



### SPEAKER'S CARD

Please complete this form and submit it to the City Clerk in ADVANCE of the City Council meeting or Agenda Item you wish to address. Each person speaking to the City Council will be given **THREE (3)** minutes to make comments. (Please fill out a separate card for each REQUEST)

4

Please print **Date of Meeting and Agenda Item #** \_\_\_\_\_

Name: LARRY MCNEILL Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Comments or for those that do NOT wish to speak, but would like to have their comments entered into the public record

Blank lines for comments

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4

Please print **Date of Meeting and Agenda Item #** 3/19/24

Name: James Killoran Phone: \_\_\_\_\_ 4 - Public Comment on non-agenda items

Address: Clayton, CA

Comments or for those that do NOT wish to speak, but would like to have their comments entered into the public record

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4

Please print **Date of Meeting and Agenda Item #** 4 - non-agenda items

Name: Kevin McFarland Phone: 925-693-0883

Address: 331 Mt. Washington

Comments or for those that do NOT wish to speak, but would like to have their comments entered into the public record

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**Please print**                      **Date of Meeting and Agenda Item #** Non Agenda

Name: Terri Denslow                      Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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**Comments** or for those that do **NOT** wish to speak, but would like to have their comments entered into the public record

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**Please print**                      **Date of Meeting and Agenda Item #** Non Agenda

Name: Scott Denslow                      Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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**Please print**                      **Date of Meeting and Agenda Item #** 4

Name: Lauren Rindorf                      Phone: 925-890-9830

Address: 33 El Portal Dr

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**Comments** or for those that do **NOT** wish to speak, but would like to have their comments entered into the public record

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**Please print** **Date of Meeting and Agenda Item #** \_\_\_\_\_

Name: GARY HOOD Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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**Please print**                      **Date of Meeting and Agenda Item #** \_\_\_\_\_

Name:   Bry Walcott                        Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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Comments or for those that do NOT wish to speak, but would like to have their comments entered into the public record

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**Please print**                      **Date of Meeting and Agenda Item #**   March 24 5b  

Name:   Allison Snow                        Phone:   925 998 2682  

Address:   360 Blue Oak Lane, Clayton 94517  

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Comments or for those that do NOT wish to speak, but would like to have their comments entered into the public record

  Autism Awareness  

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9a

**Please print**                      **Date of Meeting and Agenda Item #** \_\_\_\_\_

Name:   Lauren Kindorf                        Phone:   925-890-8930  

Address:   33 El Portul Dr  

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**Please print**                      **Date of Meeting and Agenda Item #** 9A

Name: Scott Denslow                      Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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**Comments** or for those that do **NOT** wish to speak, but would like to have their comments entered into the public record

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**Please print**                      **Date of Meeting and Agenda Item #** 9A

Name: Scott Denslow                      Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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**Please print**                      **Date of Meeting and Agenda Item #** 9A

Name: Jemi Denslow                      Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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9a

**Please print** \_\_\_\_\_ **Date of Meeting and Agenda Item #** 9A

Name: Jim Killoran Phone: \_\_\_\_\_

Address: Clayton, GA

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**Please print** \_\_\_\_\_ **Date of Meeting and Agenda Item #** \_\_\_\_\_

Name: GRARY HOOD Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Comments or for those that do NOT wish to speak, but would like to have their comments entered into the public record

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**Please print** \_\_\_\_\_ **Date of Meeting and Agenda Item #** \_\_\_\_\_

Name: Bill Walcutt Phone: \_\_\_\_\_

Address: \_\_\_\_\_

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# HISTORICAL FACTS

CLAYTON, CA

P.C.  
G.H

- Gary Napper retired in 2019. He had been our city manager for a very long time.
- The 16-year incumbent who was defeated in the election of 2018 is the one who started this nonsense that staff would leave if Jeff Wan was elected. Suddenly we get a city manager who reached retirement age and it's **somehow Jeff Wan's fault.**
- Interim Joe Sbranti was hired. He was retired from Pittsburg and therefore could NOT be hired as permanent and was also limited as to how long he could work for the city.
- Ikani Taumeepeu was then hired as a permanent city manager led by 28-year incumbent Julie Pierce. If you want to know why he didn't last, you should ask Julie Pierce. All we know is he was allowed to resign and it cost the city \$100k. But **somehow that is Jeff Wan's fault.**
- The city then hired Interim Fran Robustelli who was eligible to be hired as a permanent and was by many accounts a good city manager. But 28-year incumbent Julie Pierce who was on her way out had to have her hands in everything and pushed to hire a permanent city manager before the new council was sworn in in late 2020.
- Fran was passed over and Reina Schwartz was hired. Again Tamara and her friends like Mr. Kiloran say **that's Jeff's fault too.**
- Reina Schwartz resigned right before the election in 2022 to care for a family member. You can see on her LinkedIn profile she was out of work for about a year. Again somehow **that is Jeff's fault.**
- The city then hired Ron Bernal, who was retired and therefore limited as to how long he could work and could not be a permanent hire. Bernal is also a very good city manager and it was too bad we couldn't keep him.
- And then we get to Mr. Bret Prebula. The mystery to me is that the people screaming the most for investigations all seem to have the same political stripes. That's our history. **How is it all Jeff's fault?**

The people who hate Jeff have hated him since the day he stepped up to run. And the most un-American thing I can think of is for one political group to call for the arrest trial and conviction of their opponents.

Welcome to Stalinist Clayton courtesy of Tamara Steiner!

February 27, 2024

City of Clayton City Council  
6000 Heritage Trail  
Clayton, CA 94517

Dear City Council,

Thank you for the opportunity to serve the Clayton community. I have enjoyed learning about the city, its unique culture, and its history. I have also enjoyed developing a team of staff who diligently work to serve our community members.

After thoughtful consideration, I have decided to resign as City Manager effective April 12, 2024. After my departure, I would be happy to chat with the next City Manager to provide any insights or guidance that may be helpful. At this time, I will develop a written transition plan to assist in my departure and will provide it to City Council when completed.

I wish all of you and the Clayton community the best.

Sincerely,

A handwritten signature in black ink, appearing to read 'BSP' with a stylized flourish extending to the right.

Bret Prebula  
City Manager



**From:** Bret Prebula <bretp@claytonca.gov>  
**Date:** March 15, 2024 at 10:12:52 AM PDT  
**To:** Executive Team [executiveteam@claytonca.gov](mailto:executiveteam@claytonca.gov)

**Subject: Transition Update**

Hi City Council-

As I continue to wind down and transition out of my role, I wanted to update you on some logistics.

The March 19th City Council Meeting will be the last council meeting I attend. I will be on vacation from April 1 to my last day with the city April 12 as I had some planned trips. Amy will be acting City Manager if an interim is not on board by then. Since I won't be coming back to the office we will eliminate my email and related access at that time to meet security best practices.

I will have the transition plan to the executive team and City Council by the end of the month.

If the interim comes during my vacation, I will find time to have a virtual meeting to answer any questions about the transition plan, although the executive team is aware of all that is going on and will be great assistance to the Interim CM.

Best,

Bret

Bret Prebula  
City Manager  
City of Clayton

**From:** [A.J. Chippero](#)  
**To:** [Stephanie Cabrera-Brown](#)  
**Cc:** [Bret Prebula](#)  
**Subject:** For the Record  
**Date:** Tuesday, March 19, 2024 4:32:08 PM

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Some people who received this message don't often get email from [aj@chippero.com](mailto:aj@chippero.com). [Learn why this is important](#)

Hello Stephanie,

Please include the for the record in tonight's public comment section for non-agenda items. Thank you.

Sincerely,  
A.J. Chippero

Honorable Mayor Diaz and Clayton City Council Members,

The current issue of The Pioneer features a front page editorial titled "High staff turnover a sign of Clayton's decline." No matter how one thinks of The Pioneer, there is no denying what is laid out in the editorial. While that information may come as a surprise to the citizens not engaged in our local politics, to those of us that pay attention or have been involved, like myself a 13 year Clayton resident who served 6 years on the Trails and Landscaping Committee before serving two terms as a Planning Commissioner including Chair in my final year, this is no surprise. In fact this editorial should serve as a wake up call to our citizens that something isn't right.

Stated in #9 Council Items for the City Council Meeting Minutes for October 3, 2023:

"Councilmember Tillman restated her previous request for a 360 degree review of Council by staff, and requested to discuss the City Attorney conducting an investigation if Council is overstepping their bounds and creating a toxic or hostile work environment, and if such findings would be basis for developing a Censure Policy."

It is the mayor that sets the agenda and Councilmember Jeff Wan was mayor at that time and ignored Councilmember Tillman's request. Councilmember Tillman has made the same request at every single council meeting since making it on October 3, 2023 up to the most recent meeting. And like the October 3rd request, neither former Mayor Wan or current Mayor Diaz has honored her request to add the item to a future agenda.

It's time to stop ignoring Councilmember Tillman's request and start investigating why we are having the unusually high amount of turnover among city staff and if allegations made in the editorial: "Wan and Diaz bypassed the city manager and issued orders directly to staff in violation of the city's municipal code" are true.

I am urging Mayor Diaz to do the right thing. If you have nothing to hide, then you have nothing to loose by honoring Councilmember Tillman's request that this item be added to a future agenda.

Thank you for your time.

Sincerely,  
A.J. Chippero

**From:** [Gary Hood](#)  
**To:** [Stephanie Cabrera-Brown](#)  
**Cc:** [Bret Prebula](#); [Jeff Wan](#); [Kim Trupiano](#); [Letecia "Holly" Tillman](#); [Amy Walcker](#); [Jim Diaz](#); [malathy.subramanian@bbklaw.com](#); [Peter Cloven](#)  
**Subject:** Public Comment for Tonight's Meeting  
**Date:** Tuesday, March 19, 2024 1:57:23 PM  
**Attachments:** [To be placed in Public Comment.docx](#)

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Some people who received this message don't often get email from garyhood94517@gmail.com. [Learn why this is important](#)

Hi Stephanie,

I need your help with the attached document. Please make sure this document is given to the city council, city manager, and city attorney for tonight's meeting.

Additionally, please post it under "Public Comment."

If you have any questions, please contact me.

Thanks,

Gary Hood  


(To Be Placed in Public Comment)

March 19, 2024

Dear Mayor, City Council, City Manager, and Staff,

I appreciate Councilmember Holly Tillman bringing the sales tax proposal to our attention, but it appears she once again wants to take the least line of resistance to a real problem.

For over two years both Councilmember Tillman and Councilmember Pete Cloven have been pushing for multiple tax increases without knowing anything about our income and expenses, let alone what we have in reserve. WHY?

I do believe, if needed, the community would support a sales tax increase versus trying to sunset the existing landscape maintenance tax in 2027 and then trying to pass a new general parcel tax - but now is not the time.

However, before moving forward with any tax proposals, I think we should take a closer look at the city's finances and reserves.

For this letter, I will be focusing on the amount we have been taxed over the years without the full benefit. This is called OVERTAXATION!

The reserves appear quite high - around \$8-12 million based on what I've seen. I'm curious why such a large percentage of tax revenue wasn't used for the services that were promised to citizens. Let me repeat . . . WASN'T USED!

Additionally, why does the landscape district have over \$300k in reserves when the landscaping looks terrible? Remember the "Weeds Gone Wild / A Town Divided" flyer? It's not about money, it's about leadership and getting the job done, but that's a discussion for another day.

Some reserves are prudent, but 150% +/- seems excessive. It's plain and simple, it appears the citizens were overtaxed to build up these reserves. What was the rationale? What purpose did the money serve? It surely didn't serve the citizens.

I'm glad the council has agreed to move some of the reserves to the general fund, leaving about 40% of the annual budget in reserve - that seems more reasonable.

It is now time to allocate our excess tax dollars towards the improvements our city's leaders pledged to the citizens and make improvements to our city.

We need to closely examine the city budget and 5-year projection numbers over the next year, or so, while carefully spending our unspent/overtaxed dollars on things that were promised.

I encourage citizens to review the city's finances at <https://cleargov.com/california/contra-costa/city/clayton/checkbook> (<https://cleargov.com/california/contra-costa/city/clayton/checkbook>) and identify any unnecessary spending. (Who in their right mind would spend \$800.00 on pictures for the city website, let alone hire consultant after consultant, and on top of that pay our city engineer over \$400,000?) We need to get our house in order once and for all.

As I mentioned at the last City Council Meeting, we should focus on “needs” rather than “wants.” The city should spend taxpayer funds with the same fiscal prudence and care they would their own money, not recklessly like drunken sailors.

I'm happy to discuss this further. Please let me know your thoughts on a prudent path forward, but in my opinion, Councilperson Tillman, a sales tax at this time is not warranted or justified. Every problem can't be solved by money.

Best regards,

Gary Hood  
Clayton Resident

**From:** [Kahni Horton](#)  
**To:** [Stephanie Cabrera-Brown](#)  
**Subject:** Clayton in decline???  
**Date:** Monday, March 18, 2024 2:44:14 PM  
**Attachments:** [attachment 1.pdf](#)

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[You don't often get email from kahni925@aol.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

Dear Stephanie, please email the following letter to the city Council and ask that it be added to the public comments for tomorrow night. Thank you. Please acknowledge that you have received this email.

