THE Kennedy COMMISSION

HOUSING ELEMENT REVIEW GUIDANCE

2021 REVIEW GUIDANCE

Orange County 6th Cycle Housing Element Campaign

1. PUBLIC ENGAGEMENT

PUBLIC PARTICIPATION

Housing issues affect entire communities ranging from residents to the public and private sectors. Public participation presents an opportunity for cities to engage residents to understand problems and find solutions to Orange County's housing crisis. Including residents and community stakeholders in the housing element process is important because diverse segments of the population can be engaged in defining the housing problem and in crafting appropriate housing solutions that work for everyone. True and diverse engagement from the public increases the likelihood that the community members will support new housing strategies and housing developments.

OUTREACH

The California Housing and Community Development Department (HCD) identifies different effective approaches to public participation. A critical strategy is to identify key individuals/community leaders who can represent their communities during all stages of the housing-element process and being proactive in reaching out to the community by visiting neighborhoods and participating in local events. It is important to facilitate the involvement of low and moderate-income residents and those in diverse housing situations such as tenants in units at risk of conversion to market-rate, homeless-shelters, seniors, farmworkers, and non- and for-profit affordable housing developers to discuss housing problems faced, solutions, as well as resources needed.

IDEAL SCENARIO

RED FLAG/FURTHER ANALYSIS NEEDED

QUESTIONS TO CONSIDER:

Does the City have an easily accessible online/in-person platform to engage in all stages of the housing element?	Yes	No
Has the City exhausted different methods of communication including mailers, radio ads, local print, electronic media to communicate opportunities to engage in all stages the housing element?	Yes	No
Does the City include different language options for community input including surveys, communication tools, presentations, and interpretation?	Yes	No
Has the City reached out to your local community organizations for input on the housing element process?	Yes	No

2. COMMUNITY DATA "COMMUNITY NEEDS"

HOUSING TYPE

Housing-element law requires that local governments adequately plan to meet their existing and projected housing needs among all income levels.

Understanding the total number of lower income households and their renter or homeownership status is an important factor to consider when going through the housing element process. The difficulties and barriers for these families are drastically different and require adequate attention/resources. This data can also help community advocates to push for more adequate programs and policies that better reflect their housing insecurities.

QUESTIONS TO CONSIDER:

Does the City have programs and policies to increase affordable housing stock such as an inclusionary housing ordinance or an affordable housing ordinance?	Yes	No
Does the city provide sufficient supportive resources, subsidies, or protections for low income families especially renter households?	Yes	No

EMPLOYMENT

The Housing Element must also describe employment trends by industry and how changes either recent or anticipated, can affect the housing market. The City should discuss opportunities for improving work-housing balance, such as mixed-use with affordable housing to facilitate housing that is located near jobs. Analyzing the wage ranges, major employers and employment sectors is important to adequately serve the needs of the employees earning those wages. The analysis should address incomes and its relationship to the need for housing at all income levels.

QUESTIONS TO CONSIDER:

Is the average cost of housing in the City higher than the income of jobs available in the City?	Yes	No
Is the City creating opportunities for mixed-use developments to facilitate housing that is located near jobs?	Yes	No

COST BURDEN

Housing is the largest single expense for California families with many households spending more than 30 percent of their income making them "cost burdened". In other severe cases, households can be found to pay 50 percent or more of their gross income. This is especially true for extremely low, very low, and low income renter households. The cost burden for lower-income households reflects the lack of supply of affordable housing. According to the National Low Income Housing Coalition, workers in California working at minimum wage of $13 an hour would have to work 90 hours a week to afford a one bedroom rental home at fair market rent. Affordable housing production needs to increase to address cost burden.

QUESTIONS TO CONSIDER:

Is the City increasing affordable housing stock to reduce cost burden?	Yes	No
Has the City met its Regional Housing Need Assessment goals during its 5th cycle especially among extremely low and low income?	Yes	No

OVERCROWDING

Overcrowding increases mental, physical health, and safety concerns and can also stress the condition of the housing stock. The U.S. Census defines overcrowding as units that are occupied by 1.01 or more persons per room (units with more than 1.5 persons per room are considered severely overcrowded) excluding bathrooms and kitchens. Household income plays a significant role in overcrowding conditions; As income increases overcrowding decreases. For many families, living in overcrowding conditions is necessary to afford housing. Rates of overcrowding are three times higher in low-income households.

