Making Housing Elements Work: Accountability & Enforcement

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Outline

• Overview of A & E
• The team
• Housing elements
• Proactive enforcement
• Complaint-based enforcement
• Collaboration
• Discussion
Purpose

Ensure all local jurisdictions meet their fair share of the state’s housing needs and promote development of housing at all income levels

• Support jurisdictions in promoting housing production through incentives and planning grants
• Provide education and technical assistance to help jurisdictions understand and implement the law
• Hold jurisdictions accountable for following the law through enforcement actions as needed
Overview

• Complaint-based & proactive
• Prioritize:
  – Severity (e.g., pattern; AH or large project; extreme effect on supply, choice, affordability, location)
  – Impact (e.g., precedence, ripple effect, scalability, projects)
  – Alignment (e.g., equity, access to opportunity, climate change, infill, homelessness)
• Start with technical assistance
The Team

Land Use and Local Government Relations

Planning Grants & Incentives
- Technical Assistance
- Planning Grants
- Incentive Programs
- Housing Element Review

Housing Accountability Unit
- Technical Assistance
- Enforcement
- Housing Element Review
The Team (cont.)

• Intersection between law and policy
• Collaborative effort between:
  – HCD’s Housing Accountability Unit (HAU)
  – HCD’s Legal Affairs Division (LAD)
  – Attorney General’s Housing Strike Force
Results

• Produced over 250 pieces of technical assistance
• Helped multiple projects get through the planning process to production
• Setting up housing elements to have better outcomes
• Provide much needed education and help to local governments
• Building relationships and connections with the AG’s office – cross collaboration
• Won our first case in Huntington Beach
Housing Element Law
Government Code sections 65580-65589.11

- Enables the State to influence housing supply and affordability through:
  - Implementation of state housing law
  - Review of every locality’s housing element
  - Accountability measures to ensure localities meet their commitments and follow state housing law

- Lays the foundation for other HCD housing activities, including planning grants, pro-housing designation, accountability & enforcement, preservation, ADUs – and getting housing built

- Must be updated:
  - Every 8 years for 521 jurisdictions
  - Every 5 years for 18 jurisdictions (mostly in small, rural counties)
Housing Elements are a Process that Span Across the Planning Period

RHNA

- HCD Develops the Regional Housing Needs Allocation (RHNA, number of new housing units needed over an 8-year period)
- Council of Governments distributes RHNA to each jurisdiction
- HCD reviews RHNA distribution for consistency with RHNA objectives

Draft, Certify, Adopt

- Each jurisdiction plans for their RHNA in the housing element of the general plan
- Develops action plan to “set the table for development”
- HCD reviews housing elements for compliance with state law

Implementation

- Jurisdiction implements the action plan to encourage housing growth
- Jurisdiction submits annual report on housing to HCD

Enforcement

- HCD proactively monitors implementation of key programs in the housing element
- HCD responds to complaints from stakeholders regarding lack of action to implement housing plan or violation of state housing law
- HCD can remove compliance of housing element and/or refer to the Attorney General
6th Cycle

- Other Regions (5 year) (2019 - 2024)
  - 17

- Rural Counties (HCD Acts as COG), Humboldt County (2019 - 2027)
  - 24

- Rural Counties (HCD Acts as COG), San Luis Obispo COG (2020 - 2028)
  - 15

- San Diego, Inyo County, Sacramento Area Council of Gov, Amador County, Southern California Association of Governments, Glenn County (2021 - 2029)
  - 256

- Butte County, Del Norte County, Siskiyou County (2022 - 2030)
  - 18

- Association of Bay Area Governments, Central Coast Counties, Central Valley (2023 - 2031)
  - 216

- Madera County, Merced County (2024-2032)
  - 10
Most Common Overarching Issues

• Housing element does not support assumptions.
• Analysis seeks to support existing conditions rather than guide solutions.
• Programs are status quo, do not support the narrative in the housing element, or do not have specific actions and timelines to demonstrate a beneficial impact in planning period. Lack of clear commitments (e.g., “uses Explore, Consider, Evaluate the feasibility, Study….”)
• Little or incomplete public participation has led to more third-party comments for HCD to consider.
Affirmatively Furthering Fair Housing

