



# AFFIRMATIVELY FURTHERING FAIR HOUSING AND ANTI-DISCRIMINATION IN LAND USE LAW

Government Code §§ 8899.50, 65583, 65583.2, 65008

## INTRODUCTION

### Affirmatively Furthering Fair Housing (AFFH)

AFFH 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.” State law requires that all public agencies, cities and counties included, administer all of their activities and programs relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with its obligation to AFFH. Please see HCD’s [AFFH page](#) for more information, including a guidance memo to help jurisdictions better understand and fulfill their AFFH duty, with particular attention to housing element requirements. The memo also provides an AFFH data viewer to assist jurisdictions in performing the required analysis.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

### Anti-Discrimination in Land Use Law (ALU Law)

The ALU Law prohibits discrimination in local land use policies and practices. It incorporates the protected characteristics listed in the Fair Employment and Housing Act (FEHA), Government Code section 12900 et seq., while adding additional protections for persons and families of very low, low, moderate, or middle incomes, which include persons and families with incomes lower than 150 percent of area median income (AMI). Protected characteristics include race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, military or veteran status, and genetic information.

Enforced by the California Civil Rights Department, the Fair Employment and Housing Act (FEHA) also prohibits housing discrimination in local land use policies and practices, and on the basis of these protected characteristics. Visit the California Civil Rights Department’s (CRD) [Housing Discrimination page](#) for information about FEHA, including examples of actions that could be discriminatory if based on a person’s protected characteristic.

## **KEY PROVISIONS**

### **Housing or Community Development and AFFH**

Beyond what federal fair housing laws might require, Government Code section 8899.50 extends the obligation to affirmatively further fair housing to all public agencies in the State of California with programs or activities that relate to housing or community development. This affirmative duty is not limited to those agencies with relationships with the federal government. These statutory obligations charge all public agencies with broadly examining their existing and future policies, plans, programs, rules, practices, and activities, and making proactive changes to promote more inclusive communities. This can include, for example, considering whether the location and provision of public services and infrastructure are consistent with AFFH.

### **Housing Elements and AFFH**

Government Code sections 65583 and 65583.2 establish several requirements for local housing elements. Jurisdictions must include the following AFFH components:

- ▶ A summary of fair housing issues and an assessment of the jurisdiction's fair housing enforcement and outreach capacity.
- ▶ A comparative 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. This 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 protected characteristics.
- ▶ An analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to AFFH.
- ▶ An assessment of contributing factors for fair housing issues in the jurisdiction, with highest priority given to factors that limit fair housing choice or access to opportunity or that negatively impact fair housing or civil rights compliance.
- ▶ Programs to address the most salient fair housing issues and priorities identified by the required AFFH analyses, with measurable outcomes and a concrete timeline with milestones.

Section 65583 also clarifies local jurisdictions' AFFH duties by specifying that localities must promote, remove constraints on, and otherwise affirmatively support housing for persons with characteristics protected by state fair housing laws, including protections that apply to households with lower incomes.

### **Land Use Policies and Practices and ALU Law**

As specified in Government Code section 65008, the following are key components of the ALU Law:

- ▶ **Method of Financing, Household Characteristics or Income, Multifamily Use.** The law prohibits discriminating against a housing development or an emergency shelter—including by disapproving it or imposing conditions—because of the method of financing, because of any characteristics of the owners or the intended occupants protected under FEHA, because of the income level of the intended occupants, or because the development is multifamily if it is consistent with the zoning for the site.
- ▶ **Equal Requirements.** The law prohibits jurisdictions from imposing requirements on government subsidized or assisted housing or shelters that are different from those imposed on nonsubsidized or unassisted housing. It similarly prohibits jurisdictions from imposing requirements on housing for persons with protected characteristics or with incomes below 150 percent of AMI that are different from the requirements jurisdictions generally impose on housing.
- ▶ **Preferential Treatment.** The law authorizes jurisdictions to extend preferential treatment to publicly subsidized housing or emergency shelters.
- ▶ **Senior Housing.** The law allows limited exceptions for senior housing that limit occupancy based on age.

In addition to prohibiting discriminatory local land use policies and practices, the law specifies that any actions taken under such policies or practices are null and void.

## RECENT HCD TECHNICAL ASSISTANCE LETTERS

<p><a href="#">City of Norwalk</a>, September 16, 2024</p>	<p>The City’s ordinance imposing a citywide moratorium on establishing, implementing, or operating emergency shelters, single-room occupancy housing, supportive housing and transitional housing violates ALU Law for two reasons. First, the City is prohibiting housing because of the method of financing and/or the intended occupants. Second, the moratorium specifically denies low-income individuals and families, including individuals experiencing homelessness and individuals with disabilities, the enjoyment of housing.</p>
<p><a href="#">City of Fresno</a>, August 7, 2024</p>	<p>The City’s decision to accept and later reject Homekey funding for a permanent supportive housing project located near resources and services runs counter to AFFH and the City’s proposed housing element commitments.</p>
<p><a href="#">County of Fresno</a>, August 5, 2024</p>	<p>Withdrawal of the County’s application for grant and loan funding from HCD’s No Place Like Home (NPLH) program in connection with an approved supportive housing project runs counter to the County’s duty to protect persons or families of very low or low income.</p>
<p><a href="#">City of Concord</a>, June 10, 2024</p>	<p>The City’s failure to approve the Tax Equity and Fiscal Responsibility Act (TEFRA) resolution for an affordable</p>

	<p>housing project may be inconsistent with several of the City’s housing element programs. Given that the approval of the TEFRA creates no risk, obligation, or liability for the City, the denial of a resolution raises concerns that the denial is “materially inconsistent” with the City’s obligation to AFFH.</p>
<p><b><u>County of Los Angeles,</u></b> July 28, 2023</p>	<p>ALU Law prohibits the County from imposing different requirements on a supportive housing project than those generally imposed on other housing.</p>
<p><b><u>City of Anaheim,</u></b> December 14, 2021</p>	<p>The City violated California’s AFFH and ALU Law provisions by “imposing separate, more onerous requirements on housing for a protected class” when it both impermissibly required a conditional use permit and subsequently denied its issuance for the “Grandma’s House of Hope” application, a proposal to create transitional housing for formerly homeless women with mental health disabilities. HCD warned the City of its <a href="#">continued violation</a> of these laws, and later joined a lawsuit filed by Grandma’s House of Hope. In February 2024, the Orange County Superior Court ruled in favor of HCD.</p>

**RECENT LEGISLATION**

<p><b>Additional AFFH Analysis</b> <a href="#">AB 1304</a>, Santiago (2021) amended Gov. Code, §§ 65583 and 65583.2</p>	<p>Pursuant to AB 1304, jurisdictions must include an analysis in their housing element sites inventory of how the inventory affirmatively furthers fair housing and state explicit goals, objectives, and policies relative to AFFH. In addition, jurisdictions must analyze their fair housing issues through both a regional and historical context rather than just analyzing current issues within their own boundaries and must include protected characteristics as factors in the analysis. AB 1304 also clarified that AFFH duties are mandatory and enforceable in court.</p>
<p><b>Affirmatively Furthering Fair Housing</b> <a href="#">AB 686</a>, Santiago (2018) amended Gov. Code, §§ 65583 and 65583.2, added Gov. Code, § 8899.50</p>	<p>AB 686 requires all public agencies, including cities and counties, to administer all of their activities and programs relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with the duty to AFFH. Beginning January 1, 2021, all housing elements must include an assessment of fair housing issues, an analysis of the relationship between available sites and areas of high or low resources, and concrete actions in the form of programs to address identified fair housing issues and/or further promote AFFH.</p>