QUESTIONS TO CONSIDER:

Is the rate of overcrowding high in the City for renters and owners?	Yes	No
If the city includes policies/programs that aim to reduce overcrowding, do these policies increase or reduce housing options for families ? Example: If the City introduces an ordinance such that reduces the number of rental agreements allowed in a home in an attempt of reducing overcrowding, it can be regarded as reducing housing opportunities.	Increase	Decrease
Overcrowding is an indicator of high cost rents. Is the City increasing affordable housing options to address overcrowding?	Yes	No

3. ANALYSIS OF CITIES' PAST PERFORMANCE

WHAT HAS THE LOCALITY DONE?

The State requires that each locality keep track of how many building permits each locality has issued annually at each income level: very low, low, moderate, and above moderate. This progress is published annually in the a localities Housing Element Annual Progress Reports (APR).

CLICK HERE TO REVIEW EACH ORANGE COUNTY'S LOCALITIES' PROGRESS TOWARDS MEETING THEIR RHNA ALLOCATIONS AT EACH INCOME LEVEL.

EXAMPLE OF A LOCALITY'S PROGRESS: ANAHEIM

HERE IS AN EXAMPLE OF A TABLE DETAILING THE CITY OF ANAHEIM'S PROGRESS TOWARDS MEETING THEIR RHNA ALLOCATIONS

Anaheim

Income Level		RHNA	2014 Year 1	2015 Year 2	2016 Year 3	2017 Year 4	2018 Year 5	2019 Year 6	2020 Year 7	2021 Year 8	Total Units to Date	Remaining RHNA	Percentage to RHNA
Very Low	Deed	1,256	10	69	0	2	0	43	184	-	308	948	25%
	Non-deed		0	0	0	0	0	0	0	-			
Low	Deed	907	98	13	0	0	0	10	39	-	160	747	18%
	Non-deed		0	0	0	0	0	0	0	-			
Moderate	Deed	1,038	0	0	0	0	0	0	0	-	50	988	5%
	Non-deed		22	23	0	0	5	0	0	-			
Above Moderate		2,501	1,271	1,169	1,317	1,533	944	948	462	-	7,644	-5,143	306%
Total Units		5,702	1401	1274	1317	1535	949	1001	685	-	8162		

The City of Anaheim's 2020 APR shows that the City has not met their very low and low RHNA allocations. However, they have met and exceeded their above moderate RHNA allocations.

HIGHLIGHTS FROM APR ANALYSIS FOR ORANGE COUNTY LOCALITIES:

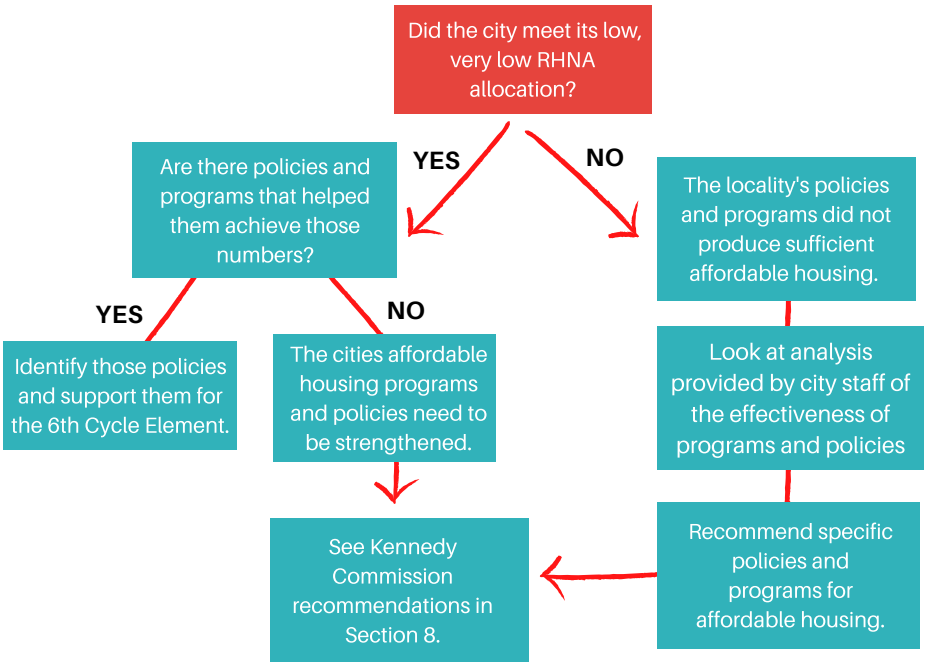
- **Only 7 Orange County jurisdictions have met their very low and low RHNA allocations. 3 of the 7 jurisdictions had a very low and low RHNA allocation of 2 units or less at these income levels.**
- **33 Orange County jurisdictions have met their above moderate income RHNA allocation**
- **1 jurisdiction has had no building activity**

