

Since 1969, California has required that all cities and counties adequately plan for their share of the state's growing housing needs. While cities do not build housing – that is the function of private developers – they do adopt plans, regulations and programs that provide opportunities for how and where housing development occurs. One of the most important housing policy documents used by jurisdictions is the General Plan; more specifically, the Housing Element of the General Plan.

The General Plan serves as the “blueprint” for how a city will grow and develop and includes seven state required 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.”

This information bulletin outlines how the state determines housing requirements for jurisdictions, the process localities must follow to secure a certified Housing Element, and the implications for failing to meet required state housing goals.

I. THE REGIONAL HOUSING NEEDS ASSESSMENT

The California Department of Housing & Community Development is responsible for developing state housing production goals. These goals represent the total number of housing units to be built within an eight year housing cycle for varying income groups. This process is referred to as the Regional Housing Needs Assessment.

Once the RHNA is determined, HCD assigns the RHNA figures to the 21 different council of governments located throughout the state, who in turn assign the housing goals to their respective member cities and counties. Carlsbad's COG is the San Diego Association of Governments, who represents 18 cities and the County of San Diego.

The RHNA is developed by HCD and distributed to the individual cities and counties by the COGs in accordance with four state directed RHNA objectives:

- Plan for housing at all income levels/all jurisdictions
 - Balance jobs and housing
 - Focus development in urban areas
 - Protect rural areas, open space and habitat land
- These objectives are achieved using several regional and local factors and influences including:
- » Share of existing and projected population growth
 - » Distribution of existing households (by income)
 - » Existing and projected jobs
 - » Persons per household
 - » Opportunities and constraints for housing
 - » Availability of land suitable for development
 - » Preserved or protected lands
 - » Availability of high quality transit corridors
 - » Historic vacancy rates and loss of units
 - » Housing cost burdens
 - » Social equity adjustments

II. HOUSING BASED ON INCOME CATEGORIES

Under Housing Element Law, RHNA is assigned to four income groups or categories. Families with...

- Very low household income
- Low household income
- Moderate household income
- Above moderate household income

The household income for each of these categories is based on a percentage of the Area Median Income, as reflected in the chart below.

Income Category	Percent of AMI
Very Low	<50%
Low	51 to 80%
Moderate	81 to 120%
Above Moderate	>120%

These percentages are applied to the AMI for a region, not a specific city. Carlsbad falls under the AMI for San Diego County, which is currently \$86,300 per year for a four-person household. In comparison, Carlsbad's median income is at \$107,600. The income categories pursuant to the San Diego County AMI is reflected in the table below for a family of four:

Income Category	Percent of AMI	Household
Very Low	<50%	\$53,500
Low	51 to 80%	\$85,600
Moderate	81 to 120%	\$103,550
Above Moderate	>120%	>\$103,550

III. DENSITY AND AFFORDABILITY

The foundation of Housing Element Law is based on the premise that density is a proxy for affordability. The idea being, the more housing units on a site (density) translates to lower construction costs per unit, which translates to lower rental/sale prices of those units (affordability). As such, HCD assigns minimum density figures to each income category as reflected below.

Income Category	Percent of AMI	Minimum Density ¹
Very Low	\$53,500	30 du/ac
Low	\$85,600	30 du/ac
Moderate	\$103,550	15 du/ac
Above Moderate	>\$103,550	<15 du/ac

¹ du/ac = Dwelling unit per 1 acre of land

Most cities and counties can attest that higher density development alone rarely translates to housing that is affordable at the targeted income categories. As such, the state requires that cities develop and implement programs that will help facilitate affordable housing sales/rental costs (i.e., inclusionary housing requirements, locally-funded subsidies), but the programs cannot be too onerous as to make the housing development infeasible to construct (i.e., require that all higher-density projects be restricted as affordable).

Until state law changes, this is the formula that cities and counties must use when planning for housing under state Housing Element Law.



