



# Housing Element Law

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Every city and county in California must adopt a comprehensive “general plan” to govern its land use and planning decisions. All planning and development actions must be consistent with the general plan. The general plan must contain 7 elements, including a housing element. The housing element must “make adequate provision for the housing needs of all economic segments of the community.” While this law does not require local governments to provide housing to meet the need, it does require that the community plan for the needs of all their residents.

Each community must prepare a new housing element generally every five years and submit the element to the state Department of Housing and Community Development (HCD) for review. When the community is preparing its housing element, it must include residents and community groups in the process. This provides an opportunity for affordable housing advocates to urge the inclusion of policies and programs that promote affordable housing.

**Contents of the Housing Element:** Housing element law, Gov. Code Sec 65580 *et seq*, requires the housing element to contain: 1) a detailed analysis of the locality’s housing needs, resources and constraints to housing development; 2) goals addressing those issues; 3) a 5-year

program of actions to address those needs, resources and constraints.

**Housing Needs:** A housing element must first include an assessment of the locality’s existing and future housing needs. This assessment must include the community’s “fair share” regional housing needs allocation (RHNA) for all income groups (very low, low, moderate and above moderate) as determined by the regional Council of Governments (COG). It must also assess and quantify the needs of disabled persons, elderly, large families, farmworkers, families with female heads of household and homeless persons.

**Inventory Of Sites:** The element must contain a site specific inventory of land “suitable for residential development, including vacant sites and sites having potential for redevelopment.” Essentially, it is a snapshot of sites that are currently available. It must also analyze how the zoning and infrastructure available to the sites will affect the sites development potential. The inventory must provide: 1) a site specific listing of parcels and a map showing their location, 2) the size, zoning and general plan designation, 3) the existing use (for nonvacant sites), 4) a description of environmental constraints to development (need not be site specific), 5) a description of existing or planned water and sewer service (need not be site specific, but should indicate

whether the identified sites can be served during the planning period).

The analysis must determine the number of units that can be accommodated on the residentially zoned sites identified in the inventory. The determination may be made based on the locality’s own analysis (employing minimum densities, if any, and actual densities of existing projects) *or* it may be assumed that densities appropriate for lower income households are: 30 units/acre for urban metropolitan areas, 20 units/acre for suburban jurisdictions, 15 units/acre for non-metropolitan counties and 10 unit/acre for unincorporated areas in nonmetropolitan counties. (The definitions of these categories are found in Government Code §65583.2(d), (e) & (f).) For sites with existing uses identified as suitable for housing, the jurisdiction must demonstrate the additional development potential of each site given the existing use and other development constraints.

**Governmental Constraints:** The document must also include an analysis of local governmental constraints to the development of housing for all income levels. The review must address, at minimum, land use controls, developer fees and exactions, building codes and permit processing procedures. The constraints analysis must also analyze barriers to development of housing for disabled persons and demonstrate local

efforts to remove governmental constraints that hinder the locality from meeting its housing need.

**Goals & 5-Year Program of Actions:** The element should contain goals and action programs addressing all identified needs and constraints:

(1) Action to Make Adequate Sites Available: The housing element must contain an action program that will make sites available during the housing element planning period with appropriate zoning and infrastructure to accommodate the portion of the RHNA that cannot be accommodated by sites in the land inventory without rezoning. It must identify sites as needed” to facilitate and encourage a variety of types of housing for all income levels.” The identified sites must include sites for multifamily rental housing, factory-built housing, mobile homes, emergency shelters, transitional and farmworker housing. Where the inventory of sites does not identify sites to meet the fair share regional housing need for each income group or for farmworkers, the action program must provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right. (“Use by right” means the use does not require a conditional use permit, planned unit development permit or other discretionary review (excepting design review).) In addition, HCD will not approve an element when the zoning approval process imposes vague, overbroad or unreasonable conditions.

(2) Removal of Government Constraints: The program of action must also contain a program to “address and, where appropriate and legally possible, remove governmental constraints”

to the development of housing for all income levels and for persons with disabilities. Although localities have the discretion to determine what local ordinances and policies are “appropriate” to remove, if the housing element identifies a particular constraint as a problem it must include a program that addresses the harmful effect of the barrier.

**The Adoption & Approval Process:** Every 5 years the regional council of governments must, based on determinations by HCD and the state Department of Finance, determine each city and county’s share of the regional housing need for all income levels. Then each local government must prepare an updated housing element that covers the five year period and submit the element to HCD for review. If HCD finds an element out of compliance a court must give great weight to HCD’s interpretation if the element is challenged, and an element will be presumed valid if HCD finds it in compliance.

HCD’s most recent housing element compliance report for localities is available on the web at: [www.housing.hcd.ca.gov/hpd/hrc/plan/he/status.pdf](http://www.housing.hcd.ca.gov/hpd/hrc/plan/he/status.pdf).

**Penalties for Noncompliance:** When a local government fails to adopt an updated housing element, or adopts an element that does not comply with the law, the general plan is invalid and a local government may not proceed to make land use decisions or approve development until it has adopted a valid housing element. If challenged in court, the court may issue an order that curtails the ability of the locality to approve subdivisions, or zoning changes or to issue building permits. In addi-

tion, a court may order the approval of proposed affordable housing developments. See Gov. Code Sections 65754-55 for details on court remedies for non-compliance. The statute of limitations in actions challenging a housing element may be extended pursuant to Gov. Code §65009 (d).

When the community adopts a housing element that includes sites and programs for the development of affordable housing, it may not act contradictory to the terms of the element, and it must implement the element’s programs in accordance with the terms specified in the housing element.