
SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair
2025 - 2026 Regular

Bill No: AB 610
Author: Alvarez
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Fiscal: Yes
Consultant: Favorini-Csorba

HOUSING ELEMENT: GOVERNMENTAL CONSTRAINTS: DISCLOSURE STATEMENT

Requires cities and counties to prepare a disclosure statement identifying potential governmental constraints as a part of their housing element and limits the ability of cities and counties to adopt governmental constraints.

Background

General plans. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements.

The general plan must be “internally consistent,” which means the various elements cannot have conflicting information or assumptions. Additionally, cities’ and counties’ major land use decisions—including zoning ordinances and development permitting—must be consistent with their general plans. In this way, the general plan is a blueprint for future development.

Housing element. Cities and counties must develop a housing element as part of the general plan every eight years (every five years for some rural areas). Each city or county receives a total number of housing units to plan for in its housing element, broken down by income category. The housing element must also contain specified information, programs, and objectives, including:

- An assessment of housing needs, and an inventory of resources and constraints relevant to the meeting of these needs;
- A statement of the community’s goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and
- A program that sets forth a schedule of actions to implement the goals, objectives, and policies in housing element during the planning period, and timelines for implementation.

Governmental constraints analysis. Existing law requires each city and each county to include in its housing element an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and housing types. Constraints include land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permitting procedures, as well as any locally adopted ordinances that directly impact the cost and supply of residential development. This analysis must also include local efforts to remove governmental constraints that hinder the city or county from meeting its share of regional housing need and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters.

Local governments must address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to housing.

Housing element compliance. Housing element law spells out in detail the process for cities and counties to adopt a housing element that complies with the law, including a schedule for adopting housing elements and deadlines for each step in the process.

First, a city or county must send a draft housing element to the Department of Housing and Community Development (HCD) for review and comment. HCD must make written findings as to whether the draft element substantially complies with housing element law. If HCD finds that the housing element does not substantially comply, a city or county must either:

- Change the draft element or draft amendment to substantially comply; or
- Adopt the draft element or draft amendment without changes, in which case the city or county must explain the reasons it believes that the draft element or draft amendment substantially complies with housing element law despite HCD's findings.

Cities and counties must also submit a copy of an adopted housing element promptly to HCD following adoption, which then reviews it for compliance and reports back to the city or county within 60 days.

Last year, the Legislature enacted AB 1886 (Alvarez), which eliminated the ability of cities and counties to “self-certify” their housing elements by deeming them compliant with the law, and instead said that a housing element is only considered compliant when either HCD or a court determines that the housing element is compliant.

Decertification of housing elements. HCD can decertify a formerly compliant housing element. HCD must review any action or failure to act by a local government that HCD determines is inconsistent with an adopted housing element or housing element law (AB 72, Santiago, 2017). These actions include any failure to implement any program actions included in the housing element.

If HCD issues written findings saying the action or failure to act does not comply with a city or county's approved housing element or with housing element law, the city or county has up to 30 days to respond to the findings before HCD takes other action. If the city or county does not cure the issue, HCD must notify the local government and can notify the office of the Attorney General that the local government is in violation of state law.

Additional penalties for housing element noncompliance. Over the last several years, the Legislature has strengthened the consequences for cities and counties that are out of compliance with housing element law. Local agencies cannot qualify for state funding for affordable housing, or infrastructure for affordable housing without a compliant housing element. Both the Attorney General and HCD have units with dedicated staff to enforce housing element law and other land use laws passed by the legislature. The Attorney General can also sue a city for non-compliance and ask the court to order the city or county to bring its housing element into compliance. The court can issue fines up to \$100,000 a month after the local agency fails to comply for 12 months. After an additional six months of non-compliance, the court may increase the fines by six times and appoint a receiver to take all actions necessary to bring the jurisdiction's housing element into compliance.