IV. THE LOCAL HOUSING ELEMENT

Once a jurisdiction receives its RHNA allocations, it must update its General Plan and Housing Element to demonstrate how the jurisdiction, particularly through policies and zoning, can or will accommodate the RHNA. Generally, a Housing Element must include the following:

- Review of previous Housing Element
- Assessment of housing needs
- Inventory and analysis of adequate sites
- Analysis of potential constraints
- Housing policies and programs
- Quantified objectives

One of the most labor intensive and controversial components of the process is the inventory and analysis of adequate sites.

Each jurisdiction must evaluate the Land Use Element of their General Plan to determine whether there is enough land available, with adequate zoning (minimum density as described in Section III), to accommodate their assigned RHNA allocation for each income category. If unable to accommodate the housing goals, the jurisdiction must rezone enough land to meet the RHNA obligation.

In addition to adequately zoning sites, the law requires that each jurisdiction look for ways to streamline permit processes and remove processing barriers in order to facilitate the creation of affordable housing.

A ministerial process with reduced fees and development incentives (i.e., increased density above plan allowance, waiver of design standards like parking or setbacks, expedited permit review) for affordable housing projects is highly encouraged by HCD.

Ultimately, an effective Housing Element provides the necessary conditions for developing and preserving an adequate supply of housing, including housing affordable to seniors, families, and workers.

The update plan provides the opportunity to develop housing and land use strategies to reflect local changing needs, resources, and conditions and provides a vehicle to adopt approaches addressing state driven regulations related to sustainability and environmental concerns. Jurisdictions may also use the Housing Element as an opportunity to complement their economic development goals with their housing goals.

V. HCD HOUSING ELEMENT CERTIFICATION

Once updated, Housing Elements must be reviewed and approved by HCD and then adopted by the local jurisdiction (City Council) prior to state mandated deadlines (described in Section VIII). Failure to timely complete this process will result in several penalties, as highlighted in the section below.

VI. PENALTIES FOR NONCOMPLIANCE & LIMITATIONS

Failing to meet the state requirements can result in significant penalties. Given the current housing crisis in California, each year the state legislature introduces new laws that increase and expand the penalties for noncompliance as well as impose limitations on local controls affecting housing production. Below are a few of the more significant State acts.

Housing Accountability and Affordability Act

If HCD finds that a jurisdiction's RHNA goals are not being timely satisfied, SB 35 requires cities and counties to streamline review and approval of eligible affordable housing projects by providing a ministerial approval process, exempting such projects from environmental review under CEQA and public hearing process. Refer to the City Info Bulletin on this act.

Building Homes and Jobs Act

Under Senate Bill 2, jurisdictions that do not have an approved HCD certified Housing Element are not eligible for grant funding. Carlsbad's current housing element is HCD certified, which allowed the city to apply for and be awarded an SB 2 grant in the amount of \$310,000.

Housing Development and Financing Act

Under Assembly Bill 101, jurisdictions failing to timely adopt a local Housing Element may be fined tens of thousands of dollars per month until HCD determines compliance.

Housing Crisis Act

SB 330 introduces an even more expedited review process for residential development projects than SB 35 and prohibits cities from imposing growth caps or moratoriums on housing projects or plans. This will likely impact how we can implement Carlsbad's Growth Management Plan.

Residential Density and Affordability Act

Under SB 166, a city cannot reduce residential density on a property without concurrently rezoning another property to make up the lost units. Furthermore, if a city approves a project that results in a density lower than the housing plan identified, it must rezone another property to make up the difference.

