

MEMO

To: Luis Lopez, Community Development Services Director, City of Coachella
From: Lisa Wise Consulting, Inc.
Date: January 14, 2021
Subject: Summary of HCD Housing Element Approval Process and Requirements

The housing element is the primary tool the State of California uses to ensure local governments are appropriately planning to produce enough housing to meet their allocated regional housing needs. It is a mandatory part of a jurisdiction's General Plan, but differs from other General Plan elements in the following ways:

- **Update Timeline:** The housing element must be updated every eight years for jurisdictions within a metropolitan planning organization (MPO) on a 4-year regional transportation plan (RTP) cycle. If a jurisdiction fails to adopt the housing element within 120 days of the statutory due date, the jurisdiction will be required to comply with two consecutive 4-year housing element update cycles instead of the 8-year cycle.
- **Statutory Requirements and State Certification:** The housing element must be reviewed and approved (i.e., certified) by the California Department of Housing and Community Development (HCD) to ensure compliance with statutory requirements.

Requirements

According to California Government Code Sections 65580-65589, the housing element must include:

- A statement of the community's goals, quantified objectives, and policies to maintain, preserve, improve, and develop housing;
- An assessment of existing and projected housing needs for all income levels;
- An analysis of housing constraints and resources that could impact housing production;
- An inventory of adequate sites that are zoned and available within the planning period to meet the jurisdiction's fair share of regional housing needs across all income levels; and
- A program that provides a schedule of implementable actions to be taken during the planning period to achieve the outlined goals, objectives, and policies.

The housing element must also maintain consistency with the other elements of the General Plan. Furthermore, State law requires that the jurisdiction make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element (Government Code §65583(c)(9)).

New State Laws

The State recently passed new legislation that will impact the 6th cycle housing element update. These laws include, but are not limited to:

AB 1397 Adequate Housing Element Sites (2017): This law strengthens local governments' obligation to identify sites available to meet their RHNA at all income levels.

- Non-vacant sites must have a realistic development potential.
- If non-vacant sites are used to accommodate 50% or more of lower income RHNA, jurisdictions must overcome presumption that existing use is an impediment to development.
- Including previously identified sites to meet lower income RHNA is only allowed if they are rezoned by right and require at least 20% affordable to lower income households.
- If including sites smaller than ½ acre and larger than 10 acres, jurisdictions must demonstrate a history of affordable housing development on similar sites.

SB 166 No Net Loss (2017): This law requires jurisdictions to maintain adequate sites to accommodate its remaining RHNA at all times throughout the housing element planning period. If a jurisdiction approves a development at a lower residential density than assumed in the housing element sites inventory, the jurisdictions must identify additional adequate low-income housing site(s) to accommodate the remaining RHNA, and if necessary, rezone sites within 180 days.

SB 6 Design and Development of the Site Inventory (2019): This law requires the housing element site inventory to be submitted electronically on a standard HCD form.

AB 686 Affirmatively Furthering Fair Housing (AFFH) (2018): This law requires housing elements to demonstrate the local jurisdiction is affirmatively furthering fair housing. Jurisdictions now need to demonstrate compliance with the statute by:

- Analyzing existing fair housing and segregation issues;
- Identifying fair housing goals;
- Developing strategies to implement these goals; and
- Ensuring sites in the inventory are identified in such a way that promotes AFFH.

AB 879 Reporting Requirements and Enforcement (2017): This law requires a deeper analysis of factors that can impact constraints, such as local ordinances, fees, and permitting timelines, as well as strategies to remove them in housing elements and assessed through Annual Planning Reports.

AB 671 ADU Plan (2019): This law requires jurisdictions to provide in their housing elements a plan to incentivize and promote the creation of affordable ADUs.

AB 1763 Enhanced Density Bonus (2019): This law expands State density bonus provisions by allowing 100% affordable projects¹ to receive up to an 80% density bonus and four concessions. If a 100% affordable project is located within ½ mile of a major transit stop, there is no density limit, and the project can receive a height increase of three additional stories or 33 feet. Also, no parking is required for supportive and special needs housing.

AB 2162 Supportive Housing Streamlined Approval (2018): This law allows supportive housing by-right in any zone where multi-family and mixed uses are permitted. It expands CEQA exemption for ministerial approval and includes specific timeframes for approval if certain requirements are met.

AB 72 Housing Element Enforcement (2017): This law allows HCD to review any action or lack of action by a jurisdiction that is inconsistent with its housing element. HCD can revoke housing element compliance and notify the Attorney General.

Approval Process

Once the jurisdiction has drafted their updated housing element, the jurisdiction submits it to HCD. HCD will review the draft housing element to determine if it appropriately accommodates the jurisdiction's RHNA, including the accommodation of housing units across a range of income categories, and all other State requirements. Typically, HCD will review and provide comments on the public draft housing element within 60 days of receipt. Review of the draft housing element is usually facilitated by one or more conference calls with the jurisdiction and any consultants retained by the jurisdiction. If the draft document meets State requirements, HCD will provide a conditional letter of approval, noting the State can approve/certify the housing element if adopted as is. Otherwise, HCD will provide comments that will need to be addressed before adoption and HCD certification. After any necessary changes are made to address HCD's comments, the jurisdiction will formally adopt the housing element and submit the adopted housing element to HCD for certification, which can take up to 90 days (see Figure 1: HCD Housing Element Approval Process on the following page).

If the jurisdiction adopts the housing element without fully satisfying HCD requirements, it will be considered legally noncompliant. This noncompliant status can prevent the jurisdiction from being eligible for certain State funding, making the jurisdiction vulnerable to lawsuits by the Office of the Attorney General, and trigger a new 4-year update timeline for future housing elements.

Timeline

The 6th cycle housing element updates for the Southern California Association of Governments (SCAG) region must be adopted by the local jurisdiction by October 15, 2021. HCD offers a 120-day grace period. If the housing element is adopted during this time, the housing element is considered compliant. Certification occurs following the deadline and does not need to occur within the grace period.

¹ Up to 20% of the total units can be for moderate-income households (Government Code §65915(b)(1)(G)).

Figure 1: HCD Housing Element Approval Process

