New AFFH Housing Element Requirements

*Draft Informational Memo to Council about AB 686*

Planning Partners,

Due to increased RHNA numbers and many legislative changes to housing laws, this cycle’s Housing Element Update will be challenging for local staff and policy makers. We recommend early and regular communication with policymakers to keep them informed of the new requirements and how these may change what type of housing is needed and where it is located in local communities.

ABAG staff have drafted the attached informational memo on AB 686­ Affirmatively Furthering Fair Housing (AFFH) requirements for local staff to customize and present to policy makers in preparation for the Housing Element Update process. It summarizes the 90-page [AFFH guidance](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf) and includes suggestions highlighted in yellow for where local jurisdiction-specific information can be inserted and where this data can be found.

This is an introduction to the topic of fair housing; you may not want to dive too deeply into the data until you or your consultant has conducted the initial assessment. This *[Housing Element Timeline with AFFH Steps](https://abag.ca.gov/sites/default/files/documents/2021-08/Housing_Element_Timeline_with_AFFH_Tasks.xlsx)* will help you locate when the AFFH activities will need to occur and how they interact with the work you are doing to update your Housing Element.

**Make meaning, add local context, and find insights** – the goal of this informational memo is to help you communicate to your elected leaders about the work that you will be doing and to solicit input and direction that you may need. Consider and tailor the document according to what you think Council needs to know and where you need direction from Council. Consider it as a starting point.

**For additional resources** –review one of [ABAG](https://abag.ca.gov/our-work/housing/housing-technical-assistance-program/abag-regional-housing-technical-assistance) or [HCD](https://youtu.be/2LbbdRwLKxA)’s webinars on the topic.

**DATE:**

**TO:**

**FROM:**

**SUBJECT: AB686 - New AFFH Housing Element Requirements**

This report provides an overview about the work that will be undertaken over the next year to fulfill [Insert Jurisdiction name]’s duty to affirmatively further fair housing as part of the Housing Element update, as mandated by Assembly Bill 686 (2018). This is an informational item and no action is needed.

## Background

Assembly Bill 686 (AB 686), passed in 2018, created new requirements for jurisdictions to affirmatively further fair housing. According to AB 686, affirmatively furthering fair housing means to take “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” and is Federally mandated by the 1968 Fair Housing Act.

The [four main goals](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686) are to:

1. Address significant disparities in housing needs and in access to opportunity.
2. Replace segregated living patterns with truly integrated and balanced living patterns.
3. Transform racially and ethnically concentrated areas of poverty into areas of opportunity, and
4. Foster and maintain compliance with civil rights and fair housing laws.

AB 686 sets forth the duty to affirmatively further fair housing (AFFH) in two broad categories:

1. Public Agencies- All public agencies, departments and programs are required to administer programs and activities relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with this obligation.
2. Housing Elements- New requirements for Housing Elements due on or after January 1, 2021 direct local decision-makers to incorporate fair housing into the Housing Element, create land-use and funding opportunities to increase affordable housing in high resource neighborhoods, and bring additional resources to traditionally under-resourced neighborhoods.

This memo focuses on the incorporation of fair housing in the Housing Element update only.

## Fair Housing and the Duty to Affirmatively Further Fair Housing

Fair housing laws aim to ensure that people have access to housing and the resources attached to place of residence regardless of their race, national origin, family status, religion, sex or disability, often referred to as protected classes. The 1968 Fair Housing Act attempted to remedy and prevent policies and practices that are discriminatory as well as those that promote or maintain racially segregated communities. Yet, over 50 years later, the Department of Housing and Community Development (HCD) acknowledges that “historic patterns of segregation persist in California despite the long-standing federal mandate.”[[1]](#footnote-1) [Assembly Bill 686](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686) (AB 686), passed in 2018 requires jurisdictions to “explicitly address, combat, and relieve disparities resulting from past and current patterns of segregation to foster more inclusive communities.”[[2]](#footnote-2)

**[Insert Jurisdiction name]** is part of one of the most prosperous regions in the world. The Bay Area is also the second most diverse of the 150 largest metro regions in the country[[3]](#footnote-3), but the prosperity is not evenly shared among this diverse population. In 2019, White workers in the Bay Area at the middle of the income range earned over double the income of Latinx workers and 70% more than Black workers[[4]](#footnote-4). Some of these disparities are related to the segregated and unequal neighborhood environments and housing system. In 2019, over three quarters of White and Asian Bay Area residents lived in moderate and high resourced neighborhoods as classified by the State, in contrast less than half of Latinx and Black residents[[5]](#footnote-5).

