



HOUSING ELEMENT LAW

Government Code §§ 65580-65589.11

INTRODUCTION

The housing element is the plan for how every city and county will meet the existing and projected housing needs of all income groups within the jurisdiction. Housing Element Law is also part of a broader statewide framework to reduce regional and local patterns of housing segregation by removing barriers to housing production—particularly affordable housing—and ensure that every local jurisdiction in the state does its part to plan for the housing needs at all income levels.

HCD created **Building Blocks: A Comprehensive Housing-Element Guide** to assist jurisdictions in creating comprehensive housing elements. For additional technical assistance resources, please view the following link: [Building Blocks | California Department of Housing and Community Development](#).

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.

KEY PROVISIONS

General Plan Framework

The housing element is one of several required elements of a jurisdiction's general plan. Every city and county must adopt and periodically update its general plan, generally every 8 years. Project entitlements, including subdivision maps, and local legislative actions (e.g., specific plans, zoning ordinances) must be consistent with the general plan. Each of the general plan's elements must also be consistent with one another, ensuring an internally consistent document to guide planning and development within the jurisdiction. The housing element is unique within the general plan because it requires specific actions and commitments by the jurisdiction to facilitate housing development and the element must be reviewed and certified by HCD.

Site Inventory Requirements

One of the most important requirements of the housing element is the preparation of an inventory of available sites suitable to accommodate its assigned Regional Housing Needs Allocation (RHNA) for each income group. These income groups include Very Low, Low, Moderate, and Above Moderate, representing different percentage ranges of Area Median Income (AMI). This analysis requires the jurisdiction to calculate how many new units may be accommodated on each inventory site and demonstrate that each site is "suitable and available" for the development of housing within the 8-year planning period. This includes determining that the sites are served by infrastructure (or that there is a plan to serve them) and have appropriate zoning and development standards in place.

Density Minimums

Sites designated to meet the need for lower-income households must be zoned at densities sufficient to accommodate housing affordable to these income groups. This standard can be demonstrated in two ways.

- ▶ The jurisdiction can rely on a set of minimum default densities set forth in the statute. These default densities—sometimes known as “Mullin densities” after the name of the author of the bill that enacted them—vary by the community type, ranging from 10 units per acre for an unincorporated area in a nonmetropolitan county, to 30 units per acre in a metropolitan jurisdiction. HCD publishes a list of jurisdictions and their respective “default” density standards that are deemed appropriate to accommodating housing for lower-income households. Zoning that accommodates the default density is presumed to be sufficient to support the development of housing for lower-income households. For additional details, please view the following link: [Default Density Memo](#).
- ▶ The jurisdiction can demonstrate that certain densities support feasible developments for that income group based on market demand, financial feasibility, and development trends. This method is generally rare and subject to HCD review.

Programs to Address Gaps

After evaluating the inventory based on statutory requirements, if the inventory shows a shortfall for one or more income categories, the housing element must contain a program to make additional adequate sites available to accommodate the entire RHNA during the housing element planning period. For example, if a jurisdiction has a RHNA of 1,000 units for low-income households, the inventory must show that there are enough sites to accommodate at least 1,000 new units of housing zoned at appropriate multifamily densities. If not, the housing element must have a program that commits the jurisdiction to rezone land or take other actions to make additional sites available.

In addition, the program must designate sites sufficient to meet the RHNA for lower-income households with a zoning that permits development by-right for projects where at least 20 percent of the units are affordable to lower-income households. By right means that a project must be approved without discretionary action that would trigger environmental review requirements. This program can include a number of actions by the local government, including rezoning land to residential from other uses or increasing the density and development standards on existing residential sites. If a housing element is certified by the due date, a jurisdiction has three years to complete the rezoning program.

Other Requirements in the Housing Element

Beyond identifying sufficient sites to meet the RHNA, the housing element must include analyses, programs, and objectives on a number of topics critical to addressing the existing and projected need for housing affordable at all income levels. The following is a broad overview of key requirements that must be included in the housing element:

- ▶ **Analysis of existing demographics and housing need.** The element must include an analysis of existing need for housing for various income levels and populations.

This includes an analysis of the number of households that are living in overcrowded or substandard housing, the number of households overpaying for housing—generally defined as those paying more than 30 percent of their income for housing, and housing need for special need populations such as persons experiencing homelessness, seniors, persons with disabilities, large families, and extremely low-income households.

- ▶ **Identification and removal of constraints to housing.** Housing elements must include an analysis of governmental and non-governmental constraints to the development of housing for all income levels. This includes an evaluation of development standards, permit processing procedures, housing for persons with disabilities, fees, building standards, and other governmental regulations that affect the development of housing. The element must also ensure that the jurisdiction has zoning to accommodate a variety of housing types including multifamily, housing for farmworkers, supportive housing, transitional housing, and emergency shelters. Where identified, the element must include programs to minimize or remove constraints.
- ▶ **Sites for shelters.** Housing elements must identify a zone or zones where emergency shelters are permitted without discretionary approval. If such a zone does not exist, the jurisdiction must include a program to create one. (See [HCD memo dated December 29, 2022](#), for additional details on emergency shelters.)
- ▶ **Preservation of existing affordable housing.** Housing elements must include an analysis of existing subsidized housing that is at risk of converting to market rate within the next 10 years and the local, state, and federal resources available to preserve the housing as affordable. The element must also include programs to preserve these units where feasible, and to conserve and improve the existing affordable housing stock, including non-subsidized units at risk of demolition.
- ▶ **Affirmatively furthering fair housing.** Housing elements must include an assessment of fair housing issues, including patterns, trends, conditions, and practices that result in impediments to fair housing choice and actions the jurisdiction will take to proactively increase access to housing choice and reduce segregation.

