

CA's New Housing Accountability Unit & Why It Matters to People with Disabilities

May 10, 2022





Outline

- Purpose
- Overview
- Process
- The team
- Authority
- Collaboration
- Discussion



Purpose

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

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

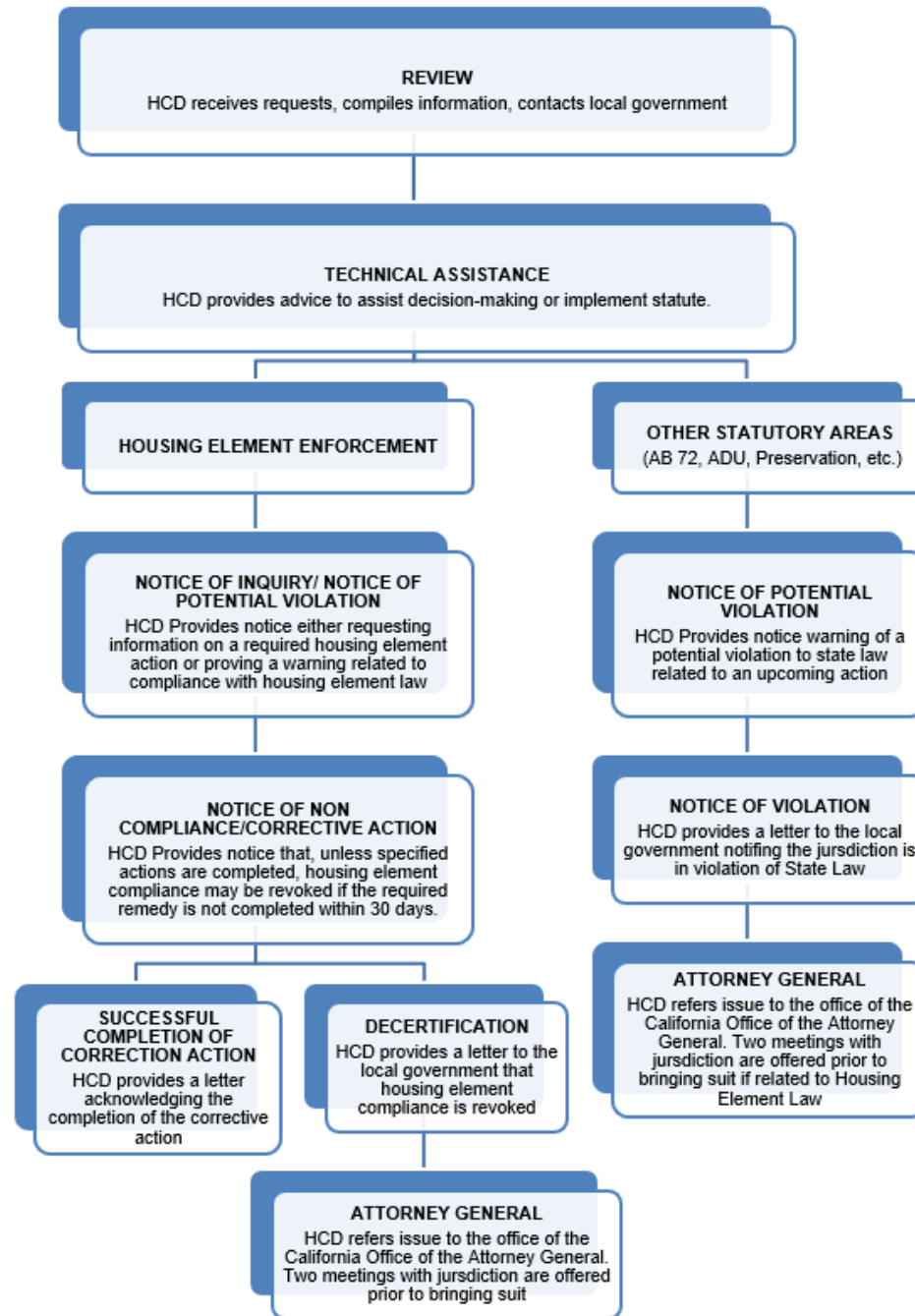


Overview

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

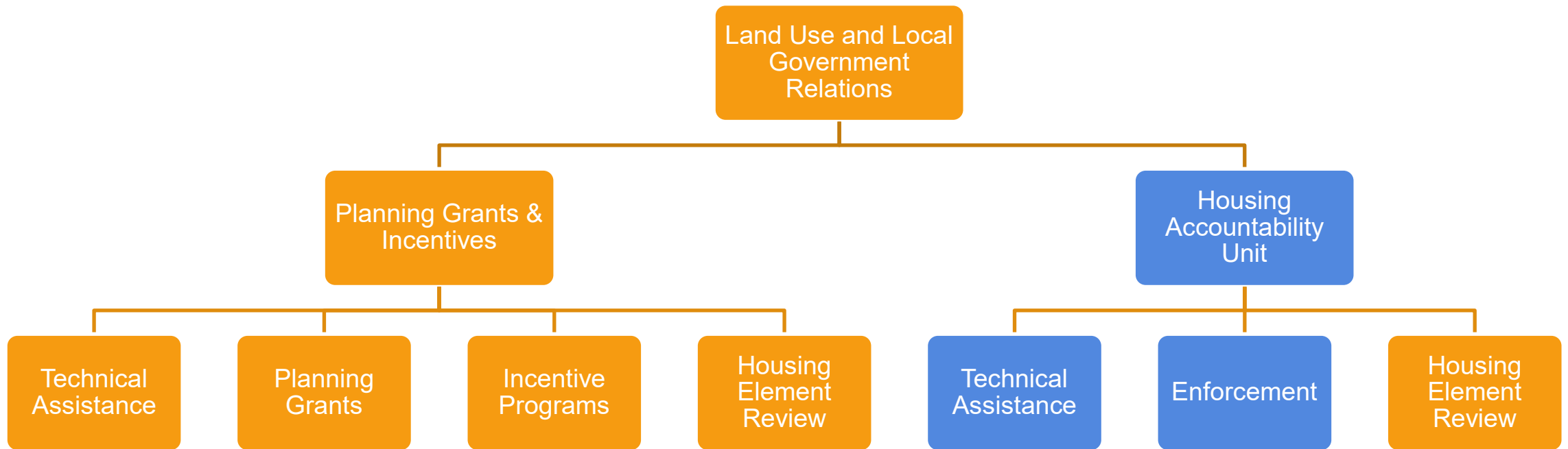


Moving from Technical Assistance to Enforcement





The Team





The Team (cont.)

- HCD's Housing Accountability Unit (HAU)
- HCD's Legal Affairs Division (LAD)
- Attorney General's Housing Strike Force



Results

- Helped multiple projects and hundreds of housing units get through the planning process to production
- Setting up housing elements to have better outcomes
- Provide much needed education and help to local governments
- Building relationships and connections with the AG's office – cross collaboration
- Won our first case in Huntington Beach.



Authority

Housing Element Law

Compliance
Proactive Enforcement

AB 72 authority

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

AB 215 authority (as of Jan. 1)

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

Other housing laws

ADU laws
Surplus Land Act
Affordable Housing Preservation Noticing Law
Rental Inclusionary Housing
Limitations on Development Standards (SB 478)



Housing Element Law

Government Code sections 65580-65589.11

- Enables the State to influence housing supply and affordability through:
 - Implementation of state housing law
 - Review of every locality's housing element
 - Accountability measures to ensure localities meet their commitments and follow state housing law
- Lays the foundation for other HCD housing activities, including planning grants, pro-housing designation, accountability & enforcement, preservation, ADUs – and getting housing built
- Must be updated:
 - Every 8 years for 521 jurisdictions
 - Every 5 years for 18 jurisdictions (mostly in small, rural counties)



Housing Element Law

Government Code sections 65580-65589.11

- An assessment of housing needs and inventory of resources and constraints must include:
 - An analysis of potential and actual governmental constraints on housing development for persons with disabilities.
 - An analysis of any special housing needs, such as those of the elderly and persons with disabilities, including a developmental disability.



