its contents and the process for adoption in detail. Most local governments must review and revise their housing elements “as appropriate” but not less than every eight years. (§ 65588(e).)²⁶ This interval was established by SB 375 [Stats. 2008, ch. 728] for regions classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act – almost all jurisdictions. (§ 65588(e)(2).) The purpose was to link the preparation timetables of the federally required Regional Transportation Plans and the state mandated housing elements.

The due date for most jurisdictions will be 18 months after adoption of every *second* regional transportation plan update (generally due every four years under federal rules), provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element. (§ 65588(e)(3).) The elements for the few jurisdictions in areas that have attained the required pollution reductions will continue to be due every five years. (§ 65588(e).) As explained above, this periodic revision requirement coincides with the jurisdiction’s receipt of its regional housing needs determination, which the regional (COG will allocate at least a year before the housing element due date.

Annually, the community must report to HCD on the progress made by the community in implementing the programs of the element. (§ 65400.) And, although a housing element found in substantial compliance has a rebuttable legal presumption of

²⁶ See § 65584.02 and [HCD Housing Element Update Schedules for 6th Regional Housing Need Assessment \(RHNA\) Cycle \(6th Cycle Housing Element Update Schedules\)](https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/6th-web-he-duedate.pdf) at: <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/6th-web-he-duedate.pdf>. (Appendix B.)

validity in court (§ 65589.3), HCD now has the authority to withdraw its finding of approval if it determines an action by the locality is inconsistent with an adopted housing element or the Housing Element Law, including any failure to implement any program actions included in the housing element. Once making this determination it may also refer the failure to comply to the Office of the Attorney General. (§ 65585(i) and (j)).²⁷

G. Enforcement and Implementation.

1. Failure to Adopt or Adoption of an Inadequate Element.

Failure to timely adopt a housing element in substantial compliance with state housing element law exposes the local government to litigation that can result in a court order curtailing the locality's powers to approve development. (§§ 65754, 65754.5, & 65755.) Indeed, if a court finds that the jurisdiction has failed to adopt an element in compliance with the law, the court **must** issue an order that either suspends the community's power to take various development approval actions or requires the community to approve proposed residential developments containing affordable housing. Just the threat of this remedy often provides a powerful incentive for the local government to negotiate adoption of an adequate element.

Failure to adopt a compliant housing element also may deprive the jurisdiction of access to certain state funding and affordable housing incentives. See, e.g., **§ 65589.9**. Jurisdiction not designated "pro-housing" by HCD lose points in competition for HCD funding. To be designated pro-housing a jurisdiction must have an HCD determined compliant housing element and meet other standards provided in HCD's emergency regulations: [HCD Prohousing Designation Program](#).

See "Background" of [HCD's Housing Elements Guidance](#).

2. Inconsistent Actions.

The general plan consistency requirement provides another means of enforcing the housing element obligation. Once adopted, the housing element becomes the primary land use planning policy and program statement for the local government. As

²⁷ See PILP's memorandum describing [AB 72](#) [Stats. 2018, ch. 370]: <https://thepublicinterestlawproject.box.com/s/zds7vg5oiwbjv3qlzj6gfw7uykg2peg>. It may also refer to the Attorney General any violations it finds of: 1) the Housing Accountability Act (§ 65589.5); 2) the No-Net-Loss Law (§ 65863); 3) the Density Bonus Law (§ 65915 *et seq.*); 4) unlawful discrimination against affordable housing (§ 65008); 5) AFFH (§ 8899.50); 6) SB 35 (§ 65913.4); and/or 7) Supportive Housing and Low-Barrier Navigation Centers (§ 65650 & 65660).

explained previously, the local government may not take actions inconsistent with the housing element, with a limited exception for some zoning actions of charter cities. Consequently, if a locality approves a commercial development for sites identified as available for housing, the project can be challenged as inconsistent with the housing element. By the same token, if the local government fails to adopt an adequate element, its general plan is inadequate, and therefore any action required to be consistent with the general plan could be found inconsistent *per se*.

3. Violation of the “No-Net-Loss” Statute.

Approving downzoning of a site identified in the housing element as available at a greater density, or approving a development for market rate on a site identified as available for housing affordable to lower income households may also violate the “No-Net-Loss” statute. (§ 65863.) This law provides that “at no time” may a jurisdiction not have sufficient sites available at appropriate density to meet each income category of RHNA need.

4. Failure to Implement.

The adoption of a housing element also creates a mandatory duty to take the actions mandated in the element. If the element obligates the community to take a particular action, e.g., to rezone sites for multifamily housing, failure to implement that aspect of the housing element breaches the mandatory duty created by the element and, therefore, constitutes an act inconsistent with the element. A suit to compel performance of the action may be brought as a writ of mandate. (§ 65583(h).)

5. HCD’s New Enforcement Powers.

HCD may also review a community’s failure to implement a housing element program or any action it takes that is inconsistent with the housing element. If HCD finds that the locality’s actions do not substantial comply with the Housing Element Law it may revoke any previous findings that the housing element is in compliance with the law, and it may notify the Attorney General that the City is in violation of the law. (§ 65585(i) & (j).) It may also refer to the AG any violations of certain other affordable housing laws it identifies in its review, including the violation of the Housing Accountability Act (§ 65589.5), the No-Net-Loss law (§ 65863), and the law prohibiting local government discrimination against subsidized housing. (§ 65008.) (§ 65585(j).)

6. Failure to Rezone Sites Identified in the Prior Housing Element: The “Carry-over” Obligation.

If the community fails to identify sites or implement a program to rezone sufficient sites to accommodate its share of the need for lower income housing by the

date the next housing element is due, it must rezone enough sites to accommodate the need within one year. (§ 65584.09.)²⁸

H. Basis for Federal Consolidated Plan.²⁹

California’s system of planning for affordable housing development through the adoption and implementation of local housing elements was used as a model for what is now the federal Consolidated Plan (“ConPlan”) requirement. In order to receive federal community development funds from the Department of Housing and Urban Development (HUD), cities (“entitlement” jurisdictions), urban counties and smaller cities (“consortia”), and states (on behalf of rural communities) must prepare a consolidated plan to assess the needs of its lower income households and prioritize how it will allocate these funds. (The funds include the Community Development Block Grant (CDBG) program, Home Investment Partnership Act (HOME) funds, funds for the McKinney Homeless Assistance Program.)

Like the housing element, the ConPlan is a plan that must be regularly updated (every five years) and must: 1) identify housing needs; 2) identify barriers to affordable housing development; and 3) prioritize the needs and establish programs addressing the needs and the barriers. And like the housing element law, the ConPlan laws mandate that the local activities funded by the HUD programs be consistent with the ConPlan. In most California communities, the next five-year ConPlan was due in the year 2020.

In addressing barriers to housing development, the ConPlan must include an Analysis of Fair Housing (AFH). (24 C.F.R. § 91.5 *et seq.*)³⁰ And although the HUD Rule governing the preparation of an AFH is currently withdrawn, the adoption of AB 686 in 2018 requires all housing elements to comply with the AFH preparation requirements

²⁸ If a court finds that a local government with an eight-year housing element failed to complete, within the required three years, the rezoning needed to accommodate the RHNA for very low- and low-income housing, the court must issue an order or judgment compelling the locality to complete the rezonings within 60 days or the earliest time consistent with public notice and hearing requirements. The court may also impose sanctions for failure to rezone. (§ 65587(d)(1).)

²⁹ See 42 U.S.C. § 12701 *et seq.*, 42 U.S.C. § 5301 *et seq.*, 24 C.F.R. Parts 91 & 570, 24 C.F.R. Part 5, § 5.150 *et seq.*

³⁰ As of this update, the Trump Administration’s suspension of the HUD Affirmatively Furthering Fair Housing Rule obligation for jurisdictions to prepare an Assessment of Fair Housing to obtain approval of a ConPlan remains in effect. See F.R. Vol. 85, No. 153 August 7, 2020 at 47899 *et seq.* However, jurisdictions must still have prepared a prior Analysis of Impediments of Fair Housing Choice (AI), which the Assessment of Fair Housing was to replace. The AI almost must barriers to the development of housing, but the HUD guidance governing its preparation – the Fair Housing Planning Guide – is much less robust and specific.

regardless of the suspension of the federal rule. (*See* § 65583(c)(9).) The impediments identified should be addressed in the housing elements analysis of governmental constraints. The AFH/AI and the rest of the ConPlan's analysis, if well done, can help guide advocates when considering what local laws and regulations present constraints to the development of affordable housing, and what action programs should be included in the element to promote and affirmatively further fair housing pursuant to section 65583(c)(5).

II. PROCESS AND TIME LINES

The revision of housing elements begins with the determination of housing needs for all income categories for all regions of the state by the Department of Housing and Community Development (HCD). Next the regional Council of Governments (COG) for each region allocates a share of the regional need to each city and county prior to the housing element due dates. Originally, the due dates of the housing element were staggered by region identified in section 65588. However, due to the adoption of SB 375 (2008), which linked regional transportation planning to land use planning in order to coordinate greenhouse gas reduction efforts, the precise due dates of most housing elements are 18 months from the date of adoption of the Regional Transportation Plan (RTP). This rather intricate process is laid out in this chapter.

A. HCD & COG Determination and Allocation of Share of Regional Housing Need. (§ 65584 et seq.)

The revision and update of the housing element begins at least two years before the revision is due, with the determination of a region's Regional Housing Needs Allocation (RHNA) – the region's overall projected housing need for the planning period – and then allocation of the RHNA to individual cities and counties within the region. A city's or county's share of the RHNA is derived from the existing *and* projected housing needs of people of *all* income levels in the "area significantly affected" by its general plan. (§ 65584(a).) The RHNA is broken down into the following income levels:³¹

- Very low-income (up to 50% of area median income [AMI]);³²
- Low-income (50-80% of AMI);
- Moderate-income (80-120 % of AMI); and
- Above moderate-income (120% of AMI and above).

HCD first determines the RHNA for the region, then the COG allocates a share of the regional need to each city and county. For counties not within the jurisdiction of a COG, HCD may delegate the allocation of RHNA to the county, or HCD may perform the

³¹ See 25 Cal. Code Regs. §§ 6910, 6926-6932; Health & Saf. Code §§ 50079.5, 50093, 50105; and State of California General Plan Guidelines, p. 95, available at http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.

³² And, as explained in Chapter III, jurisdictions must derive the local need for **extremely low-income housing** (30% of median (Health & Saf. Code § 50106)) from the very low-income RHNA.

allocation. The RHNA must be determined and allocated to local jurisdictions at least *one year* before their housing elements are due. (**§ 65584(b).**)

1. HCD Determination of the RHNA for the Region.

First, HCD consults with the COGs on the assumptions and methodology for determining the RHNA at least 26 months before the housing elements are due. (**§ 65584.01(b).**) Then, at least two years before the elements are due, HCD determines each region's share of housing needs.³³ (**§§ 65584(b) & 65584.01; see also § 65588.**)³⁴ HCD's determination is based on both the population projections of the state Department of Finance (DOF) and the regional population forecasts used in preparing the regional transportation plans (RTPs)³⁵. To assist HCD in making the determination, the COG must also provide HCD with available data relating to anticipated household growth, household size trends, the rate of household formation (based on age, gender, and ethnicity), vacancy rates (including rates necessary for a "healthy" housing market), overcrowding of renter households, jobs-housing relationship, cost burdened households and loss of units due to natural disaster. (**§ 65584.01(b).**)

HCD's final RHNA plan must further the following objectives:

- Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low-income households.
- Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns and the achievement of the region's greenhouse gas reductions targets provided pursuant to section 65080 (SB 375).
- Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.

³³ *Except* for the San Diego Association of Governments, discussed below.

³⁴ The RHNA due dates of HCD or of the COGs may be extended by HCD for no more than 60 days if extension would enable access to more recent critical data. If the HCD or COG deadlines are extended, the deadlines of the local governments for preparing their housing elements must also be extended by no more than 60 days. (**§ 65584(c).**)

³⁵ If the difference between the DOF projections and the regional forecast is within 1.5%, HCD must base the determination on the regional population forecast. This percentage changed from 3% to 1.5% effective January 1, 2018, pursuant to AB 1086 (Daly). For more information about the relationship between transportation planning and the housing element, see § D, below.

- Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.
- Affirmatively furthering fair housing.

(§ 65584(d).)

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.

(§ 65584(e).)

If the COG objects to HCD's RHNA determination it may file an objection within 30 days of the determination. HCD must then make a final determination within 45 days. **(§ 65584.01(c).)**

a) Alternative Processes.

At least six months prior to the date HCD must determine the RHNA, the COG may request the use of population and household forecast assumptions used in the regional transportation plan (RTP). **(§ 65584.02.)** The request may include a request for an extension of the deadlines allocating the RHNA, and for preparation of housing elements by local jurisdictions, in order to synchronize these deadlines with federal regional transportation planning deadlines. HCD must consult with the COG regarding the request and may consult with DOF, the state Department of Transportation, other contiguous COGs, and anyone else deemed necessary. HCD has discretion to reject the request.

2. COG Allocation of RHNA to Local Governments.

Once HCD has allocated the RHNA to a COG, the COG must allocate the RHNA among the local jurisdictions within the COG, including cities, counties, and cities and counties. The COG must begin the process of developing a distribution methodology prior to receiving its RHNA allocation from HCD. See the table and chart at the end of this section.

a) RHNA Distribution Methodology.

At least *two years prior* to the housing element revision date, each COG or subregion must develop a proposed methodology for distributing the RHNA to its local governments.³⁶ **(§ 65584.04(a).)** To develop this methodology, pursuant to **section 65584.04(b)** *no more than six months before developing the proposal*, the COG or subregion must survey the local governments regarding factors that include:

- Jobs-housing relationship, including “how many housing units within the jurisdiction are affordable to low-wage workers....”
- Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.
- Opportunities and constraints on development, distribution of household growth relative to transportation infrastructure, market demand for housing, local agreements to direct growth to unincorporated areas, loss of subsidized housing, housing cost burdens and farmworker housing needs. *However, no ordinance, policy, voter-approved measure, or standard* that directly or indirectly limits the number of residential building permits issued (e.g., growth-control ordinances) may be used as a basis for a reduction in the RHNA. **(§ 65584.04(g).)**
- Loss of subsidized housing units *and units from disasters* where the Governor declared a state of emergency.
- Housing needs of farmworkers.
- Information that will allow the development of a methodology based upon the issues, strategies, and actions that are included, as available, in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing. (The COG must electronically report the results of the survey of fair housing issues, strategies, and actions **[§ 65584.04(c).]**)
- The percentage of existing households at each of the income levels that are paying more than 30 percent and more than 50 percent of their income in rent.

(§ 65584.04(e).)

³⁶ At least 28 months prior to the scheduled housing element revision date, two or more cities and a county, or multiple counties, may form a subregional entity for the purpose of allocation of the subregion’s RHNA among its members. **(§ 65584.03.)**

b) Public Participation.

The COG or the subregion must make a diligent effort to procure participation of all economic segments of the region in making the RHNA determination. They must conduct at least one public hearing on the proposed methodology. (**§ 65584.04(d).**)

c) Submission to HCD.

Following the public participation period, the COG must submit the draft allocation to the department. (**§ 65584.04(h).**) HCD must review within 60 days and report its findings to the COG. (**§ 65584.04(i).**) If HCD determines the methodology is inconsistent with the requirements of **section 65584(d)**, the COG must: 1) Revise the methodology; 2) Adopt the methodology without revisions, but with findings regarding the methodology is not inconsistent.

d) Allocation.

Eighteen (18) months prior to the housing element revision date, the COG or subregion must distribute the draft allocation to each local government. (**§ 65584.05(a).**) The distribution must 1) allocate units consistent with the Sustainable Communities Strategy of the Regional Transportation Plan; 2) ensure that the total RHNA is maintained; 3) ensure that each jurisdiction's share of the RHNA includes allocation of units for low- and very low-income households. (**§ 65584.04(m).**)

Within 45 days of the distribution, a local government may request a revision of its share in accordance with factors surveyed and based upon comparable data from all affected jurisdictions, and must be consistent with the development pattern in an applicable Sustainable Communities Strategy. (**§ 65584.05(b); see also § 65080.**) Within 45 days of appeal, other local governments and HCD may comment on the appeal. (**§ 65584.05(c).**) And within 30 days of the close of the comment period the COG or subregion must hold a public hearing. (**§ 65584.05(d).**) No later than 45 days after the public hearing, the COG or subregion must either accept, reject or modify the proposed revision and make a final allocation, which could include reallocation of RHNA to other jurisdictions. (**§ 65584.05(e).**)³⁷

If the total of all reductions to the RHNAs of appealing jurisdictions is 7% or less of the total regional housing needs, the adjustment is redistributed proportionately to all local governments. (**§ 65584.05(f).**) If the total adjustments are greater than 7%, the COG or subregion must develop a methodology to redistribute the amount greater 7%. Two or more localities may agree to an alternate distribution of the appealed housing allocations. *Ibid.*

³⁷ Any of time periods in subdivision (d) or (e) may be extended by the COG or subregion for up to 30 days. (**§ 65584.05(i).**)

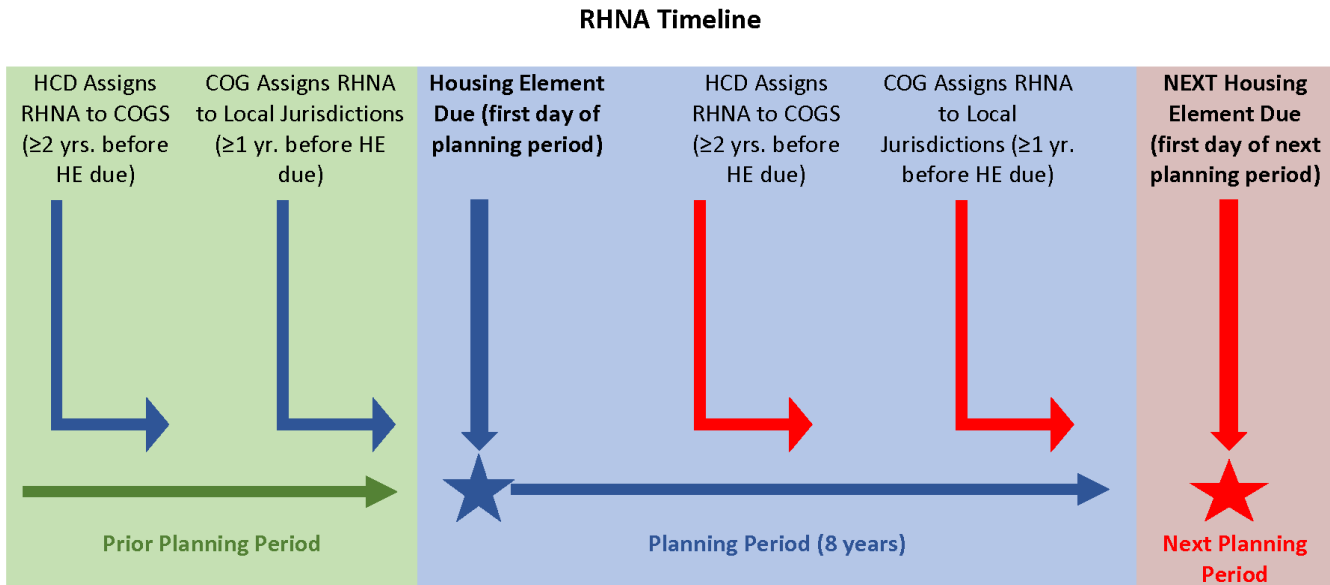
Within 45 days of the proposed final distribution of the RHNA, the COG or subregion must hold a public hearing to adopt the final plan and make a final determination. (**§ 65584.05(g).**) Within *three (3) days* of making the final determination the final allocation must be submitted to HCD, and HCD must determine within 30 days whether the final allocation is consistent with the existing and projected needs of the region and may revise the allocation accordingly.

(Ibid. See also Figure 2.)

TIMELINE FOR RHNA ALLOCATION PROCESS GENERALLY	COG & HCD ACTIONS
Between 30 Months & 26 Months before Housing Element due date	COG must survey jurisdictions requesting information for development of a RHNA allocation methodology
26 Months before Housing Element due date	HCD calculates the RHNA & meets with COG regarding HCD's assumptions & methodology [COG may object & appeal, <i>but the timetable is not changed by the objection or appeal</i>]
Two Years before Housing Element due date	HCD distributes the RHNA to COGs. COG must develop a methodology for allocation of the RHNA and submit to HCD for review
<ul style="list-style-type: none"> • Within 60 days of Submission to HCD 	HCD must complete review, and COG must: 1) Revise methodology according to HCD's findings, <i>or</i> 2) Adopt the methodology without change
18 Months before Housing Element due date*	COG distributes draft RHNA Allocation
<ul style="list-style-type: none"> • Within 45 Days of Draft RHNA 	City or County may request revisions
<ul style="list-style-type: none"> • Within 45 Days of Revision Request 	HCD & local governments may comment
<ul style="list-style-type: none"> • Within 30 Days of the Close of the Comment Period 	COG must hold public hearing

TIMELINE FOR RHNA ALLOCATION PROCESS GENERALLY	COG & HCD ACTIONS
<ul style="list-style-type: none"> • Within 45 Days of Public Hearing 	COG must accept, reject or modify the Final allocation and reallocate the reduced RHNA to other jurisdictions
<ul style="list-style-type: none"> • If less than 7% is Redistributed 	Redistribution spread equally among all jurisdictions
<ul style="list-style-type: none"> • If more the 7% is Redistributed 	COG must develop a methodology for redistribution
<ul style="list-style-type: none"> • Within 45 days of Allocation Decision 	COG must hold a public hearing and adopt a Final RHNA allocation plan
<ul style="list-style-type: none"> • Within 3 days of Adopting Final RHNA 	COG must submit the Final RHNA to HCD
Within 30 days of HCD Receiving the RHNA Allocation	HCD must determine whether allocation is consistent with the Total RHNA it assigned the COG. HCD may revise the RHNA to Achieve Consistency
<i>* The entire COG/HCD disposition process could consume up to 10 months of the 18 months if HCD provides the maximum extension.</i>	COG must develop a methodology for allocation of the RHNA

NOTE: California Courts lack jurisdiction to hear challenges to RHNA allocations. *City of Coronado v. San Diego Association of Governments (2022) 80 Cal.App.5th 21. Once a community or other litigant as exhausted the extensive administrative appeal process, the RHNA is final.*

Figure 2. RHNA Timeline.

3. HCD Distribution of RHNA to Local Governments Not in Regions Covered By a COG.

HCD determines the RHNA for cities and counties without COGs. (**§ 65584.06.**) However, if HCD determines that a county or counties has the capability and resources to distribute the RHNA, and the county or counties have agreed to accept that responsibility for that task, then HCD must delegate the RHNA distribution to the county or counties. (**§ 65584.06(a).**) This determination must be supported by a resolution of the board or boards of supervisors, as well as by resolutions of a majority of the cities within the county or counties, representing a majority of the population of the county or counties. (**§ 65584.06(a).**)

Within 90 days of HCD's draft RHNA distribution to cities and counties, a local government may propose to revise its RHNA share. HCD must issue a decision on the proposal within 60 days following the end of the 90-day period. The jurisdiction may request a public hearing to review the determination within 30 days of the decision. Before making its decision after the hearing, HCD must consider all comments and provide a written response to each request for a revision from a locality. As with COG-assigned RHNA, if HCD reduces the RHNA of one jurisdiction it must reallocate the forgone portion to other jurisdictions in the region. HCD must issue a final RHNA distribution for all local governments within 45 days of the completion of the local review period.

