

**FINDING OF EMERGENCY  
OF THE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
REGARDING THE  
CALIFORNIA CODE OF REGULATIONS  
TITLE 25. HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION 1. CHAPTER 6. SUBCHAPTER 6.6  
SECTIONS 6600 THROUGH 6607, CONSECUTIVE  
PROHOUSING DESIGNATION PROGRAM**

**REQUIRED NOTICE OF PROPOSED EMERGENCY ACTION**

(Cal. Code Regs., tit. 1, § 48)

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. This document provides the required notice. Upon receiving the proposed emergency regulation, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

**PROPOSED EMERGENCY ACTION**

The California Legislature mandated the Department of Housing and Community Development (HCD) to adopt emergency Prohousing regulations by July 1, 2021. (Gov. Code, § 65589.9, subd. (d).) The Director of HCD finds that the adoption of emergency Prohousing regulations is necessary to comply with this legislative mandate, to promote housing development during the current housing crisis, and to assure that the regulations are in place during the 6<sup>th</sup> Housing Element Cycle, which began in 2021 for many jurisdictions. Indeed, having the regulations in place during the 6<sup>th</sup> Housing Element Cycle allows HCD to guide and shape consequential local housing decisions now and over the next decade.

**FINDING OF EMERGENCY & INFORMATIVE DIGEST**

(Cal. Code Regs., tit. 1, § 50(b)(1), (b)(3)(B); Gov. Code, § 11346.5, subd. (a)(3)(A), (C).)

**California Has a Housing Shortage of Crisis Proportions That Calls for Immediate Action**

The Legislature has found and declared that the availability of housing is a statewide concern and priority. “The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)

The Legislature has also imposed an obligation on all public agencies, including cities and counties, to “administer [their] programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with [their] obligation to affirmatively further fair housing.” (Gov. Code,

§ 8899.50, subd. (b).) This obligation requires all public agencies to take “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.” (Gov. Code, § 8899.50, subd. (a)(1).)

At the same time, the Legislature has identified the dire scale and consequences of California’s housing shortage:

- “The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A).)
- “California housing has become the most expensive in the nation. The excessive cost of the state’s housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.” (Gov. Code, § 65589.5, subd. (a)(1)(B).)
- “Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.” (Gov. Code, § 65589.5, subd. (a)(1)(C).)
- “California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives.” (Gov. Code, § 65589.5, subd. (a)(2)(A).)

HCD’s California Statewide Housing Assessment reinforces the Legislature’s findings. In that assessment, HCD provided the following data and analysis:

- From 2015-2025, approximately 1.8 million new housing units are needed to meet projected population and household growth, or 180,000 new homes annually.
- Production averaged less than 80,000 new homes annually over the last 10 years, and ongoing production continues to fall far below the projected need of 180,000 additional homes annually.
- Lack of supply and rising costs are compounding growing inequality and limiting advancement opportunities for younger Californians. Today’s population of 39 million is expected to grow to 50 million by 2050. Without intervention, much of the population increase can be expected to occur further from job centers, high-performing schools, and transit, constraining opportunity for future generations.
- Of California’s almost 6 million renter households, more than 3 million households, pay more than 30 percent of their income toward rent, and nearly 30 percent — more than 1.7 million households — pay more than 50 percent of their income toward rent.
- California is home to 12 percent of the nation’s population, but a disproportionate 22 percent of the nation’s homeless population.

- For California’s vulnerable populations, discrimination, and inadequate accommodations for people with disabilities are worsening housing cost and affordability challenges.

(Cal. Dept. of Housing and Community Development, California’s Housing Future: Challenges and Opportunities, Final Statewide Housing Assessment 2025 (Feb. 2018) pp. 1, 3, 5.)

### **The Housing Shortage Leads to Homelessness, Cost Burdens, Poor Public Health Outcomes, and Enduring Economic and Opportunity Losses**

The shortage of housing units in California has led to (1) significant increases in the population of Californians experiencing homelessness, (2) significant increases in the share of gross income going to rents, and (3) significant increases in Californians’ commute times and the number of Californians supercommuting (i.e., spending more than 90 minutes commuting each way for work).

