

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****OFFICE OF THE DIRECTOR**

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**NOTICE OF PROPOSED ACTION  
TITLE 25. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY  
DEVELOPMENT**

**NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]**

The California Department of Housing and Community Development ("Department") proposes to adopt new regulations that establish the Prohousing Designation Program. Specifically, the Department proposes to adopt the following sections to title 25, division 1, chapter 6, subchapter 6.6 of the California Code of Regulations:

- Sections 6600, 6601, 6602, 6603, 6604, 6605, 6606, 6607, and 6608.

This proposed rulemaking will allow the Department to continue operating the Prohousing Designation Program ("Program") that it is currently administering under emergency regulations that are scheduled to expire on April 26, 2022, or 90 or 180 days later if the Office of Administrative Law (OAL) approves readoptions of the emergency regulations

**EFFECTIVE DATE OF REGULATIONS**

The Department anticipates the final rules, if adopted, will become effective on or about April 25, 2022, or no later than October 22, 2022 if OAL approves readoptions of the Department's existing emergency regulations.

**AUTHORITY [Government Code Section 11346.5, Subdivision (a)(2)]**

Government Code, section 65589.9

**REFERENCE [Government Code Section 11346.5, Subdivision (a)(2)]**

Government Code, section 65589.9.

**PUBLIC COMMENTS [Government Code Section 11346.5, Subdivision (a)(17)]**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 113465.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Where to Submit Comments

Any interested person, or his or her authorized representative, may submit written comments on the proposed regulatory action to the Department, addressed as follows, by any of these means:

Postal Mail

Department of Housing and Community Development  
Attn: Kathyren Mendoza  
2020 W. El Camino Avenue, Suite 500  
Sacramento, California 95833

Electronic Mail

Comments may be submitted electronically to [ProhousingPolicies@hcd.ca.gov](mailto:ProhousingPolicies@hcd.ca.gov). Please identify the comments as "Comments on Regulations" in the subject line.

Time for Comments

Comments may be submitted until March 23, 2022. If the final day for the acceptance of comments is a Saturday, Sunday, or state holiday, the comment period will close on the next business day.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]

Policy Statement and Specific Benefits Anticipated from Regulatory Action [Government Code Section 11346.5, Subdivision (a)(3)(C)]

The objectives of the proposed regulations are to specify the Program's procedures for:

- submitting applications for a Prohousing Designation,
- reviewing, and scoring these applications,
- designating Jurisdictions as Prohousing,
- monitoring Jurisdictions' compliance with the Program, and
- revoking noncompliant Jurisdictions' Prohousing designations.

Responding to the scale, urgency, and consequences of the housing crisis, in Government Code Section 65589.9, the Legislature mandated the Department to adopt emergency regulations by July 1, 2021 to create incentives for jurisdictions that are

compliant with Housing Element requirements and have enacted local Prohousing Policies to accelerate housing production. The Legislature further directed the Department to establish a program to determine which local jurisdictions qualify to be designated as Prohousing. Local jurisdictions receiving a Prohousing Designation shall be awarded additional points or preference in program funding applications pursuant to Government Code section 65589.9(b).

The Department has subsequently adopted emergency regulations that established the Prohousing Designation Program to administer Prohousing incentives. Through the emergency regulations, the Program became operative on June 30, 2021. Eligible funding programs currently linked to the Program include the Affordable Housing and Sustainable Communities Program established by Part 1 (commencing with Section 75200) of Division 44 of the Public Resources Code, the Transformative Climate Communities Program established by Part 4 (commencing with Section 75240) of Division 44 of the Public Resources Code, and the Infrastructure Infill Grant Program of 2007 established by Section 53545.13 of the Health and Safety Code.

The emergency regulations will expire on April 26, 2022, or 90 or 180 days later if the Office of Administrative Law (OAL) approves readoptions of the emergency regulations. The Department, therefore, needs to complete a permanent rulemaking process that complies with the Administrative Procedures Act (Government Code Section 11340 et seq.) so that, as directed by the Legislature, the Program can continue after the emergency regulations expire.

The benefits anticipated from this regulatory action include local jurisdictions taking actions to accelerate housing production, increase housing supply, and preserve existing affordable housing throughout communities across California. By encouraging Prohousing Policies that further both housing and related state goals including but not limited to Affirmatively Furthering Fair Housing (AFFH), climate change and disaster recovery, reducing Vehicle Miles Traveled (VMT) and promoting proximity of housing to amenities, holistic land use and planning, and expedited permitting processes, the proposed rulemaking package would indirectly contribute to creating healthier, more vibrant, and more inclusive communities in California.

