

## LAND USE

Housing Element Law requires every locality to adopt and update a housing element every five years which includes an identification of existing and projected housing needs, an inventory of land suitable for residential development, and a five-year plan to meet those identified needs.

The housing element, as a planning tool, was initially developed to describe how growth would be accommodated using a "best case scenario" approach. A locality was not expected to build the units, but was required to provide appropriate zoning for the development of the housing need identified within its housing element, including the regional need for housing.

Over the years, amendments have been made to Housing Element Law which hold local governments responsible for ensuring that housing is actually built, including identifying specific sites, to accommodate a community's lower income housing unit regional allocation.

In 1981, California began a comprehensive program to allocate among local governments the statewide need for low-, moderate- and above moderate-income housing units. For the first time, each community was required to include in the housing element of its general plan a plan to meet its "share" of California's housing need.

Because both the federal and state governments have consistently reduced funding for affordable housing over the last twenty years, many local governments find it difficult to meet regional allocation goals. In addition to a shortage in resources, local governments are also plagued by the ever-increasing phenomenon of NIMBYism or "not-in-my-back-yard" when efforts are made to provide and disperse additional affordable housing in the community.

Furthermore, cash-strapped cities and counties often engage in the "fiscalization of land use" by prioritizing commercial, retail and industrial development--which generate more property and sales tax revenue--over residential development.

### **Housing Element**

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. The housing element update process addresses the statewide concern of providing "decent housing and a suitable living environment for every California family," in part by facilitating increases in housing supply to accommodate the needs of the state's population and its growth. The law recognizes the most critical decisions regarding housing development occur at the local level within the context of the general plan. In order for the private sector to adequately address housing needs and demand, local governments must regularly update their general plans, zoning, and development standards to provide opportunities for, and do not unduly constrain, housing development for all income groups.

Regional housing need allocations (RHNA) for each city and county constitute a fundamental basis for housing element updates. A RHNA for each city and county is a short-term projection of additional housing units needed to accommodate existing households and projected household growth of all income levels by the end of the housing element planning period.

RHNAs establish minimum housing development capacity that cities and counties are to make available via their land use powers to accommodate growth within a short-term planning period. RHNAs are assigned by four income categories as guideposts for each community to develop a

mix of housing types for all economic segments of the population. The process is also known as "fair share" planning, as shares of the regional housing need are determined for constituent cities and counties of the affected region(s) of the housing element update cycle. Regions are represented by councils of governments (COGs) or counties, which are charged with preparing regional housing need allocations plans (RHNPs).

The RHNA process is one of the state's earliest forms of intergovernmental or regional planning (since the 1970s), in that it involves roles for State government, COGs, and city and county governments, and also considers components of transportation planning. In consultation with each COG, the Department of Housing and Community Development (HCD) determines the housing needs for each COG using a demographic method based on the Department of Finance's (DOF's) population projections. HCD also fulfills the functions of a COG in those rural counties for which there is no COG. While HCD forwards projections for the region, the distribution of the need within the region to individual cities and counties is subject to determination by the COG. The COGs allocate the RHNA's to their city and county members in draft RHNPs, and involve a 90-day review period, in which each city and county has an opportunity to request revision of their need allocation by the COG. The COG may revise the initial allocations, subject to maintaining the total regional need.

While controversy about housing policy is certainly nothing new, the current chronic shortage of affordable housing in California has led to a serious polarization of the debate. On one hand, an alliance of affordable housing advocates and the building and realty industries have insisted that the primary cause for the shortage of housing has been obstructionist and "not-in-my-backyard" (NIMBY) policies pursued by local governments intent on excluding "undesirable" populations. On the other hand, local governments and land use planners have seen the initiatives of the housing advocate/building industry axis as a frontal assault on local government land use authority, and maintain that the primary causes of the housing crisis lie in the state's dysfunctional fiscal relationship to local governments and conflicting and uncoordinated land use mandates coming from Sacramento. In addition, many local governments have expressed extreme frustration with what they have seen as the unpredictable application of RHNA requirements by COGs and HCD, and the perception that HCD has made it unnecessarily difficult to get a housing element certified.

This polarization crystallized in the fierce debate surrounding SB 910 (Dunn) in 2001-02. SB 910 would have imposed strict punitive measures on cities that failed to certify their housing elements. After SB 910 failed in 2002, many of the warring parties agreed to establish a working group outside of the legislative process in the hope that more progress could be made if a group was not constrained by legislative timelines and the polarization inherent in legislative processes.

In the beginning of May 2003, the Legislature established a moratorium on housing element related bills to allow a housing element working group (HEWG) to bring back recommendations for reform during the 2004 session. HEWG included representatives from HCD, cities, counties, councils of governments, planners, the for-profit and nonprofit building industry, housing advocates, and business groups. Ultimately the HEWG agreed to the provisions contained in AB 2158 (Lowenthal) and AB 2348 (Mullin) both of 2004 and signed into law by the Governor.