B. Transfer of Regional Housing Needs Allocation Prior to Adoption; New Cities; Annexations. (§ 65584.07.)

After the adoption of the final RHNA distribution plan, but before the due date for the housing element update (i.e., during the year before the housing elements are due), a county may transfer a portion of its RHNA to one or more cities within the county under the following conditions, pursuant to section 65584.07:³⁸

- the city (or cities) agrees to increase its RHNA by an equivalent amount;
- the transfer occurs only between a county and cities within the county;
- the county's share of low-income and very low-income housing is reduced in the same proportion as the county's share of moderate- and above moderate-income housing is reduced; and
- the COG or HCD, whichever assigned the RHNA, determines that the first three conditions have been satisfied. Counties and cities that have executed transfers must include the revised RHNA in their updated housing element.

1. New Cities.

If an incorporation of a city occurs after the final RHNA has been distributed, the new city and the county may agree to a revised allocation, with the new city accepting part of the county's allocation. If they cannot reach agreement, then either party may request the COG (or HCD, where there is no COG) to make a revised determination. The revision must be made within one year of the incorporation. The revision must be based upon the methodology described above for transferring RHNA from a county to existing cities. The revision may neither reduce the total RHNA of all cities and the county nor change the RHNA of the existing cities.

2. Annexations. (§ 65584.07(d).)

If a city annexes territory after distribution of the final RHNA, the city and county may agree to revise the allocation so that the city accepts a share of the county's RHNA. If the two cannot agree, one may request the COG (or HCD where there is no COG) to make a revised allocation. The determination must be made within six months of a written request. It must be based on the RHNA methodology adopted by the COG, unless the annexed land is subject to a development agreement entered before January 1, 2008. In that case, the reallocation is based on the number of units allowed by the development agreement.

³⁸ AB 2158 (2004) clarified section 65584.5's provisions regarding transfer of RHNA.

However, a revised determination may not be made if: 1) the land was within the city's sphere of influence when the RHNA was first allocated; 2) the COG or HCD certifies that the land was fully incorporated into the determination of the city's RHNA; and 3) the area covered by the annexation is the same as that used to determine the city's RHNA.

C. Statutory Deadlines. (§ 65588.)

Cities and counties must update their housing elements every four (4), five (5), or eight (8) years, depending on a variety of factors. Section 65588 sets up a schedule for periodic review of the housing element. "Each local government shall review its housing element as frequently as appropriate" to evaluate:

"The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal."

"The effectiveness of the housing element in attainment of the community's housing goals and objectives."

"The progress . . . in implementation of the housing element."

The statute prescribes deadlines for completion, staggered by geographic region. The deadlines known at the time of publication of this edition, as well as the due dates for the prior housing element cycle, are available on HCD's web site: [6th Cycle Housing Element Update Schedules](#). (Appendix B.)

The current housing element revision cycle due dates (sixth revision cycle) begin June 15 2019 and extend through January 31, 2024.

ALERT: MOST OF THE LISTED DATES ARE CLOSE ESTIMATES OF THE ACTUAL DUE DATES BECAUSE BEGINNING WITH THE FIFTH REVISION CYCLE THE EXACT DUE DEPENDS ON THE DATE OF ADOPTION OF THE REGIONAL TRANSPORTATION PLAN (RTP) – 18 MONTHS FROM THE ADOPTION OF THE RTP. (See § 65588(e)(2).)

HCD also tracks the status of housing elements and publishes that information on its [website](#).³⁹

Beginning with the fifth revision, the due dates are 18 months following the adoption of the regional transportation plan (RTP) by the metropolitan transit organization (MTO). (**§ 65588(e).**) As of the sixth revision, the housing elements of most jurisdictions in most regions will be due every eight (8) years. See discussion below and section 65588(e)(3)(A). However, jurisdictions that fail to adopt elements

³⁹ <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-download-tool>

within 120 days of the statutory deadline must prepare their housing elements every four (4) years. (**§ 65588(e)(4).**)

1. Limited Authority of HCD to Extend Deadlines.

If HCD extends the date of a COG to complete the RHNA allocation, then it must extend the date for communities within the COG to prepare their housing elements, but not for more than 60 days. (**§ 65584.01(c).**)

D. SB 375 Changes to Housing Element Due Dates.

The Legislature passed SB 375 in 2008 [Stats. 2008, ch. 728] as the land use and transportation planning component of the state's effort to achieve the greenhouse gas emission reduction goals of The Global Warming Solutions Act of 2006 (AB 32 [Stats. 2006, ch. 488]). The legislation is an attempt to integrate preparation of the RHNA and regional transportation plans (RTP) by requiring that the RHNA further the objectives of the "sustainable communities strategy" (SCS), which must be part of the RTP. It linked funding for transportation projects to the SCS, requiring consistency between the SCS and the financial and action elements of the RTP. (**§ 65080(b)(2)(B).**)

1. The Sustainable Communities Strategy and Alternative Planning Strategy.

An SCS was required to be included in the first RTP adopted by the regional metropolitan transportation organization (MTO) after June 30, 2010 and in every RTP thereafter. It must establish a reduced development blueprint for the region which will reduce greenhouse gas emissions. But, it must also take into account the state housing goals contained in the Housing Element Law and identify areas sufficient to house all economic segments of the population over the 20- to 30-year term of an RTP, *including areas sufficient to accommodate an eight-year RHNA*. If the MTO determines that the draft SCS is unable to reduce greenhouse gases to target levels established by the California Air Resources Board (ARB), it must prepare an alternative planning strategy (APS). (**§ 65080(b)(2)(I).**)

Neither the SCS nor the APS regulates or supersedes the land use authority of local government. It also does *not* require consistency with local land use laws or policies, including the general plan, and the RTP, including the SCS, or the APS. (**§ 65080(b)(2)(J).**) However, the legislation requires consistency between the SCS and the allocation of the RHNA to local governments. (**§ 65584.04(k).**)

2. Due Dates for the Sixth Revisions.

The actual due dates for the sixth revision (and for the fifth) depend on several interrelated variables.

a) Sixth Revision.

For local governments in nonattainment Clean Air Act (42 U.S.C. § 7506) – *most large COGs* – regions the sixth revision and subsequent revisions are generally due not less than every **eight years**. (**§ 65588(e)**.) Local governments in regions that adopt an RTP every five years, including jurisdictions that have attained adequate air quality standards under the Clean Air Act, must complete their sixth revisions five years after the due dates of the fifth revisions set out in (**§ 65588(e)**.)

Jurisdictions on **five-year** update schedules have the option of switching to an **eight-year** housing element cycle by electing to update their RTPs every four years (instead of five years) beginning with the sixth revision. (**§§ 65080(b)(2)(L), 65588(e)(3)(C)**.) To do so for the sixth revision, the jurisdiction was required to make its election by December 31, 2014.

In the *San Diego* region, the sixth revision is due 18 months after the adoption of the first RTP to be adopted after the fifth revision due date. (**§ 65588(e)(2)(B)(ii)(II)**.)

3. “Four-Year Update Consequence” *Repealed & Replaced with Mandatory Site Rezoning Within One Year Except for Housing Elements Due in 2021.*

Prior to the adoption of [AB 1398 \(2021\)](#), jurisdictions on eight-year housing element schedules that did not adopt their housing elements within 120 days of the deadline for adoption switch to a four-year update cycle until they have timely adopted two consecutive housing elements. (**§ 65588(e)(4)(A)**.) *Under AB 1398, however, for all jurisdictions with housing elements due prior to January 1, 2022, all elements adopted for the sixth revision, the failure to adopt a housing element within 120 of the deadline triggers a mandate to complete rezoning sites required by the housing element program adopted pursuant to section 65583(c)(1)(A) within one year of the statutory deadline to revise the housing element. Jurisdictions that adopt prior to the 120 days after the deadline must complete rezoning within three years. (§ 65583(c)(1)(A) and § 65588(e)(4)(c).)*

EXCEPTION FOR ELEMENTS DUE IN 2021. After many complaints that jurisdictions in the SCAG region did not have sufficient time to adjust to the one-year rezoning consequence for submitting an adopted element within 120 days of the

statutory deadline, the Legislature adopted [SB 197](#). The legislation first extended the time to complete rezonings back to three years from one for jurisdictions with elements due in 2021 but which adopted after the 120 period with housing elements due in 2021 *provided* that the jurisdiction:

- Submitted a draft housing element found in compliance by HCD prior to the statutory deadline, and
- Adopts an element within one year of the statutory deadline that HCD finds in compliance.

Second, SB 197 extends the three year period to four years provided either:

- The jurisdiction has been unable to complete the rezoning because of the action or inaction beyond its control due to the action of any other state, federal, or local agency.
- The jurisdiction is unable to complete the rezoning because of infrastructure deficiencies due to fiscal or regulatory constraints.
- The jurisdiction 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.

See **§ 65583.4**; “Housing Element Submittal” of [HCD’s Housing Elements Guidance](#); and PILP’s memorandum on [SB 197](#)⁴⁰.

The [6th Cycle Housing Element Update Schedules](#) table on HCD’s website contains information about each jurisdiction’s update schedule (five years v. eight years).

E. Submission to HCD, HCD Review, Public Comments, and Adoption. (§ 65585.)

Before a local government adopts or amends a housing element, it must submit the draft housing element or amendment to HCD for review. Although local governments and HCD have always been obligated to consider public comments on draft housing elements, in 2021 the Legislature significantly improved and expanded the public notice, review and comment requirements. (See [AB 215 \(2021\)](#)) The *first* draft revision of a housing element for each new housing element cycle *now* must be submitted at least *90* days prior to adoption; a draft of a *subsequent* amendment or revision to the housing element must be submitted at least *60* days prior to adoption.

The local government also must “make the first draft revision of the housing element available for public comment for at least 30 days” prior to submitting the draft to HCD. And if any comments are received, the locality must take at least 10 business

⁴⁰ <https://thepublicinterestlawproject.box.com/s/1g0uxdyp4alizpr3rxjdhhbttcrv6tbo4>

days after the 30-day public comment period to consider and incorporate the public comments into the draft. For any subsequent draft revision, the locality must post the draft on its website and email a link to all that have requested notices related to the housing element at least seven days before submission. (**§ 65585(b)(1).**)

Additionally, planning staff for the local jurisdiction must compile all the public comments received regarding the housing element update, and must submit them to every member of the legislative body responsible for adopting the housing before the body adopts the housing element. (**§ 65585(b)(2).**)

Once the jurisdiction has submitted its draft housing element or amendment to HCD, HCD conducts a review and must issue written findings determining whether the element or amendment “substantially complies” with the Housing Element Law. Any public agency, group, or person may submit written comments during the review process. HCD must consider these comments and report its findings to the local government within *90* days of the receipt of a draft revised element or a proposed amendment. And critically:

The department shall not review the first draft submitted for each housing element revision pursuant to subdivision (e) of Section 65588 until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments....[§65583(b)(3)]

For subsequent draft amendments or revisions, HCD must review and report its findings within *60* days. Many jurisdictions’ draft housing elements or amendments will go through multiple rounds of HCD review before HCD finds the draft to substantially comply with Housing Element Law. (**§ 65585(b)(3).**)

CAUTION: Although HCD now has 90 days to review a local jurisdiction’s first draft housing element update, advocates should let the HCD reviewer know they will be submitting comments and submit their comments as early as possible in the review period because HCD is not required to use the full 90 days for its review. Advocates should contact HCD as soon as the community submits the element and tell the reviewing staff that they intend to provide comments.

In adopting the housing element, the local legislative body must consider HCD’s findings. If HCD finds the element or amendment is out of substantial compliance with the housing element laws, section **65585(f)** requires the legislative body to either:

- Change the draft to achieve substantial compliance; or

- Adopt the draft without changes and include written findings explaining why the legislative body believes the draft does substantially comply.

1. No “Self-certification.”

Option two is sometimes called “self-certification” by local governments, but that is a misnomer. A jurisdiction cannot render its housing element in substantial compliance with the law simply by adopting written findings that reject HCD’s determination. The question of whether an element complies with the statute is a question of law, and a court should give HCD’s determination (essentially, HCD’s construction of the statute) deference when evaluating the legal adequacy of a housing element.

Upon adoption of the final element, the local government must submit it to HCD for additional review. HCD must then report its written findings to the local government within 60 days. (**§ 65585(h).**)

Housing Element Review and Comment	Timelines and Actions
Draft Element Due for Submission to HCD	90 days prior to statutory due date
Local Gov. Makes Draft First Revision Available to Public	30 days, plus 10 business day if public comments are received, prior to submission to HCD
Public Provides Comments to Legislative Body	Ideally within the 30-day period, but prior submission to HCD
Local Gov. Submits Draft First Revision to HCD	90 days prior to statutory due date
HCD Reviews the Draft First Revision (UNLESS THE LOCAL GOV. FAILED TO MAKE THE DRAFT AVAILABLE TO THE PUBLIC FOR COMMENT AS REQUIRED)	HCD has 90 days to complete its review BUT may finish before 90 days
If Local Gov. Prepares Subsequent Draft Revisions	Must post on its website for 7 days prior to submission to HCD
HCD Reviews & Reports Findings on <i>Subsequent Drafts</i>	Within 60 days after receipt

Housing Element Review and Comment	Timelines and Actions
Public May Provide Comments on Drafts to HCD	During HCD's Review
Local Gov. Adopts the Housing Element	1) After making changes HCD finds necessary to bring the element into substantial compliance, or 2) Adopting the draft <i>without</i> changes, but making findings explaining why the element substantially complies
HCD Reviews the Adopted Element	Within 90 days of submission and reports findings

F. Annual Progress Report. (§ 65400(b)(2).)

After the legislative body has adopted the housing element or other part of the general plan, the local planning commission must provide an annual report by April 1 of each year to the local legislative body, the Governor's Office of Planning & Research, and HCD on the status of the plan and progress in implementation. **(§ 65400(a).)** The report must be considered at an annual meeting of the legislative body and must describe the progress made by the locality in meeting its share of the regional housing needs and the efforts to remove governmental constraints to the maintenance, improvement and development of housing (pursuant to section **65583(c)(3)**).

The mandatory forms an online progress reporting system for annual progress reports are available on HCD's website (*see* "[Annual Progress Reports](https://www.hcd.ca.gov/planning-and-community-development/annual-progress-reports)").⁴¹

Effective for the 2018 reports, due April 1, 2019, the annual progress reports must contain the following information:

- The status of the housing element and the jurisdiction's progress in implementing it.
- The jurisdiction's progress in meeting its RHNA share.
- The jurisdiction's efforts to remove governmental constraints and non-governmental constraints to the maintenance, improvement, and development of housing pursuant to section 65583(c)(3).

⁴¹ <https://www.hcd.ca.gov/planning-and-community-development/annual-progress-reports>

- If the report contains the number of units that have been substantially rehabilitated, converted from non-affordable to affordable housing, or preserved as affordable housing, documentation of how the units meet the standards set forth in section 65583.1.
- The number of housing development applications received in the prior year.
- The number of units included in all development applications in the prior year.
- Whether and how the general plan is consistent with guidance published by the Office of Planning and Research.
- A list of sites rezoned to accommodate the RHNA share.
- The number of net new housing units that were issued a completed entitlement, a building permit, or a certificate of occupancy in the housing element cycle, and the income category each housing unit satisfies.
- The number of applications submitted for streamlining under SB 35/section 65913.4.
- Information on the extent density bonuses have been granted for developments with affordable housing.

(§ 65040(a)(2).)⁴²

1. SB 35.

Senate Bill 35 (Wiener), adopted as part of 2017's legislative housing package, created new consequences for jurisdictions that do not timely submit their annual progress reports, and for jurisdictions that are not meeting their RHNA targets each year. **(§ 65913.4.)** Specifically, the new law requires local jurisdictions to streamline certain housing development projects that contain 10 percent or more units affordable to lower-income households if the jurisdiction either (1) did not submit its annual progress report, or (2) did not meet its pro-rata share of the above moderate-income RHNA; the law requires jurisdictions that did not submit their annual progress report, or that did not meet the pro rata share of their RHNA for low- and very low-income households, to streamline approval of certain projects with 50 percent or more affordable units. **(§ 65913.4(a)(4)(B).)**

Finally, if the local government fails to submit the annual report or submits an inadequate report, it is subject to suit. If the court finds that the reporting requirements have been violated, it must issue an order requiring the jurisdiction to comply within 60

⁴² Some of these requirements were adopted as part of AB 879 and SB 35 in 2017 and are new for 2018 annual progress reports

days and instituting “appropriate sanctions.” The court may also retain jurisdiction to enforce the order. (**§ 65400(b).**)

G. *NEW: Mid-cycle Review By HCD and Discretionary Referral to the Attorney General. (§ 65585(i)-(p).)*

Effective January 1, 2018, Assembly Bill 72 clarified HCD’s authority and obligation to review certain actions and failures to act by local jurisdictions outside of the regular review process, and, where appropriate, to require corrective action for actions or inactions that violate Housing Element Law or related statutes. (**§ 65585(i)-(j).**)

See PILP’s comprehensive memorandum on [AB 72](#).⁴³ In 2021 the Legislature added to the list in section 65585(j) of the related affordable housing statutes HCD could review for compliance. They now are the Housing Accountability Act (§ 65589.5); the No-Net-Loss-Law (§ 65863); Density Bonus Law (§ 65915); law prohibiting discrimination against affordable housing (§ 65008); Housing Crisis Act of 2019 (§§ 65941.1, 65943, 66300); Affirmatively Furthering Fair Housing (§ 8899.50); SB 35 (§ 65913.4), development permits (§ 65650 et seq. and § 65660 et seq.); and limitations on development standards for three to ten units outside of single-family or historic zones. (§ 65913.11.)

⁴³ <https://thepublicinterestlawproject.box.com/s/zds7vg5oiwbjv3qlzj6gfw7uykg2peg>

In summary, here's what AB 72 requires as well as authorizes HCD to do:

AB 72 requires HCD to:	Additionally, AB 72 authorizes HCD to:
<ul style="list-style-type: none"> • Review any action or failure to act that violates Housing Element Law, including any failure to implement housing element programs. • Issue written findings to the jurisdiction about whether the action or failure to act substantially complies with Housing Element Law. • Give the jurisdiction a reasonable time (30 days or less) to respond to HCD's findings regarding the jurisdiction's compliance or noncompliance with Housing Element Law. • Consider written comments from any local government, public agency, group, or person any local government, public agency, group, or person regarding the jurisdiction's compliance or noncompliance with Housing Element Law. • Notify a <i>jurisdiction</i> of any findings that the jurisdiction is in violation of the Housing Accountability Act; the No Net Loss Statute; the Density Bonus Law; section 65008; Housing Crisis Act of 2019, Affirmatively Furthering Fair Housing law; sections 65913.4 and 65913.11; section 65650 et seq.; and section 65660 et seq.. 	<ul style="list-style-type: none"> • After providing the jurisdiction written findings of substantial noncompliance and an opportunity to respond, revoke its prior approval of the jurisdiction's housing element until the jurisdiction comes into compliance with Housing Element Law. • Consult with any local government, public agency, group, or person regarding the jurisdiction's compliance or noncompliance with Housing Element Law. • Notify the <i>Attorney General</i> violations of Housing Element Law, the Housing Accountability Act; the No Net Loss Statute; the Density Bonus Law; section 65008; Housing Crisis Act of 2019; Affirmatively Furthering Fair Housing law; sections 65913.4 and 65913.11; section 65650 et seq.; and section 65660 et seq..

Prior to the Attorney General bring suit for any of the violations referred by HCD, HCD must offer the jurisdiction the opportunity for two meetings and provide the jurisdiction with findings regarding the violation. (§ 65585(k).) In an action or special proceeding brought by the AG, if the court finds the housing element does not substantially comply, the AG may request an order or judgment directing the jurisdiction to bring its element into compliance. (§ 65585(l).) If the jurisdiction has not complied with the order after 12 months, the court must impose a fine of up to \$100,000 per

month, the court may multiply the fine by a factor of three. If the jurisdiction fails to comply the fine may be increased by a factor of 6 and/or order an agent of the court to “take all governmental actions necessary to bring the jurisdictions element into substantial compliance. . . .” (§ 65585(l)(3).) These remedies are in addition to any remedy authorized under any of the statutes that have been violated. (§ 65585(l)(4). And the court may consider mitigating factors. (§ 65585(m).)

If the AG declines to represent HCD in any action or special proceeding pursuant to a notice of referral by HCD, the department may appoint or contract with other counsel to represent the department. (§ 65585(o).) The three-year statute of limitations in Code of Civil Procedure section 338 applies to an action or special proceeding brought pursuant to section 65585(j). (§ 65585(p).)

H. Water & Sewer Service Priority for Developments Addressing RHNA. (§ 65589.7.)

After adoption of an initial or amended housing element, the local government must deliver a copy of the element to all public and private entities that provide water and sewer services within the territorial jurisdiction of the local government.

See [HCD Building Blocks: Other Requirements - Priority for Water and Sewer](#).

See also [HCD Memorandum, SB 1087, Water and Sewer Service Priority for Housing Affordable to Lower-Income Households, May 22, 2006](#). (Appendix B.)⁴⁴

The water and sewer provider, in turn, must grant a priority to any proposed affordable housing development:

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.

(§ 65589.7(a).)

Importantly, failure of the local government to deliver the housing element to the infrastructure provider does *not* exempt the provider from granting the affordable housing priority. (**§ 65589.7(e).**) Infrastructure providers must have policies and procedures for this priority, and must update them every five years. (**§ 65589.7(b).**) For *private* providers regulated by the Public Utilities Commission, the PUC is charged with developing these policies and procedures.

⁴⁴ http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/memo_sb1087.pdf

In addition to requiring a priority for affordable housing development, a water or sewer provider **may not deny service** to an affordable housing development (or condition or reduce the amount of services applied for) unless it makes written **findings** that the denial, condition or reduction is necessary based on:

- (1) The provider does not have “sufficient water supply,” [as defined] or is operating under a water shortage emergency [as defined], 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 provider is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections.
- (3) The provider 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 provider 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, or payment of a fee or charge imposed pursuant to Section 66013.

(§ 65589.7(c).)

III. HOUSING ELEMENT CONTENTS

The purpose of the housing element is to **plan** for the housing needs of all income levels. To accomplish this, the Housing Element Law provides that the element must describe and analyze the community's existing and projected housing needs, and must establish programs that the jurisdiction will undertake to meet those needs:

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.

