

# Housing Element Law

## Changes from 1969 to the Present

Since 1969, the California State Legislature has passed laws requiring that all cities and counties adequately plan to meet the housing needs of people at all income levels in the community. California's local governments meet this requirement by adopting housing plans as part of their "general plan" (also required by the state). General plans serve as the local government's "blueprint" for how the city, town, or county will grow and develop and are required to include seven elements: land use, transportation, conservation, noise, open space, safety, and housing. The law mandating that housing be included as an element of each jurisdiction's general plan is known as "housing element law."

The Bay Area has faced an acute shortage of housing for many years. The State Legislature has made many changes to the law in the intervening years and what began as fair-share housing law is now part of much more comprehensive regional planning efforts, and includes transportation, environmental and hazard mitigation planning activities. Until recently, however, few changes were made to ensure communities comply with state housing law. After 50 years, HCD now has enforcement capabilities on local governments' planning requirement due to Assembly Bill 72 (2017).



## Allocation of Housing Numbers

The Regional Housing Needs Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level described as a percentage of median income) that each jurisdiction must accommodate in its Housing Element.

As the first step in this process, the California Department of Housing and Community Development (HCD) issues the total housing need for the San Francisco Bay Area for an eight-year period, which is 441,100 units for 2023-2031. This number is known as the Regional Housing Need Determination (RHND).

As the Bay Area's council of governments (COG), the Association of Bay Area Governments (ABAG) is responsible for distributing the RHND to local governments. Absent ABAG, a local government would be left to work directly, and alone with Sacramento—as is the case for cities, towns, and counties without a COG.

Each RHNA cycle, ABAG facilitates a public process whereby local cities, towns, and counties work to shape the methodology used to distribute



*New Housing Construction (ABAG Archives)*

**The income categories are based on the U.S. Department of Housing and Urban Development's (HUD) definition of local area median income (AMI).**

- **Extremely low income:** 0 to 30% of AMI [FYI, for RHNA this is included in the very low income category]
- **Very low income:** 30% to 50% of AMI
- **Low income:** 50% to 80% of AMI
- **Moderate income:** 80% to 120% of AMI
- **Above moderate income:** More than 120% of AMI

As an example, in 2019, Alameda County AMI for a family of four is \$111,700. AMI is different for each county and household size.

a portion of the region's housing needs among Bay Area jurisdictions. ABAG convenes a Housing Methodology Committee—comprised of local elected officials, city, town and county staff, and various stakeholders—to create an allocation methodology that meets the requirements of state law, while balancing the needs and priorities of communities throughout the region.

For the 2023-2031 cycle, recent legislation has increased HCD's oversight over the RHNA process. ABAG must now send its draft methodology to HCD who must review it to ensure it is consistent with the RHNA objectives outlined in state law. Once the final RHNA methodology is adopted, ABAG or a subregion will issue draft allocations. Each jurisdiction has the opportunity to appeal the draft allocation it receives from ABAG, or its subregion if it is participating in a RHNA subregion. HCD also now has the authority to appeal a jurisdiction's draft allocation. Once



*Petaluma Avenue Homes, Sebastopol (ABAG Archives)*

ABAG has taken action on any appeals that are submitted, the ABAG Executive Board will adopt a final methodology and issue a final allocation to each local government in the Bay Area. The final RHNA plan must then be submitted to HCD for its review.

There are numerous opportunities to provide input into the RHNA process. Visit the ABAG website to sign up for the RHNA mailing list: <https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation/sign-rhna-mailing-list>

Once a local government has received its final RHNA from ABAG (or the applicable subregion), it must revise its Housing Element to show how it plans to accommodate its portion of the region's housing need at each income level. ABAG's role in the process ends once it has allocated a share of housing needs to each community. HCD then reviews each local jurisdiction's Housing Element to ensure that it complies with Housing Element law.

## Housing Law Changes

An income requirement for housing was added to the existing general plan requirements in 1967 via Assembly Bill 1952, authored by then Assemblymember Pete Wilson, San Diego. Cities were required to make standards and plans for adequate sites for housing and improvement of housing for all economic segments of the community. Multiple bills in both houses of the State Legislature have been proposed over the years to change the process and increase the amount of control at the local or state levels.