- Sites inventory is developed independently of the AFFH analysis and does not show how conditions are improve or exacerbated.
- Analysis consists of data but not analysis for patterns and trends over time.
- Contributing factors not tied to identified fair housing issues and analysis and are not reflected in program solutions.
- Programs do not work to overcome patterns and trends, are status quo, and lack metrics and milestones.
- Public Participation did not have affirmative actions to include all segments of the population or seek to consider AFFH.
Key Areas of Non-Compliance

Sites Inventory

• Factors and assumptions are not supported with data, development and market trends, and analysis.
• Market and Development Trends (when included) do not relate to the sites inventory.
• No discussion of actual existing uses of the site and how they would impede development or why they are good opportunities.
• Lack of clear substantial evidence that uses will likely discontinue in the planning period (think in three buckets: a) site-specific information relating to use, b) market and development trends to support, c) programs to facilitate redevelopment).
Key Areas of Non-Compliance

Constraints

• Describes but does not analyze as a constraint (think impact on cost, supply, timing, certainty, transparency).
• Puts off analysis to a “study.”
• Seeks to justify rather determine if there is a constraint.
• Does not analyze development standards of zones identified in the inventory.
• Does not actually describe and analyze what it takes to go through the planning approval process.
Consequences of HE Noncompliance

Ineligibility or delay in receiving state funds
- Permanent Local Housing Allocation
- Local Housing Trust Fund
- Infill Infrastructure Grant Program
- SB 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities

Cannot use inconsistency with zoning and general plan standards to deny an affordable housing project
(Housing Accountability Act)

Legal ramifications
- HCD may notify the AG, legal remedies include $10,000-$100,000 per month in fines x 6 for continuing noncompliance
- Broad discretion for court to impose other remedies
- Private parties can sue for HE compliance as well
An Eight-Year Contract

A housing element is no longer a paper exercise – it’s a contract with the state of housing commitments for eight years and the Housing Accountability Unit will hold jurisdictions to those commitments.
Proactive Enforcement

1. Housing element draft never submitted
2. Housing element remains out of compliance
3. AB 1398 (rezone) implementation
4. Long term housing element implementation
   - Jurisdictions must commit to monitor certain site inventory strategies and make adjustments throughout the planning period.
   - Tracking, monitoring, and enforcing key program commitments and timeframes.
   - Using Annual Progress Report data to identify jurisdictions falling behind on meeting housing goals.
HCD’s Authority

Housing Element Law

Compliance
Proactive Enforcement

AB 72 authority

Housing Accountability Act
Density Bonus Law
No Net Loss Law
Land Use Discrimination Law

AB 215 authority (as of Jan. 1)

Housing Crisis Act of 2019 (SB 330)
Permit Streamlining Act
Affirmatively Furthering Fair Housing Law
Streamlined Ministerial Permit Processes (SB 35)
By Right Supportive Housing (AB 2162)
By Right Low Barrier Navigation Centers (AB 101)
Limitations on Development Standards (SB 478)

Other housing laws

ADU laws
Surplus Land Act
Affordable Housing Preservation Noticing Law
The Progressive Discipline Approach

- REVIEW
  - HCD receives requests, compiles information, contacts local government

- TECHNICAL ASSISTANCE
  - HCD provides advice to assist decision-making or implement statute.

- HOUSING ELEMENT ENFORCEMENT
  - NOTICE OF INQUIRY/NOTICE OF POTENTIAL VIOLATION
    - HCD provides notice either requesting information on a required housing element action or proving a warning related to compliance with housing element law.

- OTHER STATUTORY AREAS
  - (AB 72, ADU, Preservation, etc.)

- NOTICE OF VIOLATION
  - HCD provides notice of a potential violation to state law related to an upcoming action.

- NOTICE OF VIOLATION
  - HCD provides a letter to the local government notifying the jurisdiction is in violation of State Law.

- SUCCESSFUL COMPLETION OF CORRECTION ACTION
  - HCD provides a letter acknowledging the completion of the corrective action.

- DECERTIFICATION
  - HCD provides a notice to the local government that housing element compliance is revoked.

- ATTORNEY GENERAL
  - HCD refers issue to the office of the California Office of the Attorney General. Two meetings with jurisdiction are offered prior to bringing suit related to Housing Element Law.
Collaboration with Stakeholders

• Engage in the housing element process at both the local and state level
• Share complaints about potential violations of housing laws
  – HousingElements@hcd.ca.gov
  – ComplianceReview@hcd.ca.gov
• Invite HCD to speak to members (e.g., conferences)
Thank you!