(§ 65583)⁴⁵

By “adequate provision”, the statute means the housing element must make adequate plans for low- and very low-income households as well as middle- and upper-income households. Conceived to require and enable communities to eliminate exclusionary land use policies and practices that lock in patterns of racial and economic segregation, the core housing element obligation became the requirement to identify “adequate sites.” It means that the local government must zone land at sufficient densities and served by adequate infrastructure to facilitate the development of housing to meet even the lowest income levels. And in this context, it must now ensure, after performing an assessment of fair housing, that the location of the sites affirmatively furthers fair housing rather entrench or exacerbate existing patterns of racial or ethnic concentrated areas of poverty or affluence.

The specific requirements for the contents of the housing element are largely contained in section **65583**. It provides a detailed description of the subjects and analyses that the element must include. Of the nine elements that comprise the local general plan, only the content of the housing element is prescribed in a separate

⁴⁵ All statutory citations in this manual include changes made during the 2022 legislative session, which are effective January 1, 2023.

statute with such detailed specificity.⁴⁶ *See Buena Vista Garden Apartments Assn. v. City of San Diego Planning Dept. (Buena Vista)* (1985) 175 Cal.App.3d 289, 296-298. Section 65583 as well as the other housing element statutes are attached as Appendix A. The chapter addresses each particular requirement.

[HCD Building Blocks](#) contain the department's interpretation of the statutory requirements along with suggestions on their implementation.

A. Review of Progress Under Prior Housing Element. (§ 65588(a).)

To lay the basis for preparation of an element with the contents required by section 65583, the housing element must first evaluate:

- The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
- The effectiveness of the housing element in attainment of the community's housing goals and objectives.
- The and the progress of the jurisdiction "in implementation of the housing element."
- The effectiveness of the housing element goals, policies, and related actions to meet the community's "special housing needs" (e.g., the needs of farmworkers, unhoused people and people with disabilities) identified in § 65583(a)(7).

(§ 65588(a).)

In this section, the locality should describe and quantify the actual progress towards fulfilling and implementing of the previous element's goals, objectives, policies, and programs. In preparing this the community should draw on the Annual Progress Reports it files pursuant to section 65400 and engage in an overall compilation and assessment of other available data. The section should include the reasons for major differences between what was projected or planned and what was achieved. Finally, this part should contain a discussion of how the goals, objectives, policies, and programs of the revised and updated element incorporate the lessons from the results of implementing the previous element.

⁴⁶ SB 1035 substantially expanded the required contents of the *safety element*, which now must be revised contemporaneous with the revision of the housing element, (§ 65302(g)), so as to regularly update planning for natural disasters. [Stats. 2018, ch. 733.] And, after the adoption or revision "of two or more elements concurrently on or after January 1, 2018", jurisdictions must adopt an *environmental justice element*, which may be a separate element or incorporated into other elements. (§ 65302(h).)

See [HCD Building Blocks: Getting Started - Review and Revise](#).

B. Assessment of Housing Needs and the Resources and Constraints to Meeting the Needs. (§ 65583(a).)

The first substantive section of the updated housing element is the analysis of the community's current and projected housing needs in comparison to the resources available and the constraints to meeting the identified needs. Here the local government must provide an up-to-date appraisal of the state of the unmet housing needs of all economic segments of the community, including the community's share of the regional housing need, and an inventory of the land and resources that are available to meet these needs. This part must contain "an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs." (§ 65583(a).)

1. Analysis of Population & Employment Trends & Housing Needs, Including the Needs of Extremely Low-income Households. (§ 65583(a)(1).)

The required assessment includes:

An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households. . . . These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584. [Emphasis added.]

(§ 65583(a)(1).)

This analysis must start with the regional housing needs share allocation for each income category as assigned by the regional COG or HCD (i.e., very low-income, low-income, moderate-income, and above moderate-income). It must also determine what portion of the jurisdiction's very low-income need comprises the needs of **extremely low-income** households. In assessing the need for extremely low-income housing, the locality may either conduct an independent analysis or assume that the need is 50% of the regional need allocation for very low-income housing.

The RHNA numbers, therefore, are just a starting point *and* a minimum. Any local conditions or circumstances that have increased the need or any data the jurisdiction obtains indicating additional need (such as Census data) should be incorporated into the analysis. Other additional needs that should be considered include the affordable housing required by the Mello Act (**§ 65590**) in the Coastal Zone and any remaining housing required under the Community Redevelopment Law as amended by the Dissolution Law. (*See* **Health & Saf. Code § 33413.**)

The analysis of housing needs is the critical beginning of the preparation of the housing element. Everything else – the number and type of sites needed, the goals and objectives, and the programs – flow from these need determinations.

See [HCD Building Blocks: Housing Needs - Population, Employment and Household Characteristics](#).

HCD also prepares, in collaboration with the COGS, a pre-approved “data package” for local jurisdictions to use in making these assessments. The data packages can be accessed here: <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools>. The data packages are also available under the “Regional Housing Needs” section of [HCD’s Regional Housing Needs Allocation](#).⁴⁷ For jurisdictions in the ABAG region, ABAG has also developed data packets that have been approved by HCD: [ABAG Housing Needs Data Packets](#).

2. Analysis and Documentation of Household and Housing Characteristics. (§ 65583(a)(2).)

Analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(§ 65583(a)(2).)

This analysis provides crucial information on the needs of existing households and the condition of the housing stock and, therefore, helps provide a more complete picture of the real housing needs of the community. It should contain more than merely a recitation of Census data. Other, more current sources of data should be surveyed, and the information should be *analyzed*.

See [HCD Building Blocks: Housing Needs - Population, Employment and Household Characteristics](#); [HCD Building Blocks: Housing Needs - Overpayment and Overcrowding](#); and [HCD Building Blocks: Housing Needs - Housing Stock Characteristics](#).

⁴⁷ <https://www.hcd.ca.gov/planning-and-community-development/regional-housing-needs-allocation>

3. Analysis of Special Housing Needs. (§ 65583(a)(7).)

The housing element must include:

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 the capacity necessary to accommodate the most recent homeless point-in-time count conducted before the start of the planning period, the need for emergency shelter based on number of beds available on a year-round and seasonal basis, the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions. 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. An analysis of special housing needs by a city or county may include an analysis of the need for frequent user coordinated care housing services.

(§ 65583(a)(7).)

This list is not exhaustive and, if other groups in the community have unique housing needs, the housing element should identify and analyze those needs. The analysis of special housing needs for particular populations is an important corollary to the analysis of housing needs by income level required by subdivision (a)(1). While the assessment of need by income category provides an indication of the *number* of units that are needed, this analysis provides an indication of the *type* of housing that is needed. However, because the community's share of the regional housing need is derived from projections that likely are based on inadequate data regarding farmworkers, persons with disabilities and homeless persons, the regional needs figures may need to be adjusted upwards to account for these special needs.

The needs of each group should be analyzed separately. Each analysis should include, at least:

- Quantification of persons/households
- Quantification and qualitative description of need
- Identification of resources available to meet the need

- Description of program or policy options for addressing the need

See [HCD Building Blocks](#) and Appendix B.

a) Analysis of the Needs of People with Disabilities, Including Developmental Disabilities.

People with disabilities tend to have lower incomes than the general population and face housing discrimination at greater rates than the general population. Their housing choices may be limited, not only by the lack of affordability, but also by a dearth of physically accessible housing, or of housing with supportive services. As such, the housing element must contain an analysis of the housing needs of people with disabilities.

See [HCD Building Blocks: Housing Needs - People with Disabilities, Including Developmental Disabilities](#).

This obligation to analyze the housing needs of people with disabilities includes a specific requirement to analyze the needs of people with developmental disabilities. See [HCD Memorandum, SB 812 Persons with Developmental Disabilities, June 21, 2012 \(Interpreting the Requirement to Analyze the Housing Needs of Persons with Developmental Disabilities\)](#). (Appendix B.)⁴⁸ While Census data does not include data on developmental disabilities, [the Regional Center](#) serving the local area maintains data on people who receive their services.⁴⁹ Regional Centers and other government and non-profit agencies who work with people with developmental disabilities can assist the jurisdiction in understanding the particular housing needs of people with developmental disabilities, as well as the resources available in the community.

b) Analysis of the Needs of Emergency Shelters and Homeless & Unhoused Persons.

Analysis of the homeless and unhoused population is essential to determining the need for emergency shelters and transitional housing. This analysis should include estimates of numbers and types of households (e.g., single men, single women, families, and persons with disabilities, including people with impairments related to substance abuse). It should also include an estimate of units/beds/vouchers currently available to assist this population.

⁴⁸ A developmental disability is “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...Cerebral Palsy, Epilepsy, and Autism.”

<http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/NoticeCoverLtrSB812Memo.pdf>

⁴⁹ <https://www.dds.ca.gov/rc/>

See [HCD Building Blocks: Housing Needs - People Experiencing Homelessness](#).

The emergency shelter need must be based on both annual and seasonal need to ensure that communities provide for sufficient shelter during periods of cold and inclement weather. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in a jurisdiction's 10-year plan to end chronic homelessness, provided the units are either vacant or will be constructed during the planning period with funding has been identified.

See [HCD Memorandum, SB 2, May 7, 2008 \(Updated April 10, 2013\) \(Interpreting the Requirement to Zone for "By Right" Approval of Emergency Shelters, Transitional and Supportive Housing and Limiting the Authority of Local Government to Deny Approval of Those Facilities\)](#). (Appendix B.)⁵⁰

c) Analysis of Farmworker Housing Needs.

This analysis should include estimates of the number of permanent and migrant farmworkers. Starting places for this data include local agricultural employment and Farm Bureau offices, as well as organizations that work directly with farmworkers, including legal services and healthcare providers. There may also be farmworker employment data collected by growers' organizations, school districts, or county government.

See [HCD Building Blocks: Housing Needs - Farmworkers](#).

d) Analysis of the Needs of Elderly Persons.

The housing element must analyze the housing needs of seniors in the community. This analysis should identify the number of seniors in the community, as well as the number of seniors living in poverty. It should describe and analyze particular housing needs of seniors, including issues related to physical access and affordability. In conducting this analysis, the jurisdiction should consult with government and nonprofit agencies that serve seniors and evaluate the resources available to seniors for housing and other needs in the community.

See [HCD Building Blocks: Housing Needs - Seniors](#).

e) Analysis of the Needs of Larger Families & Female-headed Households.

The housing element must analyze the housing needs of larger households (i.e., households with five or more persons) and female-headed households.

⁵⁰ <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/SB2-Memo050708.pdf>

See [HCD Building Blocks: Housing Needs - Large Families and Female-Headed Households](#).

Large families' housing choices are restricted due to the limited number – and lack of affordability – of units large enough to accommodate them without overcrowding. Female-headed households tend to have lower incomes than other households of the same size, and have unique housing needs in this regard. The analysis should quantify how many larger households and female-headed households are in the community, identify what percentage of these households are experiencing poverty, and analyze the particular housing needs of these categories.

4. Analysis of Assisted Housing Eligible for Conversion. (§ 65583(a)(9).)

The housing element must identify and analyze subsidized and deed-restricted affordable housing at risk of conversion to market-rate housing during the planning period. This analysis, which provides the factual basis for programs to preserve at-risk affordable homes (see § G.7), must contain:

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. “Assisted housing developments,” for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. “Assisted housing developments” shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done

aggregately for each five-year period and does not have to contain a project by project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(§ 65583(a)(9).)

This provision is intended to address the potential loss of thousands of government subsidized, privately-owned units throughout the state due to expiration of the affordability restrictions imposed as condition of a government grant, subsidized loan, or mortgage insurance, and to prevent the displacement of the lower-income individuals and families who live in affordable housing developments. **The description and analysis must include:**

- An **inventory** of the units subject to expiration *during the planning period of the housing element*;
- Assessment of preservation versus replacement costs;
- Public and nonprofit entities for potential acquisition; and
- Potential local, state, and federal funding sources.

Resources available to help identify units at risk of conversion include the National Housing Preservation Database (<http://preservationdatabase.org/>), the California Tax Credit Allocation Committee's Project Mapping tool (<http://www.treasurer.ca.gov/ctcac/projects.asp>), the HUD LIHTC Database (<https://lihtc.huduser.gov/extract/index.html>), and the California Housing Partnership (chpc.net).

HCD Building Blocks includes a comprehensive discussion of what should be included in this analysis and how it should be conducted.

See [HCD Building Blocks: Program Requirements - Preserve Units at Risk of Conversion to Market Rates](#).

C. Inventory and Analysis of Land and Resources for Affordable Housing Development.

1. Inventory of Existing Sites including Analysis of Their Zoning, Available Public Facilities & Services, and Their Furtherance of Fair Housing. (§§ 65583(a)(3) & 65583.2.)

As a critical corollary to assessing the community's housing needs, the housing element must contain:

An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, an analysis of the relationship of zoning and public facilities and services to these sites, and an analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing.

(§ 65583(a)(3).)

Here the community must provide a comprehensive inventory and analysis of *specific* sites that are available for housing development to address the identified RHNA needs by income category. See generally, [HCD Memorandum, Housing Element Sites Inventory Guidebook \(AB 1397, AB 1486, AB 686, SB 6\), June 10, 2020 \(Housing Element Sites Inventory Guidebook\)](#) (Appendix B),⁵¹ the accompanying [Sites Inventory Form](#), and [Sites Inventory Instructions](#).⁵²

NOTE: The site inventory of every element submitted to HCD after January 1, 2021 *must* be submitted on HCD's Excel based templated, linked above. This should make it easier for both HCD and advocates to assess the land inventory a site identification of a community.

The inventory is used to:

identify sites throughout the community, consistent with paragraph (10) of subdivision (c) of Section 65583, that can be developed for housing within the

⁵¹ https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf

⁵² https://www.hcd.ca.gov/community-development/housing-element/docs/site_inventory_instructions.pdf

planning period and that are sufficient to provide for the jurisdictions share of the regional housing need for all income levels. . . .

(§ 65583.2(a)) [paragraph (c)(10) is the obligation for housing elements to include an action program to affirmatively further fair housing (AFFH) that follows the federal Fair Housing Law statute and rule and requiring an AFFH program in housing elements – see § G, below].]

In addition to vacant sites, the element must contain a catalog of sites having the potential for redevelopment. Land suitable for residential development includes:

- Vacant sites zoned for residential use
- Vacant sites zoned for nonresidential uses that allow residential use
- Residential sites that can be developed at a higher density, including sites owned or leased by a city, county, or city and county.
- Sites zoned for non-residential use that can be:
 - redeveloped for residential use *or*
 - as necessary, rezoned for residential use

(§ 65583.2(a).)

The site inventory must identify specific parcels **by assessor parcel number (APN)**, and must list the size, general plan designation, and zoning of each parcel. **(§ 65583.2(b)(1) & (2).)** The analysis of sites must also include:

- **For Non-Vacant Sites:** a description of the existing use of each property; and for sites owned or leased by the locality, any plans to dispose of the site during the planning period, including compliance with the Surplus Land Act (§ 54220 et seq.). **(§ 65583.2(b)(3).)**
- A description of **environmental constraints** to the development of housing. This description need not be site specific. **(§ 65583.2(b)(4).)**
- A description of the **availability of utilities** to the sites. **Under section 65583.2(b)(5)(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.

- However, “[s]ites 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.” (§ **65583.2(b)(6).**)
- A **map** that shows the location of the sites included in the inventory. (§ **65583.2(b)(7).**)

2. Analysis of the Capacity of the Inventory to Accommodate the RHNA for Each Income Level. (§ 65583.2(c)-(g).)

Based on the inventory, the locality must:

[D]etermine 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....

(§ 65583.2(c).)

However, except for sites in an unincorporated area in a nonmetropolitan county, a locality may not re-designate nonvacant and vacant sites identified to accommodate the lower income RHNA in a previous element, unless it provides that the site is or will be zoned for residential use by right with 20% of the units affordable to very low- and low-income households:

....A nonvacant site identified . . . 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....

(Ibid.)

See (f) below and [Housing Element Sites Inventory Guidebook](#) at 11 & 12.

In addition to this information about individual sites, the inventory must analyze the capacity of the sites for housing development, and to meet a particular portion of the jurisdiction's RHNA share. Assembly Bill 1397, effective January 1, 2018, significantly strengthened the requirements for this analysis, especially where jurisdictions identify smaller sites, larger sites, and sites with existing uses.

a) Density and Affordability.

The Housing Element Law allows jurisdictions to assume that a site can be developed for housing affordable to low- and very low-income households if the site has the capacity to be developed at or above a certain "default density." (**§ 65583(d).**) The default densities vary from 10 dwelling units per acre to 30 dwelling units per acre, depending on the location and population of the jurisdiction.

Jurisdiction Size/Type	Default Density (in dwelling units/acre)
Incorporated Cities within nonmetropolitan/rural counties	15 du/ac
Nonmetropolitan counties with micropolitan areas	15 du/ac
Unincorporated areas in nonmetropolitan areas	10 du/ac
Suburban jurisdictions	20 du/ac
Metropolitan jurisdictions	30 du/ac

For the default densities applicable for the sixth revision of the housing elements due *prior* to January 1, 2022, see [HCD Memorandum, Default Density Standard 2010 Census Update, June 20, 2012](#) (Appendix B).⁵³ For housing elements due January 1, 2022 or later (based on the 2020 Census), see [Default Density Standard Option \(2020 Census Update\), March 21, 2022](#) (Appendix B).⁵⁴

b) Realistic Site Capacity to Accommodate the RHNA.

⁵³ http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Default_2010census_update.pdf

⁵⁴ <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/defaultdensity2020censusupdate.pdf>

For all sites in the inventory, the jurisdiction must determine the number of units “that can be realistically be accommodated” for lower-, moderate- or above moderate-income housing. (**§ 65583.2(c).**) AB 1397 made clear that the jurisdiction cannot assume development capacity for housing at a particular level of affordability based solely on **land use controls and site development requirements**; it must now also analyze:

- The **realistic development capacity** of the site.
- **Typical densities** of existing or approved developments at a similar affordability level.
- The “current or planned availability and accessibility of sufficient water, sewer and dry utilities.” (**§ 65583.2(c)(2).**)

For sites where the zoning or general plan imposes a minimum residential density, the jurisdiction may assume that the site will be developed at the 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.” (**§ 65583.2(c)(1).**)

c) Small Sites and Large Sites.

AB 1397 also added a requirement that, for a jurisdiction to count a site that is less than one half acre or more than 10 acres toward its lower-income RHNA, the housing element must demonstrate “that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units” or provide other evidence that the site can be developed as lower-income housing. (**§ 65583.2(c)(2).**)

d) Non-vacant Sites.

Many jurisdictions – especially urban and suburban jurisdictions promoting infill development – seek to rely on sites that already have existing uses to meet their lower-income housing need.

Prior to AB 1397’s amendments, section 65583.2 required jurisdictions relying on sites with existing uses to accommodate the RHNA to evaluate the sites development potential.

AB 1397 requires additional analysis to demonstrate *the likelihood* that such sites will be redeveloped as housing. The methodology must include:

- The jurisdiction’s “past experience with converting existing uses to higher density residential development;”
- The “current market demand for the existing use;” and

- “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.”

(§ 65583.2(g)(1).)

Importantly, now a nonvacant site that is realistically capable of being redeveloped for lower income housing, but that is unlikely to be redeveloped for lower income housing, should not be included on the inventory as a site available to accommodate a community’s lower income RHNA.

Furthermore, when a community relies on non-vacant sites to accommodate 50 percent or more of its lower-income RHNA, HCD *presumes* that the existing use will “impede additional residential development.” **(§ 65583.2(g)(2).)** To overcome this presumption, the housing element must include site-specific “findings based on substantial evidence that the use is likely to be discontinued during the planning period.” **(§ 65583.2(g)(2).)**

e) Replacement Housing Required for Sites Designated to Accommodate Lower Income RHNA When the Site Is or Was in Residential Use as Rent Controlled, Deed Restricted Lower Income Housing, or Occupied By Lower Income Households.

AB 1397 creates additional requirements for jurisdictions seeking to rely on sites that have current residential uses, or where housing was demolished within the last five years. Specifically, sites that have, or in the past five years had, (1) deed-restricted affordable housing for low- and/or very low-income households, (2) rent-controlled housing, or (3) housing occupied by low- or very low-income households, are subject to the replacement housing requirements described in the Density Bonus Law. **(§§ 65583.2(g)(3); 65915(c)(3).)**

f) Requirements for Sites Identified in the Prior Housing Element.

AB 1397 also placed new limits on jurisdictions’ ability to continue identifying the same sites for meeting the lower-income RHNA from one planning period to the next, where affordable housing has not been developed on those sites. Specifically, neither **non-vacant sites identified in a prior housing element**, nor **vacant sites identified in the last two planning periods** may be counted towards the lower-income RHNA need unless:

- The sites are zoned at the “default” densities presumed adequate in section 65583.2 (c)(3),

- 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.” (§ 65583.2(c).)

See [Housing Element Sites Inventory Guidebook](#) at 11 & 12.

g) Designation of Sites for Moderate and Above Moderate-Income Housing.

At least 25% of the moderate-income RHNA for metropolitan areas must be allocated to sites zoned for a minimum of four units/acre, but no more than 100 units/acre. And at least 25% sites of the above-moderate-income RHNA for metropolitan areas must be allocated to sites that allow at least four units/acre. (§ 65583.2(c)(4).)

3. Adequate Sites Alternative. (§ 65583.1.)

a) ADU’s and Military Base Conversion.

Section 65583.1 provides jurisdictions with alternative means to meeting their RHNA obligation apart from the identification of sites with realistic capacity to be developed (or redeveloped) with housing. These means include affording HCD *limited* discretion to allow an identification of sites for accessory dwelling units (ADUs) if based on the number of ADUs actually developed in the previous planning period. (§ 65583.1(a).) The section also permits a community to meet up to 25% of its RHNA through conversion of sites located on a military base undergoing closure. (§ 65583.1(b).)

b) Substantial Rehabilitation, Conversion, Preservation, and Acquisition of Hotels, Motels, and Mobilehome Parks.

Section 65583.1 also allows HCD to permit jurisdictions under limited circumstances to meet up to 25 percent of their RHNA obligation for any income category through inclusion of a housing element program which commits the local government to provide units through the provision of committed assistance by substantial rehabilitation, conversion of market-rate to affordable housing, preservation of assisted affordable housing, conversion of hotel rooms and preservation of mobilehome park spaces:

- Substantial rehabilitation of existing units in “imminent risk of loss” and declared unfit for habitation, which will be reserved for housing affordable to lower income households for 55 years, and where any displaced persons are provided with comparable housing, relocation assistance and the right to return;

- Conversion of existing foreclosed or market rate multifamily units not occupied by lower income households to rental housing affordable to lower income households for 55 years through acquisition or purchase of affordability covenants/deed restrictions;
- Preservation of existing affordable housing units through acquisition or provision of affordability covenants for 55 years;
- Acquisition of hotel, motel or hostels to housing affordable for lower income households for 55 years;
- Acquisition of a mobilehome park in which 50% of the residents are lower income and any spaces vacated will be reserved for lower income households for 55 years.

(§ 65583.1(c); see also [HCD Building Blocks: Site Inventory and Analysis - Adequate Sites Alternative](#).

c) Housing Built Between the Beginning of the RHNA Projection Period and the Deadline for Adoption.