ANALYSIS OF CITIES' PAST PERFORMANCE(CONTINUED)

HOW EFFECTIVE WERE THE PREVIOUS POLICIES AND PROGRAMS?

In this Housing Element section, localities are supposed to analyze the effectiveness of policies and programs included in the previous planning period (2014-2021). The locality should provide a chart explaining the actions taken to implement each of these policies and programs during the past planning period.

One way to analyze a locality's performance is by looking at how much housing was produced at the very low and low income levels in the previous planning period. Look at the previous page regarding APRs to see how your locality did.



OTHER IMPORTANT CONSIDERATIONS:

	IDEAL SCENARIO	RED FLAG/FURTHER ANALYSIS NEEDED
Did the locality produce more housing at the above moderate income level than the very low and low income levels?	Yes	No
If yes, was above moderate production at least 100 units greater than the production at the very low and low income levels?	Yes	No
Was half of the production at the very low and low income levels done through Accessory Dwelling Units (ADU)? Look at column 7 "Building Permits" of Table A in the City's APR.	Yes	No

4. CONSTRAINTS AND ANALYSIS

WHAT OBSTACLES ARE PRESENT FOR THE DEVELOPMENT OF HOUSING?

In this section of the Housing Element, localities must identify and analyze potential and actual governmental constraints that might hinder the maintenance, improvement, or development of housing at all income levels. The locality must also demonstrate local efforts to address these constraints.

TYPICAL CONSTRAINTS A CITY WILL ENCOUNTER IN THE DEVELOPMENT OF HOUSING AND THAT WILL NEED TO BE ANALYZED IN THIS SECTION:

Land Use and Zoning Constraints	Describes how a locality's land use and zoning is implemented and whether the process and other required infrastructure (e.g., improvements to street widths, curbs, etc) facilitate or hinder housing development. For example, a code amendment which specifies expensive materials and/or methods, can pose a constraint to housing development or maintenance by adding additional cost.
Constraints for people with disabilities	Localities must analyze potential governmental constraints to the development, improvement, and maintenance of housing for people with disabilities; demonstrate efforts to remove these constraints; and provide for reasonable accommodations for persons with disabilities through programs that remove constraints.
Fees and Exactions	Housing development is typically subject to: • permit processing fees for planning and zoning • impact fees or exactions that help pay for all or a portion of the public costs related to the development project The analysis should determine the extent to which fees pose a constraint to housing.
Nongovernmental Constraints	The housing element must analyze housing cost components, including the cost of land, construction costs, and the availability of financing, and develop and implement programs that respond to these conditions. While these costs are beyond a locality's control, localities can create preconditions (e.g., favorable zoning and development standards, fast-track permit processing, etc.) that facilitate housing development.
Permits and Processess	Common constraints include lengthy processing time, unclear permitting procedures, layered reviews, multiple discretionary review requirements, and costly conditions of approval. These can place a constraint on the production and improvement of housing by increasing the final cost of housing and uncertainty in the development of the project.

5. NEW POLICIES AND PROGRAMS

HOW WILL THE CITY MEET ITS HOUSING NEEDS?

In this section, the City must identify specific programs in its housing element that will allow it to implement the stated policies and achieve the stated goals and objectives. Programs must include specific action steps, a specific timeframe for implementation, identify the entities responsible for implementation, describe the City's specific role, and identify specific, measurable outcomes.

This section will also include a statement of the community's goals and the City's quantified objectives.

Do you feel like the City appropriately captured the community's concerns?	Yes	No

Quantified objectives are the housing production goals the City feels it can realistically achieve. Cities' quantified objectives for the lower income levels are often lower than their RHNA allocations at these income levels.