Dear city council members:

>

> Dane and I are working with a prospective buyer who is selling his home in Antioch and considering our advice to downsize to Clayton. Yesterday, while we were meeting with him, he mentioned to us that we had not disclosed that Clayton is a city in decline. Apparently, he had read the article headlined in a local tabloid (the Clayton Pioneer)

> Subsequently, he wrote us the following letter (personal info redacted), and also sent the letter to the Antioch city Council as well as the Contra Costa Board of Realtors:

>

>

> Sincerely,

> Dane and Kahni Horton

> Clayton, California

John E. M [REDACTED]  
[REDACTED]  
Antioch, California 94518

March 18, 2024

Contra Costa Association of Realtors  
1870 Olympic Boulevard  
Walnut Creek, California 94595

Dear Realtors:

I am working with local real estate agent team to sell my home in Antioch, California in the last part of May. I do this because I am now single and I want to down size.

I am interested in the City of Clayton. However in my research of the Clayton Community I ran across an editorial published in their local March 15<sup>th</sup> newspaper, The Clayton Pioneer, titled, "High staff turnover a sign of Clayton's Decline." A further quote in the editorial reads, "Clayton has gone from a Shining City to rivaling Antioch for comic relief."

My questions to the Association are: Is the City of Clayton in fact a state of decline? Will my possible investment in a home in Clayton be a wise investment? Should I abandon my interest in the Clayton Community? Obviously the "comic relief" comment toward the City of Antioch is just a comment without merit and has no foundation.

I am hoping the editorial is the work of an irresponsible writer on the Clayton Pioneer staff. But, I would like your opinion, to reassure me, the City of Clayton should continue to be on my relocation radar. The best way to contact me is with email, [REDACTED]

Sincerely,

John E. M [REDACTED]

Cc: Office of the Mayor, City of Antioch

**From:** [William P Jordan](#)  
**To:** [City Clerk](#)  
**Cc:** [Bret Prebula](#); [Dana Ayers](#)  
**Subject:** Housing Element for 6th cycle  
**Date:** Wednesday, February 28, 2024 6:09:56 AM  
**Attachments:** [sixth-cycle-housing-element-report.pdf](#)

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You don't often get email from billjordan@sbcglobal.net. [Learn why this is important](#)

Dear City Clerk,

Please add this document to the next city council and planning commission meetings.

It appears to have relevant information on the struggles and concerns of cities and the State of California.

Thank you.

William Jordan



*Lessons Learned from the  
Sixth Cycle Housing Element  
Update in the Bay Area*



February 27, 2024  
East Bay Housing Organizations



<b>Author</b>	Aaron Tiedemann, Policy Manager
<b>Design</b>	Megan Nguyen, Senior Policy Associate Sasha Perigo, Strategic Communications Manager
<b>Editors</b>	Lindsay Haddix, Executive Director Jeff Levin, Senior Director of Policy Megan Nguyen, Senior Policy Associate Sasha Perigo, Strategic Communications Manager

## **Acknowledgments**

This report would not have been possible without contributions from our allies, members, and friends across the Bay Area. Thank you to the members of the Bay Area Housing Element Working Group, including Public Advocates, East Bay Asian Local Development Corporation, Public Interest Law Project, Nonprofit Housing Association of Northern California, Silicon Valley at Home, Housing Leadership Council of San Mateo County, Working Partnerships USA, Urban Habitat, Enterprise Community Partners, and more. Thank you to the Greenbelt Alliance and East Bay for Everyone from whose research and advocacy we benefitted immensely. Finally, thank you to Jeremy Levine at the Housing Leadership Council of San Mateo and Courtney Pal at Resources for Community Development for their incredibly valuable feedback and ideas.

# Executive Summary

This report summarizes observations made by [East Bay Housing Organizations \(EBHO\)](#) on the ongoing Sixth Cycle Housing Element update process in California, focusing on the San Francisco Bay Area.

This Housing Element update process was hotly anticipated given that state legislators had passed a number of sweeping reforms aimed at strengthening the Housing Element process since the last time local governments were required to update their housing plans. But while January 31, 2023, marked the beginning of the eight-year Housing Element cycle, a year later almost half of all cities and counties in the Bay Area still have not had their plans approved by the State.

East Bay Housing Organizations (EBHO), a member-driven advocacy organization, is a key stakeholder in local and state Housing Element law. We have worked on Housing Element policy at the state level, participated in drafting Housing Elements in cycles past, worked in coalition with stakeholders on all sides of the political spectrum, and trained members on how to get involved with local Housing Element advocacy. During the Sixth Cycle Housing Element update process, EBHO observed and participated in the drafting of twenty Housing Elements across the Bay Area.

When reflecting on this experience, we have come to four key findings:

- **Housing Elements were held to higher targets and stricter standards across the board.** RHNA targets in Alameda and Contra Costa Counties more than doubled from the last Housing Element Cycle. While necessary to alleviate California's housing crisis, this was a huge hurdle for jurisdictions to overcome.
- **The State's Affirmatively Furthering Fair Housing (AFFH) rule has proved to be a powerful tool for advancing housing justice.** Housing policies have historically been used as a way to exclude people of color and low-income households from access to areas of high opportunity; AFFH aims to reverse previous policies and rectify the harm done by these exclusionary actions.
- **Local governments were unprepared and under-resourced for the expanded scope of work.** Jurisdictions - including well-intentioned ones - struggled to understand and implement the new Housing Element requirements simply because they lacked the capacity or time to do so.
- **Despite new consequences, recalcitrant jurisdictions rejected state mandates.** Some local governments have made it clear through their actions (and inactions) that they do not welcome new housing - particularly affordable housing - in their community. Opposing their new Housing

Element requirements was just another manifestation of this exclusionary behavior.

While we are optimistic that new state requirements have had a positive impact on furthering housing justice, there are still kinks to be ironed out and further work to be done. Our policy recommendations are as follows:

- **Provide more funding for HCD and technical assistance for governments at every level.** The requirements of the Housing Element are complex and considerable. For jurisdictions to successfully fulfill all their obligations, HCD must be able to provide timely, adequate, and tailored support to each one. The Agency, and local jurisdictions, need sufficient staff and resources to implement this.
- **Emphasize Affirmatively Furthering Fair Housing (AFFH) as a central piece of any Housing Element.** Inclusive housing policies dictating how and where housing is built and preserved are the only way to push forward housing justice in communities experiencing the legacy of exclusive past policy decisions. They should be the core focus of every Housing Element.
- **Fund affordable housing development.** Affordable housing development requires public subsidy, and the current levels of funding available are simply insufficient to meet the East Bay's ambitious Housing Element goals.

# Background

## Housing Elements 101

Every eight years, every city and county in California must write and submit a **Housing Element** to the **California Housing and Community Development Department (HCD)**.<sup>1</sup> These Elements lay out a jurisdiction's roadmap to facilitate housing construction and other housing-related services for that eight-year planning period or "cycle." Housing Elements are one part of a jurisdiction's **General Plan** — their overall planning, zoning, transportation, and open space governing document — the only part that must be reviewed and approved by the State.

One of the core pieces of the Housing Element process is the **Regional Housing Needs Allocation (RHNA)**, a number of units of housing assigned to each city and county, broken down by income level.<sup>2</sup> To determine each jurisdiction's **RHNA**, HCD first starts by analyzing how many homes affordable to each of four income categories the state needs to develop over the cycle's eight-year planning period.

The four income categories included in the RHNA are as follows:

- **Very Low Income** 0–50% of Area Median Income
- **Low Income** 50–80% of Area Median Income
- **Moderate Income** 80–120% of Area Median Income
- **Above Moderate Income** > 120% of Area Median Income

Each income category is determined in relation to the metropolitan area's **Area Median Income (AMI)**, which is determined by the **United States Department of Housing and Urban Development (HUD)**. The income level needed to qualify for each category is adjusted up or down relative to the number of people living in the household.

The federal government considers Alameda and Contra Costa Counties to be in the same metropolitan area for the purpose of calculating AMI, and thus the household income limits for each income category are the same across the two counties. The chart below shows the household income limits for each income category in the East Bay, determined by the number of people living in the household.

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<sup>1</sup> California Department of Housing and Community Development. "Housing Elements," n.d. <https://www.hcd.ca.gov/planning-and-community-development/housing-elements>.

<sup>2</sup> California Department of Housing and Community Development. "Regional Housing Needs Allocation (RHNA)," n.d. <https://www.hcd.ca.gov/planning-and-community-development/regional-housing-needs-allocation>.

Figure 1: Household Income Limits for Affordable Housing Programs in the East Bay

**Household Income Limits per Income Category Used in RHNA  
East Bay (Alameda and Contra Costa Counties), 2023**

Persons in Household	1	2	3	4
Very Low Income (0–50% AMI)	\$51,800	\$59,200	\$66,600	\$73,950
Low Income (50–80% AMI)	\$78,550	\$89,750	\$100,950	\$112,150
Moderate Income (80–120% AMI)	\$124,250	\$142,000	\$159,750	\$177,500
Above Moderate Income (>120% AMI)	No Income Limit			

Source: U.S. Department of Housing and Urban Development (HUD)

After HCD has determined the RHNA at the state level, it then assigns portions of this overall number to each regional planning body or [Council of Governments](#); for the [nine-county Bay Area](#), this is the [Association of Bay Area Governments](#) (ABAG). ABAG then goes through [a process](#) to determine each city and county’s share based on a variety of factors including a jurisdiction’s progress on its goals from the last cycle and socioeconomic and demographic information.<sup>3</sup>

Local governments are responsible for demonstrating how they will accommodate the number of homes that were allotted to them through the RHNA process in their Housing Elements. They do this by including a [Site Inventory](#) of lots that could be used for housing development and a plan for how it will encourage that construction.

A Site Inventory is a database of locations within the local government’s jurisdiction that have adequate zoning and infrastructure to accommodate new housing construction alongside the number of homes that could be built on each site. The locations listed in a jurisdiction’s Site Inventory are usually either [vacant](#) or [underutilized sites](#). For example, a lot on a main thoroughfare that’s currently home to a vacant storefront could be a potential site for a new 4-story apartment building. After identifying potential sites for housing development, cities then have to pass zoning updates that make the development target identified for each site possible.

It is important to understand that local governments are not responsible for actually building the homes allocated to them through the RHNA process — California does

<sup>3</sup> “Final Regional Housing Needs Allocation Plan.” Association of Bay Area Governments, December 2021. [https://abag.ca.gov/sites/default/files/documents/2021-12/Final\\_RHNA\\_Allocation\\_Report\\_2023-2031-approved\\_0.pdf](https://abag.ca.gov/sites/default/files/documents/2021-12/Final_RHNA_Allocation_Report_2023-2031-approved_0.pdf).

not have a public development agency. Rather, jurisdictions need to ensure there are adequate sites for private actors to develop and ensure their laws are encouraging of, rather than constraining to, that development.

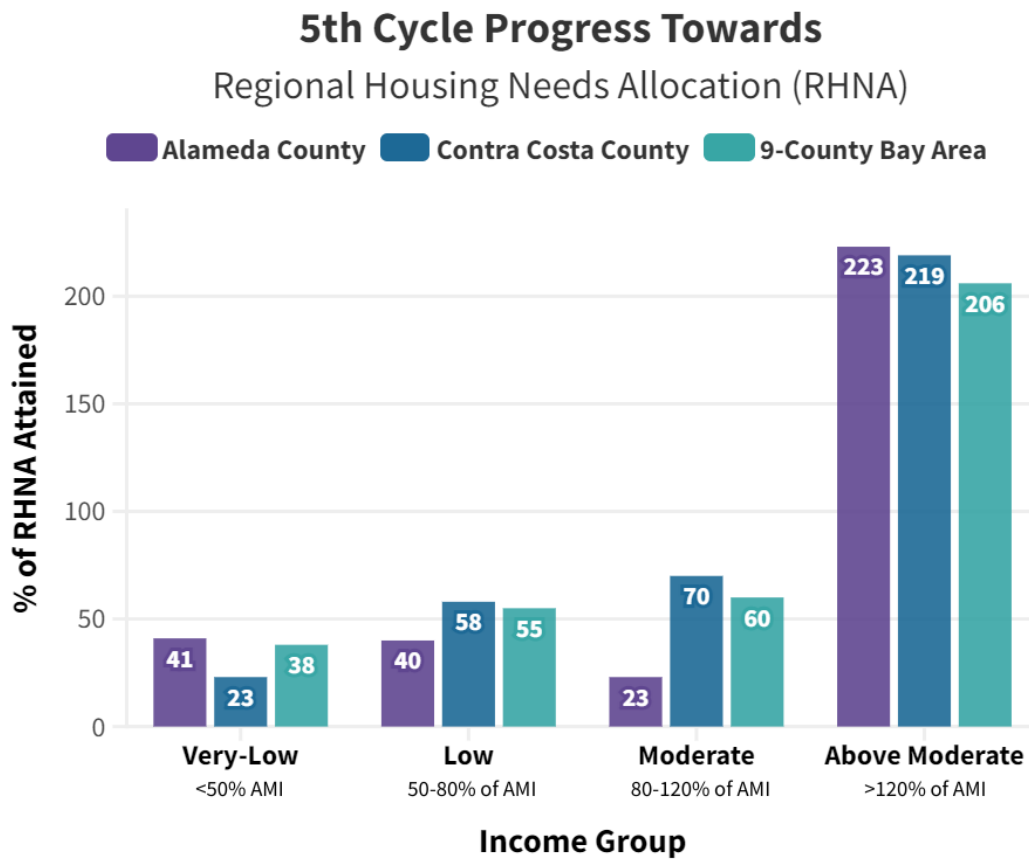
(To read more about the various components of a Housing Element, see [Appendix A](#).)