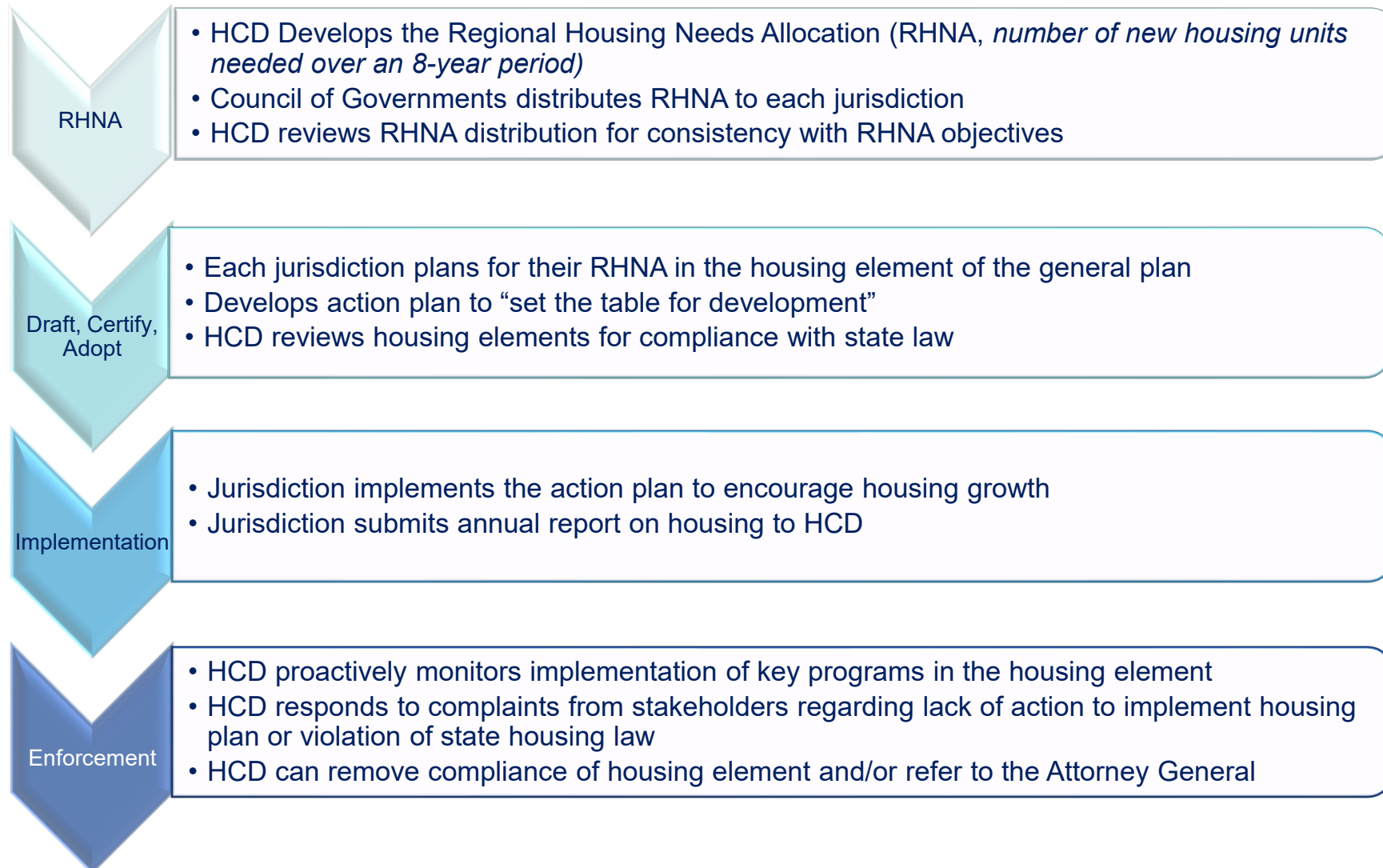
Housing Element Law

Government Code sections 65580-65589.11

- Programs must do the following:
 - Remove governmental and nongovernmental constraints on housing development for persons with disabilities.
 - Remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.
 - Transitional housing and supportive housing shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.
 - Promote and affirmatively further fair housing opportunities and promote housing throughout the community for all persons regardless of disability.