According to figures from the U.S Department of Housing and Urban Development (HUD), 151,278 Californians were experiencing homelessness on any given day, as of January 2019.

The California Budget & Policy Center found that more than half of California’s renters are cost-burdened, meaning these individuals spend more than 30 percent of their gross income on rent. Unfortunately, this data likely understates the gravity of the issue because take-home pay (i.e., net income) is typically much lower than gross income. In fact, a 2018 Federal Reserve study found that about 40 percent of Americans could not afford an unexpected \$400 bill. This problem likely grew more acute during the COVID-19 pandemic, when as much as 25 percent of the labor force became unemployed. Notably, layoffs and unemployment during the COVID-19 pandemic have been disproportionately concentrated in communities already at risk of housing insecurity and higher rent-burdens.

*Public health outcomes of living outside of opportunity areas will last a lifetime.*

The shortage of housing in California also leads to negative public health outcomes because it promotes supercommuting and increases Vehicle Miles Traveled (VMT). In Alameda County, for example, the number of supercommuters rose 126 percent between 2017 and 2019. One study found that people in traffic experience higher stress levels than fighter pilots experience during combat. Another study found that people with commutes of over an hour were 33 percent more likely to suffer from depression, 40 percent more likely to have financial worries, and 21 percent more likely to suffer from obesity. An additional study from USC stated that commuting can result in lowered amounts of exercise and socializing, reduced sleep, and increased levels of stress and exposure to pollutants.

*The housing shortage will have a detrimental and enduring impact on the material lives of Californians.*

Since home equity wealth is one of the most important markers of economic opportunity, the housing shortage also opens or exacerbates wealth and opportunity gaps across generations. According to research by the Social Science Research Council, “One of the most important markers of economic opportunity is a family’s ability to support its children’s economic future by helping to pay for college or down payments on a home or by leaving an inheritance. Deep losses to a family’s wealth, especially losses to home-equity wealth, can drastically diminish the ability to assist children in these ways.”

Beyond long-term economic impacts, the California Budget and Policy Center notes that unaffordable housing costs erode Californians' essential quality of life. "Unaffordable housing costs can force families to spend less on other basic necessities like health care or food, to cut costs by seeking lower quality child care, and to under-invest in important long-term assets like education or retirement savings."

### **Against this Backdrop, Prohousing Regulations Are Needed to Accelerate and Incentivize Housing Production**

The scale, urgency, and consequences of the housing crisis, as described above, compel swift action and clear-headed innovation by the State of California. Indeed, Government Code section 65589.9 responds directly to these imperatives by (1) establishing the Prohousing Designation Program; (2) providing localities with a defined incentive to promote housing production and inclusive communities; and (3) requiring HCD to take emergency rulemaking action. The emergency regulations, in turn, will provide localities with a plain and straightforward map of the expectations, requirements, and procedures that are essential to the Prohousing program. Together, these laws will sharpen localities' incentive to proactively address the housing crisis, as well as provide localities with a clear understanding of how to secure Prohousing incentives.

### **SUMMARY OF PROPOSED REGULATIONS**

- § 6600. Purpose, Scope, and Authority: This section describes the general purpose of and authority behind the Prohousing Regulations.
- § 6601. Definitions: This section defines key terms.
- § 6602. Applications and Documentation: This section introduces and briefly describes HCD's process for accepting and reviewing Prohousing Designation applications.
- § 6603. Submittal and Application Review: This section details the requirements, timelines, communications, and reporting that are part of the application process.
- § 6604. Applicant Threshold Criteria: This section describes the threshold criteria that applicants must satisfy before their applications proceed to the scoring review and validation phase of HCD's review process.
- § 6605. Designation Criteria Requirements: This section describes HCD's expectations and areas of focus during the scoring review and validation phase of the review process. This section also explains the system for allocating points.
- § 6606. Designation Criteria: This section provides a comprehensive description of HCD's scoring categories, HCD's point system, and HCD's considerations during scoring review and validation.
- § 6607. Administration: This section describes HCD's ongoing monitoring of Prohousing Designations. This section also explains that HCD may take revocation action, and it sets out the bases and administrative process for such action.
- Formal Resolution for the Prohousing Designation Program (New 04/21).