## Past Performance

After getting HCD's stamp of approval, cities and counties must submit [Annual Progress Reports \(APRs\)](#) detailing their progress in issuing land use approvals and building permits to meet their construction goals. The final APRs for the Bay Area's Fifth Cycle Housing Elements were released earlier this year, so we can now analyze jurisdictions' performance across the entire eight-year cycle.

Over the past eight years, most jurisdictions in the Bay Area either met or exceeded their **total** RHNA goal. Broken down by income level, however, we see that most jurisdictions crossed this threshold by exceeding their [market-rate development](#) goals while vastly underproducing very low- and low-income units.

Figure 2: Fifth Cycle Progress Towards Regional Housing Needs Allocation

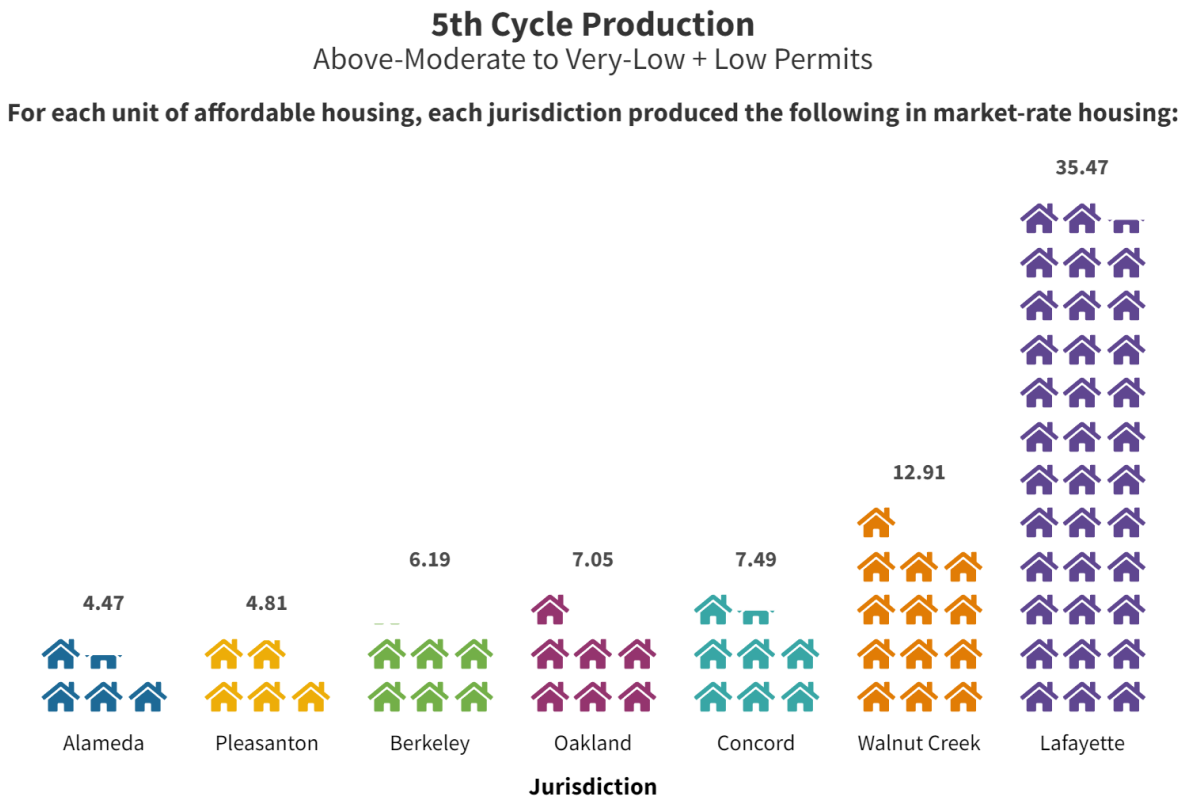


Source: [Annual Progress Reports](#), California Department of Housing and Community Development

For every six units of market-rate housing built in the East Bay over the last eight years, only one home was built that was affordable to very low or low-income households. Across the entire Bay Area, cities built an average of five market-rate homes for every unit of [affordable housing](#).

While market-rate housing is not necessarily being built at the expense of new affordable units, this ratio reflects a profoundly worrying trend — **the Bay Area is consistently and dramatically failing to provide sufficient affordable housing.**

Figure 3: Fifth Cycle Production Housing Balances



Source: [Annual Progress Reports](#), California Department of Housing and Community Development

While there may be compelling reasons for this shortfall — affordable housing construction faces many more financial and regulatory hurdles — it is still a shortfall that we need to start addressing immediately. That is why the State has taken a tougher stance this RNHA cycle and created new laws that could have big consequences if not followed correctly.



## New State Laws

In the years since the Fifth Cycle Housing Element update process concluded in 2015, hundreds of bills aimed at addressing the state’s affordable housing crisis have been introduced in the legislature.

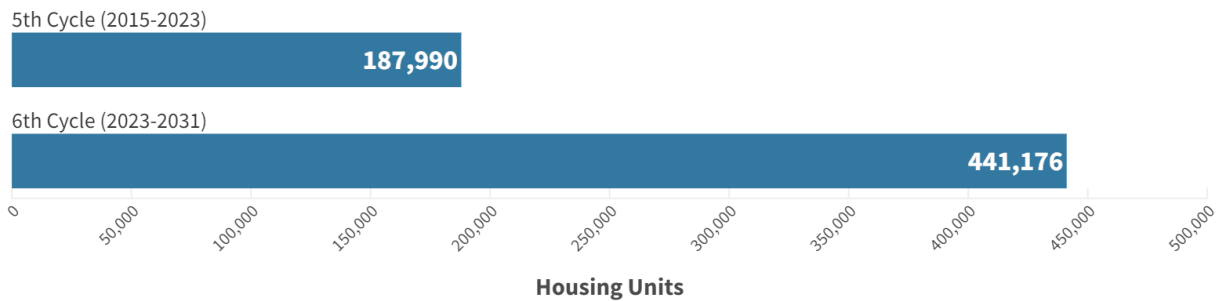
In 2017, then-Governor Jerry Brown signed into law a comprehensive package of housing bills including four bills related to Housing Element law — [SB 35](#) (Wiener), [SB 166](#) (Skinner), [AB 72](#) (Santiago), and [AB 1397](#) (Low).<sup>4</sup> The following year, [SB 828](#) (Wiener) and [AB 1771](#) (Bloom) made changes aimed at increasing transparency and accountability in the RHNA process.<sup>5</sup>

Providing a full breakdown of new legislation is beyond the scope of this report, but we will cover a few of the most dramatic changes that shifted the landscape for Housing Element update from the ground up.

## Increase in RHNA

While the RHNA for the entire San Francisco Bay Area has increased steadily in past cycles, this time it jumped up dramatically, going from 187,990 units in the Fifth Cycle (2015-2023) to 441,176 units in the Sixth Cycle (2023-2031).<sup>6</sup>

Figure 4: Nine-County Bay Area Regional Housing Needs Allocation (RHNA)



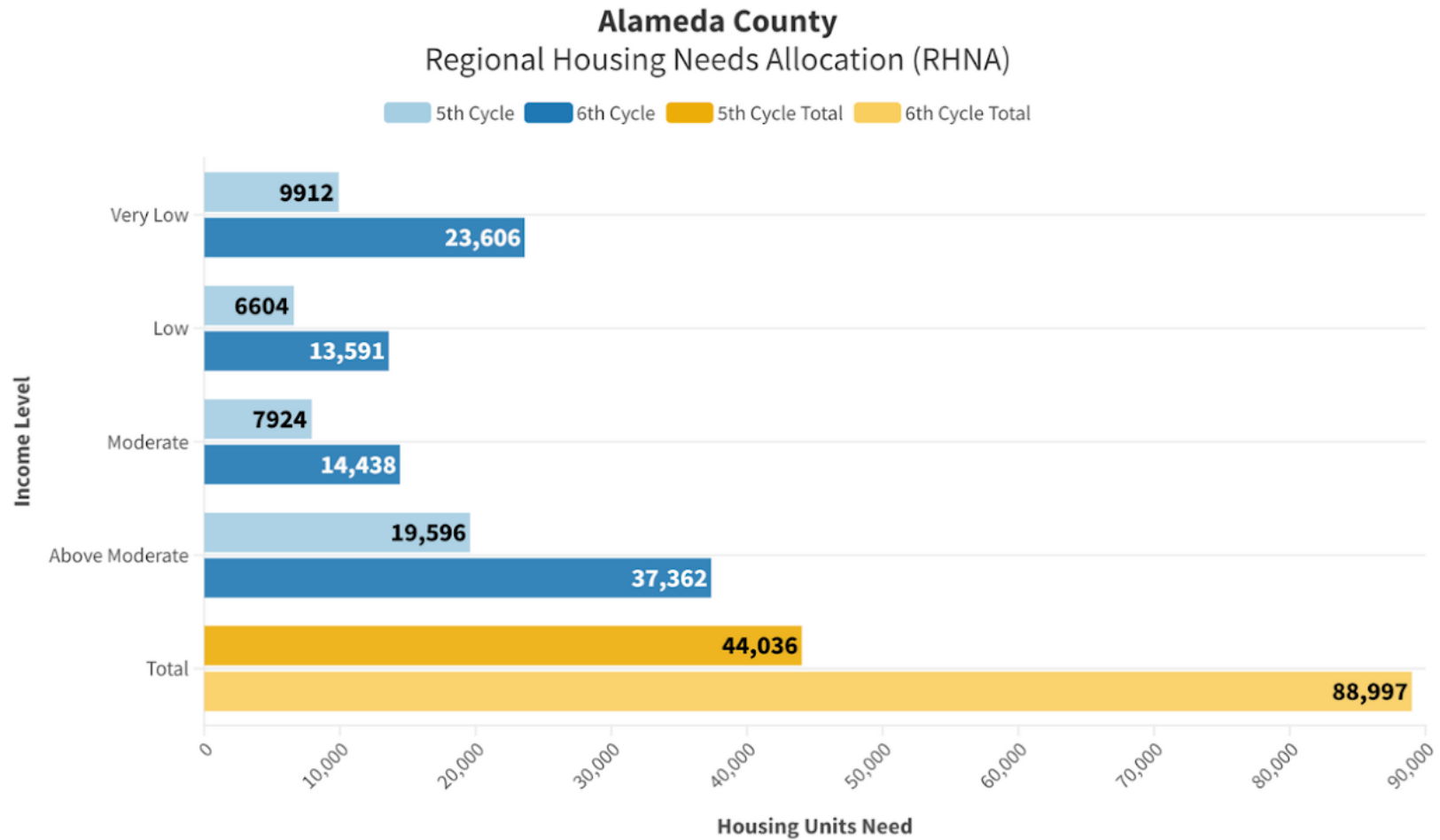
Source: [Final Regional Housing Needs Allocation Determination, 2023-2031](#) & [Final Regional Housing Need Allocation, 2015-2023](#), Association of Bay Area Governments (ABAG)

<sup>4</sup> California Senate Housing Committee. “Housing Element and RHNA Law: Recent Reforms.” Accessed February 22, 2024. <https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/RHNA%20reform%20fact%20sheet%20-%2010.2021.pdf>.

<sup>5</sup> Ibid.

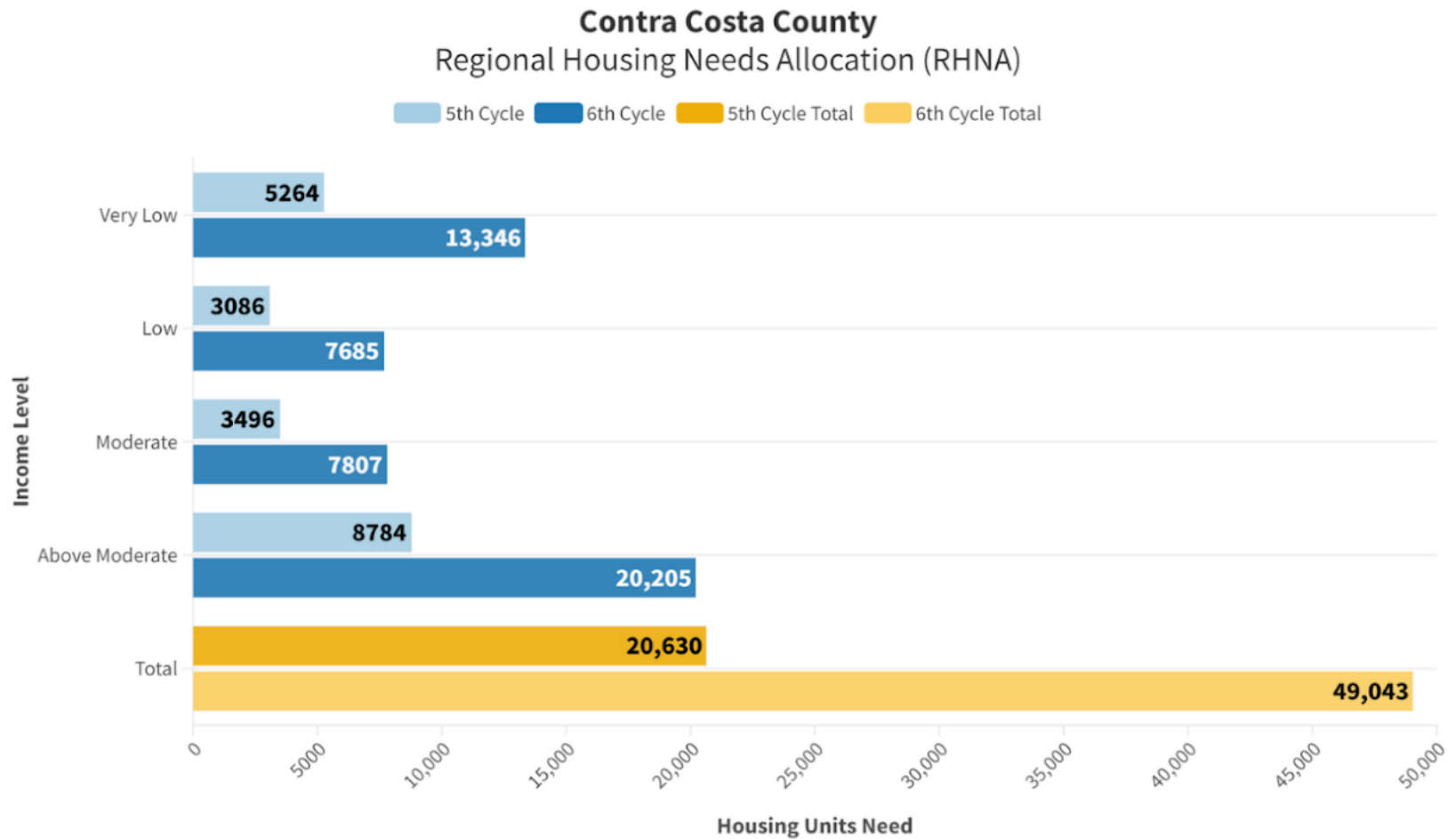
<sup>6</sup> HCD.CA.Gov. “Housing Element Implementation and APR Dashboard.” Accessed October 30, 2023. <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>.