Major changes occurred in 2017 when approximately 150 housing bills were proposed during the legislative session. A package of 15 bills were signed by the governor related to funding for housing, streamlining development approvals and increasing accountability for meeting the requirements of Housing Element Law. These included bills that significantly changed the RHNA process, requiring additional outreach and reporting, modifying the way the RHND is calculated to better reflect unmet



As part of the RHNA process, local jurisdictions within a county have an opportunity to form a subregion to conduct their own RHNA process independently of the region's process. Two subregions have been formed for this RHNA cycle: one in Napa County, including the City of American Canyon, the City of Napa, the Town of Yountville, and the County of Napa and a second in Solano County, which includes all of its local jurisdictions.

housing needs, increasing the number of topics to be considered in the allocation methodology, and giving HCD (on behalf of the State of California) the ability to sue individual cities for not meeting requirements.

A notable change was the addition of "furthering fair housing" as a required objective for RHNA and local housing elements. The concept of furthering fair housing comes from the federal Fair Housing Act and means taking actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. More information on the Fair Housing Act is available [here](#).

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#### Sources

Baer, William C. (February 2008). California's Fair-Share Housing 1967-2006: the Planning Approach, *Journal of Planning History*

Lewis, Paul G. (2003). California's Housing Element Law: The Issue of Local Noncompliance, Public Policy Institute of California

California's Housing Package (n.d.), Housing and Community Development, <https://www.hudexchange.info/programs/fair-housing-planning/>

## Timeline of Important Events

An income requirement for housing was added to the existing general plan requirements in 1967 via AB 1952, authored by then Assemblymember Pete Wilson, San Diego. Cities were required to make standards and plans for adequate sites (for housing) and improvement of housing for all economic segments of the community. Multiple bills in both Houses have been proposed around the housing element, gone through the legislative process and been either vetoed or passed. Significant bills are discussed below.

**1970** – the Legislature directed HCD to develop guidelines for housing element preparation on one and five year cycles. SB 1489 (Moscone), emphasized housing need, passed in 1971, and ABX 1 of 1971 established more standards. The California Housing Finance Agency (CalHFA), which also assisted communities in providing affordable housing was created in 1975. The legislation authorized HCD to review local housing elements for conformity to its guidelines.

**1976** – Fair-share was added to the guidelines by HCD. The COGs are now given the responsibility by HCD to distribute shares of low-income and moderate-income housing. The local housing element had to include these income requirements – whether or not communities wanted them. HCD also was given responsibility to review local housing elements. Statewide hearings in 1977 brought out a number of positions on housing elements and HCD requirements.

**Mid 1980's** – AB 2853 (Roos), provided for faster permit processing and higher densities, and allowed the housing element to meet state goals and be reviewed by HCD. COGs would continue

to formulate the fair share for each community, but HCD had final approval of the numbers and each community was to revise its Housing Element every five years.

**1990s** – Cities and counties looked at housing elements, if certified, as providing protection against lawsuits. In addition, this decade also created the concept of regional allocation “sharing burdens of lower- income households among geographic areas,” without mandated goals.

**1993** – The Senate Committee on Local Government held hearings on housing element progress and heard concerns that communities were not doing enough and that housing elements were despised by local governments. Bills changed the cycle timeframe, including AB 2172 (Hauser), SB 1703 (Costa) and SC 320 (Committee). Main topics for discussion by the Committee on Housing and Land Use hearings in 1995 were the housing allocations and the Department of Finance (DoF) projections. A common complaint was that the DoF projections were not complete enough for communities to develop appropriate allocations. The COGs projections also were criticized.

**1998** – AB 438 (Torlakson), allowing for the creation of sub-RHNA areas looked at how housing units were counted. 2001 – SB 910 (Dunn) would have included imposing fines on jurisdictions not complying; and would have tied RHNA to transportation planning on a six year cycle. However, this bill did not pass.

**2002** – SB 423 (Torlakson) created a jobs and housing balance incentive program, also known as Workforce Housing Incentive Program. In 2003, at HCD's request, a working group of stakeholders met to make recommendations, which included:

- Develop more transparency in determining fair shares

- Clarify land inventories of building sites
- Ensure inventories were buildable
- Increase HCD review consistency of local elements
- Explore city self-certification
- Devise better housing element enforcement that would penalize non-compliance.

**2004** – AB 2348 (Mullin) clarified the relationship between the land inventory and adequate sites requirement, provided guidance on the content of adequate land inventory, and provided greater development certainty. AB 2158 (Lowenthal) revised the process for determining allocation from just DoF to include transportation planning numbers and created a review process.

