

The Housing Element Opportunity

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Do Communities Adequately Plan for Housing?



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What's Different This Time?

- (Much) Bigger Housing Targets for Expansive Places (SB 828, AB 1771)
- Realism About “Realistic” Site Capacity (AB 1397, SB 6, Site Inventory Guidebook)
- A Duty to Affirmatively Further Fair Housing (AB 686)
- A Duty to Approve Plan- and Zoning-Compliant Projects (SB 35, SB 167, AB 1515)
- YIMBY Watchdogging

Conjecture: The Housing Element Update Will Be the Single Best Opportunity for Pro-Housing Reform at City Level for Next Decade

1. NIMBYs have incentive to compromise, make a deal

- Cities w/o compliant housing element forfeit authority to apply their zoning code or general plan to 20% low-income / 100% moderate-income projects. Gov't Code 65589.5(d)(5).



2. Housing element can be used to make the deal sticky (hard to undo)

- Any “fundamental, mandatory and clear” provisions supersede contrary municipal ordinances and regulations
- Amendments must be submitted to HCD for review & comment; HCD may respond to bad amendments by decertifying the housing element



3. Housing element update foregrounds citywide and regional interests, not neighborhood interests



4. Local knowledge puts the substantive bite in state law. (Wins without winning?)