The racial inequities seen today developed through historical policies and practices enacted at federal, state, regional and local levels and across the public and private sectors. Though many of the explicit forms of discrimination have been outlawed, the results of these systems have left a lasting imprint on both the region and [**insert jurisdiction name].** Racially explicit practices (e.g., racial covenants) have been replaced with race-neutral land use policies that continue to exclude people of color from predominantly white neighborhoods. Furthermore, increasing housing costs have deepened racial and economic segregation, displacing many low income and people of color to the peripheries of the region or out of the Bay Area all together[[6]](#footnote-6).

The effects of segregation affect all Bay Area residents. As noted in [*Momentum for Lasting Solutions*](https://mtc.ca.gov/sites/default/files/Launching%20BAHFA-Regional%20Housing%20Portfolio_2-24-21.pdf)*:* “the Bay Area’s inability to adequately house all its residents, especially close to job centers, has led to a host of other challenges such as crippling traffic, attendant greenhouse gas emissions, and labor shortages.”[[7]](#footnote-7) Today, there is an opportunity to address segregation and racial inequities in California’s communities and the Bay Area region. To meet this moment, the State is requiring that jurisdictions address the persistent housing inequities by affirmatively furthering fair housing.

## Snapshot of Segregation and Fair Housing in [insert Jurisdiction name]

 [**INSTRUCTIONS for Table 1:**

1. Insert POPEMP-03 Population By Race chart from your ABAG [housing needs data packets](https://mtcdrive.app.box.com/s/nei8x775oi5m47mqhu8ctpyyqrioa2v3), or
2. Fill in table for your county and jurisdiction by visiting [Bay Area Equity Atlas](https://bayareaequityatlas.org/indicators/race-ethnicity#/?geo=07000000000653000)]

Segregation can exist at various scales. It is possible to be segregated within the jurisdiction (different neighborhoods with different compositions) or within a regional context (the jurisdiction looks different than the Bay Area as a whole). According to the [Othering and Belonging Institute](https://belonging.berkeley.edu/most-segregated-and-integrated-cities-sf-bay-area) at UC Berkeley [**insert jurisdiction name]** has a [**choose: high/moderate/low** from this [worksheet](https://belonging.berkeley.edu/sites/default/files/bay_area_cities_by_level_of_segregation_0.xlsx)] level of racial/ethnic segregation when compared to the rest of the region.

**Table 1. Racial/Ethnic Composition of our City, County and Region, 2010 and 2019**

|  |  |  |  |
| --- | --- | --- | --- |
|  | [insert jurisdiction name] | [insert county name] | 9-County Bay Area |
| 2010 | 2019 | 2010 | 2019 | 2010 | 2019 |
| White |  |  |  |  | 42% | 39% |
| Black |  |  |  |  | 6% | 6% |
| Latinx |  |  |  |  | 24% | 24% |
| Asian or Pacific Islander |  |  |  |  | 24% | 27% |
| Mixed/Other |  |  |  |  | 4% | 5% |

## What are the AFFH requirements for Housing Element Updates?

The five main elements that all jurisdictions will need to incorporate AFFH into Housing Element updates are: (1) Targeted Community Outreach, (2) Assessment of Fair Housing, (3) Site Inventory, (4) Identification and Prioritization of Contributing Factors, and (5) Goals Policies and Actions.

### Targeted Community Outreach

In addition to the traditional housing element outreach, AB 686 requires “meaningful, frequent, and ongoing community participation, consultation and coordination” to ensure that input has been received from groups most impacted by fair housing issues and that local knowledge is incorporated. To meet these requirements, it is recommended that:

* + Outreach be made accessible via language translation
	+ Engagement is conducted in various locations and venues and during non-working hours
	+ A wide set of stakeholders that serve and represent protected classes are engaged
	+ Assess outreach effectiveness by monitoring and comparing demographics of who participates for representativeness.

National best practices recommend creating equity advisory committees to provide input and oversight, as well as offering mini-grants to community-based organizations and other stakeholders to assist with engagement of low-income households and protected classes.

HCD will be reviewing a summary of the fair housing outreach to ensure compliance.

### Assessment of Fair Housing

The Assessment of Fair Housing describes the jurisdiction’s unique fair housing circumstances[[8]](#footnote-8) and must include a summary and analysis of:

1) Fair housing outreach capacity and enforcement,

2) Segregation and integration patterns,

3) Racially and/or ethnically concentrated areas of poverty (RE/CAPs),

4) Disparities in access to opportunity (e.g., education, transportation, economic and environmental), and

5) Disproportionate housing needs (e.g., overpayment, overcrowding, and displacement risk) for low-income households and protected classes[[9]](#footnote-9).