### **Technical, Theoretical, or Empirical Studies, Reports, or Documents Relied Upon** (Gov. Code, § 11346.1.)

- Bay Area More Segregated Now than in 1970. May 28, 2019. Haas Institute for a Fair and Inclusive Society.
- Bay Area super-commuting growing: Here's where it's the worst. Mercury News. September 11, 2019. Erin Baldassari
- California Unemployment Rate Approaches 25%. May 14, 2020. NBC. James Jackson.

- California's Housing Affordability Crisis Hits Renters and Households With the Lowest Incomes the Hardest. April 2019, California Budget and Policy Center. Sara Kimberlin/
- Commuters 'more stressed than pilots'. The Independent. 2004. Graham Hiscott.
- Impact of the US Housing Crisis on the Racial Wealth Gap Across Generations (June 2015, Social Science Research Council). Burd-Sharps and Rasch.
- Report on the Economic Well-Being of US Households in 2018, May 2019. US Federal Reserve.
- Residential Land Use regulation and the Spatial Mismatch Between Housing and Employment Opportunities in California Cities. 2019, Turner Center for Housing Innovation. Noah Durst.
- Stubborn Zoning Boards Tied to Segregation In Boston Area, Report Finds. Wbur. June 2019. Simón Rios.
- The Geography of Inequality: How Land Use Regulation Produces Segregation. American Political Science Review. 2020. Jessica Trounstein.
- The Greater Boston Housing Report Card 2019 Supply, Demand and the Challenge of Local Control. June 2019. Sasser Modestino et al.
- Rodionova, Zlata. "Lengthy Commutes Increase Likelihood of Depression, Obesity and Money Concerns." The Independent, Independent Digital News and Media, 22 May 2017, [www.independent.co.uk/news/business/news/long-commutes-work-employee-depression-obesity-productivity-workers-research-travel-a7749206.html](http://www.independent.co.uk/news/business/news/long-commutes-work-employee-depression-obesity-productivity-workers-research-travel-a7749206.html).
- Cal. Dept. of Housing and Community Development, California's Housing Future: Challenges and Opportunities, Final Statewide Housing Assessment 2025 (Feb. 2018).

#### **AUTHORITY AND REFERENCE**

(Gov. Code, §§ 11346.5, subd. (a)(2), 11346.1, subd. (b).)

These regulations are authorized by Government Code section 65589.9, subdivision (d). These regulations also implement, interpret, and make specific the provisions of Government Code section 65589.9.

#### **REGULATORY COMPATIBILITY**

(Gov. Code, § 11346.5, subd. (a)(3)(D).)

The Department of Housing and Community Development has determined that this proposed regulation is not inconsistent or incompatible with existing state regulations. Prohousing emergency regulations create a non-mandatory designation that helps jurisdictions access state dollars allocated for housing and planning-related activities.

#### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

(Gov. Code, § 11346.5, subd. (a)(5).)

The proposed emergency regulations do not impose a mandate on local agencies or school districts.

#### **ESTIMATE OF COST OR SAVINGS**

(Gov. Code, § 11346.5, subd. (a)(6).)

The Director has determined that the emergency regulations do not impose any additional cost or savings on any state agency, any cost requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the California Government Code, any other non-discretionary cost or savings on any local agency, or any cost or savings in federal funding to the state. Application for and participation in the Prohousing program is

discretionary and the proposed regulations pertain to program eligibility, compliance, and administration issues. The proposed emergency regulations do not require any person or entity to take any action, make any monetary expenditure, or refrain from taking any action or making any expenditure. The proposed regulations will not have an effect on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing business within the State of California, the expansion of businesses currently doing business within the State of California, or on small businesses. HCD maintains that the Prohousing program does not have any private sector cost impacts. Pursuant to Section 6603 of the State Administrative Manual, an Economic and Fiscal Impact Statement (STD. Form 399) is submitted.

**STATEMENT OF CONFIRMATION OF MAILING OF FIVE-DAY EMERGENCY NOTICE**

(Cal. Code Regs., tit. 1, § 50, subd. (b)(3)(A).)

The Department of Housing and Community Development sent notice of the proposed emergency rulemaking action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulations to the Office of Administrative Law in accordance with the requirements of Government Code section 11346.1, subdivision (a)(2).