



ASSOCIATION  
OF BAY AREA  
GOVERNMENTS

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To: City Managers/County Administrators, Community Development and Planning Directors  
From: Ken Kirkey, ABAG/MTC Planning Director  
CC: ABAG Executive Board and ABAG Regional Planning Committee  
Date: August 12, 2019  
RE: Recent Changes to Housing Element Law

ABAG will be embarking on the Regional Housing Need Allocation (RHNA) process for the sixth cycle in Fall 2019. After ABAG completes the process to allocate a portion of the region's housing need to each city and county, local governments are required to update the Housing Element of their General Plans (with an expected Housing Element due date of December 2022).

While this deadline is several years away, recent legislation has made significant changes to Housing Element Law—particularly the requirements for selecting sites to accommodate housing need—that will necessitate substantial additional work by local governments. The new rules are summarized in the attached file. See Government Code Sections 65583 and 65583.2 for details.

***ABAG/MTC staff is encouraging jurisdictions to consider using the [SB2 Planning Funds currently available](#) from the California Department of Housing and Community Development (HCD) to address these new requirements.***

To help local jurisdictions gain a better understanding of the new requirements, ABAG/MTC staff has conducted a preliminary analysis to demonstrate the potential impacts of these rules on the sites jurisdictions identified for the 2015-2023 Housing Element period. This transmittal includes an attachment with this preliminary analysis for all jurisdictions in the county. The analysis approximates the number of sites that could be subject to greater scrutiny based on size or existing use and whether or not sites can be recycled in the inventory without zoning changes. The analysis is subject to the limitations of the underlying data and is not intended to be definitive – ***local jurisdiction staff will be responsible for conducting a more fine-grained analysis of the sites to ensure consistency with state statutes.***

ABAG/MTC's map and database of local jurisdiction Housing Element sites can be downloaded from <http://opendata.mtc.ca.gov/datasets/bay-area-housing-opportunity-sites-inventory-20072023>.

If you have questions about the analysis completed by ABAG/MTC staff, please contact Ada Chan, Assistant Planner, at 415-820-7958 or [achan@bayareametro.gov](mailto:achan@bayareametro.gov).

Since HCD is responsible for approving local Housing Elements, please contact them directly at 916-263-2911 if you have questions about how to ensure compliance with these statutory requirements.

KK: GA

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Attachments

*Overview of Recent Changes to Housing Element Law*  
*RHNA Site Analysis Spreadsheet for Jurisdictions (Organized by County)*

## **Overview of Recent Changes to Housing Element Law**

### **Housing Element Site Inventory Reporting Requirements**

- Sites must be listed by Assessor Parcel Number (APN) and include the number of units that can be “realistically accommodated” on each site.
- Parcels included in the inventory must have sufficient access to utilities, including “dry utilities.” The term “dry utilities” is not defined in the statute.

### **Reuse of Sites Included in Previous Housing Elements**

State law limits jurisdictions’ ability to reuse the following types of sites used in previous Housing Elements to accommodate lower-income<sup>1</sup> housing need if those sites have not been approved for housing:

1. A vacant site identified in two or more consecutive planning periods
2. A non-vacant site identified in one prior planning period

Unless they meet the following criteria:

1. The site is or will be rezoned to the minimum lower-income household density for the jurisdiction within three years; **and**
2. The zoning allows for residential development by right if at least 20% of the units are affordable to lower-income households

### **Use of Non-Vacant Sites in the Housing Element Site Inventory**

- According to HCD, underutilized sites (e.g., a vacant/abandoned use, a parking lot, a blighted site) are not considered to be vacant. Jurisdictions will have to provide evidence that the non-vacant site is suitable for lower-income development during the RHNA period.
- If a jurisdiction uses non-vacant sites to accommodate 50% or more of its lower-income housing need, the jurisdiction must provide “substantial” evidence that the existing use on a non-vacant site that is identified for lower-income housing is likely to be discontinued during the planning period. Absent substantial evidence, the existing use is deemed an impediment to additional residential development.
- If a site was subject to affordability agreements for lower-income households, subject to a rent control policy, or had housing units occupied by a lower-income resident within the past five years, the jurisdiction must require replacement of that housing at the same or lower income level.

### **Use of Small and Large Sites in the Housing Element Site Inventory**

- Sites smaller than 1/2 acre and those larger than 10 acres are deemed inadequate to accommodate lower-income housing need unless the jurisdiction provides examples of lower-income development on equivalent sites (equivalent number of units at an equivalent affordability level on a site of equivalent size) or other evidence for why the site is appropriate.

## Other Significant Changes to Housing Element Law

- The Housing Element must affirmatively further fair housing opportunities and include a program that establishes goals and actions to do so [GC §65583(c)(9)]. *It is expected that HCD will provide additional guidance on this topic, but materials are not yet available.*
- A jurisdiction must make “no net loss” findings if it approves a project on a Housing Element site that has *fewer units OR a different income category* compared to what was shown in the Housing Element [GC §65863].
- The analysis of governmental constraints to housing must evaluate any local ordinances that directly impact the cost and supply of residential development (e.g. inclusionary ordinance and short-term rental ordinance) [GC §65583(a)(5)].
- The analysis of nongovernmental constraints must evaluate developer actions related to a project that hinder housing development and must demonstrate local efforts to remove nongovernmental constraints that create a gap between planning for and construction of housing [GC §65583(a) (6)].
- The Housing Element must describe the typical length of time between project approval and request for a building permit. It must also analyze requests to develop at densities below the density identified in the site inventory [GC 65583(a)(6)].
- The Housing Element must include a program to mitigate non-governmental constraints (e.g. NIMBYism, economic conditions, jobs/housing imbalance, labor shortage, effects of wildfire/flood, etc.) [GC 65583(c)(3)].
- When describing environmental constraints, the Housing Element should include the jurisdiction’s mitigation measures, if any. [GC 65583.2(b)(4)]
- The shortfall rezone requirement has changed from by-right for all owner and rental multifamily projects to only those owner and rental multifamily projects that include 20% or more units that are affordable to lower-income households [GC 65583.2(h)].
- The jurisdiction must demonstrate that it has a policy/procedure to accommodate supportive housing pursuant to AB 2162 [GC 65651]. This is in addition to the SB 2 requirements for supportive housing.