Figure 5: Alameda County Fifth & Sixth Cycle RHNA



Source: [Final Regional Housing Needs Allocation Determination, 2023-2031](#), Association of Bay Area Governments (ABAG)

Figure 6: Contra Costa County Fifth & Sixth Cycle RHNA



Source: [Final Regional Housing Needs Allocation Determination, 2023-2031](#), Association of Bay Area Governments (ABAG)

## No Net Loss

In previous cycles, there were no real consequences for meeting or missing the RHNA targets for different income levels. Cities had to plan for affordable housing, but would not face penalties if it wasn't built.

This cycle, however, the State has instituted a new **"No Net Loss"** rule, which requires jurisdictions to maintain an adequate inventory of sites to build their remaining RHNA units or lose local control over permitting. Put more simply, if a city permits market-rate housing, housing with fewer units than planned for, or **non-residential uses** on sites it had planned for affordable housing, they must identify new sites for lower-income units or fall out of compliance.<sup>7</sup>

## Affirmatively Furthering Fair Housing (AFFH)

California's new **Affirmatively Furthering Fair Housing (AFFH)** law is modeled after, but more closely monitored and enforced than, the Federal AFFH rule that was part of the Civil Rights Act of 1968.<sup>8</sup> While the basis for the Federal AFFH requirement is enshrined in law, its enforcement is subject to interpretation by the **United States Department of Housing and Urban Development (HUD)**. California's law was modeled after the Obama administration's more proactive rule. When the Trump administration suspended that rule, California passed **AB 686 (Santiago)**, effective January 1, 2019, as a way to ensure that California's standards for housing justice remained high regardless of who is in the White House.

AB 686 requires jurisdictions to "affirmatively further fair housing" in all their housing and community development programs and activities. The law defines affirmatively furthering fair housing as "taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."<sup>9</sup>

Put more simply, it requires jurisdictions to proactively redress systematic and longstanding inequalities in their housing stock. This includes breaking up racial and socioeconomic segregation, replacing exclusionary zoning, and implementing programs focused on ensuring housing stability for historically marginalized groups.

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<sup>7</sup> Olmstead, Zachary. "Memo on No Net Loss Law." Department of Housing and Community Development, October 2, 2019. <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-166-final.pdf>.

<sup>8</sup> California Department of Housing and Community Development. "Affirmatively Furthering Fair Housing," n.d. <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

<sup>9</sup> Olmstead, Zachary. "AB 686 Summary of Requirements in Housing Element Law." California Department of Housing and Community Development, April 23, 2020. [https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab686\\_summaryhousingelementfinal\\_04222020.pdf](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab686_summaryhousingelementfinal_04222020.pdf).

For jurisdictions that already work with HUD, this should have been familiar — those receiving funding from HUD must submit an [Analysis of Impediments to Fair Housing](#) along with a plan to address those impediments every five years. But for others, it was a new challenge, one that made their housing planning stronger. In short, AFFH upgraded Housing Elements from a document that *could* advance social and racial justice, to one that *must* do so.

## Increased Penalties for Noncompliance

Another significant change for most jurisdictions has been the increased consequences for not having an approved Housing Element by the State's deadline. In previous cycles, it was relatively common for jurisdictions to miss the update deadline and start the Housing Element cycle without a compliant Housing Element approved by the State. Consequences for this largely consisted of ineligibility for certain funding programs and other support by the State; the system was heavy on the carrot without much stick.

Several measures have been put in place this cycle that make noncompliance extremely unattractive while ensuring standards are high. Many of these measures come from [California's Housing Accountability Act](#) (HAA), which was substantially strengthened in 2017 by the passage of SB 330, authored by State Senator Nancy Skinner. Increased difficulty getting into compliance also has made the "[The Builder's Remedy](#)," a previously obscure and underutilized provision of the HAA much more important. This provision rules that jurisdictions without an adopted Housing Element compliant with the requirements of State law lose the authority to deny any project that has at least 20% of its units affordable to lower-income households (less than 80% of AMI) or 100% of its units affordable to moderate-income (those making 80% to 120% of AMI). This means that without an approved Housing Element, a City could have no choice but to approve a project that does not comply with its zoning.<sup>10</sup>

In a similar vein, recent State laws have also increased the power of lawsuits, from both the State and outside organizations, to force jurisdictions to get into compliance. Third parties, mostly housing advocacy law groups like YIMBY Law and Housing Defense Fund, have moved quickly to take advantage of this change by suing recalcitrant jurisdictions for being out of compliance — and receive compensation from the jurisdiction at fault for the cost of the suit if they win.<sup>11</sup> Punishments can include a Court-mandated timeline for Housing Element approval and loss of zoning control.

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<sup>10</sup> "The 'Builder's Remedy' and Housing Elements." Association of Bay Area Governments, n.d. <https://abag.ca.gov/sites/default/files/documents/2022-10/Builders-Remedy-and-Housing-Elements.pdf>.

<sup>11</sup> Hanson, Natalie. "California cities face flurry of lawsuits over missed housing mandate." *Courthouse News Service*, February 7, 2023. <https://www.courthousenews.com/california-cities-face-flurry-of-lawsuits-over-missed-housing-mandate/>

This vulnerability under the law is further backed by the new watchdog groups created in HCD and the State Department of Justice (DOJ): the [Housing Accountability Unit](#) (HAU) and the [Housing Strike Force](#), respectively. Each of these groups can sue or otherwise force out-of-compliance jurisdictions to get serious about meeting HCD’s standards for compliance.

Figure 7: HCD’s Housing Accountability Unit



Source: “[Governor Newsom’s Newly Created Housing Accountability Unit Marks First Year](#),” Office of Governor Gavin Newsom

Finally, new deadlines have been instituted for latecomers who do not adopt a compliant Housing Element by the State’s deadline. Specifically, those who did not receive HCD’s approval before May 31, 2023, must finish any rezoning required by January 31, 2024, or be considered non-compliant.<sup>12</sup> This penalty dovetails with the Builder’s Remedy to provide an ongoing incentive to complete zoning changes apace or risk projects inconsistent with local zoning being approved despite a jurisdiction’s objections.

<sup>12</sup> “Programs To Rezone.” Association of Bay Area Governments, n.d. <https://abag.ca.gov/sites/default/files/documents/2022-03/Programs-to-Rezone-final.pdf>.

## **Methodology**

This report was written after EBHO staff observed and participated in the drafting of Housing Elements in twenty jurisdictions across the Bay Area. To date, EBHO staff has provided direct commentary on the Housing Elements in Concord, El Cerrito, Contra Costa County, Oakland, Berkeley, Alameda, and Alameda County. We have reviewed sections of Housing Elements in every other jurisdiction in the East Bay.

In our target jurisdictions in the East Bay (throughout Contra Costa and Alameda County), EBHO staff were and continue to be key stakeholders and advocates for housing justice from the start of the Housing Element process to HCD approval and beyond, as we have been in previous cycles. Acting as independent housing policy experts and drawing on past experience engaging with previous Housing Element cycles, as well as working in local government on Housing Element implementation, our staff worked with other advocates, tenants, and government staff to: improve site inventories, ensure programs had real impact, and confirm that plans met statutory requirements. As a member-driven organization, throughout the Housing Element process, we leveraged and engaged the expertise of our members — who themselves constitute both experts in the field and representatives of the communities most affected by Housing Element law.

A large part of EBHO's Housing Element work was undertaken with the [Housing Element Working Group](#), a committee formed by EBHO in August of 2021 and composed of over fifty EBHO members representing affordable housing developers, residents of affordable housing, academics, housing professionals, and others. Through this working group, EBHO provided training and policy expertise to partners and members — everyone from seasoned housing professionals to ordinary residents getting involved for the first time.

At the regional level, EBHO staff were an active member of ABAG's Housing Methodology Committee, which advised ABAG on the development of the formula for the Sixth Cycle RHNA. EBHO also was an active participant in a regional Housing Element working group that included legal aid and other housing advocates doing similar Housing Element work in all nine counties in the Bay Area. EBHO staff and members of the Working Group also helped draft joint letters to every planning department in the Bay Area advocating for increased transparency and public participation in the Housing Element process.

EBHO also monitors, sponsors, and takes actions in support of changes at the State level that have substantial impacts on the rules governing how Housing Elements are written — including AFFH, the Housing Accountability Act, and No-Net Loss.

# Key Findings

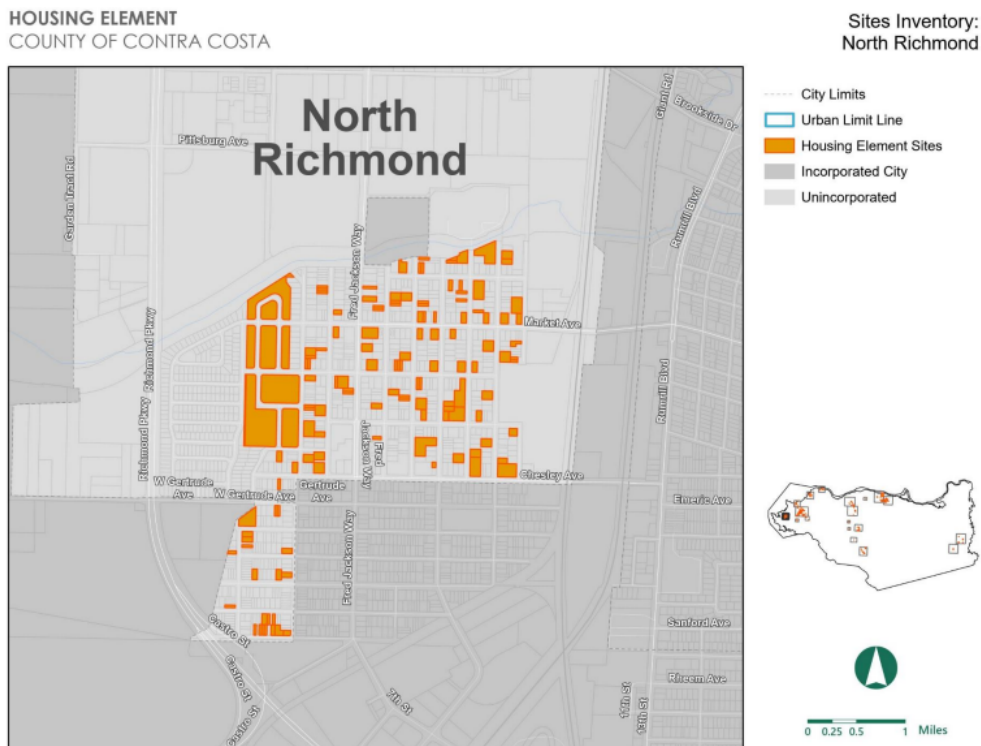
## Key Finding #1: HCD held local governments to higher targets and stricter standards across the board.

As mentioned earlier, the Sixth Cycle has been characterized by stricter standards across the board. A bevy of new State laws and requirements, as well as generally higher standards from HCD, have meant that every Housing Element must include a variety of new and more aggressive programs to be certified.

On the milder side, jurisdictions had to include hyper-specific language and ensure their plans had clear deliverables. For example, it is no longer sufficient to commit one’s City to “consider rezoning to allow more types of construction,” rather a City must “develop and put before the Council for adoption a comprehensive rezoning plan for neighborhood X—which will allow up to Y units per acre, by Z date.”

The bottom line is that every site listed in a Housing Element’s Site Inventory as a potential location for housing development *must be developable*. If a city or county includes a site in its Site Inventory that is not currently zoned for housing development, it must commit to passing zoning changes by a certain date.

