


**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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**MEMORANDUM**

DATE: May 22, 2006

TO: Planning Directors
Public Works Directors
Water and Sewer Service Providers
Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 1087, Legislation Effective January 1, 2006:
Water and Sewer Service Priority for Housing Affordable
to Lower-Income Households**

Chapter 727, Statutes of 2005 (SB 1087) establishes processes to ensure the effective implementation of Government Code Section 65589.7. This statute requires local governments to provide a copy of the adopted housing element to water and sewer providers. In addition, water and sewer providers must grant priority for service allocations to proposed developments that include housing units affordable to lower-income households. Chapter 727 was enacted to improve the effectiveness of the law in facilitating housing development for lower-income families and workers. This memorandum notifies pertinent agencies of these existing and new responsibilities.

For local governments, Chapter 727 now requires all cities and counties to immediately deliver the adopted housing elements of the local general plan and any amendments to water and sewer service providers. The Department recommends that copies of existing housing elements and amendments be submitted to service providers within a month of receipt of this notice. Future updates or amendments to the housing element should be sent within a month after adoption. When submitting copies of housing elements to service providers the Department further recommends inclusion of a summary/quantification of the local government's regional housing need allocation and any other appropriate housing information. Moreover, to effectively implement the law, local governments should consult with water and sewer providers during the development and update of the housing element, as well as sending copies of the adopted plan. This will facilitate effective coordination between local planning and water and sewer service functions to ensure adequate water and sewer capacity is available to accommodate housing needs, especially housing for lower-income households.

Chapter 727, Statutes of 2005 – Water and Sewer Service Priority

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For water and sewer providers, Chapter 727 establishes specific procedural requirements to facilitate implementation, such as:

1. Requiring water and sewer providers to adopt written policies and procedures, **no later than July 1, 2006**, that grant priority to proposed development that includes housing affordable to lower-income households. For private water and sewer companies regulated by the Public Utilities Commission, the commission shall adopt written policies and procedures for use by those companies in a manner consistent with the statute.
2. Prohibiting water and sewer providers from denying or conditioning the approval or reducing the amount of service for an application for development that includes housing affordable to lower-income households, unless specific written findings are made.
3. Requiring Urban Water Management Plans to include projected water use for single-family and multifamily housing needed for lower-income households.

The Department hopes this information is helpful. The amended statutory language is enclosed as Attachment 1. Attachments 2 and 3 contain a summary of California's deepening housing crisis and an overview of housing element law, respectively. Also, a copy of the legislation can be found on the Department's website: www.hcd.ca.gov/hpd. Copies of published bills from the 2005 session can be obtained from the Senate's website: www.senate.ca.gov or the Legislative Bill Room at (916) 445-2323. If you have any questions or would like additional information or technical assistance, please contact Paul Mc Dougall, of our staff, at (916) 445-4728.

Attachments

ATTACHMENT 1

**Statutory Language: Chapter 727, Statutes of 2005
(SB 1087)**

CHAPTER 727 amended Government Code Section 65589.7 and amended Water Code Section 10631.1. The following shows changes or additions in italics/underlined and deletions indicated by asterisks.

Government Code Section 65589.7

- (a) The housing element adopted by the legislative body and any amendments made to that element shall be *immediately* delivered to all public agencies or private entities that provide water **** or sewer services *for municipal and industrial uses, including residential,* within the territory of the legislative body. Each public agency or private entity providing water or sewer services shall grant a priority for the provision of these services to proposed developments that ***** *include housing units affordable to lower income households.*
- (b) *A public agency or private entity providing water or sewer services shall adopt written policies and procedures, not later than July 1, 2006, and at least once every five years thereafter, with specific objective standards for provision of services in conformance with this section. For private water and sewer companies regulated by the Public Utilities Commission, the commission shall adopt written policies and procedures for use by those companies in a manner consistent with this section. The policies and procedures shall take into account all of the following:*
- (1) *Regulations and restrictions adopted pursuant to Chapter 3 (commencing with Section 350) of Division 1 of the Water Code, relating to water shortage emergencies.*
 - (2) *The availability of water supplies as determined by the public agency or private entity pursuant to an urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.*
 - (3) *Plans, documents, and information relied upon by the public agency or private entity that is not an "urban water supplier," as defined in Section 10617 of the Water Code, or that provides sewer service, that provide a reasonable basis for making service determinations.*
- (c) *A public agency or private entity that provides water or sewer services shall not deny or condition the approval of an application for services to, or reduce the amount of services applied for by, a proposed development that includes housing units affordable to lower income households unless the public agency or private entity makes specific written findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following:*