Summary of Existing Laws and Regulations, and Effect of Proposed Action  
[Government Code Section 11346.5, Subdivision (a)(3)(A)]

In Government Code section 65589.9, the Legislature mandated the Department to create a program that would allow jurisdictions that are compliant with Housing Element requirements and that have enacted local Prohousing Policies to receive incentives in the form of additional points or preference when they apply for certain funding from the Department. Section 65589.9 also authorized the Department to issue emergency regulations to initially establish and implement the Program.

The Department's existing emergency regulations became effective on July 1, 2021, but they will expire on April 26, 2022, or 90 or 180 days later if OAL approves readoptions.

The proposed Action will allow the Program to continue after the emergency regulations expire and includes the following proposed provisions:

**Section 6600:** This section, as a whole, defines the purpose, scope, and authority of the proposed regulations. This section clarifies the statutory basis for these regulations and helps potential applicants and the general public understand the Prohousing Designation Program by clarifying what the program does and does not do. This section helps local jurisdictions determine whether they should participate in the Program.

**Section 6601:** This section, as a whole, defines certain terms used in the proposed regulations. These definitions help local jurisdictions understand the process and requirements to apply for the Prohousing Designation.

**Section 6602:** This section, as a whole, explains when local jurisdictions can apply for the Program, where they can find the application form, and what documents to include with their application.

**Section 6603:** This section, as a whole, describes the Program's basic submittal and application review procedures. In this section, the Department outlines its expectations for applicants who are applying for the Prohousing Designation and specifies the timeline that the Department takes to review applications and validate jurisdictions' self-scoring of their Prohousing policies. This section also specifies the Department's procedures for reporting which local jurisdictions have received a Prohousing Designation.

**Section 6604:** This section, as a whole, specifies the threshold criteria that applicants must satisfy. These basic requirements include but are not limited to: having a compliant Housing Element, a legally sufficient Annual Progress Report submitted to the Department, completion of any rezoning necessary to remain in compliance with Government Code Section 65583, Subdivision (c)(1), relative to the Regional Housing Needs Allocation (RHNA), and complying with all state housing laws at the time of their application submittal.

**Section 6605:** This section, as a whole, specifies the criteria that applicants must satisfy when including the Prohousing Policies on which they base their applications. The Department also clarifies that applicants assume responsibility for self-scoring their application first, which the Department will validate when reviewing the application.

**Section 6606:** This section, as a whole, specifies the criteria that applicants must satisfy to be designated as Prohousing and outlines the scoring categories, policies, and point totals allocated to each policy that can count towards a local jurisdiction's total point score for the Program.

**Section 6607:** This section, as a whole, details the Department's procedures for monitoring jurisdictions that have received Prohousing Designations ongoing compliance with the Program and for revoking the Designations of noncompliant jurisdictions.

Section 6608: This section, as a whole, notifies applicants that Prohousing Designations will expire after a period of three years from the calendar year following the date of the Designation and outlines the process for how local jurisdictions may renew their Prohousing Designation with the Department.

Existing Federal Regulation or Statute [Government Code Section 11346.5, Subdivision (a)(3)(B)]

The Department is not aware of any existing federal regulation or statute that is identical or similar in nature to the Prohousing Designation Program.

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing state regulations. The proposed rulemaking is a statutorily mandated package that creates incentives in the form of additional points or other preference in the scoring of competitive housing, community development, and infrastructure programs. The Program complements existing Housing Element law and other state housing laws and is neither inconsistent nor incompatible with other existing state regulations.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

This proposed regulatory action incorporates the following form by reference: California Water Boards State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (adopted April 2, 2019, Revised April 6, 2021.)

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivision (a)(5) and (6), and (12)(A)]

- Mandate on local agencies or school districts: none.
- Cost or savings to any State agency: none.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant effect on housing costs: Because the Program will not actually award financial incentives to applicants for HCD funding, it will not directly have a significant impact on housing costs. Reductions in housing costs could indirectly

occur from local jurisdictions implementing Prohousing policies that accelerate housing production and increase housing supply.

