



Association of Bay Area Governments



Technical Assistance
for Local Planning

HOUSING

DISCLAIMER: This document is intended solely as a technical overview of the provisions of AB 2339 (2022). It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel when adopting an ordinance to implement the provisions of AB 2339 or when determining the applicability of these provisions to any proposed housing development project in their jurisdiction.

AB 2339 Housing Element Analysis

Background

AB 2339, which amended Government Code Section 65583(a)(4), requires additional analysis related to emergency housing for Bay Area jurisdictions that 1) submit drafts of Housing Elements to HCD after April 1, 2023, or 2) did not submit a first draft to HCD until after January 31, 2023. Minor updates or discussions that do not go through formal review do not trigger the requirements, nor does a review of the final (adopted) Housing Element.

This memo provides a framework for how to conduct that analysis. HCD will not certify a Housing Element subject to AB 2339 unless a satisfactory analysis is included.

Previous to AB 2339, jurisdictions had to allow emergency shelters by right in at least one zone. They also had to ensure there was enough land to meet the existing need. Among other requirements, AB 2339 limits which zones can be used, clarifies how to evaluate if there is enough land, and requires jurisdictions to demonstrate that existing uses are not an impediment to the development of emergency shelters. The bill also expands the definition of emergency shelter to include other associated support services such as navigation centers.



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Preparing the Analysis:

1. **Designate at least one zoning district that allows emergency shelters by right.** The zoning district must allow residential uses. It may allow other uses as well.
2. **Ensure the designated zoning districts include adequate sites that meet at least one of the following:**
 - a. *Vacant sites with mixed-use zoning*– The zoning must allow housing development, and the zone must be located near amenities and services, such as health care and social services, that serve homeless people. If the zone is not located near amenities and services, the local government must provide free transportation to services or offer the services onsite.
 - b. *Vacant sites zoned for residential use.*
 - c. *Nonvacant sites that are suitable for use as a shelter or that can be redeveloped for a shelter in the current Housing Element period.* An analysis must demonstrate that the existing use is likely to be discontinued during the planning period, considering the current uses, market conditions, and incentives for shelter development. This is similar to the analysis that many jurisdictions have done for their non-vacant sites inventory.
 - d. *Sites owned by the local government* – To use this category, jurisdictions must provide substantial evidence that the sites will be made available during the planning period, are suitable for residential use, and are either located near amenities and services, or the local government will provide free transportation or on-site services.
3. **Document that there is enough land (adequate sites) to accommodate the need for emergency shelters.** Calculate the square footage needed by multiplying the number of people experiencing homelessness by 200 square feet. Compare the required space with the total buildable area of the identified sites, to demonstrate that the designated sites can accommodate the need for shelters. If the local government has developed shelters on sites that had fewer square feet per person or has other evidence that the sites can accommodate more people, that number may be used.
4. **Define emergency shelter to include various related uses.** These include but are not limited to, navigation centers, bridge housing and respite or recuperative care.



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5. **List and evaluate standards** for emergency shelters and determine if the rules pose constraints.
 - a. Cities may *only* apply the following standards for emergency shelters:
 - i. Maximum number of beds
 - ii. Parking for staff
 - iii. Size and location of waiting rooms and client intake areas
 - iv. Provision of onsite management
 - v. Proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart
 - vi. Length of stay
 - vii. Lighting
 - viii. Security when the shelter is in operation.
 - b. In particular, be cautious of maximum size limits. Contact local service providers to ensure that any maximum size is not a constraint.
 - c. Emergency shelters must be a permitted use with no discretionary permit allowed and should not be subject to additional CEQA analysis.
6. **Include a rezoning program if needed.** If the existing zoning districts allow shelters, but do not allow residential uses, or do not have adequate capacity to meet the need, include a program to amend the zoning ordinance within one year of Housing Element adoption.