Are the quantified objectives for the very low and low income levels comparable to those at the above moderate income level?	Yes	No

WILL THE NEW PROGRAMS AND POLICIES PRODUCE AFFORDABLE HOUSING?

Were any policies reused from the previous planning period?	Yes	No
If yes, did these policies produce housing at the very low and low income level during the current planning period (2014-2021)?	Yes	No
If not, does the City provide a thorough analysis of the policy's previous performance and explain what they are doing differently during the upcoming planning period (2021-2029) to make the policy effective?	Yes	No
Did the City reuse policies that produced housing at the very low and low income levels in the past planning period? For example, inclusionary zoning or a housing opportunity ordinance.	Yes	No
Does the jurisdiction include any policies recommended by the Kennedy Commission? Policy recommendations in section 7 on page 19.	Yes	No
Did the jurisdiction include policies that directly address Affirmatively Furthering Fair Housing (AFFH)?	Yes	No

6. SITES

SITE INVENTORY ASSESSMENT

The Site Inventory identifies available vacant and non-vacant sites that are suitable and appropriately zoned for residential development.

The purpose of the Site Inventory is to identify specific sites that are suitable for residential development for all income segments in order to accommodate the local government's regional housing needs allocation (RHNA) with its residential development capacity. If a jurisdiction does not conduct a proper analysis of the sites within its inventory, this may result in the identification of unfeasible sites for the development of affordable housing and an unrealistic Housing Element.

See KC's Site Inventory Guidance Document for more information.

ADUS

Accessory Dwelling Units or ADUs provide innovative options to supplement housing stocks in cities. It has become a popular option for both cities and homeowners by assisting in reaching RHNA goals and providing a source of income to homeowners.

Since 2017, the Legislature has passed a series of new laws that significantly increase the potential for the development of new ADUs and JADUs (junior ADUs) by removing development barriers, allowing ADUs through "over the counter" approval, and requiring jurisdictions to include programs in their housing element that incentivize their development.

California Health and Safety Code (HSC), Section 65583(c)(7), requires that cities and counties develop a plan that incentivizes and promotes the creation of ADUs that can be offered at affordable rent for very-low to moderate-income households.

ADU CALCULATIONS

According to HCD's Site Inventory Guidebook potential development of ADUs should be based on:

- The number of ADUs developed in the previous planning period.
- Community need and demand for these types of housing units.
- Resources and/or incentives available that will encourage development.
- Availability of ADUs for occupancy, rather than used as offices or guest houses.
- Anticipated affordability may be found by examining the current market rents and trends.

OPTION 1: SAFE HARBOR 1

A jurisdiction may calculate its projected ADUs by using trends in ADU construction since January 2018. This only accounts for the effect of new laws without local promotional efforts or incentives. The "safe harbor option" is calculated by taking the average number of ADUs permitted per year since January 2018 and multiplying by 8 (each year in the planning period).

Ex: City A produced 5 ADUs in 2018, 4 ADUs in 2019, and 4 ADUs in 2020.

How many ADUs can be estimated using the safe harbor calculation? **A: 34**

Many jurisdictions will use the following Safe Harbor formula:

$$8 * \frac{(\#\ ADUs\ in\ 2018 + \#\ in\ 2019 + \#\ in\ 2020)}{3}$$

OPTION 2: SAFE HARBOR 2

If there is no data available for the production of ADUs after 2018, a city may "assume an average increase of five times the previous planning period construction trends prior to 2018". (Guidebook, p. 31)

$$5 * 8 * \frac{(\#\ ADUs\ in\ Year\ 1 + \#\ in\ Year\ 2 + \ldots + \#\ in\ Year\ N)}{N}$$

If a city's projection exceeds the calculations above, they need to specify what programs will lead to a significant increase in ADU production.