Finally, the section allows a community to count towards its RHNA, units built between the beginning of the housing element projection period and the deadline for adopting the housing element. **(§ 65583.1(d).)** To utilize these alternatives, the housing element must make specific findings.

4. Identification of Zones Permitting Emergency Shelters. (§ 65583(a)(4).)

The housing element must identify one or more zoning designations that allow residential, including mixed uses, where emergency shelters are allowed as a permitted use (i.e., siting of an emergency shelter does not require a conditional use permit or other discretionary approval) on suitable sites. **(§ 65583(a)(4)(A).)** Additionally, the housing element must demonstrate that the zoning designation identified have sufficient capacity to meet the community's need for emergency shelter. **(§ 65583(a)(4)(A).)**

If a jurisdiction cannot identify any zones where shelters are allowed by right, or if the zone or zones that it does identify lack the sufficient capacity to meet the community's emergency shelter need, then the housing element must, include a program to amend the jurisdiction's zoning code to allow emergency shelters by right in a zone or zones with sufficient capacity within one year of the adoption of the housing element. These basic requirements initially became part of the Housing Element Law in 2008 with the enactment of SB 2 and were substantially strengthened in 2022 by AB

2339.⁵⁵ However, many jurisdictions still lack a zone or zones with sufficient capacity to meet the need for emergency shelter, and where emergency shelters are allowed by right.

All communities must identify at least one zoning designation that can accommodate at least one year-round shelter, regardless of the community's need for such shelter. But, if a community can demonstrate to the satisfaction of HCD that it has at least one shelter, or that, pursuant to a multi-jurisdiction agreement it is served by a shelter in another community, that can accommodate its need for shelters, the community may comply with this provision by identifying a zone where shelters are allowed with a conditional use permit. **(§ 65583(a)(4)(F).)**

The element must also analyze existing or proposed permit processing, development, and management standards for emergency shelters, demonstrate that the standards are objective, and encourage and facilitate the development of shelters. **(§ 65583(a)(4)(C).)** The section limits the types of restrictions that local jurisdictions can impose on siting and operation of emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

- 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 onsite waiting and client intake areas.
- The provision of onsite 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.

(§ 65583(a)(4)(B).)

⁵⁵ Pursuant to Section 65583(e), the stronger provisions of AB 2339 (e.g., requiring the identification of one or more zoning designations (rather than "zones")) apply to any housing element adopted after 120 days from the January 1, 2023 effective date of AB 2339.

See [HCD Memorandum, SB 2](#). HCD also tracks jurisdictions' SB 2 compliance status in its Housing Element Tracking System. (See [Annual Progress Reports](#)" and [HCD Housing Elements Guidance](#)).⁵⁶

D. Analysis of Constraints to Housing Development.

1. Analysis of Governmental Constraints and Efforts to Remove Them. (§ 65583(a)(5).)

Even if the community has enough sites to address its housing needs, building standards, fees, conditional use permit procedures, design review, and protracted processing can present significant barriers to development of affordable housing *and* housing for persons with disabilities. As such, the housing element must conduct . . .

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development⁵⁷. 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, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7).

(§ 65583(a)(5).)

The analysis of constraints must include, not only constraints to the development of housing affordable to households at different income levels, but also constraints to the development and maintenance of a variety of *types* of housing "including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural

⁵⁶ <https://www.hcd.ca.gov/planning-and-community-development/housing-elements>

⁵⁷ The language regarding "any locally adopted ordinances that directly impact the cost and supply of residential development" was added by AB 1397, effective January 1, 2018. HCD has long required jurisdictions to analyze inclusionary housing ordinances or any comparable local laws as potential constraints on the development of new housing; this change appears to clarify HCD's existing position rather than impose a new requirement on local jurisdictions or on HCD, especially because the Legislature also adopted AB 1505 expressly authorizing jurisdictions of adopt inclusionary zoning ordinances. (**§§ 65850(g) and 65850.01.**)

employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.” (See **§ 65583(c)(1)**.)

See also [HCD Building Blocks: Constraints - Codes and Enforcement of Onsite/Offsite Improvement Standards](#); [HCD Building Blocks: Constraints - Constraints for People with Disabilities](#); [HCD Building Blocks: Constraints - Fees and Exactions](#); [HCD Building Blocks: Constraints - Land-Use Controls](#); and [HCD Building Blocks: Constraints - Processing and Permitting Procedures](#).

Examples of potential constraints other than those listed in the statute include growth controls, moratoria, open space requirements, parking requirements, minimum street widths and lot sizes, maximum lot coverage, historic preservation, processing and permit procedures and restrictions on accessory dwelling units, mobilehomes, or mixed uses.

The analysis must also demonstrate efforts to remove the identified constraints. *This requirement is somewhat confusing because it is quite possible that a community has yet to take actions to remove the constraints turned up in the analysis.* Section 65883(c)(3) requires that the element include a program of future actions to remove constraints, so the obligation in this paragraph to demonstrate efforts to remove existing constraints probably should be read to: *1) require description of existing efforts to remove constraints, and 2) clarify the mandate of (c)(3) to remove constraints.*

a) Analysis of Growth Controls.

Local ordinances, policies, or regulations that specifically limit the *amount* or *timing* of residential development should be analyzed for their specific impact on the *cost* and *supply* of housing. The element should describe the permit allocation process and criteria and any incentives for affordable housing. It should also demonstrate efforts to remove these constraints.

Examples of growth controls that must be analyzed include:

- Area-wide downzoning
- Urban limit lines, growth boundaries, greenbelts
- Annexation restrictions
- Building permit and other development caps
- Requirements for voter approval of upzoning, rezoning, or other general plan changes
- Requirements of “super-majority” votes of legislative bodies for upzoning, rezoning or general plan changes

- Across the board restricting of development standards, including height limits and Floor-Area-Ratios.
- Ordinances or policies limiting development based on adequacy of public facilities (such as sewer and water facilities)

See [HCD Building Blocks: Constraints - Land-Use Controls](#).

b) Analysis of Constraints to Housing for Persons with Disabilities.

The housing element must specifically analyze constraints to the development, maintenance, and improvement of housing for people with disabilities. (**§ 65583(c)(5).**) For comprehensive guidance on analyzing constraints on housing for persons with disabilities refer to [HCD Memorandum, Analysis of Constraints on Development of Housing for Persons with Disabilities \(SB 520\), June 17, 2002](#) (Appendix B),⁵⁸ interpreting this requirement:

See also [HCD Building Blocks: Constraints - Constraints for People with Disabilities](#).

Among other things, the element should review:

- Whether the jurisdiction has adopted universal design elements in its building code;
- Whether current building codes present barriers to developing housing accessible to persons with disabilities;
- Whether zoning regulations present barriers to developing of residences intended for occupancy by persons with disabilities, such as group homes (e.g., prohibitions against group homes for more than six persons, or minimum distance requirements for housing for disabled persons); and
- Whether the jurisdiction has a zoning provision, policy or ordinance providing for **reasonable accommodations**⁵⁹ for housing for persons with disabilities in its zoning ordinances and development standards (e.g., provisions that

⁵⁸ <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb520-hpd-a11y.pdf>

⁵⁹ The federal Fair Housing Act (42 U.S.C. § 3601 *et seq.*), the state Fair Employment and Housing Act (§§ 12927(c)(1) & 12955(*h*)), 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) all impose an affirmative duty on localities to make reasonable accommodation (including reasonable modification or exceptions) to their laws, regulations, and practices when the accommodations are necessary to equal opportunity, including equal opportunity “to use and enjoy a dwelling unit.” (42 U.S.C. § 3604(f)(3)(B).) Likewise, section 11135’s prohibition against disability discrimination includes a duty to provide reasonable accommodations and reasonable modifications in policies, programs, and practices.

allow for variances in zoning regulations to make development of housing for disabled persons feasible, both economically and physically).

And see Disability Rights California, Everyone's Neighborhood: Addressing "Not in My Backyard" Opposition to Supportive Housing for People with Mental Health Disabilities (Publication No. CM53.01, Sept. 2014), available at: <https://oal.ca.gov/wp-content/uploads/sites/33/2016/09/11.1-Not-in-My-Backyard-Rights-DRC-Info.pdf>. Disability Rights California, *Housing Elements Checklist for Supportive Housing* (Publication No. CM58.01, May 2015).

c) Analysis of Constraints for Transitional and Supportive Housing.

Transitional or supportive housing must be considered a residential use of property, and subject only to the restrictions that apply to other residential dwellings of the same type in the same zone (i.e., jurisdictions may not require conditional use permits or other discretionary approvals for transitional and supportive housing, where other housing of the same density is not subject to discretionary approval). **§ 65583(a)(4)(A) & (c)(3)**⁶⁰ See also [HCD Memorandum, SB 2](#). The definitions of "transitional housing" and "supportive housing" were substantially revised by SB 745 in 2014. See [HCD Memorandum, Transitional and Supportive Housing \(SB 745\), April 24, 2014 \(Describing Changes to Statutory Definitions of Supportive and Transitional Housing by SB 745\)](#). (Appendix B.)

d) Relation to the Federal Consolidated Plan and Assessment of Fair Housing.

In jurisdictions that have prepared Consolidated Plans for submission to the Department of Housing and Urban Development (HUD) as requirement for receiving federal community and housing development funds, the analysis of constraints should also address any findings made in the locality's Assessment of Fair Housing. See Chapter I, § H.

2. Analysis of Nongovernmental Constraints. (§ 65583(a)(6).)

In addition to analyzing governmental constraints to the creation, maintenance, and improvement of housing, the housing element must include:

An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of

⁶⁰ This requirement was originally enacted in SB 2 and included in subsection (a)(5), but AB 2162 [Stats. 2017, ch.753, § 2] moved it to subsection (a)(4) and subsection 65583(c)(3).

construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing.

(§ 65583(a)(6).)

Nongovernmental constraints can be just about anything outside the purview of government. At minimum, this analysis should consider the effect of market forces, environmental concerns, and NIMBY opposition to the preservation, conservation, and development of housing for all economic segments of the community. In analyzing, the availability of financing the locality should consider financing for both developers and homebuyers and the possibility of redlining. Environmental constraints include slope, seismic, water supply, toxic contamination, wetlands, flood plain, etc. The analysis of the effect of NIMBY sentiment should consider both the history of such opposition in the community and the opportunities for opposition provided by the community's development approval processes.

See [HCD Building Blocks: Constraints – Non-Governmental Constraints](#).⁶¹

E. Analysis of Opportunities for Energy Conservation. (§ 65583(a)(8).)

(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.

(§ 65583(a)(8).)

This part should assess both what subsidies, incentives are available from public and private sources for energy conservation, and what changes could be made in the local building codes to increase energy conservation. *However*, it is important that any

⁶¹Note: as of the update of this manual, the HCD Building Blocks have not yet been updated to reflect the AB 1397 changes to the text of this subdivision.

consideration of increased building code standards should address the potential constraints such changes may place on affordable housing development in the form of increased costs. The analysis should consider the importance of the energy conservation achieved in relation to the effect on housing affordability.

See [HCD Building Blocks: Site Inventory and Analysis - Opportunities for Energy Conservation](#).

F. Statement of Goals, Quantified Objectives, & Policies. (§ 65583(b).)

The second principal section of the housing element is the community's formulation of goals and policies and quantification of objectives addressing the housing needs, resources, and constraints assessed and analyzed in the first part of the element. The second part must contain:

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period [sic – this reference to a five-year period was missed by the drafters of SB 375 which generally changed the period covered by most housing elements to eight years].

(§ 65583(b) and see § 65588(e) for the explanation of the five- and eight-year housing elements.)

There should be a corresponding goal and policy for each housing need, resource inadequacy, and constraint identified in the assessment section of the housing element. In addition, there must be a *quantified objective* for each housing need identified in the first section.

The *goals* for meeting the housing needs should be at least equivalent to the entire identified needs. Recognizing that the community may not be able to marshal the resources to meet the full need and achieve the goals, the law permits the element to formulate quantified *objectives* for the number of units to be developed or assisted that are less than the total housing needs. However, these quantified objectives must establish the *maximum* number of housing units *by income category* (extremely low,

very low, low, moderate & above moderate) that can be developed or conserved over the time frame of the element. In order to demonstrate that the quantified objectives truly are the maximum, the element should include an indication of the bases for arriving at each number. In this context, the quantified objectives must be compared to the identified housing needs, including the RHNA. *Buena Vista*, 175 Cal.App.3d at 305.

Therefore, the quantified objectives should, at minimum, list the number of housing units that can be constructed, rehabilitated and conserved (including preservation of affordable units) for each income category of need (very low, low, moderate & above moderate). And, if the construction objective is less than the regional share for an income level, the element should include a quantitative analysis providing the basis for the conclusion and establishing the maximum number of units, by income category, which can reasonably be developed, rehabilitated, and conserved over the planning period. *See Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1108. The analysis should take into account the number of units projected by each action program listed in the element pursuant to section 65583(c) discussed below. The objective also should be based on assessments of current and anticipated economic conditions and available resources. Available resources should include funds available from state and federal sources, such as federal HOME funds, as well as local funds.

See [HCD Building Blocks: Program Requirements - Program Overview and Quantified Objectives](#).

EXAMPLE: One jurisdiction adopted a housing element with a program to adopt an inclusionary zoning ordinance. The housing element's quantified objectives included figures for units in the lower income and moderate-income RHNA categories that were attributed to the inclusionary zoning program. When the community subsequently suspended its inclusionary zoning ordinance without amending its housing element to change the quantified objectives, advocates sued and the court found that the suspension violated the Housing Element Law.

G. Program Setting Forth an Eight- (or Five-) Year Schedule of Implementation Actions. (§§ 65583(c) & 65583.2(h).)

The final section of the housing element is the program of actions. In this part, the community sets out concrete programs for fulfilling the goals and policies, and that support the community's quantified objectives established in the second section. Just as the second part of the element should include a corresponding goal/policy/objective for each need/resource deficiency/constraint identified in the first section, this final section should have a corresponding implementation action for each goal, policy, and objective.

1. General Requirements: Specific Actions & Essential Components.

Generally, the third section must contain:

(c) A program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which 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, provision of regulatory concessions and incentives, and 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 Code⁶²).. . . (§ 65583(c).)

Therefore, the program section must include implementation actions which involve:

- 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. See [HCD Building Blocks: Program Requirements - Program Overview and Quantified Objectives](#).

Each specific action should indicate the following:

- **Who is responsible?** Identify which agencies and which officials will be responsible for the implementation of the identified actions. (**§ 65583(c)(8).**)
- **The timeline.** Each action must have a timeline for its implementation **so that the actions can have “beneficial impacts” during the planning period.** (65583(c).) The “beneficial impacts” provision was added in 2008 by SB 375 and means, essentially, that programs must be scheduled for completion **before** the end of the planning period so that they will have their intended effect during the planning period. (Programs rezoning sites for lower income housing, however, must be rezoned within three of the due date of

⁶² Although redevelopment agencies were dissolved by the Dissolution Law, the remaining redevelopment low- and moderate- income housing funds were transferred to a Housing Successor Agency and continue to be dedicated to use for low- and moderate- income housing. See Health & Saf. Code § 34170 et seq.

the housing element, or within one-year if the element is not adopted within 120 days of the due date). *Buena Vista, supra*, 175 Cal.App.3d 289, and the statute itself recognize that, in some cases, it is appropriate for actions to be designated as ongoing without a specific start and finish date.

- **The proposed measurable outcomes, including numbers of units to be assisted.**⁶³ The more specific the implementation action, the more likely it is to be implemented, especially because the commitment to undertake a specific action is much easier to enforce than a vague or general goal. For example, a program to “encourage development of affordable housing” is not really a program at all – it does not require a specific action. It is far less meaningful than, for example, a program to mandate development by committing the local government to adopting an inclusionary zoning ordinance by a particular date. **An adequate program should require a particular action to be taken by a particular date.**

See [HCD Building Blocks: Program Requirements - Program Overview and Quantified Objectives](#).

HCD’s Building Blocks explains that, *in addition* to the features described above, programs should include:

- specific action steps
- proposed measurable outcomes
- demonstrate the locality’s firm commitment to implement
- identify funding sources, where appropriate

The program of actions must contain implementation actions in eight specific areas:

- Identify of adequate sites;
- Assist in the development of adequate housing;
- Address governmental and non-governmental constraints;
- Conserve the existing affordable housing stock;

⁶³ While one appellate court case found that quantification of the outcome of each program to determine the number of units that will result or benefit from the program is not always essential to legal compliance (*Buena Vista, supra*, 175 Cal.App.3d 289), with respect to the obligation to identify adequate sites (*see* discussion below), quantification of the number of units that can be accommodated by the sites is essential to determining whether sufficient sites have been identified to meet the community’s share of regional need.

- Promote housing opportunities for all, including groups protected by the fair housing laws;
- Promote development of affordable accessory dwelling units;
- Preserve assisted housing; and
- Affirmatively further fair housing.

All are discussed below.

2. Identification of Adequate Sites and Carry-over Sites. (§§ 65583(c)(1), 65583.2(h), & 65584.09.)

***IMPORTANT:* The obligation to identify and make sites available is one of the most important parts of the housing element because it obligates the community to zone sites at high enough densities and with sufficient infrastructure to make the development of affordable housing feasible.**

This obligation is the principal legal weapon to combat exclusionary zoning practices. (It also correlates to **section 65913.1** (the “Least Cost Zoning” law, discussed below) which requires communities to at all times zone sufficient vacant sites to meet their entire RHNA for each income category.)

Based on the results of the inventory of sites prepared in accordance with the assessment section of the element, the program of actions must identify sites for a variety of types of housing sufficient to meet the community’s RHNA for the planning period. (**§§ 65583(c)(1) & 65583.2(h).**) *And*, if the inventory of sites demonstrates that the community lacks sufficient sites to accommodate the RHNA for all income levels or the need for farmworker housing, the element must identify adequate sites at specified **minimum densities** to accommodate the shortfall of sites for lower income households and farmworkers that are **developable “by-right”** (without discretionary review) in developments in which **at least 20% of the units are affordable to lower income households.** (**§§ 65583(c)(1) & 65583.2 (c) & (h).**) *In addition*, if the community failed to make available sites to accommodate any portion of the RHNA from the prior planning period, the element should also contain an action program to zone or rezone adequate sites to accommodate that shortfall. (**§§ 65583(c)(1), 65584.09.**)

For jurisdictions required to adopt an **eight-year** housing element, any necessary rezoning because of a shortfall of adequate sites must be completed three years after either the date of the adoption of the element or 90 days after receipt of HCD’s comments on the draft element, whichever is earlier. (**§ 65583(c)(1)(A).**) This deadline for rezoning can be extended by one year, but only if the community has

already completed 75% of the required rezoning, and only if it makes findings, based on substantial evidence, that the rezonings cannot be completed because of either:

- Circumstances beyond the locality’s control;
- Infrastructure deficiencies due to fiscal or regulatory constraints; or
- The local government’s need to undertake a major revision to its general plan in order to accommodate housing related policies of a Sustainable Communities Strategy or Alternative Planning Strategy.

These findings must be sent to HCD with a detailed budget and schedule for adoption of the rezonings. (§ 65583(f).)

UPDATE: REZONING MUST BE COMPLETED *WITHIN ONE YEAR OF THE HOUSING ELEMENT DUE FOR THE SIXTH REVISION IF THE REVISION IS LATE.*

For the sixth revision of the housing element, if a jurisdiction fails to adopt a housing element that HCD has been found in substantial compliance within 120 days of the due date, it must complete the rezonings *within one year of the statutory due date for the housing element rather than three years.* (§ 65588(e)(4)(C) [AB 1398 (2021)].)

CAUTION: In 2022 the Legislature adopted SB 197 exempting from the one year rezoning requirement jurisdictions in which the sixth revision was due in 2021 that failed to adopt a housing element found in compliance by HCD provided they adopt a compliant housing element within one year of the original deadline. (65583.4 [Stats. 2022, ch. 70, § 1].) See PILP’s memorandum on [SB 197](#).

a) Adequate Sites in General.

The program must:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan 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.

(§ 65583(c)(1).)

Section 65584.09 calls for the sites identified for rezoning must be in addition to the “carryover” from the previous planning period (i.e., the sites that the jurisdiction failed to rezone during that period). It provides, in relevant part:

(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, 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.

(§ 65584.09(a).)

Therefore, the program must contain implementation actions to identify enough sites to accommodate:

- The number of units necessary to meet the RHNA for the new planning period; *and*
- The number of units the locality failed to provide sites to accommodate in the prior planning period.

HCD has developed some very helpful technical assistance materials and a comprehensive guidance on the provision of adequate sites. Please review them when your reviewing this aspect of the housing element. *See:*

- [HCD Building Blocks: Program Requirements - Identify Adequate Sites](#);
- [Housing Element Sites Inventory Guidebook](#); and
- HCD: Rezone to Permit By Right.⁶⁴

The implementation actions must identify sites that:

- **Will be made available** for development during the time frame of the element;
- **Are served by infrastructure** so that they are actually available for development; and,
- **Have appropriate zoning and development standards** that facilitate and encourage a variety of housing for all income levels, including:
 - multifamily rental housing

⁶⁴ [Priority Policy Area #1 – Rezone to Permit By Right | Housing Planning Hub Site \(arcgis.com\)](#)

- factory built housing
- mobilehomes
- farmworker housing
- supportive housing
- emergency shelters (which includes shelters for homeless persons)
- transitional housing
- single-room occupancy ("SRO") Units

See [HCD Memorandum, Rezoning Deadlines for Jurisdictions That Failed to Make Sites Available in Prior Planning Period \(AB 1233\), June 20, 2007](#) (Appendix B.) (explaining how to quantify the carryover sites).⁶⁵

b) Specifics of an Adequate Site.

An available site is one that likely to be available for development of lower income housing during the planning period. The Court of Appeal has indicated (in the context of sites for homeless shelters and transitional housing) that an adequate and "available" site:

. . . is one available for immediate development, which is located within reasonable access to public agencies and transportation services; will not require unusually high site development costs; has available public services and facilities; is consistent with the General Plan designation and site zoning so as to permit development of, conversion to or use of, a shelter or transitional housing without undue regulatory approval; and is consistent with applicable parking requirements, fire regulations and design standards.

Hoffmaster, 55 Cal.App.4th at 1112-13.

The sites must also be identified *specifically*. (**§ 65583.2.**) The requirements to identify sites in an element's inventory have become more specific over time, and with the Legislature's adoption of AB 2348 in each parcel must be identified by an Assessor's Parcel Number (APN). As the *Hoffmaster* court explained:

[F]or identification to be meaningful, it must necessarily be specific. It must set for sites which will be available to be developed, without restrictive zoning burdens which combined with the NIMBY (Not In My Back Yard) factor... become insurmountable or produce protracted delays and deterrent cost increases"

⁶⁵ <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab-1233-final-dt.pdf>

Hoffmaster, 55 Cal.App.4th at 1114.⁶⁶

As discussed above in § C of this chapter, a community may consider *non-vacant* sites as suitable and available for residential development provided the site is supported by a required analysis that it is likely to be available for redevelopment during the housing element planning period.