A local government also immediately becomes subject to the “builder’s remedy” when it fails to have a compliant housing element. The builder’s remedy, as strengthened last year by AB 1893 (Wicks), prohibits a local government from denying a housing project, even if the project doesn’t meet local general plan, zoning, and other standards, if the project meets one of the following:

- Contains 7% extremely low income, 10% very low income, or 13% low income units;
- Is 100% moderate income; or
- Contains 10 units or fewer.

Builder’s remedy projects also receive significant additional benefits and can’t be required to comply with many other local policies and standards, including some inclusionary zoning requirements.

Some housing advocates say that local governments continue to adopt governmental constraints on housing after their housing elements are certified. They want to increase transparency around governmental constraints.

Proposed Law

Assembly Bill 610 requires, as part of a city or county’s governmental constraints analysis, a potential and actual governmental constraints disclosure statement containing an identification of new or amended potential or actual governmental constraints, or revisions increasing the stringency of a governmental constraint, that are anticipated to be adopted during the first three years of the planning period following certification of the city or county’s housing element.

AB 610 also prohibits adoption of a new, amended, or more stringent “covered potential or actual governmental constraint,” within three years of having a certified housing element, unless any of the following conditions are met:

- The local agency submits to HCD a copy of the policy, standard, or ordinance that includes the covered potential or actual governmental constraint, or the more stringent revision of the covered potential or actual governmental constraint, within 30 days of adoption of, or the effective date of, whichever is sooner, the policy, standard, or ordinance;
- The measure was included in the disclosure statement and the local government has completed all of the housing element program commitments to address and, where

appropriate and legally possible, remove covered governmental constraints contained in the prior and current planning periods;

- Adoption of the measure is required by state or federal law and the local government demonstrates, by a preponderance of the evidence, that the measure is no more stringent than required to comply with state or federal law; or
- Failure to adopt the measure would create health and safety conditions supporting a moratorium or similar restriction or limitation on housing development, and HCD agrees with the local government's determination.

AB 610 defines “covered potential or actual governmental constraint” to include:

- A fee or exaction;
- A development policy or standard that would, with respect to land where housing is an allowable use, have the effect of reducing the intensity of land use for residential development, consistent with the limitations in the existing Housing Crisis Act;
- A development policy or standard that would increase the procedural burden on applicants under, or narrow or otherwise restrict the potential benefits to applicants of density bonus law, including, but not limited to, the availability of waivers, concessions, or incentives; and
- A new or more stringent historic district or designation affecting a site included in the land inventory in a local government's housing element.

This definition specifically excludes affordability requirements.

AB 610 makes technical and conforming changes and includes findings and declarations to support its purposes.

Comments

1. Purpose of the bill. According to the author, “California is facing a housing crisis that demands immediate and decisive action. For too long, local policies have prioritized exclusion and bureaucracy over the urgent need for housing equity. AB 610 represents a vital step toward accountability and transparency, requiring local governments to disclose any new regulations during the planning period while ensuring they first fulfill existing commitments to remove barriers to housing. This bill prioritizes the needs of marginalized communities—those impacted by homelessness, overcrowding, and exploitative conditions—by mandating analysis of emergency shelter capacity and supportive housing. AB 610 aligns local actions with state goals, urging every city and county to contribute to dismantling barriers rather than building them.”

2. Not all bad. Housing element law requires local governments to remove governmental constraints to housing—where appropriate and legally possible. These caveats around removal are important because some governmental constraints may be necessary to achieve other state goals. For example, fire hazard mitigation requirements may impose constraints on housing, but they also preserve life and property. Similarly, fees may increase the cost of producing housing, but they also fund important public services and the work that local governments must do to review projects. AB 610 addresses governmental constraints in two ways: it prohibits local governments from adopting “covered” governmental constraints unless they notify HCD about them (or take other specified steps) and it requires cities and counties to disclose in its housing

element any new or more stringent governmental constraints that they anticipate that they will adopt in the three years following certification of a compliant housing element. However, existing law already places limitations on the ability of local governments to make changes for several of the covered governmental constraints. Specifically, cities and counties already cannot reduce the intensity of residential development unless they simultaneously add capacity elsewhere in their jurisdictions, and they are generally limited in their ability to deny benefits requested by a developer under density bonus law. These limitations in existing law significantly overlap with AB 610's provisions relating to changing the intensity of land use and changing benefits under density bonus law. Accordingly, this portion of AB 610 may provide few benefits to housing in the state and could instead introduce uncertainty around what types of actions a local government can or can't adopt. The Committee may wish to consider amending AB 610 to remove the bill's prohibition on adopting governmental constraints and the related findings and declarations that pertain to those provisions, and to instead focus the bill on the disclosure requirement.