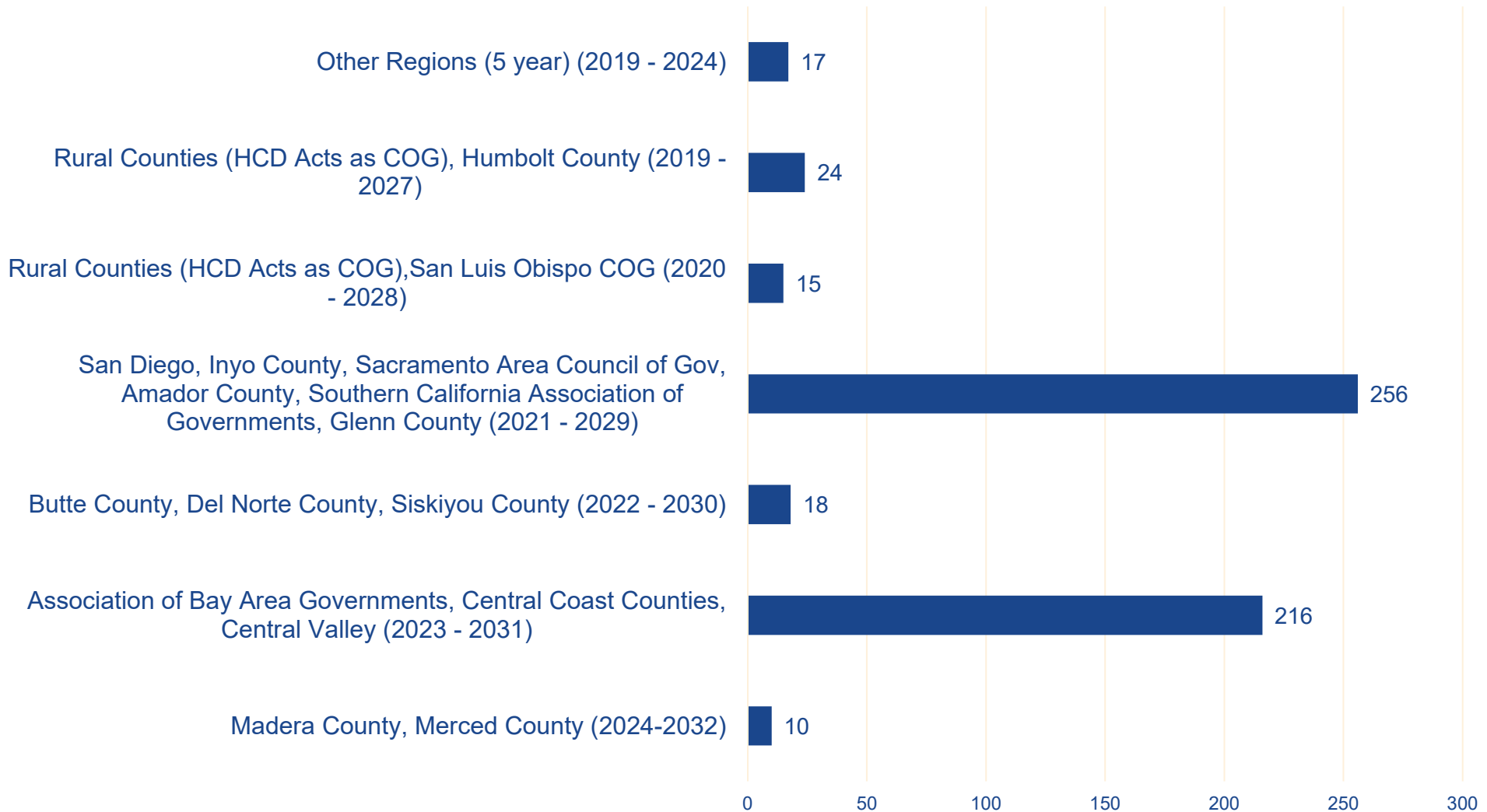


Housing Elements are a Process that Span Across the Planning Period





6th Cycle





Consequences of HE Noncompliance

Ineligibility or delay in receiving state funds

Permanent Local Housing Allocation
Local Housing Trust Fund
Infill Infrastructure Grant Program
SB 1 Caltrans Sustainable Communities Grants
Affordable Housing and Sustainable Communities