CAVEAT: Certain Sites Identified in Prior Housing Elements May Not Be Identified in the Current Housing Element to Accommodate Lower Income Housing Unless the Sites are Zoned By-Right to Require 20% Affordable:

. . . . 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. Notwithstanding the foregoing, for a local government that fails to adopt a housing element that the department has found to be in substantial compliance with state law within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning pursuant to this subdivision shall be completed no later than one year from the statutory deadline in Section 65588 for adoption of the housing element. . . .

(§ 65583.2(c))

Therefore, neither vacant sites identified in the previous *two* elements, nor non-vacant sites identified in the prior housing element may be identified as available for development of lower income housing in a revised housing element. This limitation helps ensure that a community will not continue to identify sites not truly suitable for affordable housing development. See [Housing Element Sites Inventory Guidebook](#) at

⁶⁶ *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1204, fn. 32, found this statement *dicta* when holding that Housing Element Law *prior* to the adoption of section 65583.2 did not require identification of *specific* sites, *but* the court also recognized that site specificity “facilitates the assessment of whether a locality’s housing element complies with the ‘adequate sites’ requirement . . .” *Id.* at 1199, fn. 24. And the court also found that AB 2348 adopted in 2004 [Stats. 2004, ch. 724] required all identified sites to be listed by parcel number. *Id.* at 1196.

11-12. 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. *Id.*

What Are “Appropriate Zoning and Development Standards?”

A community either must use the “default zoning densities” listed in section **65583.2(c)(3)(B)** (described in the discussion of the land inventory, above, § C) to determine whether a site is adequately zoned for lower income housing *or* must provide an analysis demonstrating how existing zoning densities below the default standard are sufficient to facilitate the development of housing affordable to the particular income level for which the site is deemed appropriate. The analysis must include market demand, financial feasibility, and information based on the experience of the community in developing housing for lower income households. (§ **65583.2(c)(3)(A).**)

If the inventory demonstrates that the community lacks zoning or sites that can accommodate the variety of types of housing required – multifamily rental, factory-built, mobilehomes, farmworker housing, emergency shelters, or transitional housing – the program should provide actions that will result in the necessary rezoning or amendment of the zoning code to make appropriate sites available in those categories. (§ **65583.2(c).**)

Appropriate development standards (i.e., land use controls, building codes, site improvement and setback standards, Floor Area Ratios (FARs), etc.) are those that do not place a significant constraint on the physical or financial development of housing for persons at the income level designated for the site. *See also* the articulation of this principle in the “Least Cost Zoning” Law, **section 65913.1**, discussed in (d), below. The determination of the appropriateness of specific development standards should be made in the context of the analysis of governmental constraints completed pursuant to **section 65583(a)(5)** (discussed in § D of this chapter). *See also*, [HCD Building Blocks: Program Requirements - Identify Adequate Sites](#).

c) “By Right” Multifamily Sites at Minimum Densities for Low & Very Low-income Household Needs. (§§ 65583(c)(1)(A), (B), & 65583.2 (c) & (h).)

Where the inventory reveals insufficient sites to accommodate the housing needs for all income levels, the program section must provide sufficient sites, developable “by right” at multifamily densities in which 20% of the units are affordable to lower income households, and with “minimum density and development standards” to provide “100% of the shortfall of sites necessary to accommodate the remaining housing need for very low- and low-income households.”

See [HCD Memorandum, Inventory and Suitability of Sites/Default Densities \(AB 2348\), June 9, 2005](#) (Appendix B) at 3-4 (interpreting sections **65583(c)(1)**) and **65583.2(h)**).⁶⁷

Section 65583(c)(1)(A) governs eight-year elements and provides for completion of rezoning within three years *unless the jurisdiction fails to adopt an adequate housing element within 120 days of the due date of the housing element, in which case the zoning must be completed within one year of the due date for adoption of the element*. Sub-paragraph (B) applies to elements of periods less than eight years and provides that rezonings must be completed so that *development* can occur within the planning period:

(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, rezonings of those sites, including 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 one year 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 subdivision (b) of Section 65583.2.

(§ 65583(c)(1)(A)-(B).)

Rezonings pursuant to either sub-paragraph (A) or (B) must comply with the “by right,” 20% affordability, and *minimum density* requirements in section 65583.2(h):

⁶⁷ <http://www.hcd.ca.gov/grants-funding/active-funding/iigp/docs/ab2348stat04ch724.pdf>

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 . . .

(§ 65583.2(h).)

What Does “By Right” Mean?

“Use by right” generally means that the use is a “permitted” use, not subject to any conditions, including a conditional use permit. The concept is to require the community to identify sites that are available for development of affordable housing without any discretionary review, which could result in the denial of a building permit or imposition of prohibitive or unreasonable development conditions or standards. If the developer presents a project that complies with the locality’s zoning and building standards, the community must issue building permit ministerially, i.e., without imposition of conditions or standards over and about those required by the zoning ordinance or building code.

See [HCD Building Blocks: Program Requirements - Identify Adequate Sites](#); HCD Rezone By Right TA, *supra*⁶⁸; and [Housing Element Sites Inventory Guidebook](#). The statute provides:

(i) For purposes of this section [65583.2] and Section 65583, the phrase “use by right” shall mean 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 [CEQA]. 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 [CEQA]. Use by

⁶⁸ [Priority Policy Area #1 - Rezone to Permit By Right | Housing Planning Hub Site \(arccgis.com\)](#)

right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.⁶⁹ (§ 65583.2(i).)

The only exception to the by-right approval requirement is that the community may subject a development to its local design review process.

However, the design review process may not go beyond requiring compliance with previously defined *objective* design standards. Otherwise, it would rise to the level of discretionary review, which is expressly prohibited.

The statute references “CEQA,” the California Environmental Quality Act (Pub. Resources Code § 21100 *et seq.*) and its definition of “project” as a shorthand way of determining when local permit issuance requirements constitute discretionary review prohibited by the statute. Under CEQA, local government actions only become a *project* triggering environmental review when they involve *discretionary* action. In this context, HCD makes clear in its Sites Inventory Guidebook that:

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.)

See [Housing Element Sites Inventory Guidebook](#) at 12.

What is “Multifamily” and Minimum Density?

The statute refers to “multifamily” development, but it defines multifamily in terms of *minimum lot size, density, and development standards*, rather than building type:

....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 [section 65583.2(c)(3)(B)(i)] and at least 20 units per acre in jurisdictions described in [sections 65583.2(c)(3)(B)(iii) & (iv)]....

(§ 65583.2(h).)

⁶⁹ Section **65589.5(f)** permits a local agency to require developments to comply with zoning and development standards consistent with meeting the quantified objectives and to impose fees to provide services and facilities.

Therefore, for localities within *non-metropolitan counties* or for *non-metropolitan counties* with *micropolitan* areas, multifamily means lots that can accommodate at least 16 units on one acre. For localities in *suburban jurisdictions* or *metropolitan counties*, multifamily means lots that can accommodate at least 20 units on one acre. See the discussion of these categories in § C of this chapter and [HCD Memorandum, AB 2348](#), which includes definitions and a table indicating the category of each California jurisdiction.

See [HCD Building Blocks: Program Requirements - Identify Adequate Sites](#).

The Re-zoned Sites Must Be Either Exclusively for Residential Use or Certain Specific Mixed-use Sites.

Although AB 2348 required that at least 50 percent of the shortfall be accommodated on sites that only allowed residential development, further changes to the law now allow a community to accommodate the shortfall on mixed use sites if the sites allow 100 percent residential development on Mixed-Use sites and residential development is required to occupy at least 50 percent of the total floor space:

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 uses project. (§ 65583.2(h).)

Where a mixed-use site is identified as developable by-right, both the residential and nonresidential uses must be permitted by right.

d) Correlation to the “Least Cost Zoning” Law (§ 65913.1) and “No-Net-Loss” Law. (§ 65863.)

The obligation to zone by-right sites if there is a shortfall must be applied in conjunction with section **65913.1** (the “least cost zoning” statute) and section **65863** (the “no-net-loss” statute). Section 65913.1 requires communities to zone sufficient sites to meet the entire share of the regional housing need. **Taken together, these linked obligations mandate the locality to designate and zone sufficient sites to meet the community’s RHNA for very low, low- and moderate-income**

households during the housing element period, soon enough to enable development during the planning period.⁷⁰

Section 65913.1 provides, in part:

In exercising its authority to zone for land uses and in revising its housing element pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, a city, county, or city and county shall designate and zone sufficient vacant land for residential use with appropriate standards, in relation to zoning for nonresidential use, and in relation to growth projections of the general plan to meet housing needs for all income categories as identified in the housing element of the general plan. For the purposes of this section:

(1) "Appropriate standards" means densities and requirements with respect to minimum floor areas, building setbacks, rear and side yards, parking, the percentage of a lot that may be occupied by a structure, amenities, and other requirements imposed on residential lots pursuant to the zoning authority which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health and safety, and the need to facilitate the development of housing affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and to persons and families of lower income, as defined in Section 50079.5 of the Health and Safety Code. However, nothing in this section shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to construct this housing.

Similarly, section **65863(a)** requires a local government to ensure that “at all times” its land inventory [§ 65583(a)(3).] or programs for adequate sites (§ 65583(c)(1).) can accommodate its share of the regional housing need **throughout the planning period.**

Consequently, in addition to identifying sites, that are available, served by infrastructure and zoned for multifamily development by right, to comply with the

⁷⁰ *Fonseca*, 148 Cal.App.4th 1174 held that the tandem requirements of the Housing Element Law and Least Cost Zoning Law “do not require immediate action and permits a locality to act within the planning period to meet the regional needs.” *Id.* at 1209. **But since the opinion was issued, the Housing Element Law has been amended to mandate that rezoning required by an eight year housing element be completed within three years (§ 65583(c)(1)(A)) [and within one year if the housing element is not adopted by the deadline] and that any zoning required by a prior housing element but not completed [the “carryover” requirement], must be completed within one year of the due date of the new housing element. (§ 65584.09.) See above.**

obligation to identify *adequate* sites, the implementation action must indicate that there are enough sites to accommodate the community's share of the regional need.

e) Sites for Farmworker Housing. (§ 65583(c)(1)(C).)

Similar to the by-right multi-family requirements described above, section 65583(c)(1)(C) triggers an obligation to include an implementation action that will result in zoning that permits farmworker housing development by-right where the inventory does not include enough sites to meet the community's need for farmworker housing:

(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.

(§ 65583(c)(1)(C).)

The community is required to assess the need for farmworker housing in the first section of the housing element. **(§ 65583(a)(7).)** As with sites for very low- and low-income housing, the sites identified for farmworker housing must be zoned at densities that make the development of housing for low- and very low-income farmworker households feasible. The sites also must not be subject to development standards so restrictive as to undermine development feasibility.

The sites should be appropriate in terms of location and development standards to facilitate housing for farmworkers. The program should identify zones where housing for permanent and, if needed, migrant farmworker housing is permitted. See [HCD Building Blocks: Site Inventory and Analysis - Zoning for a Variety of Housing Types](#).

f) Sites for Emergency Shelters and Transitional Housing. (§ 65583(c)(1) & (d).)

As discussed, section 65583(a)(4) requires communities to provide zones where shelters and transitional housing are permitted, even if there is no identified need for shelters. The programs of actions, consequently, must include a program to establish zoning for shelters and transitional housing if the current zoning does not permit the use. **(§ 65583(c)(1).)** Even if a community allows shelters within a certain designated zones, there must be sufficient capacity within that zone or zones to accommodate the need for shelters identified in the assessment. If the identified need surpasses the availability of sites within the zones where shelters are permitted by-right, there should be a program to identify additional sites where emergency shelters are permitted without discretionary review.

Sites for emergency shelters, including shelters for homeless people, and transitional housing should be located near public services and public transportation. The zoning and development standards for the sites should facilitate and encourage, rather than burden or impede development or invite community opposition. *See Hoffmaster*, 55 Cal.App.4th at 1112-1113. Most communities accomplish this goal by allowing development of shelters and transitional housing in particular zones. If the jurisdiction imposes conditions on development, they should regulate the use, not the users. *See [HCD Building Blocks: Site Inventory and Analysis - Zoning for a Variety of Housing Types](#)*.

A local government may satisfy all or part of this requirement to identify zones for suitable sites by entering into a multijurisdictional agreement with other local governments. (**§ 65583(d).**) The agreement must require that the jurisdictions develop at least one year-round shelter within two years of the start of the housing element planning period. The agreement must allocate a portion of new shelter capacity to each jurisdiction as a credit towards its emergency shelter need (as determined pursuant to section **65583(a)(7)**), and the housing element must indicate how the credit was allocated. In addition, the element must describe: 1) how the joint facility will meet the jurisdictions shelter need, 2) the jurisdictions contribution to the facility, and 3) the amount and source of funding contributed by the facility. (**§ 65583(d).**)

See [HCD Memorandum, SB 2](#).

Example of determining whether there is sufficient capacity to accommodate the RHNA by income [[Housing Element Sites Inventory Guidebook](#) at 32]):

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		

Adjustment Factor	Very Low	Low	Moderate	Above Moderate
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. [[Housing Element Sites Inventory Guidebook](#) at 32.]

g) Alternative Methods of Identifying Sites. (§ 65583.1 & § 65852.2.)

Just as the inventory of sites may include developed sites with redevelopment potential as well as vacant land (**§ 65583(a)(3).**), HCD is *authorized, but is not mandated to authorize, to allow* identification by a variety of means:

*(a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. (**§ 65583.1(a)** [*emphasis added*].)*

See [HCD Building Blocks: Site Inventory and Analysis - Adequate Sites Alternative](#). However, these alternatives have critical restrictions and anti-displacement protections:

- *They are not available to a jurisdiction that failed to accommodate any of its very low- or low-income RHNA in the previous housing element planning period. (§ 65583.1(c)(3).)*
- If by the end of the third year of the planning period a jurisdiction fails to enter into agreements to convert, rehabilitate or preserve the units it promises using this alternative method, it must amend its housing element by the fourth year of the housing element due date that identifies suitable and available alternative sites sufficient to accommodate the lower income households that would have been accommodated through this alternative method. (§ 65583.1(c)(7).)
- Lower income tenants displaced by implementation of any of these alternatives must be provided with relocation and replacement housing assistance consistent with the requirements of section 7260 et seq. (See generally § 65583.1(c).)

These alternative methods include:

Alternative Sites	Requirements
Rezoning, Redevelopment, Annexation	Must be available during the planning period.
Military Bases	Permanent housing units that are available for occupancy.
Rehabilitation	Rehab only of uninhabitable units, tenants get relocation benefits and right to reoccupy, affordable for 55 years.
Acquired/Converted	Convert to affordable units through acquisition or purchase of covenants, affordable for 55 years.
Converted hotel, motel, or hostel units (COVID-19 Response)	For unhoused, lower income, for 55 years.
Mobilehome Park Spaces	Park acquired, 50% of residents lower income, rented at 50% of TCAC rents, 5% annual increase limit., 55 year affordability.

Alternative Sites	Requirements
Preservation	Preserves, for 55 years, existing subsidized units at-risk of converting to market rate.
Accessory Dwelling Units	<p>Projections must be based on findings regarding prior creation of ADUs, their affordability, community need, <i>and</i> the availability as rental stock.</p> <p>See HCD Building Blocks: Site Inventory and Analysis - ADU and JADUs.</p> <p>See HCD Memorandum, ADU and JADUs, January 10, 2020⁷¹ and HCD Memorandum, ADU Legislation (SB 229 & AB 494), May 29, 2018. (Appendix B.)⁷²</p>

Redevelopment, Rezoning, and Annexation.

In this context, HCD may allow sites with the following redevelopment potential:

- mixed use zoning
- second units
- recycling of developed land to residential use
- increasing densities of under-utilized land

HCD in some circumstances will also permit a community to identify sites by an implementation action that results in rezoning vacant, nonresidential land or annexation of land for residential use. The inclusion of these kinds of sites is only appropriate if the implementation action includes a requirement that the rezoning or annexation occur in sufficient time to permit development during the housing element period of the element.

See [HCD Building Blocks: Site Inventory and Analysis - Adequate Sites Alternative](#).

Military Base Reuse.

⁷¹ https://www.hcd.ca.gov/community-development/housing-element/docs/ADU_TA_Memo_Final_01-10-20.pdf

⁷² <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Accessory-Dwelling-Unit-Legislation.pdf>

Section **65583.1(b)** also permits, *but does not mandate*, a community to include permanent housing units on military bases undergoing closure in limited circumstances. The housing units must be available for occupancy during the planning period and units designated for demolition or conversion do not qualify.

Rehabilitation, Acquisition, or Subsidy.

Although a primary purpose of the Housing Element Law is to ensure that communities *increase* the supply of housing to meet their needs, the law recognizes that in some circumstances the rehabilitation, preservation or conversion/acquisition of existing units is an appropriate means of increasing affordable housing and that HCD *may allow them to be counted for no more than 25% of the RHNA* in any income category. *However, the law requires that any displaced tenants are provided comparable housing and relocation assistance.* Section **65583.1(c)** permits HCD to allow a community 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...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...to low- and very low income households at affordable housing costs or affordable rents. . . .

This subdivision is quite intricate, and anyone faced with a jurisdiction attempting to utilize this provision should consult *HCD's Building Blocks* on this issue.

See [HCD Building Blocks: Site Inventory and Analysis - Adequate Sites Alternative](#).

See also [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 \(RHNA\).\)](#) (Appendix B.)⁷³

In summary, the provision permits HCD to allow communities to subtract from the RHNA in any income category a number equal to the number of units provided through an action that increases the supply of units through the provision "committed assistance" to either: 1) rehabilitate dilapidated units; 2) convert non-affordable units to affordable units; or, 3) preserve existing affordable units during the time frame of the element. If the committed assistance is not provided by the third year of the housing

⁷³ <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/alt-adeq-sites082412.pdf>

element period, the community must amend its element by the fourth year to identify adequate sites to accommodate the number of units that were not provided.

Rehabilitated Units. (§ 65583.1(c)(2)(A).) For rehabilitated units to qualify: 1) the units must be extremely dilapidated and at imminent risk of condemnation; 2) any tenant must be provided with full relocation benefits, comparable housing and the right to reoccupy (*see below*); and 3) the units must remain affordable for 55 years.

Acquired or Converted Market Rate Units and Certain Foreclosed Units in Multifamily Complexes. (§ 65583.1(c)(2)(B).) Eligible units are: i) rental and ownership units in complexes of **three** units or more; ii) non-affordable; iii) either unoccupied by low- or very low-income households or if occupied by households of those income levels, the tenants are provided with specified relocation assistance; and iv) converted to units available and affordable to low- or very low-income households for 55 years through acquisition or the purchase of “affordability covenants.” If ownership units are converted to affordable units, they only may be counted against the RHNA *if the housing element demonstrates that an equal number of affordable rental units will also be added sometime within the housing element planning period.*

Preservation Units. (§ 65583.1(c)(2)(C).) A community may be allowed to receive credit towards its RHNA site identification obligation if it preserves existing government subsidized units at-risk of converting to market rate rents for a period of at least 55 years through acquisition or the purchase of affordability covenants.

Units in a Hotel, Motel, or Hostel Converted in Response to COVID 19. (§ 65583.1(c)(2)(D).) A community may be allowed to receive credit towards its RHNA site identification obligation if units in hotels, motels or hostels are converted to affordable housing with committed assistance from the city or county and constitute a net increase in the housing stock affordable to low- and very low-income households, provided the units are: i) converted in response to COVID 19 and made available to persons experiencing homelessness; ii) made available at a cost affordable to very low- or low-income households for 55 years.

Mobilehome Park Spaces. (§ 65583.1(c)(2)(E).) HCD may allow credit towards the RHNA site identification require if the community causes acquisition of mobilehome park spaces with committed assistance and: i) the mobilehome park is acquired with HCD funding; ii) at least 50% of the residents of the park are lower income; iii) the entity acquiring the park enters into a 55 year regulatory agreement requiring all vacant spaces be rented at no more than 50% of the maximum of the California Tax Allocation Committee rents and space rent for existing tenants not be increased by more than 5% annually.

Accessory Dwelling Units. An accessory dwelling unit, sometimes referred to as a second unit or an in-law unit, or abbreviated ADU, is “an attached or a detached

residential dwelling unit which provides complete independent living facilities for one or more persons . . . [that includes] permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.” (§ **65852(j)(4).**) HCD “may allow” a jurisdiction “to identify sites for accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department.” (§ **65583.1(a).**)⁷⁴

The projection of how many ADUs will be created during the planning period, therefore, must be based on findings regarding:

- *The number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right*
- *[T]he need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.*

(§ 65583.1(a).)

To count the anticipated ADUs toward its very low-, low-, or moderate-income RHNA, the jurisdiction must also analyze the anticipated affordability of ADUs and justify its affordability projections based on data (e.g., a survey of actual rents being charged for existing ADUs). HCD’s Building Blocks provides:

Under certain circumstances, a local government may credit their adequate sites requirement per income category through ADUs or JADUs based on the number of these units developed in the prior housing element planning period, whether or not the units are permitted by right, the need for these units in the community, the resources, or incentives available for their development, and any other relevant factors as determined by the Department.

See [HCD Building Blocks: Site Inventory and Analysis - Accessory Dwelling Units \(ADU\) and Junior Accessory Dwelling Units \(JADUs\)](#) and [Adequate Sites Alternative](#).

See also [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 \(ADU](#)

⁷⁴ “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.” (§ **65852.2(m)** *emphasis added.*)

2020)⁷⁵ and [HCD Memorandum, Accessory Dwelling Unit \(ADU\) Legislation \(SB 229 & AB 494\), May 29, 2018 \(ADU 2018\)](#). (Appendix B.)⁷⁶

Anti-Displacement Protections to Alternatives to Adequate Sites.

Units Where Tenants Have Been Displaced Are Not Eligible to Address RHNA Unless Tenants Relocated & Relocation Assistance Provided. (§ 65583.1(c)(2)(A)(i).)

If tenants are displaced from units the locality seeks to count towards its RHNA due to **rehabilitation**, *the units may not be counted unless the tenants are provided with relocation assistance payments* equivalent to those required by California's Relocation Assistance law (**§ 7260 et seq.**) prior to displacement. (**§ 65583.1(c)(2)(A)(i).**) The relocation assistance statutes require that tenants be moved to *comparable housing* and provided with enough funds to cover moving expenses and sufficient rent subsidy to ensure that tenants pay no more than 30% of their income for at least 42 months.

If tenants are displaced due to **acquisition**, the units may not be counted unless the tenants are provided with relocation assistance, prior to displacement, that at minimum provides, *"the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required by Section 7260."* (**§ 65583.1(c)(2)(B)(iii).**)

3. Assist in the Development of Affordable Housing. (§ 65583(c)(2).)

The program must include implementation actions that provide some assistance in the development of housing to meet the community's affordable housing needs. Section 65583(c)(2) requires a program to: *Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.* As HCD says in its Building Blocks: "Having assessed and identified the housing needs of extremely low-, very low-, low-, and moderate-income households, including special needs households, localities must employ a sufficient number of strategies to assist in developing adequate housing to meet those needs."

See [HCD Building Blocks: Program Requirements - Assist in the Development of Housing](#).

