



Los Angeles Homeless Services Authority Housing Elements: Overview and Analysis

California law requires each city and county to develop and adopt a general plan that governs land use. The general plan must include seven mandatory “elements”, including a housing element. The housing element, which must be updated every five years, is subject to detailed statutory requirements¹ and mandatory review by the California Department of Housing and Community Development (HCD).²

The primary goal of housing element law is to increase housing supply and affordability. It is designed to achieve these goals by encouraging every city and county to plan adequately to meet its housing needs.³

All Southern California jurisdictions, including Los Angeles County and the 88 cities within it, must submit their adopted housing elements for the 2008 – 2014 cycle to HCD by June 30, 2008.⁴

Process

- Using data provided by HCD, each Council of Regional Governments (COG) in the state prepares a document known as the Regional Housing Needs Assessment (RHNA).
- The RHNA is a “fair share” distribution of the region’s housing needs to each city and county. These numbers are what communities must begin with in creating their housing elements.
- The housing element is typically prepared by a jurisdiction’s planning department, often with an outside consultant.
- State law requires that the city or county conduct an inclusive public process which makes a diligent effort to achieve participation of all economic segments of the community when developing a housing element, so public hearings must be held.
- Prior to the adoption of a housing element, the local government must submit a draft to HCD for review. HCD must review the draft, consider comments from the public, and issue written comments within 60 days.
- If HCD finds the draft to be out of compliance, the local government must either change the draft to address problems identified by HCD’s review, or adopt it without changes, making findings indicating why the element complies with the law despite HCD’s findings.
- Once adopted, the jurisdiction must promptly submit the adopted housing element revision to HCD. HCD then has 90 days to issue a written determination of whether the final element substantially complies with the law.

¹ California Government Code sections 65580-65589.8, *see also* five year review schedule at § 65588(b).

² California Department of Housing and Community Development. *State Housing Element Law* (August 31, 2005). <http://www.hcd.ca.gov/hpd/hrc/plan/he/>

³ *State Housing Element Law*.

⁴ California Department of Housing and Community Development. *Housing Element Update Schedules*. 26 November 2007.

- State law requires HCD to consider written comments from any individual, group or public agency regarding any housing element under review. This includes comments for a draft element and for HCD's review of an adopted element.⁵

Key Components of the Housing Element

- A review of the previous housing element.⁶
- An assessment of the community's existing and projected housing needs for all income levels (i.e., moderate, above moderate, low and very low). This section must include an analysis of the special needs of certain groups, such as the homeless.
- An inventory and analysis of specific sites available for development. Where the element's inventory of sites does not include sufficient sites to meet the community's fair share for very low and low income housing, the element must contain a program that provides for sites zones for multifamily use by right at densities and standards sufficient to make affordable housing feasible.⁷
- An analysis of constraints on housing (such as land-use controls and permit processing procedures) and plans to remove those constraints where possible.
- A statement of the community's goals, quantified objectives and policies relative to meeting its housing needs.
- A five-year schedule of actions the government is currently undertaking or plans to undertake in order to achieve its goals and objectives.

Special Needs Assessment for the Homeless

Each housing element must include an assessment of the special housing needs of the elderly, the disabled, female-headed households, large families, farmworkers, and homeless persons and families. The homeless needs assessment must include:

- An estimate of the number of homeless persons in the community on any given night. This estimate must be based on an estimate or count of homeless persons. Whenever possible, the estimate should be divided into single adult males and females, and families. It should also include any data available on special subcategories of homeless people, such as mentally ill, developmentally disabled, substance abusers, and survivors of domestic violence.
- An inventory of the resources currently available to the community's homeless population, such as emergency shelters and transitional housing.

⁵ Gov't Code § 65583(c)(7), *see also* California Affordable Housing Law Project, of the Public Interest Law Project. *California Housing Element Manual, 2nd Edition: Law, Advocacy and Litigation* (February 2007) 66-70. <http://www.cahlp.org/>.