Figure 8: North Richmond Site Inventory in the Contra Costa County Housing Element





Source: "[2023-2031 Housing Element](#)," Placeworks for Contra Costa County

Other programs, often including those that respond to AFFH concerns like renter protections, can stick with language that only commits to ensuring they receive a vote.

Requiring that a policy be brought to a vote may seem like a low bar; after all, a Council or Board of Supervisors could just vote down any program they are not explicitly required to pass. However, considering where we were last cycle, this is a big change. Previous cycles were often characterized by programs that would be "considered," "researched," or "evaluated" without any guarantee they would ever see the light of day once the Housing Element was adopted and approved.

Now, jurisdictions have a longer list of programs they must pass and another list that must be discussed publicly and voted upon. Possibly even more impactful in this regard was HCD's insistence on actionable timelines. Every program this cycle needed a timeline with specific commitments for items to be brought forward for consideration or passed.

Even more specifically, jurisdictions could not rely on HCD to take anything in their Housing Elements in good faith. For example, if State law requires that there be proof that a City's approval process does not impede the construction of group homes, then their Housing Element must explicitly say "The City's approval process does not impede the construction of group homes" and if they want approval, they need to back this up with hard evidence.

**East Bay jurisdictions submitted an average of three drafts of their Housing Element before gaining HCD approval.**

These changes, along with the new requirements around AFFH, made Housing Elements more impactful, but they also made passage difficult, and often frustrating, work. Many jurisdictions have faced multiple rejection letters from HCD despite their best efforts to comply with new laws. The City of Berkeley is a prime example. Despite starting earlier than most, the City went through seven drafts of its Housing Element, partly in response to multiple letters from HCD telling them to make changes.<sup>13</sup>

Berkeley's experience is not unusual; the jurisdictions currently in compliance in the East Bay submitted an average of three drafts of their Housing Element before gaining HCD approval. Jurisdictions should expect to receive at least one round of feedback as the first submission is a mandatory preliminary submission for comment, but the high number of failed attempts represents a complex, overly

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<sup>13</sup> City of Berkeley. "Housing Element Update," 2023. <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/housing-element-update>.

difficult, and time-consuming process. The preliminary submission of a jurisdiction's Housing Element reflects months, or even years, of work. Each subsequent draft requires public review periods and occasions for input from the community, which may result in even more revisions between actual submissions to HCD — which was the case for Berkeley. Submissions to HCD are then met with lengthy waiting periods. HCD has ninety days from submittal for the first draft and sixty days for each subsequent draft to return a letter with feedback and a decision — a two to three-month wait.

Both the State and local governments own some amount of the blame for the confusion that led to a high number of submissions. Some of this can be attributed to growing pains. Local governments attempted to comply with their understanding of Housing Element law only to later realize they had misunderstood new legislation. Guidance was often slow coming. The large number of jurisdictions that needed support led to long wait times for meetings with HCD staff and recommendations that felt one-size-fits-all rather than tailored to the context of a specific city.

## **Key Finding #2: California's AFFH rule has proved to be a powerful tool for advancing housing justice.**

The significance of the State's Affirmatively Further Fair Housing (AFFH) rule, both as a means of ensuring Housing Elements address historical injustices and as a stumbling block for many jurisdictions this cycle, is hard to overstate. Sixth Cycle Housing Elements were required to proactively address issues identified in a jurisdiction's fair housing analysis. In other words, for each problem identified in the fair housing analysis, a corresponding solution must be proposed.

For instance, if a city identified that a particular community was at risk of displacement, that city then needed to include programs—like rent stabilization, tenant legal counsel, or simply more affordable housing in those areas—in their Housing Element that help ensure housing security for that population.<sup>14</sup> While Housing Element law does not require jurisdictions to fully implement each of the solutions identified, getting them into the Housing Element for serious consideration is a step forward.

AFFH put wealthier, whiter, and higher-resource areas — what advocacy organizations like EBHO refer to as exclusionary communities — squarely in the spotlight. These largely **single-family** suburbs have usually escaped denser and/or affordable housing developments in previous cycles. A large reason for this is the consistent organization of **NIMBY (Not In My Backyard)** residents against these sorts of developments in these areas, both in planning hearings on individual projects and

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<sup>14</sup> HUD GIS Helpdesk. "Racially or Ethnically Concentrated Areas of Poverty (R/ECAPs)." HUD eGIS, November 3, 2023. <https://hudgis-hud.opendata.arcgis.com/datasets/HUD::racially-or-ethnically-concentrated-areas-of-pov-erty-r-ecaps/about>.

long-range planning exercises like Housing Elements.<sup>15</sup> Because these residents are often well-resourced, effectively organized, and show up to nearly every meeting in force, the NIMBY voice can often be hard for local governments to ignore, even if they know that the group does not accurately represent all (or even the majority) of their constituents and that they need to support additional housing to receive the State's approval.

In the past, this kind of anti-housing organizing has often been sufficient to stop efforts to build affordable units in these areas. This cycle, however, AFFH made it possible for HCD to reject Housing Elements that steadfastly concentrated housing construction — especially denser, multifamily, and/or affordable housing — in areas already built up and occupied by people of color and lower-income households. While they did not like it (and for some jurisdictions, it took several rejections based on failing to meet AFFH requirements for the message to be received), the incorporation of AFFH into Housing Elements did eventually force many jurisdictions to include policies that would break up racial, ethnic, and socioeconomic segregation.

### Case Study: Pleasant Hill Wrestles With Fair Housing

Pleasant Hill is a small city of approximately 34,000 located in Contra Costa County, bordering the larger City of Concord. Given that most of the city qualifies as a **Racially Concentrated Area of Affluence (RCAA)**, [an area of unusually concentrated wealth and white residents](#), it is a prime candidate for more multifamily, and especially affordable, housing development.<sup>16</sup>

In the last Housing Element update cycle, Pleasant Hill was assigned a RHNA allocation of 448 units. But between 2015 and 2022, there were just 222 new homes built in Pleasant Hill, **only two of which were affordable** to low-income tenants.<sup>17</sup> In the Sixth Cycle, Pleasant Hill's RHNA allocation jumped up to 1,803, leaving the City with the challenging task of identifying many more sites for housing development than in the past.

The City's efforts to pass a Housing Element have been difficult and fractious. Neighbors organized against planned affordable developments in the highest

<sup>15</sup> Perigo, Sasha. "Who are the Bay Area's NIMBYs—and what do they want?" Curbed San Francisco, February 20, 2020. Accessed February 23, 2024. <https://sf.curbed.com/2020/2/20/21122662/san-francisco-bay-area-nimbys-history-nimby-development>.

<sup>16</sup> rmazur\_CAHCD. "Racially Concentrated Areas of Affluence (RCAA's)," June 29, 2024. <https://www.arcgis.com/home/item.html?id=4100330678564ad699d139b1c193ef14>.

<sup>17</sup> HCD.CA.Gov. "Housing Element Implementation and APR Dashboard." Accessed October 30, 2023. <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>.

resource areas of the city, circulating [a petition](#) against these sites that has garnered close to 2,500 signatures.<sup>18</sup> Public commenters at City meetings have held up the process by calling for the City to push back on State requirements. When Pleasant Hill finally did submit a draft Housing Element, it was rejected by HCD in July 2023 which heavily cited the inadequacy of the Element's efforts to address Fair Housing or locate affordable units in high-resource areas.<sup>19</sup>

Were it not for AFFH, the City Councilmembers might have caved to the loudest voices in the room pushing against diversifying housing in their largely white, wealthy, and single-family neighborhoods. AFFH forces the City to be accountable to more than just this constituency and keeps Pleasant Hill from passing the same kind of housing policy that created these exclusive enclaves in the first place.

While AFFH has proven to be a powerful tool for advancing housing justice, some details are still slipping through the cracks. The AFFH rule as written allows cities a good deal of discretion in how they choose to prioritize it. Instead of being the central focus of many Housing Elements, AFFH sections often seemed to be tacked on at the end. Despite HCD's heightened enforcement, there has been a great deal of variation in how much jurisdictions seemed to prioritize redressing historical and current injustices in their communities.

Furthermore, a great deal of AFFH analysis, and housing resource allocation generally, rely on tools that, while useful in some respects, are profoundly flawed. One of the main examples is the [California Tax Credit Allocation Committee \(TCAC\)](#)'s [Opportunity Maps](#), which divide census tracts from **"High Resource"** — meaning those with higher economic mobility, educational attainment, and high earnings — to **"Low Resource"**.<sup>20</sup> In theory, these maps allow local and state governments to identify geographic inequality and build more housing at all income levels in high-resource areas.

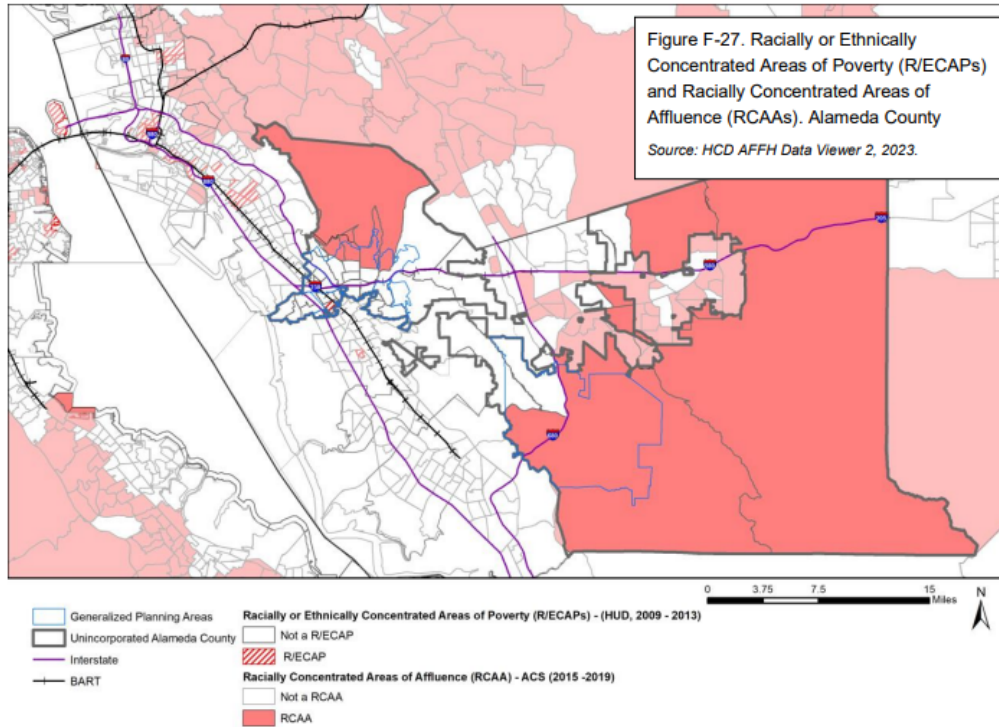
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<sup>18</sup> Lohman, Todd. "SAVE Pleasant Hill's Paso Nogal Hill/ Morello Terraces- Stop High-Density Housing Element," May 5, 2023.

<https://www.change.org/p/save-pleasant-hill-s-paso-nogal-stop-the-high-density-housing-element>  
<sup>19</sup> McDougall, Paul. "Pleasant Hill's Sixth Cycle (2023-2031) Adopted Housing Element," July 31, 2023.  
<https://pleasanthill2040.com/images/docs/ccoPleasantHillAdoptedOut073123.pdf>.

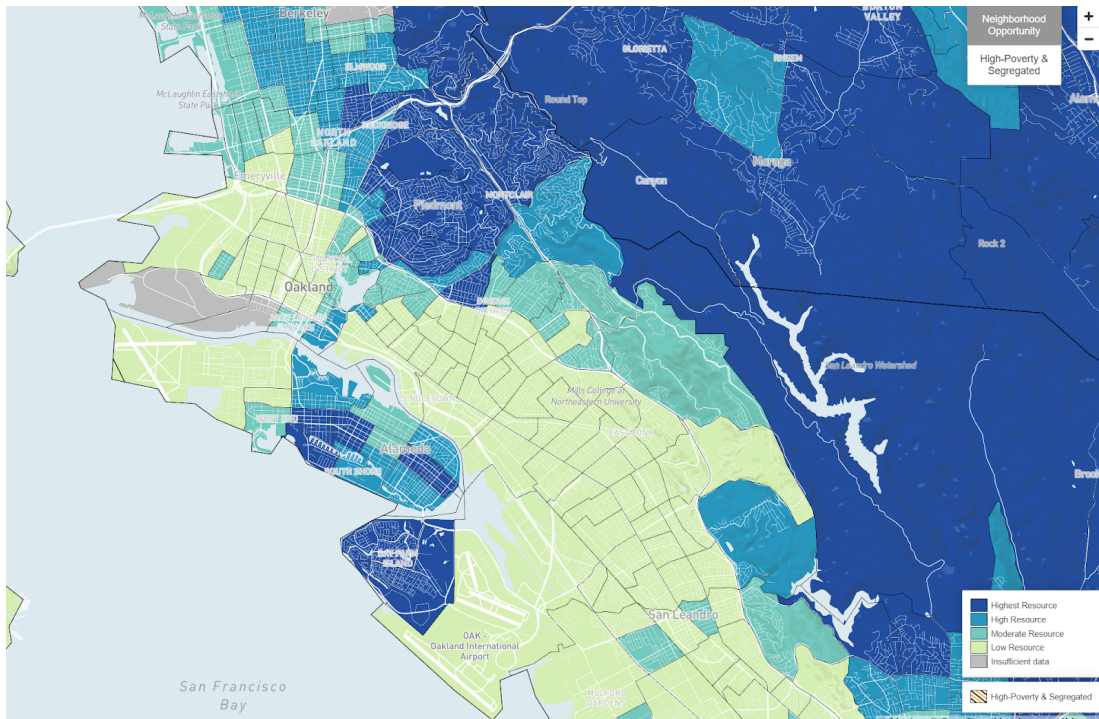
<sup>20</sup> "Draft Methodology for Opportunity and High-Poverty & Segregated Area Mapping Tools." California Tax Credit Allocation Committee, October 2023.  
<https://www.treasurer.ca.gov/ctcac/opportunity/2024/draft-2024-opportunity-mapping-methodology.pdf>

Figure 9: Racially or Ethnically Concentrated Areas of Poverty (R/ECAPs) and Racially Concentrated Areas of Affluence (RCAAs) in Alameda County



Source: [Alameda County Housing Element](#), Appendix F (AFFH), Page 69

Figure 10: California Tax Credit Allocation Committee & HCD Opportunity Map



Source: "[2024 CTCAC/HCD Opportunity Map](#)," U.C. Berkeley Othing & Belonging Institute

Working on that theory, these maps have become integral to Housing Elements and satisfying AFFH by targeting programs and sites that will create more affordable housing opportunities in high resource areas and support improved life outcomes in lower resource ones. These same maps are a key factor in determining competitive allocations of State funding for affordable housing projects.