⁷⁵ https://www.hcd.ca.gov/community-development/housing-element/docs/ADU_TA_Memo_Final_01-10-20.pdf

⁷⁶ <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Accessory-Dwelling-Unit-Legislation.pdf>

Assistance can take many forms, but the action should be concrete and specific. For instance, the program might address the *adoption and utilization of local housing trust funds, funds from any program enacted to replace the loss of redevelopment and federal and state subsidies.*

4. Address and Remove Governmental Constraints. (§ 65583(c)(3).)

The corollary of the requirement to analyze governmental constraints in the first section of the housing element (§ 65583(a)(5)) is a requirement to have a program that addresses, and where possible, removes those identified constraints:

(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, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. Supportive housing, as defined in Section 65650, shall be a use by right in all zones where multifamily and mixed uses are permitted, as provided in Article 11 (commencing with Section 65650).

(§ 65583(c)(3) (emphasis added).)

For each constraint identified in that subdivision, and for any additional constraints included in the analysis by the local government, the program section should include an implementation action which addresses the constraint in concrete fashion. This program must also include actions to remove constraints to, or make “reasonable accommodations” for, the development of housing for persons with disabilities. And removal of constraints now includes the elimination or revision of any regulation that subjects *transitional housing and supportive housing* to restrictions not applicable to other residential dwellings permitted in the same zone. In all zones where multifamily housing and mixed used development is permitted, the community must allow supportive housing development by-right.

If the implementation actions addressing constraints do not provide for the removal of each constraint, the program should explain why it is not appropriate and/or not legally possible to remove the constraint. An example of a constraint that is not legally possible to remove would be a development restriction required by state or federal environmental laws. An example of legal constraint that **is** possible to remove or cease enforcing is a growth restriction law – even one adopted by initiative – that

conflicts with state law. *See e.g., Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, indicating that Pleasanton’s initiative adopted growth cap was inconsistent with the Housing Element Law.

a) Removal of Constraints to Housing for Lower Income Households.

The program must address barriers imposed by local government to affordable housing development in the following areas: land use controls, codes or code enforcement procedures, site improvement requirements, fees and exactions, and permit processing procedures. HCD’s *Building Blocks* provide that “[f]or each policy, procedure, or requirement identified as a governmental constraint, the housing element must include programs to address and remove or mitigate the constraint.” Please review the HCD Building Blocks for examples of action programs.

See [HCD Building Blocks: Program Requirements - Address and Remove \(or Mitigate\) Constraints](#).

Actions pursuant to this subdivision could include some required by the beginning paragraph of section 65583(c): 1) *regulatory concessions and incentives* for the development of affordable housing (like those described in the **Density Bonus law**, section **65915.**); and 2) relaxation of *administration of land use and development controls*. (*See* § D.1 of this chapter.)

b) Removal of Constraints & Provision of Reasonable Accommodations for Housing for Persons with Disabilities.

Based on the analysis of constraints, in accordance with [HCD Memorandum, SB 520](#), interpreting the requirement to analyze any local constraints on the development of housing for persons with disabilities, the program must address and, if possible, remove identified barriers. (*See* § D.1(b) of this chapter.) If the locality lacks a process or standards for developers to request reasonable accommodations for housing for disabled persons, the locality’s programs should include an implementation action to establish a reasonable accommodation policy. The HCD website includes a model [Reasonable Accommodation ordinance](#).⁷⁷

If the locality has barriers to development of housing with supportive services, such as *group homes*, the program should include an implementation action to address the barriers.

⁷⁷ https://www.hcd.ca.gov/community-development/building-blocks/program-requirements/address-remove-mitigate-constraints/docs/model_reasonable_accommodation_ordinance.pdf

5. Conserve Affordability and Improve Condition of Market-rate Affordable Housing Stock. (§ 65583(c)(4).)

(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.

(§ 65583(c)(4).)

Housing elements must contain a program that addresses both the conservation of affordable market rate units *and* the improvement of the condition of those units. When the modern Housing Element Law was first adopted in 1980 some local governments contended that this subdivision required only a program to address the physical condition of affordable market rate units. The two obligations, however, were distinct as recognized by HCD from the beginning and as confirmed in 1985 by the court in *Buena Vista*, 175 Cal.App.3d at 294, 302-303. The court found that the requirement included “conservation of the existing affordable housing opportunities in the community.” (*Id.* at 299). The City had approved a permit for demolition of over 1000 units of apartments and their replacement with over 2000 condominiums without a housing element program to address the conservation of affordable units or mobile home parks.

Implementation actions addressing conditions and improvement must, at minimum, address 1) conserving the affordability of existing housing (sometimes identified by the misnomer “naturally occurring affordable housing”), and 2) Improving the physical condition of existing housings stock.

[See HCD Building Blocks: Program Requirements - Improve and Conserve the Existing Housing Stock.](#)

Implementation actions to *conserve existing affordability* must address demolition and conversion of units and can include requirement of replacement units. Displacement can be due to public or private action and the programs should protect tenants and in the case of mobilehomes, owners, from displacement due to gentrification and conversion as well as public action, such as condemnation. Potential implementation actions could be adopting a mobilehome conversion ordinance that requires the community to make specific findings prior to approving the conversion of a mobilehome park to another use and requiring relocation assistance to the home owners if the conversion is approved. In cities with rent control, there should be specific actions to maintain the inventory of rent controlled units. In cities without rent control, programs to adopt rent control should be considered.

See [HCD Building Blocks: Program Requirements - Improve and Conserve the Existing Housing Stock](#).

Implementation action to *improve the condition* of existing housing should include any needs based on housing characteristics, including *overcrowding* and *housing conditions* identified in the analysis required in the first section of the element. (§ 65583(a)(2).) They should also focus on issues of *code enforcement* and inspection. And, this subdivision provides an opportunity for communities to address *displacement*, including actions to control *demolitions and conversions* (including **condominium conversions**) and requiring *relocation benefits and replacement housing* for persons displaced.

6. Promote Fair Housing. (§ 65583(c)(5).)

(5) Promote 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, 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.

(§ 65583(c)(5).)

Pursuant to this subdivision, the housing element must include implementation actions that promote equal housing opportunities and, with the adoption of AB 686 [Stats. 2018, ch. 958], affirmatively further fair housing opportunities. (The legislation also added subdivision (c)(10) specifically requiring a program to affirmatively further fair housing (AFFH) in accordance with federal Fair Housing Law – see § G.10 below.) The language mentions particular groups, but the provision requires components that promote fair housing for *all persons*. In this context, HCD has construed obligation to mean that the program must address all groups currently protected by state and federal fair housing laws, and the protected characteristics now include *source of income, sexual orientation, gender, gender identity, gender expression, or genetic information*. (See § 12955 *et seq.*)

See [HCD Building Blocks: Program Requirements - Provide Equal Housing Opportunities](#).

(Caveat: This section of HCD Building Blocks does not yet include the new AFFH obligation.)

Implementation actions in this area should address both discrimination in the sale and rental of housing and in the land use laws, policies and actions of the local government. Actions should address investigating and resolving discrimination complaints involving landlords, property management companies, and banks, or other

lending institutions. The implementation actions should focus on the location of zones where multi-family homes and emergency shelters are currently located.

In addition to protecting the protected classes from discrimination in the sale and rental of housing, state and federal fair housing laws also prohibit local governments from discriminating in the exercise of their land use and zoning powers. **(See §§ 12955(/) and 65008.)** Those protected include not only the traditional classifications but also the **developers and occupants of low- and moderate-income housing, transitional housing, and emergency shelters**. Any local law or policy that treats subsidized housing or the low-income occupants of subsidized housing differently than market rate housing or its occupants violates these laws.

In preparing this part of the program of actions, the local government should also keep in mind that the fair housing laws prohibit laws and actions that have a *discriminatory effect* on the protected groups as well as those that intentionally discriminate. **(See § 12955.8)** An outwardly neutral practice – such as a prohibition on the development of multifamily housing – could violate the fair housing laws if the exclusion of multifamily housing falls disproportionately on minority households or low-income households. **Accordingly, constraints to the development of affordable housing identified in the analysis section of the element should also be analyzed for their impacts on groups protected by the fair housing laws.**

Note: In this regard, in jurisdictions that receive funds from HUD, this part of the program should include actions that address the required “Assessment of Fair Housing” (AFH)⁷⁸ or the Analysis of Impediments. *See Chapter I, § H. And, although the Trump administration suspended the rule requiring preparation of an AFH, with the adoption of AB 686 (as amended by AB 1304 (in 2021)), the duty to affirmatively further fair housing still applies in California and the Biden Administration is in the process of proposing a revised reinstatement of the federal rule. Section 8899.50 imposes a stand-alone AFFH obligation more strict than the federal and the Housing Element Law now requires that each housing element include a program requiring an AFH in conformance with the federal rule. See discussion below of the required AFFH program in the housing element. (§ 65583(c)(10).) (See § 11. Affirmatively Furthering Fair Housing (AFFH), below.)*

7. Preserve Assisted Housing. (§ 65583(c)(6).)

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for

⁷⁸ The rule requiring future Assessments of Fair Housing was suspended until 2020, but an existing Analysis of Impediments will continue to apply.

preservation of 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.

(§ 65583(c)(6).)

This requirement is very precise. The program must address every assisted development identified as being at risk of conversion to market rate housing with an implementation action. And to the degree necessary, the actions must provide for the application for and utilization of any available federal, state or local funding, unless the community can demonstrate that it has “other urgent needs” for the funding. Other urgent needs would probably include completion of new assisted housing to which the locality has already made a commitment, or the development of replacement housing for the units being lost.

See [HCD Building Blocks: Program Requirements - Preserve Units at Risk of Conversion to Market Rates](#).

One of the possible strategies identified is local regulation which could take the form of a local requirement to notify local government and qualified entities when the owner of subsidized units intends to opt-out of the subsidy or pre-pay a subsidized mortgage. The action item could also be outreach to the owners of subsidized owners on a regular basis to determine their plans for the property.

8. Plan That Promotes Creation of ADUs at Affordable Rents. (§ 65583(c)(7).)

(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.

(§ 65583(c)(7).)

Housing elements must now include a specific program to facilitate the creation of Alternative Dwelling Units that will have rents affordable to very low, low, or moderate-income households. HCD issued memoranda in 2018 and 2020 describing the recent legislation that provides for development of ADU’s and Junior ADU’s by-right under specified circumstances:

See [HCD Memorandum, ADU 2020](#) and [HCD Memorandum, ADU 2018](#).

However, the more recent legislation and HCD’s memos do not provide for specific mechanisms or incentives that will result in the development of affordable ADU’s or Junior ADU’s. The housing element program must nevertheless contain a plan for doing so.

9. Consistency with the General Plan and Other Community Goals. (§ 65583(c)(8).)

(8) 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.

(§ 65583(c)(8).)

As discussed in Chapter I, all land use decisions, ordinances, and policies must be consistent with the general plan and all elements of the plan must be internally consistent. (See **§ 65300.5**.) Because the housing element is the only element of the general plan that must be updated regularly, it is quite possible that goals and policies and implementation actions developed when the element is revised could conflict with those of other elements. The program should address this and provide an implementation action requiring the revision of any inconsistent elements at the same time as the adoption of the final housing element.

In addition to reviewing for consistency between different elements of the General Plan (e.g., the land use element), the community may also have other land use documents which contain policies and programs that may be inconsistent with the revised housing element. These could be a local **redevelopment** plan or stand-alone statement of policy (i.e., “Mayor’s Housing Program”). The housing element preparation process should identify and resolve these conflicts, and then describe the achievement of consistency in the final element.

See [HCD Building Blocks: Other Requirements - Analysis of Consistency with General Plan and Coastal Zone Requirements](#).

10. Public Participation. (§ 65583(c)(9).)

(9) 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.

(§ 65583(c)(9).)

Because the law already requires that prior to adopting or amending any portion of its general plan, the planning commission and legislative body of the local

government must hold properly noticed public hearings, the actions describe in section 65583(c)(9) require more than public hearings to adopt the housing element. (However, *Buena Vista, supra*, 175 Cal.App.3d 289 held failure to include this is not fatal if adequate participation was *actually* achieved.)

The program of actions must demonstrate that the locality took affirmative steps to get input from low-income persons and their representatives as well as other members of the community in *the development* of the housing element. This means that input should be sought, received, and considered *before* the *draft* housing element is completed. Examples of ways of achieving public participation include setting up citizen advisory committees, the circulation of initial drafts to interested persons and groups, and targeted outreach such as presentations to community groups, and at public meetings held in either a variety of locations or a central location near to transportation. Public meetings should be accessible to people with disabilities, be held after work hours, and advertised in several languages.

See [HCD Building Blocks: Getting Started - Public Participation](#).

11. Affirmatively Furthering Fair Housing (AFFH). (§ 65583(c)(10).)

(10) (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 and affluence, disparities in access to opportunity, and disproportionate housing needs, including displacement risk. The analysis shall identify and examine such patterns, trends, areas, disparities, and needs, both within the jurisdiction and comparing the jurisdiction to the region in which it is located, based on race 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) and Section 65008.

(iii) An assessment of the contributing factors, including the local and regional historical origins and current policies and practices, for the fair housing issues identified under clauses (i) and (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.

(§ 65583(c)(10).)

This program was added in 2018 by AB 686 [Stats. 2018, ch. 958] and amended by AB 1304 [Stats. 2021, ch. 357] with the purpose of preserving and expanding in California the federal Fair Housing Law obligation that all public agencies affirmatively further fair housing (AFFH). **(42 U.S.C. § 3608; Affirmatively Furthering Fair Housing Rule (80 Fed. Reg. 136 at 42272-42371 (July 16, 2015))).** As of the publication of the 5th edition of this manual, the Rule remains suspended as it was by the Trump administration, though the Biden administration is in the process of revising and reinstating the federal rule. AB 686, however, added an independent obligation in California law that all California public agencies affirmatively further fair housing. **(§ 8899.50)** A program to affirmatively further fair housing must be included in all elements due after January 1, 2021, which includes all large urban regions and many suburban and rural areas as well. In particular, the program must include an Assessment of Fair Housing (AFH) that meets both the general requirements of section 8899.50 and the minimum requirements of the federal rule. ([6th Cycle Housing Element Update Schedules.](#))

Section 8899.50 draws on the language of the federal rule to explain the meaning of the duty of all public agencies to affirmatively further fair housing. It provides:

“Affirmatively furthering fair housing” means that all public agencies take:

. . . meaningful actions, in addition to combatting 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.

(§ 8899.50(a)(1).)

Significantly, section 8899.50(b)(1) also expressly requires a public agency to “*take no action that is materially inconsistent with its obligation to affirmatively further fair housing.*” This is analogous to the Housing Element Law and General Plan Law prohibitions on a community taking an action inconsistent with its housing element or any other element of its general plan. Breach of this mandated consistency obligation by a local government provides advocates with a clear path to enforce the AFFH duty. See **§ 8899.50(b)(2).**

Implementing actions for this program must include the general components specified in the statute and should be guided by the federal Affirmatively Furthering Fair Housing Rule as adopted on July 16, 2016 cited above (codified at **24 C.F.R. § 5.150**) *regardless of whether the Rule remains suspended or is amended in the future.*

Following the federal Rule (and akin to the housing element obligation to assess housing needs and constraints to accommodation), the AFH in the program must “analyze and assess contributing factors to segregation patterns, “racially or ethnically concentrated areas of poverty and affluence, disparities in access to opportunity, and disproportionate housing needs, including displacement risk.” (**§ 65583(c)(10)(A)(ii).**) The express reference to *displacement risk is in addition to the purposes of the federal rule*, though the analysis of displacement was certainly implied in the federal rule. And with amendments by AB 1304, in evaluating these contributing factors, the program importantly must, as of January 1, 2022, include an assessment of “*the local and regional historical origins and current policies and practices.*” (**§ 65583(c)(10)(A)(iii).**) Then, after this careful and comprehensive analysis, the program must identify goals to address the barriers to fair housing and include strategies for implementation. (**§ 65583(c)(10)(A)(iv-v).**)

Strategies may include:

- Encouraging development of new affordable housing in areas of opportunity
- Preservation of existing affordable housing
- Protecting existing residents from displacement

(§ 65583(c)(10)(A)(v).)

The program may incorporate portions a current Assessment of Fair Housing (AFH) or Analysis of Impediments to Fair Housing Choice (AI) (if it has not yet prepared an AFH) pursuant to the Rule. **(§ 65583(c)(10)(B).)**

As it did with the land inventory and corollary obligation to identify and rezone adequate sites, HCD has also prepared a very helpful guidance on assessing the need to affirmatively further fair housing and on developing a program of strategies to address the need: [HCD Memorandum, Affirmatively Furthering Fair Housing, Guidance for All Public Entities and for Housing Elements \(April 2021 Update\) \(HCD AFFH Guidance\)](#). (Appendix B.)⁷⁹ Also see HCD's: [Draft Reviewer Checklist AFFH - Final 1-24-2021.docx](#).

H. Inclusionary & Replacement Requirements for Coastal Zone Communities.

Communities in coastal zones must take into account the affordable housing provided or required pursuant to the coastal zone affordable housing mandates of **section 65590** (the "Mello Act"). **(§ 65588(c).)** The Mello Act obligates the protection of existing units occupied by low- or moderate-income households (including mobilehomes and residential hotels), limiting demolition or conversion of those units. When demolition of low- or moderate-income units is permitted, replacement housing must be provided. And, where *feasible*, new development must include low- and moderate-income housing.

The recent decision in *Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927 was addressed with the adoption of AB 2797 [Stats. 2018, ch. 904]. The court had held that Coastal Act requirements will override the requirements of the Mello Act or Density Bonus Law (§ 65915) if the Coastal Act requirements, as included in a community's Local Coastal Plan, conflict with these other land use laws. The legislation provides, however, that the requirements of the Coastal Act and the Density Bonus Law be harmonized "to achieve the goal of increasing the supply of affordable housing in the coastal zone while also protecting coastal resources and coastal access." [Stats. 2018, ch. 904, §1]

⁷⁹ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf

Section **65588(d)** requires that the review of these coastal zone obligations in the updated housing element must, at least, include:

- The number of units approved for construction after January 1, 1982.
- The number of affordable units required to be provided either within the coastal zone or within three miles of the zone.
- The number of units occupied by low- and moderate-income households authorized for demolition or conversion since 1982.
- The number of low- and moderate-income units required, either within the coastal zone or within three miles of it, to replace those units demolished or converted.

Beyond documenting the compliance with the requirements of section 65590 and 65588(c) mandate that the review and revision of the housing element “take into account” the units required or provided pursuant to section 65590. (**§ 65588(c).**) This requirement indicates that these units should be given specific attention in each section of the housing element. For example, the units that remain to be provided should be added to the housing needs assessment in the first section (§ 65583(a)) and to the quantified objectives in the second section (§ 65583(b)). And in the concluding program of actions section, (§ 65583(c)) the updated element should identify sites for these units (§ 65583(c)(1)), include implementation actions to provide any necessary development assistance (§ 65583(c)(2)), address any constraints to their development (§ 65583(c)(3)), and describe the ways the loss demolished units will be mitigated. (§ 65583(c)(4).)

See [HCD Building Blocks: Other Requirements - Analysis of Consistency with General Plan and Coastal Zone Requirements](#).

I. Applicability of Statutory Amendments.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02 where a city, county, or city and county submits a first draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, where the city, county, or

city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

(§ 65583(e).)

Many communities fail to adopt a housing element found in compliance by HCD by the statutory deadlines. Consequently, a question often arises as to whether amendments to the housing element statutes made after the housing element due date apply to tardy housing elements. Under the provision above, amendments to housing element law affecting the contents of the housing element apply to a tardy element if a locality submits its first draft of its revised element to HCD either: 1) more than 90 days after the effective date of the statutory amendments or 2) after the statutory due date of tardy element.

IV. REVIEW AND ADVOCACY

A. Determine the Status of Jurisdiction’s Adopted & Draft Elements.

1. Immediately Contact HCD, Review HCD’s Website, & Obtain a Copy of the Housing Element and Any Drafts.

a) Website.

The first stop to determine the status of a housing element is on HCD’s website. HCD’s updated website lists what elements have been found in or out compliance, links to draft and completed elements, and links to copies of any review letters issued by HCD:

See [HCD Housing Elements Guidance](#) and the Housing Element Download Tool available at: [Housing Element Download Tool](#).

There you also can access both the Housing Review Report and the Housing Element Compliance Report by using the Housing Element Search Tool. The Review Report provides the status of housing elements currently under review, and the Compliance Report indicates the compliance status of the jurisdiction’s housing element, either IN, OUT, IN REVIEW, DUE, or CONDITIONAL (compliance). The website identifies which elements are currently under review, and updates this list on an almost weekly basis. The chart indicates whether the community has either a draft of adopted element that is currently under review. It lists the dates on which the element was submitted, when the HCD review is due, and who at HCD is reviewing the element.

Housing Element Review & Compliance Report: [Housing Element Review and Compliance Report](#).

The website also contains a link to all the housing element review letters that have been issued by HCD since January 2202: [heweb_list.xlsx](#). And you can also sign up to receive email updates from HCD as draft or final elements are submitted to HCD at: [HCD Email Signup](#).⁸⁰ This timely information is important because HCD must review a draft housing element within *90 days of submission*. (**§ 65585.**)

⁸⁰ PILP tracks this and sends notifications to advocates and public interest attorneys when HCD receives a draft or adopted element from a local government. Contact PILP if you would like to be added to this list.

b) Timing and Procedural Considerations.

Although HCD has 90 days to complete its review and provide its findings to the jurisdiction it will endeavor to complete the review of the element, *including the review of initial public comments*, within **30-60 days**. **Therefore, HCD recommends that comments be provided within the first 30 days.** In part, this time line is due to the fact that HCD will communicate with the jurisdiction once it has completed its review to follow up on any questions and to make suggestions about areas to address and will often receive revisions to the draft element to review before making HCD finalizes its findings. Thus, it is very important that you are aware of HCD's time line to review.

Once a community submits a housing element to HCD, the HCD reviewer will contact the jurisdiction within the first week. Generally, within a week after that HCD will determine whether the element is complete, using its "Completeness Checklist" -- [Housing Element Completeness Checklist](#).⁸¹ The checklist assists HCD in determining whether the submitted element contains all information required by the Housing Element Law. See HCD's Webinar Video: Part I: Introduction – The Update Process and Streamline Review:

[Updating the Housing Element Planning for California's Future - Part I: Introduction - YouTube \[starting about 6 minutes into the video\]](#).

c) Call HCD.

After reviewing the website, **call HCD** at (916) 263-2911 or (916) 263-7420 to determine the most up-to-date status of the housing element. If an element is currently under review HCD's website will identify which analyst is reviewing the document. Contact the analyst and let them know that you are interested in the community's housing policies and will be reviewing the element *and providing comments*.