Public and HCD Review

In drafting and adopting the element, jurisdictions must engage in a public process that ensures participation by all economic segments of the community. Once the public process is completed, the draft housing element is submitted to HCD for review. Upon receiving the initial draft, HCD has 90 days to issue findings to the jurisdiction as to whether the draft element substantially complies with the law, or if it does not, an explanation of what changes are necessary to bring it into compliance. Once a jurisdiction has made changes to address HCD's findings—often an iterative process during which HCD has 60 days to review each subsequent draft—the final element is adopted by the jurisdiction and submitted to HCD for final approval.

Implementation

Following adoption of the element, the law requires jurisdictions to implement the programs in the housing element and to make planning and land use decisions and approvals consistent with the adopted element. Failure to do so may result in HCD’s removal of its finding of compliance.

Results of Noncompliance

Significant penalties apply if the housing element is not updated and certified by HCD. These penalties include, but are not limited to:

- ▶ Shorter timelines to accomplish required rezonings.
- ▶ Ineligibility or de-prioritization for various state grant and incentives programs.
- ▶ Inability to deny certain housing development projects based on inconsistency with local zoning and land use designation (“Builder’s Remedy”).
- ▶ Potential litigation that can result in court-imposed fines of \$10,000 to \$100,000 per month which can be multiplied by a factor of 6 for continuing noncompliance. Moreover, in any action brought by the Attorney General or HCD to enforce the adoption of housing element revisions, jurisdictions are subject to additional fines of between \$10,000 and \$50,000 per month for each failure to adopt court-ordered housing element revisions, assessed from the date of initial violation until the date the violation is cured, including all investigation and prosecution costs in a successful lawsuit. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

[City of Santa Barbara](#),
December 19, 2024

Clarifies that Housing Element Law does not allow local governments to deny by-right review for multifamily housing on reused housing element sites solely because a subdivision is proposed. The housing component must be approved ministerially if at least 20 percent of units are affordable to lower-income households, while the subdivision itself may undergo discretionary review under the Subdivision Map Act and local ordinances.

[City of Pleasant Hill](#),
July 10, 2024

Addresses the City’s rezoning efforts under Housing Element Law and emphasizes the obligation to ensure that sites identified in its housing element are rezoned to permit residential development by-right at appropriate densities and with sufficient development capacity. The draft rezoning ordinance does not fully comply with state law because it fails to allow residential use by-right on all identified sites.

LEGISLATIVE HIGHLIGHTS

<p>Emergency Shelter Planning</p> <p>AB 2339, Bloom (2022); amended Gov. Code §§ 65583 and 65863</p>	<p>Introduces stricter requirements for jurisdictions in planning emergency shelters. It limits the zones where shelters can be placed, mandates that existing uses on proposed sites do not impede shelter development, and expands the definition of emergency shelters to include facilities like navigation centers.</p>
<p>Required Comment Period</p> <p>AB 215, Chiu (2021); amended Gov. Code, § 65585</p>	<p>Requires jurisdictions to post draft housing elements for public comment at least 30 days before submitting to HCD, with an added 10-day period to respond to comments. Subsequent revisions must be posted online and shared with interested parties at least 7 days in advance. Extends HCD’s review period for initial drafts from 60 to 90 days, while keeping the 60-day review window for revised drafts.</p>
<p>Consequences for Late Adoption</p> <p>AB 1398, Bloom (2021); amended Gov. Code, §§ 65583, 65583.2, and 65588</p>	<p>Closes a loophole that allowed jurisdictions to avoid penalties by adopting unapproved housing elements. Requires adoption of an HCD-approved housing element within 120 days of the deadline. If not met, jurisdictions must complete the required rezoning within one year instead of the usual three, replacing the prior four-year update penalty.</p>
<p>Affirmatively Furthering Fair Housing</p> <p>AB 686, Santiago (2018) amended Gov. Code, §§ 65583 and 65583.2, added Gov. Code § 8899.50</p>	<p>Requires that all housing element revisions that occur on or after January 1, 2021 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>
<p>Determination of Adequate Sites</p> <p>AB 1397, Low (2017); amended Gov. Code, § 65580, 65583, and 65583.2</p>	<p>Increases scrutiny on non-vacant sites (e.g., existing commercial or low-density residential uses) by requiring a detailed analysis of redevelopment potential, considering lease terms, market conditions, and past redevelopment success. If over 50 percent of a jurisdiction’s low-income RHNA is on non-vacant sites, existing uses are presumed to block development unless proven otherwise. Restricts reuse of undeveloped sites from past housing elements, limits reliance on very small or large parcels, and requires realistic unit capacity assumptions based on comparable local development patterns.</p>