**2005** – AB 1233 (Jones) assured that unmet need from previous RHNA cycles was added into the next cycle.

### **2017 Housing Legislative Package**

Approximately 150 housing bills were submitted in 2017. Fifteen relating to funding, streamlining and accountability, were signed by the governor. These bills significantly changed how RHNA is conducted, requiring additional outreach and reporting, increasing the number of factors included, and the ability of HCD to sue individual cities for not meeting requirements.

SB 2 (Atkins) Building Homes and Jobs Act is projected to generate hundreds of millions of dollars annually for affordable housing, supportive housing, emergency shelters, transitional housing and other housing needs via a \$75 to \$225 recording fee on specified real estate documents.

SB 3 (Beall) Veterans and Affordable Housing Bond Act of 2018 places a \$4 billion general obligation bond on the November 2018 ballot to fund affordable housing programs and the veterans homeownership program (CalVet).

SB 35 (Wiener) streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category. In a SB 35 city, approval of a qualifying housing development on a qualifying site is a ministerial act, without need for CEQA review or public hearings.

AB 73 (Chiu) streamlines the housing approval process by allowing jurisdictions to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the ordinance.

SB 167 (Skinner), AB 678 (Bocanegra), and AB 1515 (Daly) are three measures that were amended late in the 2017 legislative session to incorporate changes to the Housing Accountability Act (HAA). The HAA significantly limits the ability of a jurisdiction to deny an affordable or market-rate housing project that is consistent with existing planning and zoning requirements.

AB 1505 (Bloom) allows a jurisdiction to adopt an ordinance that requires a housing development to include a certain percentage of rental units affordable to and occupied by households with extremely low, very low, low or moderate income.

AB 879 (Grayson) expands upon existing law that requires, by April 1 of each year, general law cities and charter cities to send an annual report to their respective city councils, the state Office of Planning and Research (OPR) and HCD that includes information related to implementation of the General Plan.

AB 1397 (Low) makes numerous changes to how a jurisdiction establishes its housing element site inventory.

AB 72 (Santiago) provides HCD broad new authority to find a jurisdiction's housing element out of substantial compliance if it determines that

the jurisdiction fails to act in compliance with its housing element and allows HCD to refer violations of law to the attorney general.

**2018** – SB 828 (Wiener) changed the way HCD determines each region’s RHND, adding a number of new factors for consideration and accounting for “unmet need” in the existing housing stock by applying “adjustment factors” to a region’s total projected households, not just the incremental housing growth.

**2018** – AB 1771 (Bloom) and AB 686 (Santiago) strengthened the mandate for regions and local governments to combat discrimination, overcome historic patterns of segregation, and create equal access to opportunity through housing planning and decision-making, in other words, to “affirmatively further fair housing.” AB 1771 (Bloom) added to RHNA an enhanced focus on racial equity with an explicit mandate that COGs’ housing distribution plans affirmatively further fair housing and required COGs to survey jurisdictions on their fair housing activities, to identify regional barriers to furthering fair housing, and to recommend strategies or actions to overcome those barriers. AB 686 (Santiago) created a mandate that local jurisdictions plan and administer housing and community development programs and activities in a manner that affirmatively furthers fair housing.

**2019** – AB 1486 (Ting) strengthened the Surplus Lands Act (SLA), which requires that local agencies provide right of first refusal to affordable housing developers when disposing of surplus land by expanding the scope of land subject to the right of first refusal requirement, updating the mechanics of the surplus land disposal process, extending HCD’s enforcement mandate to include the SLA and establishing financial penalties for violation of the act.

**2019** – AB 1487 (Chiu), authorized ABAG and MTC to place on the ballot regional housing measures to help fund affordable housing and established

the Bay Area Regional Housing Authority. The 2019-20 State Budget also included significant new resources to support housing planning, including \$250 million for local governments and COGs for planning activities. The Bay Area is receiving approximately \$50 million in combined funds, split between ABAG and local jurisdictions.

**2019** – SB 330 (Skinner) made further revisions to the HAA, establishing new criteria for housing approvals at the local level, including prohibiting a local agency from subjecting a project to new ordinances, rules or fees after an application is submitted and limiting the number of hearings on a project to five. The bill also prohibits a local agency from lowering the allowed residential density below that level in effect on January 1, 2018 in high rent, low-vacancy areas, as defined. The bill’s provisions sunset in five years.