CAUTION: If HCD is in the process of reviewing an element or is discussing possible amendments with the jurisdiction, find out the reviewer's schedule for completing the review and ask:

- If the jurisdiction has asked for an *expedited* review [expedited review involves HCD making a determination even sooner that it normally would.]
- The reviewer's preliminary thoughts on whether the element substantially complies with the law

⁸¹ <https://www.hcd.ca.gov/community-development/housing-element/docs/housing%20element%20completeness%20checklist.pdf>

- That the reviewer neither make any final decisions on the status of the element nor give the locality an indication of the status until you have first had a chance to submit your comments
- For a copy of any revisions the jurisdiction has submitted to HCD since the review process started.

d) Request Copies of HCD Review Letters and Other Correspondence.

Finally, even if you downloaded a copy of a review letter from the website, **request a copy of the most recent HCD review letter** sent to the local government as well as any correspondence received from the local government. Letters issued after January 1, 2020 are available on the website, **but** confirm that the most recent letter is available online at: [heweb_list.xlsx](#). Often HCD sends written *interim* correspondence responding to oral or written comments by local government staff. It is in this informal “back and forth” between HCD and local government that HCD sometimes makes significant representations to local governments about the adequacy of the draft housing element.

e) Consider a Public Records Act Request.

If time permits send a formal California Public Records Act (§ 6250 et seq.) request, asking that HCD send you all written correspondence it has received from the jurisdiction and other interested people and agencies. The Public Records Act request can be sent directly to the analyst assigned to review the element. (**See below regarding things to consider when making a PRA request.**)

2. Contact the Local Government & Review Its Website.

Check the locality’s website and formally request a copy of the most recent adopted element *and* any draft elements in preparation. You probably will also need to send the locality a formal **Public Records Act request** as well. *See below.*

B. Obtain Documents.

Below is a list of documents you will want to consider when researching the status of a community’s housing element as well as documents that will help consider the adequacy of the draft or adopted housing element. Many of these documents are available online, although it is possible that HCD and probably the local government will provide these documents simply after a phone call, it is always a good idea to put the request in writing so that there is a record if the request is disputed later. Persons have the right to receive copies of public documents under the California Public Records Act, **section 6250 et seq.** It is good practice to include a statement in any written request

that the request is made pursuant to the Public Records Act. If a “standing” PRA request is made to HCD, the staff *should* send you a copy of any official correspondence they send to or receive from the locality.

1. Local Government Documents.

- **Existing Housing Element and Draft Housing Element**, including any **staff reports** or “**background reports**” that were produced in support of the preparation of the draft or adopted element.
- **Land Use Element** (and possibly the **Open Space element**) – these are the elements of the General Plan most likely to be directly related to issues covered in the housing element.
- **Consolidated Plan** submitted to HUD (if the jurisdiction is an “entitlement community”) – if the community is a small city that joined with a consortium of other cities in a county ConPlan, contact the county and obtain a copy.
- **AI or Assessment of Fair Housing.** As part of the federal ConPlan, jurisdictions must produce an *Assessment of Fair Housing (AFH)*, formerly the *Analysis of Impediments to Fair Housing Choice* (“AI”)⁸², and Housing Elements due on or after January 1, 2021 must contain an AFH independent of the federal ConPlan obligation. The AFH/AI could contain information that will be helpful in analyzing the community’s governmental constraints on housing, and the housing element must contain an AHF pursuant to the program of actions AFFH requirement. (**§ 65583(c)(10).**)
- **Reports or Studies** on housing produced by task forces or commissions established by the local government or the local Continuum of Care.
- **Environmental Impact Reports (EIR)** on recently approved or pending developments – these documents often contain very useful information on housing.

2. HCD Documents.

- All official **review letters** (as mentioned, these are now available on-line [linked here](#). All **correspondence from and to the local jurisdiction**.
- **Annual Progress Reports (APRs) and Data.** Under **section 65400** all cities and counties must annually file progress reports with HCD describing the progress they have made on implementing their current housing elements. This includes information on housing element program implementation, issuance of

⁸² As noted previously, the rule requiring an Assessment of Fair Housing has been postponed until 2020, but the current AI still applies.

construction permits, units constructed, and the affordability of units constructed. These reports and specific data tables are available on HCD's website at: [Annual Progress Reports](#) and includes APR – Data, Dashboard & Downloads. The information will be very helpful in determining to some extent how well the jurisdiction did in implementing the programs of its existing housing element. And that will be helpful in assessing the accuracy and credibility of the section of the new draft element that assesses the relative success and failures of the existing element.

- All **third-party correspondence**.

3. Other Data on Housing Needs, Characteristics, & Resources.

a) State, Regional, and Local Sources.

- **Housing Authorities:** The required Public Housing Authority Plans (Administrative Plan for the Housing Choice Voucher Program and for Public Housing) are adopted yearly and may have valuable information on the current needs for subsidized housing, including the number of households currently on the housing authorities' *waiting lists* and "interest lists."
- **Non-profit housing developers** and managers – these organizations will also have waiting lists and interest or "inquiry" lists indicating a measure of the need for housing. Some may keep records on the number of households that have applied for housing at their complexes. They may also have conducted studies or surveys on housing needs of lower income households or special needs households such as homeless persons or persons with disabilities.
- The **Council of Government's (COG) latest Regional Housing Needs Allocations** (RHNA) and latest projections for growth. The latter document projects the probable increase in population, jobs, and housing over the next twenty years.
- The **Data Sets and Maps prepared by the COG's** for the sixth cycle and future housing elements. These are linked on HCD's website at: [Regional Technical Assistance Plans](#)
- **Recent studies by local non-profit agencies** which analyze the housing needs for particular groups, e.g., studies or surveys of **emergency services providers** documenting the need for housing for homeless persons.
- **Report and Studies of the California Housing Partnership Corporation (CHPC):** CHPC prepares regular reports and studies on recent housing needs data and housing policies that are available on its website: CHPC.net.

- **Social services or health services agency** studies which may contain information on current housing needs for the particular populations served.
- **Employment Development Department** and **Farm Bureau** estimates of farmworker employment in the area.
- **Vacancy Rates** are available from USPS and utility companies.

b) National Sources.

- **The National Low-Income Housing Coalition (NLIHC)** website: <http://nlihc.org> is a great one-stop source of and links to the most up-to-date data sources. Especially helpful is the “2017 NLIHC Advocates Guide; A Primer on Federal Affordable Housing & Community Development Programs.”
- **“Out of Reach,”** NLIHC’s annual study of the cost of housing for each SMSA organized by percentage of income and wage level necessary to procure affordable housing. (The most recent edition is from 2022, available at: <https://nlihc.org/oor>.)
- **The Consortium for Citizens with Disabilities Housing Task Force:** **“Priced Out - TAC”** is a report on the lack of affordable housing for persons with disabilities. See also: <https://www.tacinc.org/resources/priced-out/>.
- **U.S. Census.** Used as the basis of many reports, here you will find the primary data, including the most recent updated information from the Census Bureau’s latest [American Housing Survey](#)⁸³ and [American Community Survey](#).⁸⁴
- **HUD** At www.HUDuser.org/, you will find a wide range of data sources and links to data sources, as well as the HUD Mapping Tool.

c) Other Sources.

- The **media** often report on studies and reports released by educational or research institutions, which address issues concerning local and statewide housing needs.

C. Demand Involvement and Participate.

Citizen participation by representatives of all economic segments of the community is required by the Housing Element Law. (**§ 65583(c)(9).**) At the beginning of the preparation of the draft housing element – immediately after the community has been assigned its share of the RHNA by the COG – consider requesting that the community create a community task force with broad participation (including representatives from community groups representing low-income persons, communities

⁸³ <https://www.census.gov/programs-surveys/ahs.html>

⁸⁴ <https://www.census.gov/programs-surveys/acs>

of color, groups traditionally underrepresented or excluded from public input) and with meetings that are open to the public. Also ask the local government to hold open community meetings and forums on nights and weekends to encourage participation by a broad cross section of the jurisdiction. Remember, **it is the local government's obligation to make a *diligent effort to obtain the participation of all economic segments of the community*.**

If you find that the community has already prepared or even submitted a draft housing element to HCD before there has been significant public input, *ask that the jurisdiction withdraw the submission and reopen public comment.* Preparing a draft element without adequate public input falls short of making a diligent effort to include all economic segments of the community. *If the community is not responsive to your requests for meaningful public participation, notify HCD, especially if the local government has already submitted a draft element for review.* HCD may intervene and request the community to solicit greater input. And HCD will take the inadequacy of public participation into account when reviewing the draft.

Most communities will welcome ideas about people and organizations to invite to housing element workshops or task force meetings. Contact planning staff early in the housing element development process – ideally at least 9 months prior to the housing element due date.

D. Review the Current and/or Draft Element.

Use **this manual**, the [HCD Building Blocks, Housing Element Completeness Checklist](#),⁸⁵ and the [Annual Progress Reports](#) to go through each requirement of the statute and compare it to the corresponding section of the housing element itself. See if the element addresses all the requirements of the statute. Then, use the summary of the contents included in this manual (Chapter III), the HCD Building Blocks, and the HCD technical assistance memoranda and guidances ([HCD Memoranda](#)) described in the preceding chapters of this manual to assess the adequacy of the element and to assist you in developing ideas for revisions.

Importantly, look at each program action promised in the current element and use the APRs and the other information gathered as described in section B above to determine whether the local government actually carried out the program actions.

If HCD has already issued a **review letter** for the draft or the adopted element finding it out of compliance, use the inadequacies listed in the appendix of the letter to help focus your analysis. For each provision of the statutory requirement, note the deficiencies, omissions, and lack of specificity.

⁸⁵ <https://www.hcd.ca.gov/community-development/housing-element/docs/housing%20element%20completeness%20checklist.pdf>

1. Needs, Resources, & Constraints. (§ 65583(a).)

In this section, look for missing, incomplete or faulty analysis or data. Are the housing needs fully assessed? Was all available data used? **Is the site inventory complete and sufficiently specific** within the requirements of **sections 65583(a)(3) and 65583.2**? Are all **constraints** analyzed and is there a discussion of efforts to remove them as required by **sections 65583(a)(5) and (6)**? Is each **special housing need** adequately analyzed; was all available data utilized or could the community have easily obtained better data? In addition to the resources listed above, contact affordable housing developers in your area to discuss what constraints to development they identify (excessive development standards, parcel size, environmental concerns).

- Is there an adequate basis for the determination of the extent of a particular need or lack of need?
- Is there an adequate basis for the determination of the existence or non-existence of a particular constraint?

Finally, **what additional needs, resources, and constraints should be assessed and analyzed** in this particular community? Examples of questions to ask with respect to constraints include:

- Is there a *growth control* measure or *moratorium* in effect?
- Does the community permit multifamily development of rental housing *by right*? Or is it subject to discretionary review?
- Does the land inventory identify any sites that are developable at the *densities* established in **section 65583.2(c)(3)(B)**?
- Does the community require developers of affordable housing or group homes or developers receiving city subsidies to *notify the neighborhood* before development can proceed or funding is granted?

2. Goals, Policies, & Quantified Objectives. (§ 65583(b).)

Is there a corresponding goal and policy for each identified need (including special needs), inadequate resource, and development constraint?

If the goals or quantified objectives are less than the share of the regional housing need for each income category, is an explanation given?

If the quantified objectives list a specific number of units for an income category, does the objective indicate which prospective developments or which housing element programs on which the numbers are based? For example, are a specific number of

affordable units attributed to a particular development or to particular programs such as inclusionary zoning?

Are there any additional goals or policies needed in this community? *See [HCD Building Blocks: Program Requirements - Program Overview and Quantified Objectives](#) and Chapter III, § F of this manual.*

3. Program of Actions. (§ 65583(c).)

In this part, generally determine whether there is a corresponding implementation action for each identified need, inadequate resource, constraint, goal, and objective.

IMPORTANT: Are there actions to identify sites and to remove governmental and nongovernmental constraints?

It is the implementation actions in this section that will ensure that enough sites feasible for the development of housing to meet the low- and very low-income household need will be available.

See generally, [HCD Building Blocks: Program Requirements - Program Overview and Quantified Objectives](#).

Remember, **each action should indicate the time frame for its implementation (during the time frame of the housing element). (Section 65583(c), describes specific actions, and the agency responsible for the implementation. (§ 65583(c)(8).)** Make sure the barriers identified in the public process have associated programs and actions to remove the barriers.

a) Identification of Adequate Sites. (§§ 65583(c)(1) & 65583.2.)

The program should demonstrate that the community has sufficient sites to accommodate its regional needs (RHNA) for each income category. If the Inventory of Sites reveals that available sites are insufficient, the program must include implementation actions to provide the sites to accommodate the shortfall.

See generally, [HCD Building Blocks: Program Requirements - Identify Adequate Sites; Housing Element Sites Inventory Guidebook](#); and Chapter III, § G.2.

- **Sufficient Unit Capacity?**
- **Inventory of Sites sufficient?** Can you determine the number of units that can be accommodated? (*See § 65583.2(b) and Chapter III, § B.3.*) In **some cases, the inventory will lack the necessary information, and the review can go no further.**

- **Sufficient Sites with a realistic capacity to accommodate the total RHNA?** The inventory must specify the realistic capacity for each site based on the densities and existing uses. (*See § 65583.2(c).*)
- **Sites served by Infrastructure?** (i.e., If parcels are not served with sufficient water & sewer, there must be a program to secure it.) (*See § 65583.2(b)(5).*)
- **Small or Large Sites?** Sites smaller than half an acre or larger than 10 acres are subject to additional analysis to demonstrate the feasibility of developing lower income housing on such sites. (*See § 65583.2(c)(2).*)
- **Existing Uses?** If nonvacant sites are used to accommodate more than half of the lower income RHNA, section **65583.3(g)** requires that the inventory demonstrate the existing use is not an impediment to additional residential development.
- **Zoned at Multifamily Densities to accommodate Lower Income RHNA?** Are there enough sites zoned at the “default” densities specified in **section 65583.2(c)(3)(B)** to accommodate the regional *needs share for units for low- and very low-income* households?⁸⁶ (*See Chapter III, § C.*)
- **Sites from a prior housing element?** Sites that were designated in one or two prior planning periods, depending on whether the sites are vacant or not, *may only be included again if zoned at default densities, and* there is a program that requires that at least 20 percent of the units are affordable to lower income households on the sites. (*See § 65583.2(c).*)
- **“By-Right” Sites?** If there are insufficient sites in the inventory zoned at appropriate densities and served by infrastructure to meet the need for low- and very low-income housing, does the program include an implementation action that will permit “*by right*” development of multifamily sites, and 20 percent of the units are affordable to lower income households, as required by **section 65583.2(h)**? (*See Chapter III, § C and [HCD Building Blocks: Program Requirements - Identify Adequate Sites](#).*)
- **Special Needs Sites?** Are there sufficient and appropriate sites to meet the identified housing needs of households with persons with disabilities, elderly

⁸⁶ 10 units/acre – unincorporated areas in all non-metropolitan counties not included in the 15 units/acre category; 15 units/acre – cities within non-metropolitan counties; non-metropolitan counties with micropolitan areas; 20 units/acre – suburban jurisdictions; 30 units/acre – jurisdictions in metropolitan counties.

households, female headed households, large families, homeless people, and farmworkers? (*See* Chapter III, § B.3 & § D.1(b).)

- **Emergency Shelters Permitted By-Right?** Does the inventory identify a zone or zones where emergency shelters can be developed without discretionary review? (*See* § 65583(a)(4).) Does the zone have sufficient capacity for the need identified?
- **Farmworker Sites By-Right?** If there are insufficient sites to accommodate the housing needs of *farmworkers*, is there an action program that provides for identification of sites zoned for “by-right” development of farmworker housing? (*See* § 65583(c)(1)(C) and Chapter III, § B.3 & § G.2(e).)
- **Sites to Accommodate Unaccommodated Need from Prior Housing Element Period?** If the community failed to implement a program to rezone sites to meet the lower income RHNA of the prior planning period, it must include a program to rezone sufficient sites to accommodate this “carryover” within one year. (*See* § 65584.09 & Chapter III, § G.2.)

Variety of Housing Types.

Determine whether the program provides adequate zoning for **multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, single room occupancy housing, and transitional housing**. Other than multifamily housing for which the community may be required to provide “by-right” zoning, adequate zoning for the other types of housing is probably zoning which allows development as a conditionally permitted use. This means the zoning ordinance could require that development of those types of housing require a conditional use permit. However, the conditions imposed may not be so restrictive as to be insurmountable or produce protracted delays and deterrent cost burdens.

See Hoffmaster, 55 Cal.App.4th 1098 and [HCD Building Blocks: Site Inventory and Analysis - Zoning for a Variety of Housing Types](#).

b) Assist Development of Affordable Housing. (§ 65583(c)(2).)

Is the use of all available *state and federal housing development assistance* addressed here or somewhere else in the program? *See* examples in § G, below.

c) Remove Governmental and Nongovernmental Constraints. (§ 65583 (c)(3).)

Even if the element identifies sites that are suitable and available, regulatory constraints or procedures that encourage NIMBY opposition can ultimately thwart the development of affordable housing. The analysis of nongovernmental constraints must address policies that create a gap between the plan to build affordable housing and the housing that is actually constructed. There must be programs to address each of these barriers to development. These actions must also address constraints to development of housing for *persons with disabilities* identified in the analysis required by section **65583(a)(5)**. See Chapter III, § D.

Are all the identified constraints addressed? If the program does not contain implementation *actions to remove* all the constraints, does it include an explanation as to why removal is not appropriate or legally possible? Is the provision of regulatory concessions and incentives or the administration of land use and development controls addressed here or elsewhere?

d) Other Required Implementation Actions. (§ 65583(c)(4)-(10).)

Conservation of Stock, Promotion of Fair Housing, Preservation of Assisted Housing & Affirmatively Furthering Fair Housing. In addition to an implementation action for each identified need in these areas, the program should include action items that address:

- **Conservation, conversion or demolition** (*see* subdivision (c)(4)) of affordable market rate housing, including programs to maintain the affordability of that housing;
- **Enforcement of fair housing laws** (*see* subdivision (c)(5)), including:
 - facilitation of local fair housing programs to receive and investigate discrimination complaints; and,
 - land use and zoning policies, laws and regulations that facilitate reasonable accommodation of development of housing for persons with disabilities
- **Financing and Subsidy programs for the Preservation of Assisted Housing** (*see* subdivision (c)(6)), including utilization of local, state and federal funding.
- **For elements due for revision after January 1, 2021** (*see* subdivision (c)(10)): **Meaningful actions to Affirmatively Further Fair Housing** (pursuant to section 8899.50), including:

- policies to remove impediments to fair housing choice (as described in the applicable Analysis of Impediments (AI) or Assessment of Fair Housing)

For examples of programs to suggest, see § G, below.

E. Review Other Relevant Parts of the General Plan and Other Relevant Documents.

After reviewing the housing element, compare the data, analyses, goals and programs with those that appear in the land use element (and other elements of the general plan) that might address overlapping areas with the housing element - the open space element and possibly the transportation element – and any of the other official government documents (*see* § B, above). If there are discrepancies or inconsistencies, note them.

F. Written Comments and Oral Testimony at Public Hearings.

1. Contact HCD & Make Timely Written Comments.

HCD has only sixty (90) days to review draft elements (§ 65585), so prepare written comments as soon as possible based on your review of the housing element and other relevant documents. **As HCD recommends, Make your first comments within 30 days of the submission of the draft element.** As explained at the beginning of this chapter, under HCD procedures HCD will perform a preliminary review of draft housing elements within 30 days of receipt of the element. **Therefore, contact HCD when you first become involved and inform the staff that comments will be coming. Ask when HCD plans to complete its review – sometimes local jurisdictions request expedited review.** By contacting HCD as soon as possible, its staff 1) will know to expect your comments before making its final recommendations, and 2) will be able to contact you if they have questions about the submitted element.

a) Comments.

A good way to structure comments is to use Chapter III of this Manual, by reviewing each subject covered here and commenting on whether the draft satisfies the statutory requirements. The comments should cover each deficiency noted *and* include recommendations for remedying the deficiencies. Where applicable, your comments should **reference the statutes, HCD's review letters, and HCD Building Blocks.**

If the **needs, resources, and constraints** are inadequately addressed, *identify the specific shortcomings* in any analyses. If the **goals, objectives, and policies** are incomplete or lack adequate justification, specify the particular deficiency. And if the **programs** are incomplete or fall short, address each one in kind. Finally, *include any*

additional or alternative implementation actions that will better address the housing problems in the community. (See § G, below.)

b) Communications.

When the comments are completed, submit them to the local government *and* to HCD by mail and by email (cover letter should indicate that the comments have been sent to HCD). **Find out if the local government has submitted explanatory comments to HCD – if they have, then make sure that you ask for copies and address those comments in your comments. Review any revisions the local government makes, or that HCD indicates the locality has suggested, and prepare supplementary written comments.**

Keep in Regular Contact with HCD! HCD's review of a submitted draft or adopted element usually involves many communications between HCD and local government staff. Although it is **HCD's policy not to make final commitments to local staff regarding what will suffice as legally adequate until it has considered all the comments of advocates** (indeed section **65585** requires as much), if advocates do not stay in continuous communications with HCD, they risk HCD sanctioning aspects of an element that, unbeknownst to HCD, may be deficient.

2. Oral Testimony & Public Hearings.

Advocates should also present oral comments at any opportunity, but **comments *must* be made at the noticed public hearing at which the housing element is adopted.** If comments are not presented either in writing or orally at or prior to the official public hearing, a subsequent legal attack on the adopted element may be prohibited. (See **§ 65009(b)** limiting legal challenges of general plan elements to issues raised in writing before the public hearing or orally at the public hearing.)

a) Attorneys Funded By Legal Service Corporation Funds.

Even though there are some restrictions on legislative advocacy for attorneys funded by the Legal Services Corporation, comments necessary to satisfy a statutory requirement to exhaust administrative remedies or that are a predicate for litigation on behalf of a client are permitted.

3. Arrange Oral and Written Comments from Other Groups.

Comments from other community groups, faith-based organizations, environmental organizations, and labor unions can help show the importance and political support for the positions taken. Affordable housing is critical to the goals of all these groups. It furthers integration, provides housing for the workforce and reduces

greenhouse gasses by enabling people to live closer to their jobs. Involvement of as many constituencies as possible will also ensure a more comprehensive analysis and critique of the housing element because each group will have its own special perspective, knowledge, and experience.

4. Utilize Experts, Especially Nonprofit Developers.

Advocates often lack the expertise to evaluate the accuracy of some of the data or analyses in the housing element or adequacy of sites identified for affordable housing development. Occasionally, local officials are reluctant to give credence to the advocates' critique because the draft housing element was prepared by consultants or planning staff that have substantial expertise in planning, community development or land use. While there is nothing really complicated about the analyses and programs in an element, sometimes it helps to have someone with "credentials" weighing in with comments.

Local nonprofit developers can be extremely helpful because they have experience developing affordable housing in the area. They have an interest in getting the community to rezone appropriate sites to adequate densities and to reduce regulatory barriers to affordable housing development. But, they also may want to distance themselves from direct advocacy for policy changes because they do not want to risk damaging their relationship with the local government, given that they must obtain approvals (and sometimes funding) for their projects from the locality. Consequently, nonprofit staff often welcome the efforts of advocates and do what they can to provide us with the information we need to advocate successfully.