Potential lawsuits

Many cities without an approved Housing Element have been sued by developers and/or affordable housing advocates, resulting in decisions unfavorable to the city. For example:

- ✓ Courts have suspended a jurisdiction's local land use authority via a court ordered moratoria; the city was unable to issue building permits until a Housing Element was certified and approved. (City of Pasadena)
- ✓ Courts have assumed land use control over all housing development permits. Under this scenario, the courts could approve a housing development project that may not fit the character of the community. (City of Fremont)
- ✓ Courts have imposed aggressive timelines for a jurisdiction to approve a Housing Element (with threats of court-assumed land use control for noncompliance), thereby limiting community input in the housing plan development. (City of Encinitas)
- ✓ The State Attorney General has filed suit against cities that do not have an approved or compliant Housing Element. The implications of the lawsuits are currently unknown. (City of Huntington Beach)
- ✓ In virtually all cases, the litigation resulted in the city paying significant financial penalties and/or substantive attorney fees.



VII. RELATED STATE HOUSING PROGRAMS/LAWS

Beyond the mandates required under the Housing Element Law, the state has adopted other regulations and programs that encourage housing production.

State Density Bonus Law

Density Bonus is a state law that allows a developer to increase density beyond that allowed under a city's local land use plan. An applicant can also receive reductions in required development standards such as setbacks, height limits and parking requirements. In exchange for the increased density, a certain number of the new homes must be reserved for very low, low, or moderate-income households or for seniors.

Accessory Dwelling Units

The state has found that allowing Accessory Dwelling Units in residential zones where primary residences are already allowed provides additional housing throughout California. In recent years the state has continued to revise and update the programs around ADUs, limiting local city control of them, to more widely allow for ADUs to address housing production. Refer to the city informational bulletin on ADUs.

VIII. 2021-2029 HOUSING CYCLE

The RHNA process for the next (sixth) Housing Element cycle is currently in process and will cover the period from April 2021 – April 2029. The RHNA process can be generally categorized into the steps bulleted below.

It is important to note that the RHNA process is also being conducted in conjunction with the development of the 2050 Regional Transportation Plan and its Sustainable Communities Strategy in accordance with SB 375 (See Section IX for more on this process).

RHNA Methodology and Allocation

July 2018 – November 2019

This step includes the development of the methodology in which RHNA will be distributed by SANDAG. Public review of the draft methodology was completed in September 2019, with HCD approval in November 2019. Currently, city staff coordinates and collaborates with the SANDAG and regional jurisdictions through its participation in the SANDAG RHNA Subcommittee meetings.

RHNA Distribution and Allocation

November 2019 – February 2020

Distribution of the draft RHNA to local jurisdiction occurred in November 2019. In January 2020 the following four jurisdictions filed appeals on the RHNA allocation: Coronado, Imperial Beach, Lemon Grove and Solana Beach. Results of the appeal are pending.

Certified Local Housing Element

February 2020 – April 2021

Each city and county has until April 2021 to process a Housing Element update using their assigned RHNA allocation (this period includes HCD review and City Council adoption).

IX. REGIONAL TRANSPORTATION PLAN AND SUSTAINABLE COMMUNITIES STRATEGY

The Regional Transportation Plan is a federally required long range transportation plan prepared by SANDAG that is updated every four years, and includes projections of population, household, employment growth and travel demand, along with a specific list of proposed projects to be funded. In Carlsbad, the following local projects are included in the RTP:

Carlsbad Boulevard realignment

- Village/Barrio roundabouts
- Road extensions for College Boulevard and Poinsettia Lane
- Road widenings for El Camino Real
- Road widenings for Avenida Encinas
- Other improvements at various locations:
 - » Intersection improvements
 - » Turn lane improvements
 - » ADA improvements
 - » Complete street improvements
 - » Traffic signal system improvements
 - » Pedestrian and bicycle improvements
 - » Lighting improvements
 - » Pavement management program

Pursuant to SB 375, SANDAG must also develop a Sustainable Communities Strategy to integrate land use and transportation strategies that will achieve California Air Resources Board greenhouse gas emissions reduction targets.

The SCS must demonstrate on a regional level, those areas sufficient to house all the population of the region, including the eight year projection of the RHNA. Both the RTP/SCS and RHNA have used local input as the basis for future demographic projections, including household growth.