No matter which way a city estimates their ADU production, they must "include a monitoring program that:

(a) tracks ADU and JADU creation and affordability levels, and

(b) commits to a review at the planning cycle mid-point to evaluate if production estimates are being achieved"
(Guidebook, p. 31)

ADU AFFORDABILITY

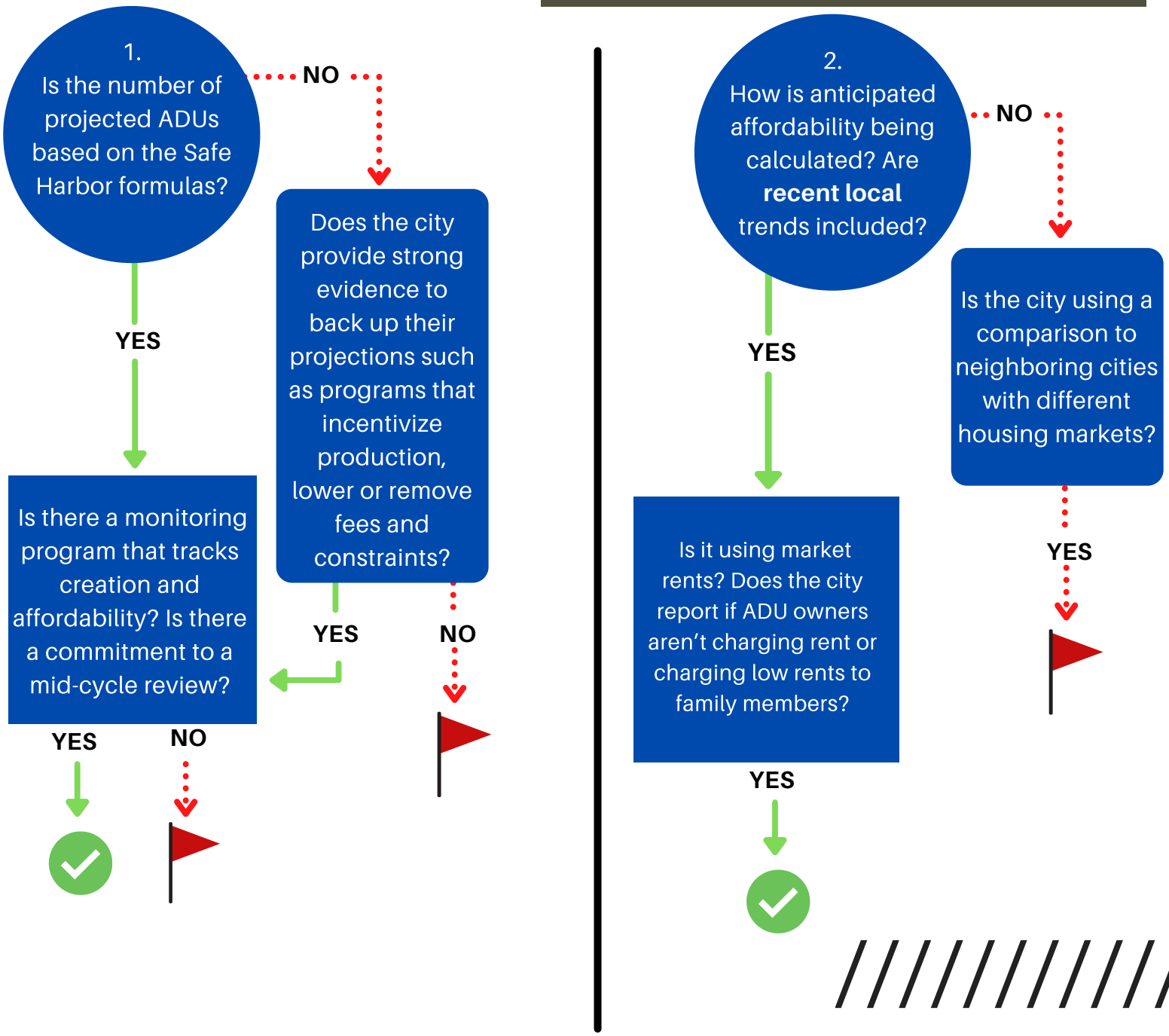
Future ADU income affordability must be based on evidence of market rents for similar units. (Guidebook, p. 30). Cities may use a regional study such as the **SCAG Regional Accessory Dwelling Units Affordability Analysis.** These findings must be appropriate and take into consideration the specific qualities of the jurisdiction.

QUESTIONS TO CONSIDER:

KEY:

IDEAL SCENARIO

RED FLAG/FURTHER ANALYSIS NEEDED



ADUS

1. **Uses a safe harbor method to establish a baseline estimate.**
2. **Commitment to an automatic mid-cycle adjustment if ADU production falls short of production goals.**
3. **Justifies affordability assumptions local ADU rental data.**

AFFORDABLE ADU PROGRAM EXAMPLES

Pasadena's 2020 Second Unit ADU Program

The affordable housing initiative incentivizes homeowners to create an affordable rental unit on their property. The program offers homeowners "Comprehensive Assistance" for financing, designing, permitting, and constructing a new Accessory Dwelling Unit (ADU) in the City of Pasadena.