In practice, overreliance on these maps means that already disadvantaged communities are under-served as part of the planning process. When no affordable housing is planned for lower-resource neighborhoods, residents could become vulnerable to displacement—especially if market-rate development, which is often relatively cheaper to build in lower-resource areas, puts pressure on existing residents by increasing rents in the area. When no affordable housing is planned in higher-resource areas, jurisdictions are losing a chance to undo decades of intentional concentration of poverty and segregation. Because higher resource areas also have more of the amenities which increase scores in competitive applications for affordable housing funds, this also makes a city's affordable projects cited in lower resource areas less competitive and less realistic.

**Overreliance on Opportunity Maps leads to disadvantaged communities being underserved in the planning process.**

Balancing the aims of providing support for vulnerable communities and breaking into exclusionary ones is not easy, and even among housing advocates, there are differences of opinion on how we should balance the two strategies. But what is obvious is that AFFH demands Housing Elements at least make an effort to make both possible.

Luckily, the State is already moving to improve some of these tools and balance these competing objectives; in October 2023, HCD launched a new [Neighborhood Change Map](#), which [identifies lower-income communities of color at risk of displacement](#). HCD and TCAC also released a [revamped Opportunity Map](#) that attempts to expand the definition of opportunity to make under-invested areas more of a focus going forward.

### **Key Finding #3: Local governments were unprepared and under-resourced for the expanded scope of work.**

On the local side, the difficulties with the State's new requirements were exacerbated by late starts and confusion. Many jurisdictions did not seriously start their Housing Element update until right before or even after the official deadline for certification. Jurisdictions further wasted time by waiting until final RHNA numbers were released to start even their preliminary analyses of existing conditions, fair housing issues, institutional barriers to housing, and available resources — pieces of

the Housing Element that don't depend on the regional housing need figures. Others simply did not understand or fully research the new requirements.

Furthermore, many elected officials struggled to understand the task at hand. Local elected officials come from all walks of life and few have a degree in city planning. Despite the best efforts of staff to break down the technical details, many elected officials were overwhelmed by their several-hundred-page Housing Elements. Conversations at City Council and Board of Supervisors meetings were light on substantive policy discussion, as they were either bogged down in confusion or focused on the decision points that were most loudly opposed by residents.

On both the state and the local side of this issue, a central problem is a lack of adequate staffing. Most local jurisdictions rely on consultants to prepare their Housing Elements, of which there are a limited number. Furthermore, planning departments struggle to give their Housing Element the time it is due or given their many other pressing concerns, increasing workloads, or staffing challenges.

All of these limitations and missteps get to a core question of the Housing Element process: *why isn't the process easier?* If the requirements are clear, the feedback timely, and the City willing and able, every jurisdiction should be able to receive feedback on their preliminary draft, integrate that feedback into a final Housing Element, and have their second submission approved, regardless of new requirements and higher unit counts.

## **Key Finding #4: Despite new consequences, recalcitrant jurisdictions rejected state mandates.**

The most dramatic piece of this Cycle has been the hostility of many jurisdictions to the process as well as the new penalties levied against non-compliant jurisdictions.

A subset of local governments has responded to the new Housing Element law with outrage and has attempted to buck the state's authority. Critics have claimed that building a Site Inventory for this cycle's higher RHNA goals is "impossible" and that complying with fair housing law would "ruin their neighborhood character."

It is challenging to take this criticism seriously when one looks at where it is coming from. The cities that continue to struggle with drafting a compliant Housing Element are not the ones with the highest RHNA allocations. Oakland, one of the Bay Area's densest cities, successfully planned for its RHNA allocation of 26,251 units and had its Housing Element certified in February 2023. By and large, it is the smaller, wealthier, and often, whiter, communities struggling to draft a Housing Element that will be accepted by the State.

**The cities that continue to struggle with drafting a compliant Housing Element are not the ones with the highest RHNA allocations.**

## Case Study: Atherton Fights Back

Perhaps the best-known example of a town struggling with their Housing Element this cycle is the uber-wealthy town of Atherton in San Mateo County, the most expensive zip code in the United States for seven years in a row.<sup>21</sup> The Town's Housing Element update has attracted interest due to the public opposition to a proposed housing project by some of the town's highest-profile residents: Steph and Ayesha Curry.<sup>22</sup>

Despite the modest number of units assigned — Atherton was assigned 348 units in this RHNA cycle compared to just 91 in the cycle prior — the Town's progress on its Housing Element thus far has been typified by public uproar at City Council meetings about the state's "ridiculous" requirements.<sup>23</sup>

Angry residents and their allies on City Councils across the state have gotten creative with their attempts to skirt substantive construction requirements. In Atherton, one of these efforts was to pass off [Accessory Dwelling Units \(ADUs\)](#) for a portion of their affordable housing allotment. Because these units can be constructed in the backyards of existing [single-family homes](#), they are often a much easier pill to swallow for communities hostile to [multifamily housing](#). While rezoning for ADUs can be positive in and of itself, ADUs are not a substitute for subsidized affordable housing.

[A recent report](#) by the San Mateo Grand Jury confirmed what many affordable housing experts — including EBHO — have been saying for years; ADUs should not count towards a jurisdiction's affordable housing RHNA quota.<sup>24</sup>

While they may be more challenging to plan for, the higher RHNA numbers in this Cycle should be taken as a wake-up call that every jurisdiction must do its fair share to solve our affordable housing crisis.

<sup>21</sup> Jozsa, Eveleyn. "Top 100 Most Expensive U.S. Zip Codes: 2023 Marks Yet Another Record Year, Despite Market Slowdown." Property Shark, November 2, 2023. [https://www.propertyshark.com/Real-Estate-Reports/most-expensive-zip-codes-in-the-us/#Sagaponack\\_Returns\\_to\\_2\\_As\\_Bostons\\_02199\\_Sees\\_Median\\_Slashed\\_by\\_41](https://www.propertyshark.com/Real-Estate-Reports/most-expensive-zip-codes-in-the-us/#Sagaponack_Returns_to_2_As_Bostons_02199_Sees_Median_Slashed_by_41).

<sup>22</sup> Swartz, Angela. "Steph and Ayesha Curry Oppose Upzoning of Atherton Property Near Their Home." *The Almanac*, January 27, 2023.

<sup>23</sup> Ting, Eric. "'Ridiculous': Atherton Residents Call for Revolt over Housing Plan Revisions." *SF Gate*, April 20, 2023.

<https://www.sfgate.com/local/article/atherton-housing-element-revisions-multifamily-17907641.php>.

<sup>24</sup> "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" 2022-2023 San Mateo County Civil Grand Jury, June 12, 2023.

<https://www.sanmateo.courts.ca.gov/system/files/grand-jury/2022adu.pdf>.



## The Builder's Remedy & Lawsuits

While in previous cycles it was standard practice for jurisdictions to submit their Housing Elements past the official deadline, there are two new penalties that have made it much less attractive for cities: the Builder's Remedy and the likelihood of lawsuits from [pro-housing](#) groups. As mentioned previously, the Builder's Remedy precludes a local jurisdiction's ability to deny certain housing projects, regardless of local zoning, if it does not have a compliant Housing Element.

Several dozen Builder's Remedy projects have been filed in the Bay Area to date,<sup>25</sup> but the mere threat of the Builder's Remedy has caused other jurisdictions without a compliant Housing Element to speed up their process.

Figure 11: Skyscraper Proposed at 2700 Sloat Boulevard in San Francisco



Source: Illustration by Solomon Cordwell Buenz via [San Francisco YIMBY](#)

Many of the proposed Builder's Remedy projects have started out shockingly large, with their proponents taking glee in spiting NIMBY residents. Developers behind the proposed 50-story skyscraper in San Francisco's low-density Outer Sunset neighborhood have made clear they intend to exercise the Builder's Remedy if San Francisco's Housing Element ever falls out of certification.<sup>26</sup> In Marin County, a

<sup>25</sup> "Developers trigger builder's remedy for 6,400 homes in Bay Area." *The Real Deal*, June 27, 2023. <https://therealdeal.com/sanfrancisco/2023/06/27/developers-trigger-builders-remedy-for-6400-homes-in-bay-area/>.

<sup>26</sup> Dineen, J.K. "S.F. supes don't think latest housing hiccup will trigger a 'builder's remedy' for Ocean Beach tower." *SF Chronicle*, November 22, 2023. <https://www.sfchronicle.com/sf/article/tower-housing-ocean-beach-18507790.php>.

developer used a “supersized” project as a red herring.<sup>27</sup> The developer threatened to file a Builder’s Remedy application for 150 units at 1501 Lucas Valley Road in unincorporated Marin County after an earlier proposal to build 39 units on the same site was delayed, before reducing its final application to 35 units.<sup>28</sup>

Other examples of Builder’s Remedy projects in the Bay Area appear to be serious attempts to build much larger projects than would otherwise be allowed, like a proposed multi-use campus with as many as 1,150 units submitted in Menlo Park in July of 2023.<sup>29</sup> In these cases, the Builder’s Remedy seems to be working exactly as intended — allowing developers to scale up their projects despite local foot-dragging and providing more affordable units as a result. Even more importantly, the Builder’s Remedy seems to also serve as an effective deterrent for NIMBY challengers of Housing Elements, who must weigh the benefit of slowing down the adoption of a Housing Element against the possibility that a delay guarantees just the kind of projects they want to stave off.

Another new penalty motivating jurisdictions to take their Housing Element seriously is the chance of a lawsuit for noncompliance from litigious pro-housing groups. More than a dozen cities and counties were sued by pro-housing groups at the end of January 2023 for failing to take meaningful action towards submitting a complete plan, and many more are in danger of further suits.<sup>30</sup> The goal of these suits is usually for the Court to mandate a timeline for the passage of a plan, but penalties can also include punitive fees and court control over project approvals.

To forestall Builder’s Remedy projects and lawsuits, many jurisdictions have tried to **self-certify** their Housing Elements. Knowing that HCD approval was not guaranteed (or even likely), some jurisdictions adopted a resolution along with their Housing Element stating that their plan was “in substantial compliance with State law.” HCD responded to these efforts by issuing clarifying rules, firmly stating the Department’s opinion that no jurisdiction has the authority to self-certify and those doing so were open to extreme risk.<sup>31</sup>

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<sup>27</sup> Varian, Ethan. “‘Nuclear option’? Supersized housing projects are planned for Bay Area’s wealthiest cities. Is one coming to your neighborhood?” *The Mercury News*, June 25, 2023. <https://www.mercurynews.com/2023/06/25/nuclear-option-supersized-housing-projects-are-planned-for-the-bay-areas-wealthiest-cities-is-one-coming-to-your-neighborhood/>.

<sup>28</sup> Halstead, Richard. “Developer Files Plan for Lucas Valley Housing Project.” *Marin Independent Journal*, November 27, 2023.

<https://www.marinij.com/2023/11/27/developer-files-plan-for-lucas-valley-housing-project/>.

<sup>29</sup> Rebosio, Cameron. “Local Elected Officials Unite in Opposition to Huge Builder’s Remedy Project in Menlo Park.” *The Almanac*, August 18, 2023.

<https://almanacnews.com/news/2023/08/18/local-elected-officials-unite-in-opposition-to-huge-builders-remedy-project-in-menlo-park>.

<sup>30</sup> Magofña, Greg. “CalHDF and Pro-Housing Legal Allies File Housing Element Lawsuits against Cities and Counties across Bay Area.” CAL HDF, February 7, 2023.

<https://calhdf.org/2023/02/07/calhdf-and-pro-housing-legal-allies-file-housing-element-lawsuits-against-cities-and-counties-across-bay-area/>.

<sup>31</sup> Kirkeby, Megan. “Summary and Clarification of Requirements for Housing Compliance.” California Department of Housing and Community Development, March 16, 2023.

## Watchdog Agencies

Even with these expanded consequences, many of the jurisdictions that have not taken this process seriously will probably still get away with it — to some extent.

