

New Laws Impacting Housing Elements

Under California law, every city and county is required to adopt a General Plan outlining anticipated growth, how that growth will occur, and what policies the jurisdiction plans to adopt to make room for this growth. One of the required elements of the General Plan is the Housing Element. The State requires that every city use the Housing Element to plan for existing and projected housing needs for all income levels in the community. Housing elements must be updated every seven to eight years. We are currently in the 6th housing element cycle, and most jurisdictions' housing elements due in January 2023.

The housing element of the general plan must include an inventory of land suitable and available for residential development to meet the locality's regional housing need by income level. The purpose of the site inventory is to identify suitable, available sites with enough capacity for residential development to hold the city's **RHNA**, including all income levels. The sites must have appropriate design standards, infrastructure, and zoning to meet development needs, or the city will need a plan to make those changes.

HCD has created a [webinar](#), [Sites Inventory Guidebook](#), and online form to help foolproof the process for city staff.

Over the last three years, the Legislature strengthened requirements around the sites inventory of the Housing Element to make sure the sites selected to meet RHNA planning obligations represent realistic, tangible development opportunities over the next 8-year planning horizon. These new laws create significant changes in the way housing elements are created and managed.

- **[Affirmatively Furthering Fair Housing \(AFFH\)](#)**: Housing policy, program guidelines, and regulations were essential in creating current inequities. They are equally important in both preventing further segregation and concentration of poverty, and increasing access to opportunity. In order to ameliorate past actions that led to inequity, AFFH requires decision-makers to create land-use and funding policies to increase affordable housing in high resource neighborhoods that have often been exclusionary (explicitly or in effect of costs and zoning policies) **and** bring additional resources to traditionally under-resourced neighborhoods. For the 2023-2031 planning cycle, AFFH requires the RHNA and Housing Elements to "affirmatively further fair housing." According to Government Code Section 65584(e), this means:

"Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing 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.”

- **No Net Loss Law:** If a city approves a development that is less dense or of a different affordability than what was planned in the site inventory, they must be able to accommodate the unbuilt homes at each income level on the remaining sites in their housing element site inventories. This may require a shift in planned capacity or adding new sites to the inventory. HCD recommends that cities overplan (plan for more homes than are required for the RHNA) by a significant amount to avoid the need to continuously identify and rezone new sites.
- **Housing Element Law Amendments:**
 - **Cities must identify which income category each site in the inventory is planned to accommodate:** In the site inventory, the city must specify whether each site is planned to accommodate lower income housing, moderate-income housing, or above moderate-income housing. Sites can accommodate units for more than one income category. This requirement is particularly important because the No Net Loss Law requires adequate sites be maintained throughout the planning period to accommodate the remaining RHNA by income category. It is also important to ensure compliance with cities’ obligation to affirmatively further fair housing, and ensure that lower-income units are placed in areas with access to resources.
 - **Capacity calculation:** Cities must calculate a realistic site capacity, taking into account how all the requirements such as setbacks, height restrictions, parking requirements, ground floor commercial requirements, and lot coverage interact to reduce the number of units that can be built. Environmental factors such as wetlands or hazards must also be taken into account.
 - **Infrastructure requirements:** All parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development, or a plan for all of that infrastructure to be completed within 3 years.
 - **Suitability of nonvacant sites:** The city is required to complete an analysis for any site that is currently in use. The analysis must show:
 - existing leases or other contracts that would prevent redevelopment of the site, and could include other market conditions that would encourage redevelopment of the property. For example, an analysis might describe an identified site as being developed with a 1960s strip commercial center with few tenants and expiring leases as a good candidate for redevelopment. A site containing a use that is unlikely to be available for residential development within the planning period would not be feasible.
 - development trends in the city related to nonvacant sites, such as a description of the local government’s track record and specific role in encouraging and facilitating redevelopment, adaptive reuse, or recycling to residential or more intensive residential uses, or a program to do so.

- local market conditions on redevelopment, such as high land and construction costs, combined with a limited supply of available and developable land, may make it more feasible to build more intensive, compact and infill development.
 - existing or planned financial assistance or regulatory relief from development standards- enough to encourage and facilitate more intensive residential development on the identified nonvacant sites.
- **Reliance on nonvacant sites:** If a housing element relies on nonvacant sites to hold 50 percent or more of its RHNA for lower income households, the housing element must include substantial evidence that the use will likely be discontinued during the planning period. Evidence could be something such as:
 - The property owner provides a letter stating its intention to develop the property with residences during the planning period.
 - There is a development agreement that exists to develop the site within the planning period.
 - The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses.
- **Size of site requirements:** If the size of the site is smaller than one half acre or larger than 10 acres, an analysis to demonstrate that the development would be feasible is required. To achieve financial feasibility, many affordable housing developments that use state or federal resources are between 50 to 150 units. Parcels that are too small may not support the number of units necessary to be competitive and to access scarce funding resources. Parcels that are large may require very large projects, which may lead to too much affordable housing in one location, or may add cost to a project by requiring a developer to purchase more land than is needed, or make a project ineligible for funding.
- **Sites identified in previous housing elements:** If a nonvacant site was listed in a previous site inventory and the city wants to use it in the new site inventory, there must be a program to rezone the parcel within 3 years and a development with 20% or more affordability would be by-right.
- **Nonvacant site replacement unit requirements:** If a site has had deed-restricted affordable housing on it within the last five years, and it is included in the site inventory for redevelopment, the demolished units must be replaced by at least the same number of units, affordable to the same or lower income level.
- **How do the new ADU laws interact with the Sites Inventory?** ADUs can be included for some of the capacity of the Sites Inventory. The number included must be based on the city's trends in ADU construction since January 2018, or if no trend is available, an average increase of five times the previous planning period construction trends prior to 2018.