Long Beach's 2021 Second Residential Unit Ordinance

The draft ordinance provides new incentives to encourage the use of ADUs to provide affordable housing, including making available refunds of all city building, planning, zoning, and impact fees to property owners who limit by deed restriction the occupancy of the ADU and rental rates to provide affordable units to those in need.

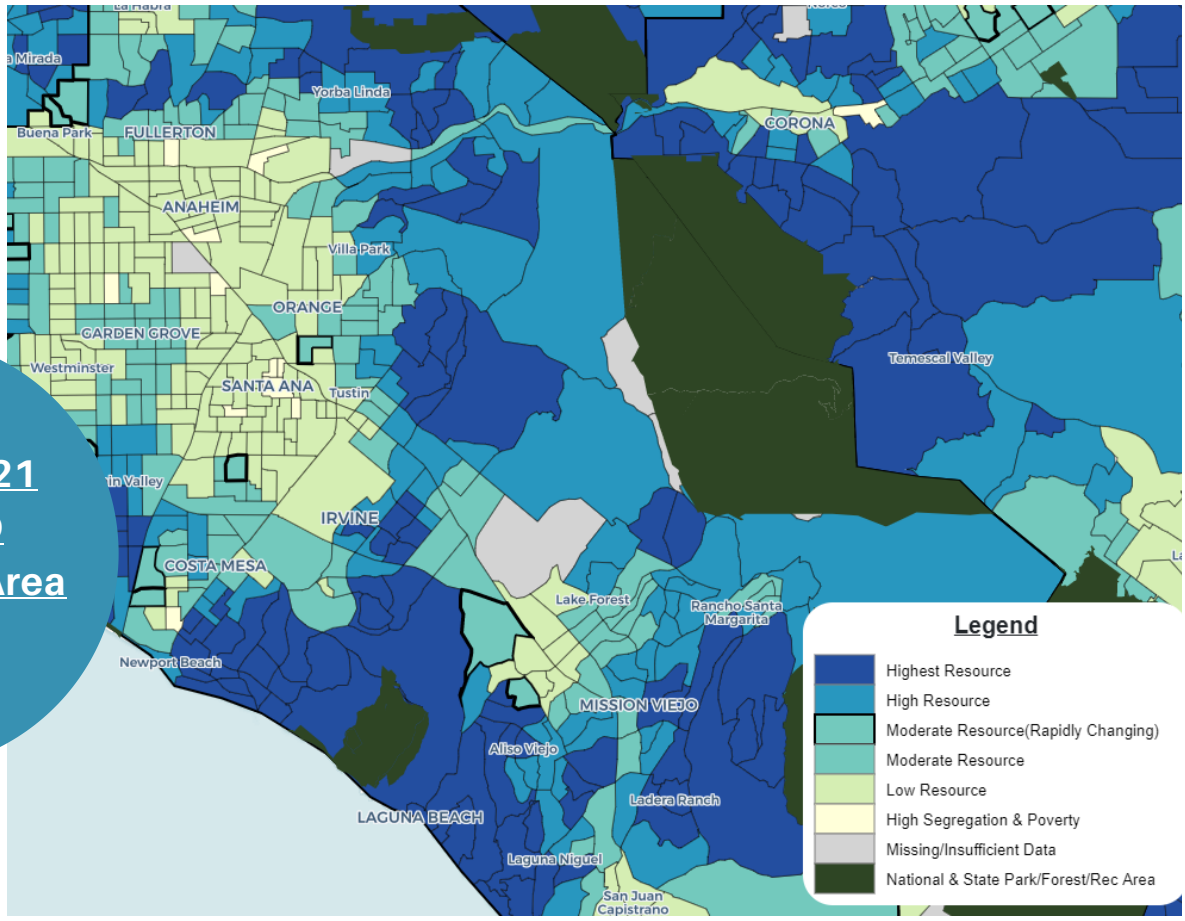
RESOURCES

KC's Site Inventory Guidance Document
HCD's Site Inventory Guidebook
SCAG Regional Accessory Dwelling Units Affordability Analysis

SITES AND STATE FUNDING FOR AFFORDABLE HOUSING

In the state of California, we have the California Tax Credit Allocation Committee (CTCAC) who administers the federal and state Low-Income Housing Tax Credit Programs to encourage private investment in affordable rental housing for households meeting certain income requirements. Credits are available for new construction projects or existing properties undergoing rehabilitation. In February 2017, the Department of Housing and Community Development (HCD) and the California Tax Credit Allocation Committee (TCAC) convened a group of independent organizations and research centers that would become the California Fair Housing Task Force ("Task Force").

