



# RENTAL INCLUSIONARY HOUSING

Government Code §§ 65850 and 65850.01

## INTRODUCTION

HCD has the authority to review a feasibility study for an inclusionary ordinance that requires more than 15 percent of the units in a rental housing development be affordable to lower-income households. HCD may conduct such a review if a jurisdiction fails to permit at least 75 percent of its above-moderate income regional housing needs allocation (RHNA) over five consecutive years, or if the jurisdiction fails to submit an annual progress report (APR) over two consecutive years.

Inclusionary housing, often referred to as inclusionary zoning, is a policy tool used by local jurisdictions to ensure that housing development meets the needs of all economic segments of the community. Inclusionary housing policies can be tailored to local circumstances. Under an inclusionary housing policy, a jurisdiction requires or incentivizes developers to include affordable units in their projects. For additional details, please see HCD's [Rental Inclusionary Housing memorandum](#).

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

### Local Authority

Cities and counties, including charter cities, may adopt ordinances requiring that a portion of residential rental units be affordable to households with moderate, low, very low, or extremely low incomes. The law applies to ordinances adopted after January 1, 2018.

Local inclusionary policies vary in terms of the percentage of affordable units that must be provided, at what income level(s), and for how long units must remain affordable. Jurisdictions typically require some mix of units affordable to low- and very low-income households, but in some high-cost markets, moderate-income units are also part of the requirement. Some jurisdictions require that inclusionary units remain affordable in perpetuity, although many policies require a 55-year affordability term for rental units and a 30- or 45-year term for for-sale units.

The law also mandates that any inclusionary housing ordinance applied to rental housing must offer developers alternative means of compliance. These alternatives may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or the acquisition and rehabilitation of existing units.

## HCD Review Authority

If HCD asks to review a feasibility study, the review is limited to whether a qualified entity prepared the study and whether the study followed best professional practices. HCD is prohibited from requesting to review a feasibility study more than 10 years from the date of adoption or amendment of the ordinance. A jurisdiction is not required to prepare a feasibility study at the time it adopts or amends an inclusionary ordinance (although doing so is considered a best practice), nor are there any statutory limits on the design of local inclusionary policies.

## LEGISLATIVE HIGHLIGHTS

### **Inclusionary Housing: Reports**

[AB 2663](#), Grayson (2024); added Gov. Code, § 65906.6

Enhances transparency around the collection and use of in-lieu fees collected under local inclusionary housing ordinances. Starting January 1, 2026, local agencies that collect these fees must annually publish the amount collected and whether the funds are intended for any specific project. In addition, every five years, jurisdictions must report the total amount collected over that period and identify the projects funded with those fees.

### **Rental Inclusionary Ordinance**

[AB 1505](#), Bloom (2017); amended Gov. Code, § 65850; added Gov. Code, § 65850.01

Restores and clarifies the authority of local jurisdictions to require inclusionary housing in rental developments. Prior to AB 1505, a 2009 appellate court interpreted local inclusionary policies as violating a landlord's right to set initial rents for new tenants under the Costa Hawkins Rental Housing Act.