3. Planners, make it work. City and county policies are not static and change in response to a wide range of factors. As elected officials turn over, a city or county's priorities and policies change in response to changed membership of their city councils or boards of supervisors. As conditions change in their jurisdiction, even longtime elected officials may identify new priorities. State laws also change, adding or modifying local agency responsibilities. These factors and others make it difficult to predict what policies local agencies may adopt in the future. AB 610 requires local governments to disclose anticipated governmental constraints that they might adopt up to three years in the future. But the bill is unclear on what it means for a constraint to be anticipated to be adopted. This introduces the risk that a local government might unintentionally miss some constraints and be penalized as a result of adopting an undisclosed governmental constraint. The Committee may wish to consider amending AB 610 to specify actions that would trigger disclosure to HCD so that local governments know how to comply with the bill's requirements, and to ensure that local agencies aren't prevented from adopting constraints simply because they weren't disclosed.

4. Let's get technical. Committee staff recommend the following technical amendment to AB 610:

- Restore references to "provision" where the bill currently modifies them to "provisions"

5. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 610 imposes new duties on local governments, Legislative Counsel says it imposes a new state mandate. AB 610 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

6. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. AB 610 says that it applies to all cities, including charter cities. The bill includes a legislative finding and declaration that the bill's changes are a matter of statewide concern, but does not include a rationale supporting this assertion. The Committee may wish to consider amending AB 610 to include additional detail on why the bill addresses a matter of statewide concern.

7. Incoming! The Senate Rules Committee has ordered a double referral of AB 610: first to the Committee on Housing, which approved AB 610 at its July 1st hearing on a vote of 7-0, and second to the Committee on Local Government.

Assembly Actions

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| Assembly Housing and Community Development Committee: | 11-0 |
| Assembly Local Government Committee: | 10-0 |
| Assembly Appropriations Committee: | 13-0 |
| Assembly Floor: | 72-1 |

Support and Opposition (7/11/25)

Support: (prior version of the bill)

California Building Industry Association (Co-Sponsor)

Housing Action Coalition (Co-Sponsor)

Spur (Co-Sponsor)

Abundant Housing LA

California Apartment Association

California Association of Realtors

California Business Properties Association

California Business Roundtable

California Chamber of Commerce

California Retailers Association

California Yimby

Circulate San Diego

Construction Employers' Association

East Bay Yimby

Fieldstead and Company, INC.

Grow the Richmond

Housing Trust Silicon Valley

Inner City Law Center

Institute for Responsive Government Action

Leadingage California

Los Angeles Area Chamber of Commerce

Monterey Bay Economic Partnership

Mountain View Yimby

Napa-solano for Everyone

New California Coalition

Northern Neighbors

Peninsula for Everyone

San Diego Regional Chamber of Commerce

Santa Cruz Yimby

Santa Rosa Yimby

Sf Yimby

South Bay Yimby

South Pasadena Residents for Responsible Growth

Southern California Leadership Council

The Two Hundred

Ventura County Yimby

Yimby Action
Yimby LA
Yimby Slo

Opposition: (prior version of the bill)
American Planning Association California Chapter
California Contract Cities Association
California Rural Legal Assistance Foundation, INC.
California State Association of Counties (CSAC)
City of Carlsbad
City of Lake Forest
City of Murrieta
League of California Cities
Public Advocates
Public Interest Law Project
Rural County Representatives of California (RCRC)
Urban Counties of California (UCC)
Western Center on Law & Poverty

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