⁶ *Id* at 9-12. *See also* State Housing Element Law, *see also* Creswell, Cathy E. California Department of Housing and Community Development. *Memo on Application of Government Code Section 65584.09*. 20 June 2007.

⁷ Govt. Code §65583(c)(1), *see also* California Housing Element Manual, at 11-12, 30-34.

- An inventory of zones within the jurisdiction that allow emergency shelters and transitional housing and an explanation of the permit processes associated with the development of these types of housing.⁸

Senate Bill 2

Until recently, jurisdictions were permitted to require conditional use or discretionary permits for the development of emergency shelters, so long as the permit process did not constitute a constraint. However, under SB2, enacted in October 2007, every city and county's housing element must identify zones where emergency shelters are allowed to locate "by right." A city or county may comply with this requirement by developing a new emergency shelter within two years of the start of the housing element planning period. All jurisdictions must demonstrate compliance with SB2 by the time their 2008 housing elements are due.⁹

Enforcement

Enforcement of the housing element has been a long-standing issue for the state legislature. As of this date, the penalties for noncompliance are the following:

- If a local government fails to adopt an updated housing element, or adopts an element that does not comply with the law, its General Plan becomes invalid. The local government may not proceed to make land use decisions or approve development until it has adopted a valid housing element.
- If a community adopts a housing element that includes sites and programs for the development of affordable housing, it may not act contradictory to the terms of the element, and must implement the element's programs in accordance with the terms specified in the element.¹⁰

If the housing element is challenged in court, the court can curtail the local government's ability to approve subdivisions, make zoning changes or issue permits. It can also order the approval of proposed affordable housing developments.

In 2001, the city of Folsom was sued by Legal Services of Northern California for its noncompliant housing element and lack of progress toward affordable housing goals. In 2002, the parties entered into a settlement requiring Folsom to rezone 128 acres of land for the possible construction of up to 2,900 affordable units. The city also agreed to add an affordable housing set-aside requirement for new developments and create an affordable housing trust fund.¹¹

Status of Housing Elements in Los Angeles County

According HCD, the statewide rate of compliance for the current housing element cycle is 79%. However, the compliance rate for Los Angeles County is lower.

HCD considers a jurisdiction out of compliance when 1) the local government failed to adopt a housing element pursuant to the statutory schedule (for our purposes, the last due date was December 31, 2000) or 2) the local government did adopt a housing element, but HCD found that the element did not comply with the law.

⁸ California Department of Housing and Community Development. *Housing Element Questions and Answers: A Guide to the Preparation of Housing Elements* (October 2006) 9-11.

⁹ Los Angeles Homeless Services Authority, *Senate Bill 2: An Overview and Analysis* (February 2007), <http://www.lahsa.org/lahsapolicyandplanningdept.asp>.

¹⁰ *California Housing Element Manual* (2007) at 10. <http://www.pilpca.org/>

¹¹ Lewis, Paul G. Public Policy Institute of California. *California's Housing Element Law: The Issue of Local Noncompliance* (2003) 31.

Housing Elements

As of December 20, 2007, the status of the housing elements for the County of Los Angeles and the 88 cities within it were the following:

- 67 jurisdictions, including the City and County of Los Angeles, have adopted housing elements **in** compliance with housing element law.
- 22 jurisdictions are **out** of compliance.
- *14 jurisdictions adopted non-compliant housing elements:* Bell, Beverly Hills, Covina, Cudahy, Hidden Hills, Industry, La Habra Heights, Lynwood, Malibu, Montebello, Palos Verdes Estates, Rolling Hills, South Gate and South Pasadena
 - *8 jurisdictions failed to submit an adopted housing element at all:* Commerce, Irwindale, La Canada Flintridge, Rolling Hills Estates, San Marino, Temple City, West Covina and Whittier¹²

As noted above, every jurisdiction in Los Angeles County is required to adopt a valid housing element update by June 30, 2008. More information is available at www.hcd.ca.gov.

¹² California Department of Housing and Urban Development. *Housing Element Compliance Report* (20 December 2007).