Nonprofits can be particularly helpful to assess whether identified sites have adequate densities, infrastructure, access, or topography, or whether they are subject to any environmental limitations or contaminated with toxic pollutants. They also have experience with the local land use laws and processes, providing a perfect source for information on which local zoning and building requirements present constraints to affordable housing development.

Sometimes nonprofit development staff will be willing to look at whether sites identified in a draft element are appropriate for development and provide real-world insight regarding the feasibility of developing the parcels. Frequently you find that they already have particular sites that they view as the most suitable for affordable housing. This kind of input can be very helpful in determining which implementation actions are the most meaningful, in particular which actions assist the development of specific projects a nonprofit developer might be planning. (See discussion of **"What to Ask For"** below in section G, Revisions and Programs to Request.)

Some other possibilities for persons with expert knowledge are:

- Affordable housing development consultants, and
- College or university urban planning professors and students.

Could be Important for Litigation: To ensure that available expert opinion can be utilized as evidence if litigation becomes necessary, if at all possible arrange to have the individuals with expertise provide their opinion in writing or at the public hearing of the legislative body. Some courts may prohibit use of expert opinions not submitted to the local government prior to the adoption of the housing element.

G. Revisions and Programs to Request.

Of course, what to ask the community to include in the element **depends largely on the needs of the particular community** and the particular deficiencies in the housing element revealed by the review described above. Below are some suggestions to consider, especially in the area of the program of actions.

First, there must be compliance with each specific requirement of the statute – section **65583** (*see* Chapter III) – all missing determinations, analyses, goals, objectives, policies, and implementation actions must be included. **Next**, there must be a *corresponding goal and implementation action* for every need, inadequate resource, and constraint identified in the element. **Finally**, the program of actions should contain *concrete and specific implementation actions with a completion date*, mandated for implementation within the year time frame of the element.

1. Greater Specificity in the Implementation Programs.

a) Is a New Ordinance Required?

Sometimes the adoption of a local ordinance is needed or required in order to ensure implementation of the action. For example, a *density bonus* program *must* be adopted in the form of an ordinance. (**§ 65915.**) And an inclusionary zoning program needs an implementation ordinance to ensure uniform application and legal adequacy.

b) Time Frame and Responsibility for Action Indicated?

Without a specified time or a delegation of specific responsibility for carrying out the action, it will be difficult to enforce the action of the action if the community fails to implement it. A specific time frame is required by section **65583(c)**.

c) Amount of Funds or Number of Units Specified?

Implementation actions that commit the community to appropriating funds or actually developing units should also be as specific as possible. Not only will this help

ensure implementation, it will help make the actions legally enforceable because there will be little question about what commitment was actually made.

2. Some Suggested Implementation Actions.

Below is a list of possible programs that have been included in housing elements and successfully implemented. This list is just illustrative. Be creative, and try to come up with the best implementation action for the particular community need being targeted. Two relatively recent and helpful resources are 1) the [Bay Area's Housing Element Policies Best Practices \(2014\)](#), available on HCD's website,⁸⁷ and 2) [NPH's Meeting Local Housing Needs: Housing Element Snapshots Across the Bay Area \(2016\)](#).⁸⁸ Additionally HCD Building Blocks, includes some suggested programs in the sections addressing housing element programs and actions.

a) Providing Adequate Sites.

If there are insufficient sites to meet the community's current share of the regional need for very low, low- or moderate-income housing *or, if the jurisdiction failed to implement a program in the previous element that required rezoning* (see § 65584.09), the housing element must include a program to rezone sites that are developable *by-right*. (§§ 65583(c)(1), 65583.2.) Enough sites must be rezoned to accommodate both the shortfall of sites for very low- and low-income households under the current RHNA, *and* the rezoning that was promised under the previous element.

Rezoning to meet the shortfall of sites available for the current zoning must generally be completed within three years. (§ 65583(c)(1).) Rezoning that was supposed to be done under the previous element must be completed **within one year** of the due date of the new element. (§ 65584.09.)

Below are some methods to expand the inventory of sites. See also [HCD Building Blocks: Site Inventory and Analysis - Analysis of Sites and Zoning](#); [Electronic Housing Element Sites Inventory Instructions](#); [Housing Element Sites Inventory Guidebook](#); and Appendix B. Remember that for the sites provided through any of these means to qualify as adequate sites, the action must ensure that the sites will be available within the time required by statute and soon enough so that they can be developed during the time frame of the element.

- **Re-zone or Annex** to increase sites.
- **Up-zone** to increase densities.

⁸⁷ http://www.hcd.ca.gov/community-development/building-blocks/docs/housing_element_policy_best_practicesv1022114.pdf

⁸⁸ <http://nonprofithousing.org/wp-content/uploads/Housing-Element-Report-FINAL-FINAL.pdf>

- **By-Right Zoning.** Zone medium and high-density sites for “by-right” development to decrease the opportunity for NIMBY opposition at conditional use permit hearings [If the land inventory demonstrates that the community lacks sufficient sites to accommodate the RHNA for all income categories, the community may be *mandated* to rezone sites to allow multifamily development by right. (*See* Chapter III, §§ C & G.2 and **§ 65583.2(a) & (h)**).]
- **Zoning Overlays.** An amendment to the zoning ordinance that “overlays” different zoning standards on particular sites for housing developments meeting specified affordability requirements. Typically, the overlay will allow increased densities and/or by-right development on the designated sites.

Caution: An overlay is insufficient to meet requirements of sections 65583(c)(1), 65583.2(c), and 65583.2(h) that identified sites must permit development by-right. An overlay likely will not compel by right development at the minimum densities required by those sections (or include the mandatory 20% affordability requirement).

- **Mixed Use Zoning.** Allow residential development in certain commercial and retail zones with minimal conditions.

CAUTION: If residential development is not appropriate or likely in a commercial area (e.g., the commercial area is isolated or far from services, public transportation or schools), rezoning of those sites to allow residential development should not count as adequate sites for lower income households.

ALSO NOTE: if a community must zone sites for by-right multifamily development because its inventory shows a shortfall of sites to meet the lower income housing need, it may only utilize mixed use sites to meet 50% of the shortfall, or it must require residential use for 50% of the floor area ratio of such sites. (§ 65583.2(h).)

- **Expand Infrastructure to unserved sites.** Utilize state Mello-Roos bond funds to expand or improve sewer and water.
- **Minimum Densities.** In medium and high-density zones, prohibit development at lower densities than the range of the zone (e.g., if zoning is medium density, 12 to 18 units/acre, developments of less than 12 units would be prohibited). Minimum densities can facilitate the accurate calculation of realistic unit capacity per site, as required for the inventory of sites, (**§ 65583.2(c)(2)**) and compliance with the no net loss statute (*see* Chapter III).

- **Permit Emergency Shelters & Transitional Housing as a “By Right” use** in some zones and permitted use in a range of zones in the community. **This is now mandatory for most jurisdictions.** (*See § 65583(a)(4).*)
- **Permit Farmworker Housing as a “By Right” use** in some zones and a permitted use in a range of zones. **This is mandatory if the analysis of farmworker housing need shows that the community has insufficient housing to meet the need.** (*See § 65583(c)(1)(C).*)

b) Procuring Development Funds.

- **Commercial Development/“Jobs-Housing” Linkage Fees.** On nonresidential development – involves conducting a “nexus” study to determine the housing needs created by nonresidential development and the amount of the fee necessary to facilitate development of affordable housing to meet those needs
- **Local Housing Trust Fund** is funded by in lieu fees from inclusionary zoning ordinances, commercial development affordable housing linkage fees, affordable housing impact fees, redevelopment “boomerang funds.”
- **Redevelopment “Boomerang Funds.”** Since the dissolution of redevelopment agencies, other taxing entities in a county are now receiving the tax monies that formerly went to the redevelopment agency. Some of these funds will “boomerang” back to cities and counties. Some communities are adopting programs committing a substantial portion of these funds to affordable housing.
- **Issue Housing Bonds.** Communities can apply for authority to issue either *tax exempt* or *general revenue* housing bonds.
- **Federal CDBG/HOME Funds.** Program to provide local *match* funds to facilitate eligibility for developments funded by this program.
- **General Funds.** Commit general funds to affordable housing development or as a match for federal CDBG/HOME funds.
- **Tax Credit Authorization.** Program authorizing use of federal/state tax credit financing for affordable housing in the jurisdiction (eligibility for tax credits generally requires local government approval).

c) Assisting Affordable Housing Development.⁸⁹

- **Inclusionary Zoning.** Requiring new developments to include a percentage of low- and very low-income housing (e.g., 10% or 20%), **or**, if the community already has an inclusionary program, increase the percentage targeted to very

⁸⁹ [HCD Building Blocks: Program Requirements - Assist in the Development of Housing.](#)

low- or extremely low-income housing. See our [Inclusionary Zoning: Policy Considerations and Best Practices](#), available on PILP's website.⁹⁰

Note: There are two important statutory changes affecting in inclusionary zoning:

First, effective in 2018 inclusionary zoning is a *required program* when the inventory relies upon sites that were included in past housing elements but not developed for affordable housing. (**§ 65583.2(c).**)

CAVEAT: such programs must be analyzed as a governmental constraint. However, the severity of the need for affordable housing is usually sufficient to justify the program. (§ 65583(a)(5).)

Second, effective in 2019 with the adoption of AB 1505 (amending section **65850**, adding section **65850.01** (*see* Chapter III), inclusionary zoning ordinances expressly may apply to rental housing. (Overturning *Palmer v. City of Los Angeles* (2009) 175 Cal.App.4th 1396.)

The legislation also gives HCD the discretion to review of ordinances, *but* only those where: 1) the ordinance requires more the 15% of the units to be affordable to lower income tenants; *and* 2) the locality has either: a) failed to meet 75% of its above moderate-income RHNA (prorated over five years), or b) failed to submit its annual housing element report (required by section 65400) for the last two years. Significantly, if HCD exercises its discretion to review, its review is limited to requesting that the locality provide and “economic feasibility study” within six months and then reviewing the methodology of the study to determine whether the methodology complies with minimum standards. See PILP's comprehensive memorandum on [AB 1505](#) and the current legal status of inclusionary zoning in California.⁹¹

- **Inclusionary Commercial Zoning.** Requiring certain kinds of new commercial developments to include affordable housing to accommodate the workforce generated by the development. This program probably is most appropriate for retail and office development where housing is compatible with the commercial use. This is somewhat akin to commercial development “linkage fees” (*see* above). And, because the obligation to include affordable housing in the development is based on the need generated by the new development, to implement the program, the jurisdiction will have to conduct a “nexus study” to determine the housing need generated by commercial development.

⁹⁰ <https://thepublicinterestlawproject.box.com/s/96ne7jfm84q63wbvmhuc9dw7e4gkxy2u>

⁹¹ <https://thepublicinterestlawproject.box.com/s/a0s9s78yq00dlvbwoczok2oyyx16bz72>

- **Financial Support to local Nonprofit Developer** to cover *staff and/or pre-development costs*. See b., Procuring Development Funds, above.
- **Hold an Article 34 election.** Pursuant to Article 34 of the state Constitution, developments financed by the government in which more than 50% of the housing is low-income housing sometimes must be sanctioned by a local election authorizing the development of a particular number of units of low-income housing. While most affordable housing developments these days are by nonprofits utilizing funding sources that do not trigger Article 34, sometimes passing a measure to provide for a certain number of units with “Article 34 authority” can help the local government utilize funds that may not otherwise be available.
- **Density Bonus ordinance** in compliance with sections **65915, 65913.5, and 65917** – these sections mandate that each community adopt an ordinance that provides a density bonus *or* equivalent incentives to developers of housing that includes a certain percentage of affordable units.⁹²
- **Donate Sites** owned by the local government to nonprofit developers for affordable housing development.

d) **Removing Constraints.**⁹³

- **Reduce Conditional Use Permit requirements** for affordable housing or group homes. (Sometimes these requirements allow localities to add any condition that would “benefit” the community – an invitation for NIMBYs to ask for conditions that could make a development infeasible.)
- **Reduce Development Standards**, such as *parking* requirements, as a regulatory concession for the development of affordable housing [See [Rethinking Residential Parking – Myths & Facts](#) (Non-Profit Housing Association of Northern California (April 2001)⁹⁴ (www.nonprofithousing.org)).]
- **Reduce, Defer, or Waive development and permit process fees** for affordable housing.
- **Reduce & Expedite the Permitting Process.**

⁹² The percentage of units and the degree of the density bonus varies depending on the level of affordability, e.g., a bonus of 20% must be granted when the development includes 5% affordable to very low, *or* 10% affordable to low-income households.

⁹³ See [HCD Building Blocks: Program Requirements - Address and Remove \(or Mitigate\) Constraints](#).

⁹⁴ <http://nonprofithousing.org/wp-content/uploads/2014/Toolkits/Original%20Toolkit/mythsandfacts.pdf>

- **Reduce & Expedite the Design Review** process for affordable housing, particularly limiting criteria to clear, objective standards that require the least cost to obtain the design objective. Note the definition of “design review” standards are those that are “objective”, that do not involve a “personal or subjective judgment by a public official” and are may be verified by external benchmarks, pursuant to SB 35 (2017). (*See § 65913.4.*)
- **Repeal any Requirements Limiting the Location of Affordable Housing.** These kinds of conditions are probably illegal under section **65008**, which prohibitions local government discrimination against affordable housing. Illegal conditions include those requiring acknowledgment or approval of an individual city council person on any project seeking state *funding* of affordable housing (**Health & Saf. Code § 50204** (AB 829 [Stats. 2018, ch. 800])). And similar conditions on receipt of local affordable housing funding are likely also prohibited by sections **65008(b) and (d)**.
- **Amend the Permitting Process for Emergency Shelters & Transitional Housing** to ensure: 1) **by-right zoning for emergency shelters (§ 65583(a)(4))**, and, 2) that zoning burdens combined with NIMBY opposition cannot present insurmountable barriers to development.
- **Repeal Notification of Neighbors Requirements.** Some communities require special notification of neighbors and businesses before an affordable housing development, including lot consolidation and splitting, can be approved. (If provisions like these apply only to affordable housing, they probably violate section **65008**, which prohibits local governments from discriminating against affordable housing.)
 - e) **Conserving Affordability & Improving the Condition of Non-subsidized Affordable Housing.**⁹⁵
- **Relocation Benefits.** Program to provide persons displaced by local code enforcement or private conversion or demolition with relocations assistance. (Local governments are generally only required when they finance or causes the displacement, and are permitted to step in and provide assistance when a building is closed due to code enforcement.)
- **Controls on Conversion or Demolition.** Regulation of condominium, residential hotel, and mobile home park conversions. These regulations must be consistent with the Ellis Act (**§ 7060**), which prohibits local governments from preventing landlords from “going out of business,” but may provide for

⁹⁵ [HCD Building Blocks: Program Requirements - Improve and Conserve the Existing Housing Stock](#)

substantial relocation assistance. The Ellis Act also does not prohibit the local government from regulating requests for changes in the use of a site after a landlord has elected to go out of business.

NOTE: The state’s largest cities: Los Angeles, San José, San Diego and San Francisco have statutory authority to impose 1:1 replacement requirements or in-lieu fees on residential hotel conversions.

- **Rent Control or Eviction Protections such as Good Cause Eviction.**

- f) **Promoting and Affirmatively Furthering Fair Housing.**

With the adoption of AB 686 in 2018, section 65583(c)(5) was amended to require that the program to *promote* fair housing required by this section also must, *affirmatively further* fair housing consistent with the federal law obligation. (**§ 65583(5)** and **§ 8899.50**) See discussion in Chapter III, §§ G.6 & G.11 and see h., below. This program obligation works in tandem with AB 686’s additional requirement that housing elements must also include a standalone program to affirmatively further fair housing that includes an Assessment of Fair Housing (AFH) consistent with the federal Affirmatively Furthering Fair Housing Rule. (**§ 65583(c)(10).**) See discussion below in h and Chapter III, § G.11. Here are examples of programs that should be considered under section 65583(c)(5):

- **Adequately Fund a local Fair Housing Counseling and Enforcement Agency.**
- **Ordinance Prohibiting Discrimination Against the Recipients of Section 8** and other rental housing subsidies.
- **Conform local Occupancy Standards to the state Housing Code** standards so that large families and group homes are not unreasonably denied housing opportunities.
- **Remove any Restrictive Definition of Family.** Certain old ordinances still illegally permit exclusion from single family zones of households larger than five or six unrelated persons or households of unrelated persons.
- **Reasonable Accommodation Policy & Procedure.** Amend Zoning Ordinance to ensure developers of housing for people with disabilities, particularly Group Homes and Residential Care Facilities are afforded “reasonable accommodation” when applying for land use approval for such developments.
- **Address concentration of poverty in disinvested neighborhoods** and the lack of affordable housing in neighborhoods of opportunity when selecting sites to rezone for multifamily development of affordable housing.

g) Preserving Assisted Housing.

- **Apply for Funding** in conjunction with a nonprofit developer or the local housing authority by a specific date.
- **Ordinance Requiring Advance Notice** of the intent to convert to the local government and *Prohibiting Eviction* except for cause.

h) Affirmatively Furthering Fair Housing in Accordance with Section 8899.50. (§ 65583(c)(10).)

Elements due beginning January 2021, in addition to containing a program to promote fair housing pursuant to section 65583(c)(5), must include an assessment of fair housing in the jurisdiction that conforms with the requirements of the federal Affirmatively Furthering Fair Housing Rule (which implements the affirmatively furthering fair housing requirement in the federal Fair Housing Law, *see* 42 U.S.C. § 3608). See [Federal Register: Affirmatively Furthering Fair Housing](#). The program must include an Assessment of Fair Housing (AFH) that includes the following components:

- *A summary of fair housing issues and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.*
- *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 and affluence, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk. The analysis must identify and examine such patterns, trends, areas, disparities, and needs, both within the jurisdiction and comparing the jurisdiction to the region in which it is located, based on race and other characteristics protected by the California Fair Employment and Housing Act and Section 65008.*
- *An assessment of the contributing factors for the identified fair housing issues, including the local and regional historical origins and current policies and practices.*
- *An identification of the jurisdiction's fair housing priorities and goals, giving highest priority to those identified fair housing issues that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.*
- *Identification of the metrics and timetable for determining what results will be achieved.*
- *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.

(§ 665583(c)(10).)

IMPORTANT: The focus of the AFFH for zoning and planning purposes is the identification of sites for affordable housing that will assist in dismantling racial and ethnically concentrated areas of poverty and wealth and place affordable housing close to important educational, health and employment opportunities. This makes the Assessment of Fair Housing (AFH) required by this program critical to a community’s identification of affordable housing sites in its housing element, and consequently the AFH should be completed *before* it determines the sites made available for lower income housing development.

A community may draw from or incorporate the relevant parts of an Assessment of Fair Housing prepared pursuant to the federal Rule as it existed on July 15, 2015 (commencing with 24 C.F.R. § 5.150). Or, if the community has not completed such an assessment of fair housing, it may instead incorporate relevant parts of an Analysis of Impediments to Fair Housing Choice prepared in accordance 24 C.F.R. § 91.225 in effect prior to August 17, 2015.

HCD has issued an extensive and generally helpful guidance on the necessary analyses and strategies for compliance with the AFFH program requirements: [AFFH Guidance Memo](#). We expect that an update will be issued in 2023. HCD also issued a helpful AFFH Data Viewer set to aid in preparing the local Assessment of Fair Housing: [AFFH Data Viewer](#).⁹⁶

Other helpful resources:

- *Racially Concentrated Areas of Affluence*, [Cityscape: A Journal of Policy Development and Research - The Fair Housing Act at 50](#)
- [ABAG: Affirmatively Furthering Fair Housing Policies and Programs Toolkit](#)

⁹⁶ <https://affh-data-resources-cahcd.hub.arcgis.com/>

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 - A. [Housing Element Statutes: §§ 65580-65589.11 \(Includes "Housing Accountability Act," §§ 65589.5-65589.6\)](#)
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7. [**Affordable Housing and High Road Jobs Act of 2022: §§ 65912.100-65912.140**](#)
8. [**Housing Development Approvals: §§ 65913-65914.5 \(Includes "'Least Cost' Zoning Law," §§ 65913-65913.2\)**](#)
9. [**Density Bonus Law: §§ 65915-65918**](#)

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Appendix B: HCD Guidance and Memoranda

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2. [HCD Housing Element Update Schedules for 6th Regional Housing Need Assessment \(RHNA\) Cycle \(6th Cycle Housing Element Update Schedules\), September 23, 2023](#)
3. [HCD Memorandum, Housing Element Compliance Memo, March 16, 2023](#)
4. [HCD Memorandum, Local Planning and Approval for Emergency Shelters Requirements Update \(AB 2339\), January 4, 2023](#)
5. [HCD Memorandum, Group Home Technical Advisory 2022, December 19, 2022](#)
6. [HCD Memorandum, Senate Bill 9 Fact Sheet \(SB 9\), March 25, 2022](#)
7. [HCD Memorandum, Default Density Standard Option \(2020 Census Update\), March 21, 2022](#)
8. [HCD Memorandum, AFFH Guidance Memo \(AB 686\), April 27, 2021](#)
9. [HCD Memorandum, Housing Accountability Act Technical Assistance Advisory \(AB 678, AB 1515, AB 3194, SB 330\), September 15, 2020](#)
10. [HCD Memorandum, Housing Element Sites Inventory Guidebook \(AB 1397, AB 1486, AB 686, SB 6\), June 10, 2020](#)

11. [HCD Memorandum, Summary of Requirements in Housing Element Law \(AB 686\), April 23, 2020](#)
12. [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](#)
13. [HCD Memorandum, Rental Inclusionary Housing Ordinances \(AB 1505\), October 21, 2019](#)
14. [HCD Memorandum, No Net Loss Law \(SB 166\), October 2, 2019](#)
15. [HCD Memorandum, Accessory Dwelling Unit \(ADU\) Legislation \(SB 229 & AB 494\), May 29, 2018](#)
16. [HCD Memorandum, Housing Element Updates and the 2014 San Joaquin Valley Fair Housing and Equity Assessment, February 9, 2015](#)
17. [HCD Memorandum, Transitional and Supportive Housing \(SB 745\), April 24, 2014 \(Describing Changes to Statutory Definitions of Supportive and Transitional Housing by SB 745\)](#)
18. [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 \(RHNA\)\)](#)
19. [HCD Memorandum, SB 812 Persons with Developmental Disabilities, June 21, 2012 \(Interpreting the Requirement to Analyze the](#)

Housing Needs of Persons with Developmental Disabilities)

- 20. 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)**
- 21. 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)**
- 22. HCD Memorandum, Rezoning Deadlines for Jurisdictions That Failed to Make Sites Available in Prior Planning Period (AB 1233), June 20, 2007**
- 23. HCD Memorandum, SB 1087, Water and Sewer Service Priority for Housing Affordable to Lower Income Households, May 22, 2006**
- 24. HCD Memorandum, Inventory and Suitability of Sites/Default Densities (AB 2348), June 9, 2005**
- 25. HCD Memorandum, Analysis of Constraints on Development of Housing for Persons with Disabilities (SB 520), June 17, 2002**