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Department has determined that the proposed regulatory action likely will not have an adverse economic impact or potential for an adverse economic impact on individuals or on business, including the ability of California businesses to compete with businesses in other states. The Program is a statutorily mandated package that creates incentives in the form of additional points or other preference in the scoring of competitive housing, community development, and infrastructure programs for local jurisdictions with compliant Housing Elements and Prohousing Policies. Only local public entities may apply for Prohousing Designations. Therefore, the Program will not have adverse economic impacts on businesses or individuals.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

The Department has determined that the proposed regulatory action likely will not have an adverse economic impact or potential for an adverse economic impact on small business. The Program is a statutorily mandated package that creates incentives in the form of additional points or other preference in the scoring of competitive housing, community development, and infrastructure programs for local jurisdictions with compliant Housing Elements and Prohousing Policies. Only local public entities may apply for Prohousing designations. Therefore, the Program will not have adverse economic impacts on businesses, of any kind.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Government Code Section 11346.5, Subdivision (a)(9)]

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Program is a statutorily mandated package that creates incentives in the form of additional points or other preference in the scoring of competitive housing, community development, and infrastructure programs for local jurisdictions with compliant Housing Elements and Prohousing Policies. Only local public entities may apply for Prohousing designations. Therefore, the Program will not have adverse economic impacts on businesses or individuals of any kind.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section 11346.5, Subdivision (a)(10)]

The Department has determined:

- The proposed action is likely to indirectly create jobs within the state, and will not result in the elimination of jobs;

- The proposed action is unlikely to create new businesses or eliminate existing businesses within the state;
- The proposed action is unlikely to expand businesses currently doing business within California;
- As discussed above under the Informative Digest, the proposed action may indirectly benefit the health and welfare of California residents and the state's environment by incentivizing local jurisdictions to enact Prohousing Policies that further state housing and planning goals that address equity, climate change and hazard mitigation, increased density of housing, and streamlined permitting processes for housing, particularly for affordable housing. Such actions may create healthier and more sustainable communities through a holistic land use and planning approach that ties housing to broader policy goals around transportation, the environment, and fair housing. This proposal is not anticipated to benefit worker safety.

**BUSINESS REPORTING REQUIREMENT [Government Code Section 11346.5, Subdivision (a)(11)]**

This proposed rulemaking does not impose any business reporting requirements.

**CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]**

No reasonable alternatives to the regulations have been identified or brought to the Department's attention that would be more effective in carrying out the purpose for which the action is proposed; as effective and less burdensome to program applicants; or more cost-effective to program applicants, and equally effective implementing the Program than the proposed rules described in the Initial Statement of Reasons.

**AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivision (a)(16) and (2) and (b)]**

As of the date this Notice is published, the rulemaking file consists of: this Notice, the Initial Statement of Reasons, the Proposed Text of the regulations, and all the information upon which the proposal is based. The Notice, Initial Statement of Reasons Proposed Text, and any information upon which the proposed rulemaking is based are available by contacting the person designated below:

Department of Housing and Community Development  
 Attn: Weston Starbird  
 2020 W. El Camino Avenue, Suite 500  
 Sacramento, California 95833  
 Telephone: (916) 776-7568  
 E-mail: [ProhousingPolicies@hcd.ca.gov](mailto:ProhousingPolicies@hcd.ca.gov)

The Notice, Initial Statement of Reasons and Proposed Text are also available on the Department's website at <https://hcd.ca.gov/community-development/prohousing/>. To access the documents from the Department's website, navigate to "Program Materials."

As required by the Administrative Procedure Act, the Department's Legal Affairs Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Housing and Community Development, Legal Division, 2020 W. El Camino Avenue, Suite 500, Sacramento, California 95833.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes which are sufficiently related to the original Proposed Text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated above for obtaining copies of the rulemaking file. Any modified regulation(s) will also be accessible on the Department's website listed above. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS [Government Code Section 11346.5, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available to the public, and copies may be requested from the contact person named above for obtaining copies of the rulemaking file or accessed on the Department's website listed above.

CONTACT PERSON [Government Code Section 11346.5, Subdivision (a)(14)]

Inquiries regarding the substance of the proposed regulation may be directed to:

Department of Housing and Community Development  
Attn: Housing Policy Manager Chelsea Lee  
2020 W. El Camino Avenue, Suite 500  
Sacramento, California 95833  
Telephone: (916) 820-1254  
E-mail: [Chelsea.Lee@hcd.ca.gov](mailto:Chelsea.Lee@hcd.ca.gov)

Non-substantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Department of Housing and Community Development  
Attn: Reid Miller



2020 W. El Camino Avenue, Suite 500  
Sacramento, California 95833  
Telephone: (916) 776-7568  
Email: [ProhousingPolicies@hcd.ca.gov](mailto:ProhousingPolicies@hcd.ca.gov)

Dated: February 4, 2022  
Sacramento, California