

Over the next two years, cities across the state of California will undertake a state-mandated process to update the “housing element” of their general plans for land use. Cities must demonstrate that they have—or will provide—adequate zoned capacity to accommodate their share of “regional housing need,” a figure which is determined by the state Department of Housing and Community Development (HCD) and regional Councils of Governments.

Defenders of this process see it as a way to ensure that every city zones for a minimally adequate amount of housing, especially on sites that nonprofits could develop for affordable housing. Critics see it as pointless exercise in paperwork, benefiting only the consultants whom cities hire to write longwinded plans that don't actually mean anything.

In a new [white paper](#), we offer a different perspective. We argue that the housing element update creates an unusual policymaking window for city officials who appreciate the need for new and denser housing, but who worry about political resistance to providing for it. Cities can use the housing element to: (1) incentivize compromises by constituents who might otherwise oppose denser housing; (2) credibly commit future city councils to prohousing policies; (3) produce information about local land-use regulation that can advance prohousing reform; and (4) encourage participation by those who would benefit from more housing.

Here we provide a summary of the details of the analysis in our white paper.

1. Prohousing Default Rules vs. Status Quo Bias

The usual process by which cities make land-use policy has a powerful bias toward the status quo — which means not producing more housing, especially in affluent neighborhoods. There are lots of “veto points” and opportunities for delay. The housing element update is different. Cities must adopt a new, substantially compliant housing element once every eight years, on a schedule determined by the state. And, critically, if a city falls out of compliance, a provision of the state's [Housing Accountability Act](#) (HAA) deprives the city of authority to apply its zoning code and general plan to housing development projects in which at least 20% of the units would be affordable to low-income households. Such projects may still be denied if they would violate an objective health or safety standard, but not for being too tall, too bulky, too dense, or too otherwise out of keeping with “neighborhood character.” This provision of the HAA hasn't been tested in court, but even so, its existence gives an incentive for compromise by those who are suspicious of new housing development.

2. Credible Commitments

Through its housing element, a city can make commitments that are tough to unravel. The housing element is part of the city's general plan, and under state law, any "fundamental, mandatory, and clear" policy of the general plan preempts contrary municipal ordinances and practices — including the city's zoning rules. Moreover, changes to the housing element by future city councils cannot be easily made. Any amendments to the housing element must be submitted to HCD for review and comment before adoption. If a city adopts a bad amendment over HCD's objection, the department can respond by decertifying the housing element, triggering the pro-housing default rule (i.e., stripping the city of authority to deny 20% low-income projects on the basis of the city's zoning code or general plan).

The ability to make such commitments gives city councils new options for implementing prohousing policies. For example, instead of upzoning a neighborhood today, a city could promise to offset any future downzoning of sites with more-than-commensurate upzoning of other sites. Or, a city could commit to "sunset" parts of its development approval process (such as discretionary review of zoning-compliant projects) if the city does not reform them by a specified date.

3. Information

A paradox of the Housing Element Law is that it requires state bureaucrats who have limited information about local conditions to evaluate a housing element's claims about "[realistic zoned capacity](#)", and about the existence and severity of other local constraints on housing development. But this also presents an opportunity for well-meaning city councilpersons, who can ask their planning departments or consultants to gather data and publicize local barriers. If the city is revealed to have problems, HCD may insist on bold programs for upzoning and constraint removal as a condition of housing element certification. The city council can then point to the risk of decertification—and the attendant loss of land-use authority—and take credit for enacting a robust housing element that avoids those consequences.

4. Mobilization of Prohousing Interests

Municipal land-use policy tends to be made on a piecemeal, project-by-project basis. The city council members who run the show (in cities with district elections) usually represent small clusters of neighborhoods, and are chosen through formally or *de facto* nonpartisan elections. Lacking partisan ties and agendas to organize around, members of the city council often default to simple, low-cost decision rules like deferring to one another on

projects in their respective districts. This means that when housing projects come before the city council, the decisionmaker (the representative of the district where the project is located) has a strong political incentive to consider neighborhood-level costs and benefits, but no incentive to weigh benefits for the city at large.

The interest groups that stand to benefit from a large expansion of the housing stock—such as employers, whose workers' salaries are eaten up by the cost of housing—have little reason to get involved. Each project, considered in isolation, is just a raindrop on the sea of the regional supply of housing and the citywide tax base.

Pointing to this dynamic, law professors [Rick Hills and David Schleicher have argued](#) that cities would adopt better land-use policies if they could establish a procedural framework for hashing out citywide deals. The prospect of a citywide deal would motivate prohousing groups to engage, and the local stakes for any one neighborhood would be less clear-cut than when a specific project is on the line. The housing element is an ideal instrument for the citywide deal: it's a citywide plan, it's adopted following an assessment of citywide and regional needs, and it enables the city to make credible commitments going forward.

State law also provides a measure of reinforcement for spontaneous prohousing mobilization around the housing element. The Housing Element Law requires "[a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element.](#)" This is an occasion for planning departments to make a concerted effort to elicit input from renters, poor people, and people of color—people who tend to have more prohousing policy preferences than affluent white homeowners, but whose voices [too often go unheard](#).

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The Housing Element Law is not a panacea for California's housing woes. But deployed conscientiously, it can help soften the political dilemmas now faced by local government officials who would like to do their part.

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