
Housing Element

Frequently Asked Questions

March 4, 2014

1. What is the Housing Element?

Answer: The Housing Element is one of the mandatory elements which must be included in a City's General Plan. The Housing Element provides goals, policies, and actions that help the City plan for the housing needs for all segments of the City's population. Housing Element law mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community. The City Housing Element is required to be updated every eight years and must be approved by the State Department of Housing and Community Development. For more information about the State's role in the crafting of the housing element, explore the [California Department of Housing and Community Development](#) page on housing elements.

2. What are the items that the Housing Element covers?

Answer: The Housing Element must cover the following topics:

- Analysis of existing needs, including the number of people living in sub-standard or overcrowded housing, people paying more for their homes than they can sustainably afford, people with special housing needs and affordable units at risk of converting to market rate.
- Analysis of projected needs, including the allocation of income-specific housing needs developed by the Association of Bay Area Governments (ABAG).
- A site inventory where housing development is allowed, as well as supported by infrastructure and the environment.
- Analysis of government controls on housing development.
- Programs, policies and objectives that the city will adopt to assist the development of housing for different income and special needs groups, ensure equal housing opportunity, and preserve and improve the existing housing stock.

3. Who prepares and certifies the Housing Element?

Answer: The City of Palo Alto prepares the Housing Element, but it must be certified by the California Department of Housing and Community Development (HCD). This certification creates a presumption that the Element is compliant with State law.

4. How much housing do we need to plan?

Answer: State law requires each city and county plan for their "fair share" of the region's housing needs. The fair share is determined by each region's Council of Government. In the San Francisco Bay Area, the Association of Bay Area Governments

(ABAG) determines the regions fair share, through a process known as the Regional Housing Needs Allocations (RHNA). ABAG has determined that Palo Alto's RHNA numbers is 1,988 units for the years 2014-2022. This means that Palo Alto must provide zoning opportunities within the City that would permit at least 1,988 sites. This does not mean that Palo Alto must physically build the housing. Put another way, the City is required to demonstrate capacity for the requisite units through an adequate amount of land zoned for particular housing types. The RHNA represents a planning target, not a building quota. So long as the City provides sufficient sites and does not impose constraints to development (i.e., by imposing unduly burdensome regulations), the City is not penalized for falling short of its RHNA goals. However, if the City does not identify sufficient sites, the shortfall is carried forward to future planning cycles.

5. How is a City's RHNA determined?

Answer: This is a complex process that begins with the State of California. The State prepares projections about expected population growth in the state and then allocates a portion of the total state population growth to each region. Regional planning organizations in turn distribute the regional allocation among local jurisdictions. For the Bay Area, the regional planning agency is the Association of Bay Area Governments (ABAG). There are three primary objectives in allocating the residences to local jurisdictions; increasing housing supply, affordability and housing type; encouraging infill and efficient development; and promoting a jobs/housing balance. ABAG uses a formula with weighted criteria to accomplish these objectives and allocate the housing units. Recently, ABAG has also focused on influencing growth patterns to minimize green house gas emissions as is mandated by the State. For more information on the ABAG RHNA process, you can go to their webpage at <http://www.abag.ca.gov/planning/housingneeds>.

6. What does it mean to have a non-compliant Housing Element?

Answer: A Housing Element is considered out of compliance with State law if one of the following applies:

1. It has not been revised and updated by the statutory deadline, *or*
2. Its contents do not substantially comply with the statutory requirements. If a Housing Element is certified, there is a presumption that it is adequate, and a plaintiff must present an argument showing that it is in fact inadequate.

Over the years, California has steadily increased the penalties for not having a legally compliant Housing Element, and this trend is expected to continue.

7. What happens if a jurisdiction does not adopt a Housing Element or the Element does not comply with State law?

Answer:

1. **Limited access to State Funding.** Both the California Infrastructure and Economic Development Bank (CIEDB) and the Bay Area's Metropolitan Transportation Commission (MTC) award funds based on competitions that take into consideration the approval status of a community's Housing Element.
2. **Lawsuits.** Developers and advocates have the right to sue jurisdictions if their Housing Element is not compliant with State Law. Recent Bay Area cities that were successfully sued include Menlo Park, Corte Madera, Pittsburg, Pleasanton, Alameda, Benecia, Fremont, Rohnert Park, Berkeley, Napa County, and Santa Rosa. According to a memo from the Santa Barbara County Council, there has never been a city that has successfully argued that they do not need to comply with Housing Element law (July 2007, Housing Element Law: Mandates and Risks of Defiance). There are several potential consequences of being sued, including:
 - a. **Mandatory compliance** – The court may order the community to bring the Element into compliance.
 - b. **Suspension of local control on building matters** – The court may suspend the locality's authority to issue building permits or grant zoning changes, variances or subdivision map approvals.
 - c. **Court approval of housing developments** – The court may step in and approve housing projects, including large projects that may not be wanted by the local community.
 - d. **Fees** – If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid to its own attorneys. These fees can easily exceed \$100,000.
3. **Carryover of unfilled housing allocation.** The City would be required to carryover to the next housing element planning period any unfilled Regional Housing Need Allocation (RHNA) if the City fails to identify or make available adequate sites to accommodate its RHNA assignment. Therefore, in addition to identifying sites for the new period's RHNA, the City would also be required within the first year of the new planning period to zone adequate sites to accommodate the RHNA from the prior planning period that was not provided.