One enforcement challenge is that Housing Elements rely on action from the City Council or County Board of Supervisors **after** they are accepted by the State. Previously, there was nothing to stop recalcitrant jurisdictions from voting forth a plan they had no intention of following. There is hope that the state's new watchdog agencies, the Housing Accountability Unit (HAU) and the Housing Strike Force will crack down on this behavior. The HAU in particular has promised to revoke certification of a jurisdiction's Housing Element compliance if it does not follow its approved plans.

**One enforcement challenge is that Housing Elements rely on action from the City Council or County Board of Supervisors after they are approved by the state.**

We have begun to see these watchdog agencies take action in Southern California. In Huntington Beach, after the City Council failed to pass a Housing Element more than a year after their deadline and repeatedly proposed local laws challenging state standards, the State Attorney General filed suit and is actively working to bring the City into compliance.<sup>32</sup> Because Southern California went first for this Housing Element cycle — their Sixth Cycle deadline was October 1, 2021 — Bay Area jurisdictions should take this as a warning.

Closer to home, San Francisco has been the subject of a [first-of-its-kind housing audit by HCD](#), despite being one of the first jurisdictions in the Bay to have a compliant Housing Element. This audit was spurred by complaints to HCD, San Francisco's longest-in-the-state timeline for getting a housing project from application to construction, and the City's repeated failure to achieve its RHNA goals — especially for affordable units. The report concludes with 28 actions the City must take or have its Housing Element compliance revoked — reopening the risk of Builder's Remedy projects like the 2700 Sloat Boulevard skyscraper and other penalties.<sup>33</sup>

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<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/memos/HousingElementComplianceMemo03162023.pdf>

<sup>32</sup> "California Sues Huntington Beach for Violating State Housing Element Law." Office of Governor Gavin Newsom, April 10, 2023. <https://www.gov.ca.gov/2023/04/10/california-sues-huntington-beach-for-violating-state-housing-element-law/>.

<sup>33</sup> "San Francisco Housing Policy and Practice Review." California Department of Housing and Community Development, Housing Policy Development Division, October 2023. <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/plan-report/sf-housing-policy-and-practice-review.pdf>.

# Policy Recommendations

Based on the challenges of this Cycle — as well as the shortcomings of the last — there are some changes both local governments and the State should make before the Seventh Cycle. Some standards, especially those around affordable housing and AFFH, will need to keep increasing if we want the Bay Area to have any hope of addressing the housing crisis. However, if we can pair those higher bars with more assistance, more resources, and an easier to understand process for everyone involved, there is no reason we can't make the next round of Housing Element updates smoother than this one.

## **Recommendation #1: Provide more funding for HCD and technical assistance for governments at all levels.**

One of the clearest lessons that has emerged from this cycle is that HCD needs more time, funding, and staff. Reviewing, giving feedback on, and approving Housing Elements for every jurisdiction in the Bay Area, let alone California, is a daunting task. Often, cities — including many who have made a good faith effort — have complained that requirements were unclear, feedback slow to arrive, and guidance muddled. The next Housing Element update process could undoubtedly be made smoother and more effective overall if the Department had more funding and more staff to provide earlier and more extensive training, engage with each city and county individually, and turn Housing Element submissions around much quicker.

Outside of HCD, this process can also be improved in the next cycle with more regional analysis tools. While many jurisdictions struggled with their AFFH and [Housing Needs Assessments](#), there were those who had it easier. [HUD Entitlement Jurisdictions](#), those big enough to have direct allocations of Federal funding, are required to complete an analysis of fair housing every five years, meaning they are already familiar with how to do this analysis. It is no surprise that many of these larger jurisdictions were better prepared to meet HCD's requirements this year. Future updates could be made much smoother if, in addition to additional technical assistance from HCD, counties — one of the most common entitlement jurisdictions — were able to extend their regular fair housing analysis over a broader area and act as a resource for cities.

**The next Housing Element update process could undoubtedly be made smoother if HCD had more time, funding, and staff.**

Regional Councils of Governments (COGs), like the Association of Bay Area Governments (ABAG) in the Bay Area, also have an important role to play. This Cycle, ABAG produced a variety of tools for local governments to use in their own analysis, including standardized data sets pre-approved by HCD for use by local jurisdictions. ABAG also produced the [Bay Area Housing and Land Use Viewer](#), a data dashboard and map that shows whether individual parcels have been included in previous Housing Element Site Inventories as well as data on AFFH considerations and land use constraints. While useful, it is unclear how often these tools were used. Regardless, more of this sort of regional analysis can only make the work in future cycles easier and stronger.

While HCD's focus this cycle was on city-level trends, more regional resources could also unlock more regional focus. Take the City of San Pablo for example; their Housing Element notes that while no census tracts within the City qualify as a [Racially or Ethnically Concentrated Area of Poverty \(R/ECAP\)](#), the entirety of west Contra Costa County — including San Pablo — broadly qualifies as a RECAP. Most Cities did not adopt this sort of macro-level view, and the entire Bay Area is poorer for it, as our planning for housing investment and action should address trends on a city, county, regional, and state level. Doing so would benefit not just Housing Element updates but other crucial housing work, like the [Bay Area Housing Finance Agency \(BAHFA\)](#) which could make use of San Pablo's analysis of county-level trends to direct housing investment.

## **Recommendation #2: Emphasize Affirmatively Furthering Fair Housing as a central piece of any Housing Element.**

Despite the centrality of AFFH requirements to HCD's rejection letters this cycle, AFFH was not the core content of many Housing Elements. Instead, AFFH response sections often seemed tacked on to the end of a Housing Element that was otherwise designed much as it would have been without the AFFH requirement. This meant that programs were often connected to Fair Housing only *after* they were designed, rather than being designed from the beginning to address it.

While the State cannot mandate every step of this process, they could make changes to guidance and requirements to make AFFH the central piece of any Housing Element. To truly prioritize righting past disparities, cities must start with their Fair Housing Assessment and then design their Housing Element from the ground up to respond to the issues identified. Doing so would make AFFH coequal with fulfilling RHNA requirements and meeting State-mandated standards around zoning as a central piece of the Housing Element process.

**One way to achieve this goal would be to split the Housing Element update process into two stages, starting with a housing needs analysis.** First, a jurisdiction would produce its analysis of housing needs, including the [Fair Housing](#)

**Assessment** and identification of constraints to housing well in advance of the deadline for final adoption. This would allow the public, City Councils, Boards of Supervisors, and possibly even HCD to review and approve the baseline analysis before any policies are developed. Jurisdictions would then prepare their site inventories and action programs based on these discussions and the community feedback received. This would allow jurisdictions to more comprehensively tailor their solutions to the challenges their community is facing, resulting in a more effective plan. This approach would require more intensive planning ahead of time and a longer time frame for preparation, but what it costs in upfront work could save in a shorter path to approval and fewer revisions.

**Another, complimentary, approach could be to regionalize the entire process of Fair Housing analysis.** As mentioned in the previous section, the Association of Bay Area Governments (ABAG) produced a variety of pre-approved resources that should have formed the basis for most jurisdiction's Housing Elements. ABAG should go a step further and produce a regional AFFH analysis that includes a city-by-city analysis of fair housing, housing needs, and development constraints. This would ensure a consistent standard of analysis across the region and allow individual cities and counties more time and resources to focus on drafting their programs and policies. ABAG is already well positioned to undertake such a project given that it frequently conducts high-quality research on both the regional and local levels.

### **Recommendation #3: Fund affordable housing development.**

Looking back at the Fifth Cycle Annual Progress Report data, a compelling story takes shape in nearly every Bay Area jurisdiction: when a local government reforms its approval process, zoning, and development standards to make construction easier, more **market-rate housing** is built.

Affordable housing, however, requires robust financial investment and direct action from the government at all levels, including the State, Federal, and local authorities, in addition to zoning changes and **streamlined** approvals. A typical affordable unit requires

**A mid-sized city in the Bay Area will need \$250 million in affordable housing funding to meet its RHNA goal this cycle.**

between \$100,000–\$200,000 in local funding — money that is usually required to be eligible or competitive for the State, Federal, and private funds that will finance the rest of the project. This means that to meet their lower-income RHNA this cycle a mid-sized city in the Bay Area will need around a quarter of a billion dollars in affordable housing funding.

In the past, the State has stopped short of requiring jurisdictions to include methods of funding affordable housing creation in their Housing Elements. Without such a

requirement, we will always be playing catch-up. If jurisdictions zone for affordable housing but lack the funds to build it, our affordable-to-market-rate housing ratio will be just as stark in eight years as it is now.

## **A Potential Game Changer**

The Bay Area Housing Finance Authority (BAHFA) is poised to place a \$10-20B nine-county regional housing bond measure on the November 2024 ballot!

This innovative measure would:

- Produce and preserve upwards of **45,000 affordable homes**
- Unlock an additional \$38.1 billion for affordable housing from other funding sources
- House **half a million low-income households** over the lifetime of these developments
- Support jurisdictions in meeting their affordable housing RHNA goals

Under state law, 80% of the funds raised through the bond will return to their city or county of origin while the remaining 20% will be administered by BAHFA to fund essential affordable housing across the Bay Area. Critically, the money invested in BAHFA has the potential to be reinvested to create **a permanent source of affordable housing funding** for the nine-county Area.

We're not kidding when we say this would be a game changer! To get involved in the campaign in your area, please visit [bayareahousingforall.org](https://bayareahousingforall.org).

This cycle, we have a potential source of funding by way of the [Bay Area Housing Finance Agency \(BAHFA\)](#), which will be putting a \$10–20 billion affordable housing bond for the nine-county Bay Area on the November 2024 ballot. Many local governments even included program goals in the Housing Elements indicating that they would “work with BAHFA in support of the regional bond.” The BAHFA bond is a huge opportunity to fund affordable housing, not just because of a one-time financial allocation, but due to BAHFA’s plans to leverage that bond funding into a permanent, self-replenishing, source of funding.

The potential of the BAHFA bond does not eliminate the need for local jurisdictions to take action to fund affordable housing themselves. With this in mind, we should make sure every local jurisdiction is putting its money, or its bonding authority, where its mouth is and committing to proactively funding the affordable housing we so desperately need.

# How to Get Involved

Crafting or analyzing a Housing Element is difficult work. It requires a great deal of specialized knowledge to understand the needs of a given community, the solutions that will respond to those needs and the local, state, and federal laws that influence all of this. Despite this complexity (or perhaps because of it), the local community must get involved with their Housing Element update. Not only is such involvement statutorily required, but it helps ensure that the programs drafted in the Housing Element respond to the real concerns and demands of the people it most deeply affects.

## **You don't need to be an expert to give feedback on the Housing Element.**

We understand that housing policy can be intimidating, and we have put together some tools that might help! On our website, EBHO has a [Glossary of Housing and Land Use Terms](#), which can be used to get an understanding of some of the most referenced parts of a Housing Element. In addition, **be sure to bookmark the [EBHO Study Room](#)**, which contains a wealth of resources explaining why housing is so unaffordable in the Bay Area and what we can do to help fix it. If you're still feeling intimidated, focus on the issues you care about or understand best; you do not need to understand everything in your city's Housing Element to weigh in!

**Connect with your community.** The voices speaking *against* housing justice are often better resourced and better organized than those of us fighting *for* housing justice, - but this does not have to be the case. Chances are there are already either organizations working to advance housing reform in your community or at least like-minded neighbors who could be organized. **You can start with [our resources on how housing advocacy organizations get going](#)**, or simply talk to your neighbors — particularly ones who you see or hear at meetings speaking out in support of the same policies as you.

**Engage with your local officials, staff, and HCD.** Most jurisdictions set up mailing lists for those interested in their Housing Element updates, some of which may keep updating interested residents after they have received HCD's approval. Make sure to show up for public hearings, community listening sessions, and any other event as well as submit written comments. When sending comment letters or emails, send copies to HCD to highlight areas of concern; this adds an extra layer of accountability for your city or county and ensures the State's reviewers focus on the sections of a Housing Element most important to the community. You can even contact HCD's reviewers directly to bring up specific areas of concern at [hauptal@hcd.ca.gov](mailto:hauptal@hcd.ca.gov)

**Get involved early** during the development of a Housing Element or other housing policies, and stay involved through approval and implementation. It will help to develop an ongoing relationship with not only elected officials but also the government housing staff in your jurisdiction. If your representatives know who you



are, and know you will keep showing up, it makes your comments that much harder to ignore.

**Stay engaged with your local government even after the Housing Element is finalized.** Housing reform is a long game; it takes years just to craft the right policies, raise the money, or build the momentum to implement a Housing Element fully - let alone construct the housing it plans for. The process the Bay Area is still going through is more the starting bell on a new eight years of progress than the final word. Ensuring that the policies your community included in its Housing Element succeed will take continued meetings with your representatives, appearances at public hearings, and organization with your neighbors throughout the Cycle. Be sure to [check your jurisdiction's Annual Progress Reports](#), a status update they must submit to the State every year detailing the number of units constructed and the programs implemented.

# Conclusion

The start of the Sixth Cycle in the Bay Area has not been easy. Higher unit counts, aggressive requirements, and missteps along the way have made it difficult for many to earn HCD's approval. While these frustrations could make it difficult to hope for substantive action to address the housing crisis over the next eight years, there are some reasons to hope for a better result.