## **Major Legislation**

**AB 980 (Salinas) Died in the Assembly Committee on Housing and Community Development:**

- Would have created an alternative production-based certification process for the housing elements of cities and counties.

**AB 1112 (Lowenthal) Held in the Assembly Committee on Appropriations:**

- Would have required the Department of Housing and Community Development to authorize the creation of six tax increment districts around transit stations to finance affordable housing development.

**AB 1158 (Lowenthal) Died in the Assembly Committee on Housing and Community Development:**

- Would have made several changes to the Regional Housing Needs Assessment procedure.

**AB 1160 (Steinberg) Died in the Assembly Committee on Housing and Community Development:**

- Would have restricted local governments' ability to deny or place restrictions on the development of second unit housing.

**AB 2158 (Lowenthal) Chapter 696, Statutes of 2004:**

- Revises the regional housing needs assessment process.
- Establishes overall policy objectives for the regional housing needs assessment allocation.
- Requires councils of government to incorporate specified factors into their methodologies for determining regional housing need.
- Establishes a detailed process for determining the allocations, allowing public participation, and hearing appeals.

**AB 2348 (Mullin) Chapter 724, Statutes of 2004:**

- Makes numerous changes to the provisions of housing element law pertaining to land inventory, adequate sites, and permitted use.
- Revises the criteria for the inventory of sites that can be developed for housing within the planning period of the general plan to accommodate that portion of a city's or county's share of the regional housing need for all income levels.
- Expands the relocation assistance available to persons displaced by sites identified for substantial rehabilitation.

### **AB 2702 ( Steinberg) Vetoed:**

- Would have sought to restrict local governments' ability to deny or place restrictions on the development of second unit housing.

**Governor Schwarzenegger's veto message:** "This bill establishes more detailed standards regarding the development of second unit housing in California. One provision specifically restricts local governments from requiring a second unit floor space to be less than 550 square feet. This creates a one-size fits all approach to second units being built in local neighborhoods.

This bill limits the say of local governments, homeowners, and local communities regarding second units being constructed in their neighborhoods. In effect, this bill dictates unilateral decisions by the state regarding what type of development is appropriate for local communities without any community participation.

As a strong proponent of local control, I believe that government is most responsive and accountable to people when it is close to the people. This bill removes that control away from local officials, where homeowners and residents can voice their concerns about their neighborhoods and moves it to a state bureaucracy in Sacramento.

Additionally, with the unanticipated growth from second units on single family properties, this bill does not take into consideration the impact and ability for local governments to provide adequate water, sewer and schools.

My Administration is very aware of the lack of affordable housing facing California. At the beginning of my Administration, I asked the Secretary of the Business, Transportation and Housing Agency to pursue an aggressive agenda into finding ways of increasing home ownership opportunities for all Californians. I encourage all housing advocates and local governments to work with the Secretary to implement this agenda making the American Dream more affordable and available to our citizens."

### **AB 2980 (Salinas) Died in the Assembly Committee on Appropriations:**

- Would have created an alternative production-based certification process for the housing elements of cities and counties.

### **SB 744 (Dunn) Died in the Assembly Committee on Local Government:**

- Would have allowed developers to appeal local land use decisions to the Housing Accountability Committee that result in denial of a project or conditions that render the project financially infeasible.

## **Other legislation**

### **AB 35 (Wiggins) As Introduced:**

- Would have made various technical changes to provisions relating to annual reports from local planning agencies.

### **As amended September 2, 2003 (Vargas), an urgency statute that would have taken effect immediately:**

- Would have increased the tobacco tax by \$1.50 per pack of cigarettes to fund specified health programs.

### **As amended January 15, 2004 (Wiggins) [Died at the Senate Desk]:**

- Would have clarified that the annual housing element portion of the report from local planning agencies include the degree to which the general plan complied with the general plan guidelines adopted and implemented by Office of Planning and Research.

### **AB 218 (Simitian) Vetoed:**

- Would have required the Department of Finance to make a determination based on the United States Census Bureau definitions when there was a dispute between the Department of Housing and Community Development and local jurisdiction regarding a housing unit.

**Governor Davis' veto message:** " This bill would require the Department of Housing and Community Development to defer to the Department of Finance when there is a dispute between a local government and the Department of Housing and Community Development with the definition of a housing unit. It further requires the Department of Finance to make a written determination in resolving such disputes.

Under current law, the Department of Housing and Community Development has the statutory responsibility to ensure that local housing elements are in compliance with State law and that each local jurisdiction is properly planning for and addressing the States housing need. In light of current law, I see no added value to include the Department of Finance in the review of local housing elements."