Jurisdictions must include input and stories from community outreach efforts in the assessment, as well as the existence or lack of local policies and programs such as local rental assistance programs, code enforcement activities, homeless services, foreclosure prevention, planned affordable housing development, etc. and how these may address or exacerbate the situation.

### Site Inventory

The site inventory in the housing element update now requires an analysis of how sites identified to accommodate new housing can improve or exacerbate existing conditions (e.g., segregation and access to opportunity). This step will require answering questions like:

* Are sites concentrated in specific geographies (e.g., are all sites to accommodate low-income households are clustered in specific area)?
	+ What are the demographics and resources in those geographies?
	+ What policies and plans are in place to transform these areas?
* How do the sites address disproportionate housing needs, including displacement[[10]](#footnote-10)?

This step also requires the identification of policies and programs needed to address the availability of adequate sites.

### Identification and Prioritization of Contributing Factors

Based on the results of the first three steps, factors that have created, perpetuate, or increase the severity of one or more fair housing issues must be identified. These factors are referred to as “contributing factors.”

* HCD requires that contributing factors be prioritized to an actionable list (of 4-6 factors) based on those that most limit or deny fair housing choice and access to opportunity.
* The [AFFH guidance](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf) provides a list of over 70 common contributing factors (p. 68- 70) as a first step.
* Community input will be important to help identify and prioritize these factors and tie them to meaningful actions.

### Goals, Policies and Actions

Identification of goals and policies with concrete steps, timelines, and outcomes for the specific actions are required and must be linked to the fair housing issues and contributing that they are designed to address. These may include different types of actions utilizing:

1. human resources: outreach, education, marketing, collaboration
2. land use resources: general plans, zoning, specific plans, ordinances and procedures, and
3. financial resources.

## Conclusion

Incorporating the duty to affirmatively further fair housing into the Housing Element update is required to be in compliance with state housing laws, which are being enforced with [new penalties](https://abag.ca.gov/sites/default/files/documents/2021-06/Consequences%20of%20Non-Compliance%20with%20Housing%20Laws.pdf). This new requirement adds several analyses and steps onto the traditional Housing Element update process.

Numerous resources are being developed to help jurisdictions meet these new requirements including:

* + - [HCD](https://youtu.be/2LbbdRwLKxA) and the [Association of Bay Area Governments (ABAG)](https://abag.ca.gov/our-work/housing/housing-technical-assistance-program/abag-regional-housing-technical-assistance) have a number of webinars, guidelines, and other tools available to assist local jurisdictions to meet these new requirements.
		- The countywide planning collaborative can help to streamline the assessment and collectively address challenges with other jurisdictions.
		- The Institute for Government leadership is offering trainings for elected officials.

As ABAG/MTC continue to support this work, they encourage us to send questions and suggestions for new products and assistance to housingTA@bayareametro.gov.

1. https://www.hcd.ca.gov/community-development/affh/docs/affh\_document\_final\_4-27-2021.pdf#page=7 [↑](#footnote-ref-1)
2. https://www.hcd.ca.gov/community-development/affh/docs/affh\_document\_final\_4-27-2021.pdf#page=7 [↑](#footnote-ref-2)
3. https://nationalequityatlas.org/sites/default/files/Final\_9\_County\_BayAreaProfile.pdf [↑](#footnote-ref-3)
4. https://bayareaequityatlas.org/indicators/median-earnings#/?geo=05000000000000017 [↑](#footnote-ref-4)
5. https://bayareaequityatlas.org/indicators/neighborhood-opportunity#/?breakdown=2 [↑](#footnote-ref-5)
6. https://www.urbandisplacement.org/sites/default/files/images/bay\_area\_re-segregation\_rising\_housing\_costs\_report\_2019.pdf [↑](#footnote-ref-6)
7. https://abag.ca.gov/sites/default/files/documents/2021-02/Launching%20BAHFA-Regional%20Housing%20Portfolio\_2-24-21\_v6.pdf [↑](#footnote-ref-7)
8. A fair housing issue restricts fair housing choice or access to opportunity. Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, disability, or other protected characteristics. [↑](#footnote-ref-8)
9. HCD’s [AFFH guidance](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf) provides detail for each of these elements (p. 28-44) [↑](#footnote-ref-9)
10. Detailed instructions for this analysis are given in the [AFFH guidance](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf) (p. 46-49) [↑](#footnote-ref-10)