TCAC and HCD charged the Task Force with creating an opportunity map to identify areas in every region of the state whose characteristics have been shown by research to support positive economic, educational, and health outcomes for low-income families—particularly long-term outcomes for children. TCAC adopted this map into its regulations in 2017, to accompany new policies aimed at increasing access to high opportunity areas for families with children in housing financed with 9% Low Income Housing Tax Credits (LIHTCs).



View the 2021 TCAC HCD Opportunity Area Maps.

QUESTIONS TO CONSIDER:

IDEAL SCENARIO	
RED FLAG/FURTHER ANALYSIS NEEDED	

	YES	NO
Are lower income sites being identified solely on the basis of minimum affordable housing density requirements?		
Are identified affordable housing sites being evaluated for their viability to compete for traditional funding to create affordable housing (CTCAC)? These funding sources prioritize development sites that promote access to community resources and services, such as schools, public transportation, medical services, and access to parks.		
Are there any specific affordable housing programs for low income sites?		
Does the analysis of identified lower-income sites include a section on affordable housing funding or opportunity areas?		

MODEL HOUSING ELEMENT COMPONENTS

SITES AND STATE FUNDING FOR AFFORDABLE HOUSING

1. **An analysis of local amenities available to identified lower-income sites.**
2. **Identification of opportunity areas throughout the city and a site inventory that considers these areas for lower-income housing feasibility.**

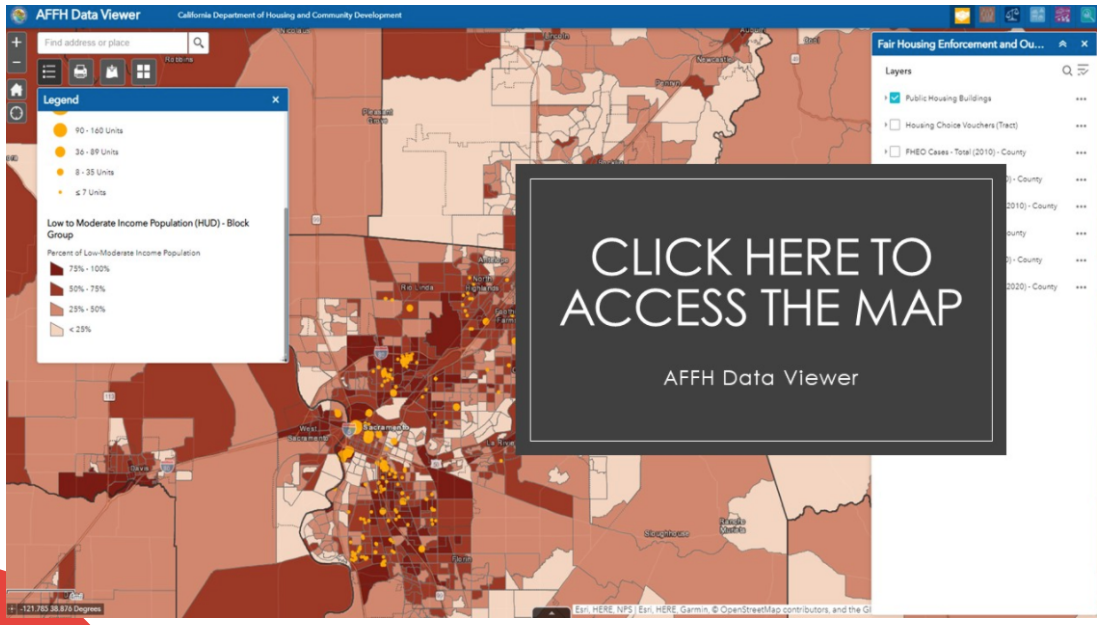
7. AFFIRMATIVELY FURTHERING FAIR HOUSING

AFFH

In 2018, California passed AB 686 as the statewide framework to affirmatively further fair housing; to promote inclusive communities, further housing choice, and address racial and economic disparities through government programs, policies, and operations. AB 686 is one of the most important tools that our local jurisdictions and partners can use to address systemic racism in housing and achieve a positive impact for all Californians through public policies, including in the Housing Element.