Cannot use inconsistency with zoning and general plan standards to deny an affordable housing project

(Housing Accountability Act)

Legal ramifications

HCD may notify the AG, legal remedies include \$10,000-\$100,000 per month in fines x 6 for continuing noncompliance

Broad discretion for court to impose other remedies

Private parties can sue for HE compliance as well



An Eight-Year Contract

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



Proactive Enforcement

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



By-Right Supportive Housing

Government Code section 65650-65656

- Supportive housing must be allowed as a use by right in zones where multifamily and mixed uses are permitted.
- Local government must complete its review of the application within 60 days after the application is complete for a project with 50 or fewer units, or within 120 days for a project with more than 50 units.



Density Bonus Law

Government Code sections 65915-65918

- Requires that local jurisdictions provide density bonuses and development incentives on a sliding scale to developers that propose to build affordable housing.
- If the development is “special needs” or supportive housing, a local jurisdiction may not impose minimum parking requirements.



Surplus Land Act

Government Code sections 54220-54234

- Purpose: Connect local agencies with developers that are interested in building affordable homes on surplus local public land.
- Requirements:
 - Noticing
 - Good faith negotiations
 - Priority for greater affordability
 - Minimum affordability
- Exemptions, including for affordable housing



Streamlined Ministerial Approval (SB 35)

Government Code section 65913.4

- Requires a streamlined ministerial approval process for development in local jurisdictions that have not made sufficient progress towards their allocation of the regional housing need.
- Eligible developments must include a specified level of affordability, be on an infill site, comply with local residential and mixed-use provisions, and comply with other requirements such as demolition restrictions.



Land Use Discrimination

Government Code section 65008

- Prohibits a local jurisdiction from denying a project based on protected characteristics; the method of financing of the development; or intended occupancy by people or families of very low, low, moderate, or middle income.



Affirmatively Furthering Fair Housing

Government Code section 8899.50

- Local jurisdictions must take meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on **protected characteristics**.
- Specifically, actions must:
 - Address significant disparities in housing needs and in access to opportunity.
 - Replace segregated living patterns with truly integrated and balanced living patterns.
 - Transform racially and ethnically concentrated areas of poverty into areas of opportunity, and
 - Foster and maintain compliance with civil rights and fair housing laws.
- AFFH duties extend to all of a public agency's activities and programs relating to housing and community development.



Housing Accountability Act

Government Code section 65589.5

- Limits a local government's ability to deny, reduce the density of, or make infeasible housing development projects that are consistent with objective local development standards and contribute to meeting housing need.
 - “Housing development project” includes transitional housing or supportive housing.
- Provides additional protections for affordable housing (20% low-income or 100% moderate/middle-income) and emergency shelters, e.g., if the HE is out of compliance, the City may not deny the project just because it's inconsistent with the General Plan or zoning ordinance.



Housing Crisis Act

Government Code section 66300

- Limits the ability of cities and counties to:
 - Reduce the intensity of land use within an existing land use designation
 - Impose a moratorium or similar restriction on housing development
 - Cap the number of housing units that can be approved or built
- Imposes requirements on developments that demolish housing units, including:
 - Replacing protected units
 - Including at least as many as the greatest number of units that existed on the site within the last 5 years
 - Providing relocation benefits and right of first refusal to occupants of protected units that are lower income households



Collaboration with Stakeholders

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



Discussion

- What local land use decisions and actions affect the disability community in particular?
- Which state housing laws seem particularly important to advancing housing for people with disabilities?
- How can HCD partner with and support the disability community on housing accountability and enforcement?

Thank you!