While imperfectly implemented and enforced, the new requirements for local governments in this Cycle reflect a shared commitment to addressing the housing crisis across the state centering social justice. While these might be high bars to jump, the situation is dire enough that we will all have to jump that much higher. Furthermore, for each jurisdiction that tried to avoid doing their part, there are several who have done the hard work to craft good faith plans for their communities — despite their frustrations with new rules and frequent rejections.

Regardless of who is rewarded for their quick action and who is punished for not being swift enough, every community will need to do its part. For the average Bay Area resident, this could mean anything from attending just one more meeting next year to serving on their Planning Commission, while for many of the cities we call home, it will mean making some difficult decisions even after HCD gives their approval. Already, this update has taught several lessons about the tools the State and local government rely on, where things went wrong, and how the process should be improved for 2031.

As more cities across the Bay and the state work their way into compliance and start implementing the Sixth Cycle in earnest, we should all do our best to monitor these plans while keeping one eye on the horizon for the 7th Cycle. Eight years will pass quicker than we think and, unless we far exceed even the most aggressive plans from this Cycle, the depth of the housing crisis means we will have to work even harder next time.

# Glossary

**Accessory Dwelling Unit (ADUs):** An ADU, sometimes called an “in-law unit” or a “granny flat,” is a secondary home that sits on the same lot as an existing residence. ADUs may be separate structures or part of the main structure and are often cheaper and easier to build than new multi-family dwellings.

**Affirmatively Furthering Fair Housing (AFFH):** A provision originally contained in the 1968 Fair Housing Act that requires recipients of federal housing and community development assistance to not just combat segregation, but take affirmative steps to remove barriers and the structural roots of segregation and discrimination. At the State level, these requirements were enacted into law by AB 686 in 2018 and apply to California City and County housing and community development activities, including Housing Elements.

**Affordable Housing:** Housing supported by public financing that is required to be affordable to specific income bands based on Area Median Income. “Affordable to” here means that the rents are affordable to specified target income levels. (Individual household incomes may be lower than the target levels but cannot exceed them). Also sometimes referred to as “below market-rate” (BMR) housing.

**Annual Progress Report (APR):** A yearly report that jurisdictions with Housing Elements must submit to the State summarizing their progress in implementing their Housing Elements. One of the central focuses of an APR is reporting the number of housing units built in the period by income band.

**Area Median Income (AMI):** The median household income for a given metropolitan area for a given year, as determined by the Federal Department of Housing and Urban Development (HUD). These numbers are used to define affordability. The most common income bands are: Above Moderate-Income (>120% AMI), Moderate-Income (80-120% AMI), Low-Income (50-80% AMI), Very Low-Income (30-50% AMI), and Extremely Low-Income (<30% AMI). These income limits are also adjusted upward and downward depending on the number of people in the household.

**Association of Bay Area Governments (ABAG):** The Council of Governments for the Bay Area. ABAG represents the 109 cities and counties within the nine-county Bay Area, setting policy and distributing the State assigned RHNA.

**Bay Area Housing Finance Agency (BAHFA):** A regional finance authority created by the State Legislature in 2019 with the power to put housing bonds on the ballot for the nine-county Bay Area. The Agency is currently preparing to put a \$10 to \$20 billion dollar bond on the ballot for the nine-county Bay Area in November 2024. BAHFA is governed by the Executive Board of ABAG.

**Builder’s Remedy:** A provision of the Housing Accountability Act that precludes a local government from rejecting an application for residential development with at least 20% of units affordable to low-income households or 100% of units affordable to

moderate-income households if that jurisdiction does not have an HCD-approved Housing Element. This allows developers to override local zoning when jurisdictions are not in compliance with Housing Element law.

**California Housing and Community Development Department (HCD):** The State agency responsible for reviewing and approving Housing Elements in California, as well as the administrator of a variety of State housing programs.

**California Tax Credit Allocation Committee (TCAC):** Allocating agency for federal and state Low-Income Housing Tax Credit (LIHTC) programs in California, overseen and based within California's State Treasurer Office.

**Council of Governments (COG):** Regional government bodies that are made up of the local governments in the area. In the Bay Area, all 109 cities and counties are represented by ABAG. COG's are usually governed by voting members who represent their city councils and boards of supervisors. COGs are assigned Regional Housing Needs Determinations by the State for their entire region, which they divide up between their member jurisdictions through a process known as the Regional Housing Needs Allocation (RHNA).

**East Bay Housing Organizations (EBHO):** A member-driven organization working to create, preserve and protect affordable housing opportunities for low-income residents of the East Bay (Contra Costa and Alameda Counties).

**Fair Housing:** A catchall term for anti-discriminatory housing policy that precludes discrimination and addresses historical inequalities in housing markets. Addressing Fair Housing is a central requirement of AFFH rules at the Federal and State level.

**Analysis of Impediments to Fair Housing:** A document that HUD entitlement jurisdictions (local governments that HUD gives funding to directly) must produce every five years assessing discriminatory patterns in housing and analyzing market, governmental, and non-governmental conditions that give rise to these patterns. HUD also requires entitlement jurisdictions to develop action plans to remove fair housing barriers and to report annually on their progress in carrying out these plans.

**Fair Housing Assessment:** The portion of a jurisdiction's Housing Element that addresses fair housing concerns and responses.

**High Resource/Low Resource Area:** Categories determined by the State and the Tax Credit Allocation Commission. These categories apply to census tracts and are determined by levels of economic mobility, educational attainment, and other indicators of quality of life. High Resource areas are currently given priority for certain types of affordable housing funding.

**Housing Accountability Act (HAA):** A State law originally passed in 1982 and substantially amended in 2017 that streamlines housing development and introduces a number of accountability measures that allow the State to limit the powers of local governments to restrict housing.

**Housing Accountability Unit (HAU):** A branch of California's Housing and Community Development Department which enforces state-level housing policy with local jurisdictions. The HAU reviews and analyzes actions by local governments and determines if those actions comply with State law. It can also impose penalties for being out of compliance, including revoking certification of Housing Elements.

**Housing Element:** A State-required housing plan that every local jurisdiction in California must update and send to HCD for approval every eight years. The Housing Element has several sections that are statutorily required including a Housing Needs Assessment, Analysis of Fair Housing, Site Inventory, and Action Plan.

**EBHO Housing Element Working Group:** A 50+ member committee formed by EBHO in August 2021 dedicated to discussing and sharing best practices for Housing Element advocacy, process, and implementation. The working group included affordable housing developers, affordable housing residents, housing professionals, academics, community members, and others.

**Housing Needs Assessment:** The section of a Housing Element that covers the existing and anticipated needs for housing in a community. These sections often include a profile of the community creating the Housing Element, with demographic information about the population, market conditions, existing housing policies, construction progress, and types of housing available.

**Housing Strike Force:** A branch of the California Attorney General's office responsible for housing enforcement actions. The Strike Force reviews implementation of State housing law and can file lawsuits against jurisdictions that are out of compliance. The Strike Force also issues guidance to residents and jurisdictions to guide the implementation of housing law and inform the public as to their rights.

**HUD Entitlement Jurisdictions:** Jurisdictions that are direct grantees of HUD funding under the Community Development Block Grant (CDBG) program.

**Jurisdiction:** A unit of local government, usually meaning a town, city, or county.

**Market-Rate Housing:** The cost of market-rate housing rises and falls with changes in the value of real estate, or what consumers are willing to pay. It is not set according to the guidelines of government agencies, which do not directly finance market-rate housing. As such, market-rate housing is more expensive for residents than subsidized affordable housing, where housing costs are capped to fit the budget of low-income households. Most for-profit developers build market-rate housing, while non-profit developers build affordable housing.

**Multifamily housing:** Buildings that contain more than one unit of housing, e.g. apartment buildings, triplexes.

**Neighborhood Change Map:** A tool produced by State HCD that identifies low- and moderate-income communities of color that have undergone substantial

racial/ethnic and economic changes. This map acts as an additional layer on top of Resource Maps to refocus affordable housing funding on equity.

**Nine-County Bay Area:** Region of California based around the San Francisco Bay, including the nine counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

**No-Net Loss:** A law adopted requiring jurisdictions to ensure development opportunities (suitable sites with adequate zoning) remain available throughout the Housing Element planning period to accommodate a jurisdiction's regional housing need allocation, especially for lower- and moderate- income households. Jurisdictions must identify additional housing sites if the sites identified in their Housing Element are developed with fewer or less affordable units than planned for.

**Non-Residential Uses:** Land use that is not housing, usually meaning commercial, industrial, or recreational, e.g. a grocery store.

**Not In My Backyard (NIMBY):** A catch-all term used to describe residents who organize against multifamily or affordable housing in their neighborhood. The term stems from the idea that these residents are often supportive of affordable housing in theory but do not want it near their own homes. Reasons given for this opposition often include concerns about open space, parking, traffic, and neighborhood character.

**Opportunity Maps:** Maps developed by State HCD for the purposes of AFFH analysis and competitively scoring affordable housing applications. These maps measure census tracts by their educational attainment, average earnings, and economic mobility, among other factors.

**Pro-Housing:** Groups like EBHO that advocate for or implement policies and programs that create more housing supply and help ensure more people are housed.

**Racially or Ethnically Concentrated Areas of Poverty (RECAP):** A HUD term used to describe areas that concentrate both a substantial nonwhite population and higher than average poverty. These are census tracts that have both a population that is over 50% nonwhite and in which 40% of residents live at or below the poverty line or has a poverty rate three times higher than the surrounding metropolitan area.

**Racially Concentrated Areas of Affluence (RCAA):** Census tracts where the concentration of White, Non-Hispanic households and the median household income are both higher than the regional average. The term was originally developed by scholars at the University of Minnesota, and HCD created a new version of the RCAA metric to support analysis of RECAPs and affluence.

**Regional Housing Needs Allocation (RHNA):** A number of housing units determined by the State that each jurisdiction must plan for and facilitate the

construction of in an eight year planning period. RHNA allocations are broken down into above moderate-, moderate-, low-, and very low-income affordability bands.

**Self-Certify:** A process used by some jurisdictions to attest that their Housing Elements were “in substantial compliance with state law” before they had been approved by State HCD. This strategy was used to avoid lawsuits, Builder’s Remedy, and other consequences for not having an approved Housing Element, but has not been accepted as a viable method by HCD.

**Single-Family Home:** A single-unit family residence, detached or attached to other housing structures (townhomes and row houses, for example).

**Site Inventory:** A list of parcels that a jurisdiction reasonably believes will be developed into housing units within the eight year planning cycle. Housing Elements must include this list with enough sites to accommodate their RHNA and must include data regarding their suitability and current use.

**Streamlining:** Changes to planning and zoning law that make it easier and quicker for housing projects to be approved for development. This often involves limiting or eliminating subjective review, limiting public hearings, enforcing timelines for approval, and standardizing procedures to make the process more predictable for developers. Some types of streamlining allow projects to be exempted from review under the California Environmental Quality Act (CEQA), greatly reducing the time it takes to gain approval.

**Underutilized Site:** Sites in a Site Inventory that are not fully built out or on which the existing building is not in use or could be redeveloped to provide more value.

**United States Department of Housing and Urban Development (HUD):** The Federal Executive Department responsible for the majority of nationwide housing-related policy and programs. HUD administers a variety of funding programs to construct, rehabilitate, or subsidize housing for lower-income households, including Public Housing, Community Development Block Grants (CDBG), Housing Choice Vouchers (Section 8), and HOME.

**Vacant Site:** Sites in a Site Inventory with no development on them that are available for housing development

# Appendix A: What's in a Housing Element?

While each jurisdiction organizes their Housing Element a little differently, all Housing Elements are required to include the following sections, as well as a number of subsections detailing progress from previous cycles, public engagement efforts, and quantified objectives for the current cycle.

**Housing Needs Analysis:** This section summarizes the state of housing in the community, including: a profile of socioeconomic and racial/ethnic demographics, the number of units rented vs owned, median housing costs, special needs populations, and a variety of other factors. It also includes forward looking analysis which details expected population growth, housing construction, and trends in the rental market. In essence, the Housing Needs Analysis should say who lives in a community, what influences their ability to live there, and what will change their ability to live there in the future. The Housing Needs Analysis section also includes the analysis of concentrated areas of affluence and segregation necessary to respond to new Affirmatively Furthering Fair Housing (AFFH) requirements.

**Site Inventory:** This section is where jurisdictions directly respond to their RHNA by showing the State that they have enough room to build their assigned units. The Site Inventory is a list of sites, which are parcels of land, that could be potentially used for housing development. The listing for each site includes an estimated development target, feasibility analysis, and information on current usage. Cities that cannot identify sufficient sites that already are zoned appropriately must include a plan to rezone land to accommodate any shortfall.

**Analysis of Constraints:** This section is where a jurisdiction must analyze the factors that make it difficult to build housing. These can include governmental constraints like restrictive zoning, public appeals processes, or onerous building standards and fees, as well as non-governmental constraints like land or construction costs. To encourage housing construction and affordability, jurisdictions must outline how they will mitigate or remove these constraints.

**Housing Programs and Policies:** Arguably the most exciting section of the Housing Element, this is where jurisdictions lay out their proposed goals and policies. Goals are large-scale aspirations like “all residents should have access to safe and affordable housing.” Policies implement those goals more specifically with programs like rent stabilization, funding for affordable housing, or changing laws to make development easier. The Programs and Policies section of a Housing Element is often the part that receives the most attention from the public and the State as it contains most of the commitments the jurisdiction is making for the next eight years.