In April 2021, HCD released an **AFFH Guidance Memo** and an **AFFH Data Tool** to assist jurisdictions with essential principles and analysis.

The new AFFH requirement will help guide cities' choices of sites, rezoning, and policies while addressing "current and historical spatial patterns of subsidized housing within and surrounding the jurisdiction, including emergency shelters, subsidized affordable housing, supportive housing, and usage of housing choice vouchers." AFFH Guidance Memo, p. 46.



AFFH REQUIREMENTS

As jurisdictions address contributing factors to Fair housing issues in their cities. The following is required:

1. The preparation, adoption, and implementation of a housing element requires a diligent effort to include all economic segments of the community.
2. Assessment of Fair Housing in the city: Summary of Issues and Analysis of Patterns, Trends, and Disproportionate Housing Needs.
3. A summary of fair housing issues in the city and an assessment of the jurisdiction's fair housing enforcement and outreach capacity.
4. An analysis and summary of fair housing issues utilizing available federal, state, and local data and knowledge. The analysis must include a variety of factors, such as trends and patterns within the locality and in comparison, to the broader region.
5. The analysis must address Integration and segregation; Racially or ethnically concentrated areas of poverty; Disparities in access to opportunity, including for persons with disabilities.
6. Disproportionate housing needs (this may include things like overpayment, overcrowding, housing conditions disproportionately affecting protected classes), including displacement risk.
7. Identified sites serve the purpose of replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity.
8. Identification and Prioritization of Fair Housing Contributing Factors
9. Programs with a schedule of actions with timelines and specific commitment to have a "beneficial impact" within the planning period to achieve the goals and objectives of addressing contributing factors to Fair housing issues.

IDEAL SCENARIO	
RED FLAG/FURTHER ANALYSIS NEEDED	

QUESTIONS TO CONSIDER:

	YES	NO
Is the affordable housing clustered in one area?		
Is the city encouraging investment and development of affordable housing in low income areas?		
Are there any specific affordable housing programs for low income sites?		
Is there adequate AFFH analysis in the site inventory based on previously listed requirements?		

MODEL HOUSING ELEMENT COMPONENTS

AFFIRMATIVELY FURTHERING FAIR HOUSING

1. **A thorough analysis and summary of the jurisdiction's disproportionate housing needs, fair housing trends and patterns (including a comparison to the region), and data on integration and segregation.**
2. **A site inventory that will accommodate affordable housing in suitably zoned, high opportunity areas.**
3. **Policies, programs, and strategies that enhance housing mobility encourage the creation of affordable housing in high resource areas, encourage investment and conservation in low resource areas, including, new construction of affordable housing and preservation of existing affordable housing and protect existing residents from displacement.**
4. **Identified sites replace segregated living patterns with integrated living patterns, transforming concentrated areas of poverty into areas of opportunity.**
5. **Programs with clear timelines and specific commitment to addressing contributing factors to fair housing issues within the planning period.**

8. LOCAL RECOMMENDATIONS FOR ORANGE COUNTY JURISDICTIONS

BEST POLICIES AND PRACTICES FOR AFFORDABLE HOUSING IN ORANGE COUNTY

Affordable Housing programs and policies are different in every city. The Kennedy Commission recommends the following policies and practices to provide relief to low-income families struggling with unaffordable and unstable housing :

1. **Adopt an Inclusionary Housing Ordinance with a 15-20% requirement of affordable housing production at extremely low, very low- and low-income categories.**
2. **Prioritize affordable housing funding and programs to increase affordable housing options for families of lower incomes, especially at very low and extremely low-income.**
3. **Identify city-owned sites and prioritize these sites for the development of affordable housing.**
4. **Ensure that development sites being identified and discussed in the initial drafts are realistic and available during the planning period.**
5. **Ensure opportunity sites are not simply upzoned or rezoned without including affordable housing policies that will capture the financial and land use incentives being given to property owners and market-rate developers. An Affordable Housing program is also needed.**