

California's New Fair Housing Laws



AB 686 and AB 1771

[Gov. C. 8899.50 & 65580 *et seq.*]

by Craig Castellanet – ccastellanet@pilpca.org
449 15TH Street, Oakland, CA 94612
www.pilpca.org

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New California Fair Housing Laws

Two measures signed into law Sept. 30 to Affirmatively Further Fair Housing (AFFH):

- **AB 686 (Santigo)**
- **AB 1771 (Bloom)**

These respond to a change in federal policy to no longer enforce 2015 AFFH rules

- **Litigation against repeal**
- **16 AGs Oppose modification**

AB 686 (Santiago) - AFFH

- **Adds AFFH Definition to the California Government Code (sec 8899.50)**
 - **To be interpreted consistently with federal regulations (80 FR 42272)**
- **Applies to all public agencies, including the state, counties, cities (and charter cities) & housing authorities**
- **All public agencies must administer “programs and activities” to affirmatively further and take no action inconsistent with AFFH obligation**

AB 686 – What is AFFH?

- **Defines AFFH as taking meaningful actions to:**
 - **Combat discrimination**
 - **Overcome patterns of discrimination**
 - **Foster inclusive communities**
- **Specifies that actions will include “both/and”**
 - **Replacing segregated living patterns with integration**
 - **Transform areas with racial and poverty concentration**

AB 686 Implementation AFFH in Housing Elements

All Housing Element revisions adopted after 1/1/21 must include an AFFH analysis:

- **Summary of FH issues in the jurisdiction**
- **Analyze data on segregation patterns**
- **Assess contributing factors**
- **Identify FH Goals and Actions, including**
 - **Encouraging new affordable housing in opportunity areas**
- **Sites Inventory & any rezone program must consider location**

California Municipalities GENERAL PLAN

- **7 Mandatory Elements: Housing & Conservation, Noise, Circulation, Open Space, Safety, Land Use**
- ***“CONSTITUTION”* for All Land Use Decisions**
- **All Actions Must Be *CONSISTENT W/ GP***
 - All Elements— “Internal” consistency
 - All Land Use Laws & Decisions– “External”
 - Zoning
 - Specific Plans
 - Development Agreements
- Like a **Budget for Land Use**

Timeline & Process

Revised Every 8 Years

[Gov. C. 65584 et seq.]

- **HCD** – **Determines Regional “Fair Share”**
 - Regional Housing Needs Allocation - **“RHNA”**
 - 4 Income Levels: very low, low, mod & above mod
 - 2 Years Before Element Due
 - Elements Due 18 Months After Transportation Plans Adopted
- **“COGs” Allocate “RHNA” to Cities & Counties**
 - *Regional Councils of Governments, 1 year prior to due date*
 - Must be based upon a statistical methodology
- **Communities Prepare Housing Elements**
- **HCD Reviews Elements for Compliance**

HOUSING ELEMENT *CONTENT*

4 Parts (Gov C 65583, 65583.1, 65583.2, 65588)

1. Evaluate Prior Housing Element
2. Assess Needs, Resources & Constraints:
 - Needs
 - RHNA 4 income levels & Extremely Low Income Households
 - Special Needs (e.g. Homeless, Disability, Farmworker)
 - Inventory of Sites
 - Analysis of Zoning, Infrastructure, Redevelopable sites
 - Analysis of Constraints – Government & Non-Government
3. Determine Goals & Quantified Objectives
4. Prepare Schedule of Action Programs
 - To Address ALL Identified Needs, Resource Shortfall & Constraints
 - Specific Date required for programs (plus 3 year limit on rezoning)
 - E.g. Rezoning, Housing T.Fund, IZ, Anti-Displacement, Redev. 2.0

AB 1771 (Bloom) RHNA Reform

Amends the RHNA Process at the COG level

Revises statutory objectives of RHNA plan to include:

- AFFH requirement, to address disparities in housing needs and access to opportunity
- Also requires improved regional jobs-housing relationship
- Allocate lower proportion of housing need to jurisdictions already disproportionately high in any income category

AB 1771 – Data & HCD Review

Methodology must “further” statutory objectives

- Replaces obligation to act consistently with statute

Includes new data requirements:

- Document the number of low wage workers compared to available housing affordable at those wage levels
- Adds overcrowding and overpayment data as a factor
- Requires COG to explain factors in its methodology
 - Additional factors only for specific health & safety concerns

Provides for enhanced review by HCD

Program Examples- AFH Plans

- Paramount,CA, committed to amend its zoning ordinance (by explicit deadlines) to allow group homes for people with disabilities in residential zones;
- Temecula,CA,committed to the goal of amending its zoning codes to allow for 100 affordable housing units in census tracts that do not have high poverty rates;
- New Orleans,Louisiana, promised to increase homeownership by Section 8 voucher recipients by 10 percent annually;
- ChesterCounty,Pennsylvania,committedtocreating35newaffordable rental units in high opportunity neighborhoods;
- El Paso County, Colorado, similarly promised to assist in the development of 100 publicly supported affordable housing units in areas of opportunity

PROGRAM EXAMPLES

| | | |
|--|--|--|
| <p><u>Inclusionary Zoning</u></p> | <p><u>Housing Trust Fund:</u></p> <ul style="list-style-type: none"> ✓ Commercial “Linkage Fees” ✓ In-lieu Fees ✓ Housing Impact Fees | <p><u>Rezoning</u></p> <ul style="list-style-type: none"> ✓ Affordable Housing “Overlays” ✓ Super Density Bonus |
| <p><u>Fee Waivers</u> (or Deferrals)</p> | <p><u>Reasonable Accommodation Ordinance</u></p> | <p><u>Land Banking</u></p> <ul style="list-style-type: none"> ✓ Donate Sites ✓ Acquire Sites |
| <p><u>Section 8 Anti-Discrimination Ordinance</u></p> | <p><u>Anti-Displacement</u></p> <ul style="list-style-type: none"> ✓ Condo-Conversion Controls ✓ Demolition Controls ✓ Replacement Housing | <p><u>Rent Control</u></p> <ul style="list-style-type: none"> ✓ Just Cause for Eviction ✓ Relocation assistance |

RELATED LAWS

- **“LEAST COST ZONING LAW”** (Gov.C. 65913.1)
 - Must Have Enough Sites to Meet RHNA w/in Planning Period
- **FAIR HOUSING LAWS** (42 USC 3601, 3608; Gov C 12955; Gov. C. 65008)
 - Zoning Having *Discriminatory Effect*
 - Provides Federal Court Jurisdiction
 - Two year statute of limitations
 - 65008 Prohibits Discrim. v. Affordable Housing
- **HOUSING ACCOUNTABILITY ACT** (Gov. C. 65589.5)
 - Must Approve Affordable Developments (Unless RHNA has been met)
- **“NO NET LOSS” STATUTE** (Gov. C. 65863)
 - Must Rezone Replacement Site if Housing Element Site Downzoned
- **PREEMPTION OF LOCAL ORDINANCES**
 - (*E.g. Growth Controls Prohibiting RHNA-- Urban Habitat v. Pleasanton*)
- **CONSTITUTIONAL CHALLENGES**
 - Element or Growth Control n/ Reasonably Related Regional Welfare
 - Evidence Code 669.5 Shifts Burden *if* Prevail on Least Cost Zoning Claim