### **AB 305 (Mullin) Chapter 430, Statutes of 2003:**

- Requires a city or county to grant an additional density bonus, concession, or incentive to a developer of housing, otherwise entitled to density bonus or other incentive if that developer includes a child care facility as part of the housing development, unless the city or county makes a finding that the existing area has adequate child care facilities.

### **AB 437 (Matthews) Died in the Assembly Committee on Housing and Community Development:**

- Would have provided priority eligibility of state competitive grants for development within the five counties of the Inter-Regional Partnership Jobs-Housing Opportunity Zones.

**AB 463 (Oropeza) Died in the Assembly Committee on Housing and Community Development:**

- Would have incorporated bicycle and pedestrian oriented design elements in residential and mixed use developments.

**AB 668 (Cox) Chapter 760, Statutes of 2003:**

- Allows a city and county, in the event of an incorporation, to reach a mutually acceptable revision of their respective regional housing need allocations.

**AB 1089 (Dutton) As introduced:**

- Would have counted student dormitories in a city or county's share of regional housing needs assessment.

**As amended April 21, 2003 (Died in the Assembly Committee on Local Government):**

- Would have allowed a redevelopment agency, until January 1, 2010, to purchase long term affordability covenants on mobilehome parks where residents rent spaces or rent or own the mobilehome occupying their space.

**AB 1320 (Dutra) Chapter 42, Statutes of 2004:**

- Allows a transit village plan to include any five from thirteen statutory public benefits.
- Deletes the requirement that a rail transit station be at the core of a transit village development.

**AB 1970 (Harman) Died in the Assembly Committee on Local Government:**

- Would have allowed a city meeting specified conditions to adopt a housing element that made no provision for new housing or the regional share of statewide housing needs.

**AB 2264 (Chavez) Died in the Assembly Committee on Housing and Community Development:**

- Would have allowed redirected spending authority, for a portion of the low and moderate income housing fund, from the Los Angeles County Housing Authority to the City of Industry to be disbursed within 15 miles of the city.

**AB 2515 (Runner) As introduced:**

- Would have satisfied a portion of a city or county share of regional housing need on the basis of two units of credit for each unit of housing on a decommissioned military base that was converted to low income housing.

**As amended March 25, 2004 (Died in the Assembly Committee on Housing and Community Development):**

- Would have allowed the joint powers authorities of Norton Air Force Base and George Air Force Base to defer payment to their low and moderate income housing funds for up to 15 years.

**SB 491 (Ducheny) Chapter 58, Statutes of 2003, an urgency statute to take effect immediately:**

- Extends the statutory deadline, by one year, for all cities and counties to complete the fourth revision of their housing element.

**SB 492 (Ducheny) Chapter 387, Statutes of 2004:**

- Extends the inoperative date, for the pilot program allowing communities in San Diego County to self-certify their housing elements, by one year, to June 30, 2010.

**SB 619 (Ducheny) Chapter 793, Statutes of 2003:**

- Makes several changes to laws related to the development of affordable housing by seeking to streamline the housing approval process.
- Authorizes new awards of attorney's fees and costs to prevailing parties in actions against local governments for alleged failure to comply with affordable housing requirements.

**SB 639 (Torlakson) Chapter 501, Statutes of 2003:**

- Extends the sunset dates of the Inter-Regional Partnership State Pilot Project to improve the balance of jobs and housing from July 31, 2004 to July 31, 2008.
- Requires an interim report to the Department of Housing and Community Development by July 31, 2004 and a final report by July 31, 2008.

**SB 1592 (Torlakson) Died in the Assembly Committee on Local Government:**

- Would have required each city and county to adopt or amend an infill ordinance or a specific plan for infill development that identified potential infill sites and specifies appropriate zoning to encourage infill development on vacant and underutilized parcels.



- Would have required the ordinance or specific plan to provide at least five incentives for infill housing, as specified, as well as an affordable housing strategy.

**SB 1777 (Ducheny) Chapter 818, Statutes of 2004:**

- Revises the schedule for completion date of the Statewide Housing plan to be January 1, 2006, January 1, 2009, and every four years thereafter.
- Clarifies the number of units of farmworker housing a grower may provide on his or her land.
- Allows the Department of Housing and Community Development one year, as opposed to six months, to issue citations for violations of mobilehome dealer licensing laws.

**SB 1818 (Hollingsworth) Chapter 928, Statutes of 2004:**

- Lowers the number of housing units required to be provided at below market rate in order to qualify for a density bonus.
- Requires that the density bonus increase incrementally according to a specified schedule.
- Requires local governments to provide a developer specified incentives or concessions if below market rate units are included within the project.