- (1) The public agency or private entity providing water service does not have "sufficient water supply," as defined in paragraph (2) of subdivision (a) of Section 66473.7, or is operating under a water shortage emergency as defined in Section 350 of the Water Code, or does not have sufficient water treatment or distribution capacity, to serve the needs of the proposed development, as demonstrated by a written engineering analysis and report.
 - (2) The public agency or private entity providing water service is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections.
 - (3) The public agency or private entity providing sewer service does not have sufficient treatment or collection capacity, as demonstrated by a written engineering analysis and report on the condition of the treatment or collection works, to serve the needs of the proposed development.
 - (4) The public agency or private entity providing sewer service is under an order issued by a regional water quality control board that prohibits new sewer connections.
 - (5) The applicant has failed to agree to reasonable terms and conditions relating to the provision of service generally applicable to development projects seeking service from the public agency or private entity, including, but not limited to, the requirements of local, state, or federal laws and regulations or payment of a fee or charge imposed pursuant to Section 66013.
- (d) The following definitions apply for purposes of this section:
- (1) "Proposed developments that include housing units affordable to lower income households" means that dwelling units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code.
 - (2) "Water or sewer services" means supplying service through a pipe or other constructed conveyance for a residential purpose, and does not include the sale of water for human consumption by a water supplier to another water supplier for resale. As used in this section, "water service **** " provided by a public agency or private entity applies only to water supplied from public water systems subject to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

- (e) This section is intended to neither enlarge nor diminish the existing authority of a city, county, or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water **** or sewer services shall neither invalidate any action or approval of a development project nor exempt a public agency or private entity from the obligations under this section. The special districts which provide water or sewer services related to development, as defined in subdivision (e) of Section 56426, are included within this section.

70 The Legislature finds and declares that this section shall be applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is a matter of vital statewide importance.

Water Code Section 10631.17

- (a) The water use projections required by Section 10631 shall include projected water use for single-family and multifamily residential housing needed for lower income households, as defined in Section 50079.5 of the Health and Safety Code, as identified in the housing element of any city, county, or city and county in the service area of the supplier.

70 It is the intent of the Legislature that the identification of projected water use for single-family and multifamily residential housing for lower income households will assist a supplier in complying with the requirement under Section 65589.7 of the Government Code to grant a priority for the provision of service to housing units affordable to lower income households.

Legislative Finding and Declaration

SECTION 3 of CHAPTER 727:

The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

ATTACHMENT 2

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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California's Deepening Housing Crisis

High Demand/Low Supply

California continues to experience very high rates of population growth and further tightening of its housing markets. Even encompassing the recession of the early 1990s, California's population grew by an average approximating 450,000 people annually and is projected to gain around 600,000 annually over the next decade.¹ As of January 1, 2005, California's population was 36,810,358 which increased by 539,267 people in 2004.² The population increased 1.5 percent from the calendar year 2004, which was lower than the 1.8 percent growth between 2003 and 2004.³ As in 2001, the United States became home to more than one million immigrants in 2002. California was home to the largest number (291,191 or 27.4 percent) of the 2002 immigrants.⁴

Housing production has not kept pace with the State's housing needs, particularly in the coastal metropolitan areas and housing need has worsened, especially for renter households and low-income owner households throughout the State. During the 1980s, 2.1 million units were built whereas the 1990s saw only 1.1 million units built. While the average annual need is projected at approximately 220,000 housing units, construction has lagged substantively below the need. Since 1999, less than 170,000 residential new construction permits have been issued each year. During 2004, 212,960 new homes and apartments were built, representing the highest production since 1989.⁵

The greatest production gap is in multifamily housing. Multifamily development only accounted for approximately a quarter of all new units during the 1990s, a drop of nearly 70 percent from the levels of the 1980s. Since 2000, the number of multifamily units has increased slightly, totaling approximately 28 percent of all new units constructed.⁶

¹ State of California, Department of Finance, Population Projections by Race/Ethnicity for California and Its Counties 2000–2050, Sacramento, California, May 2004.

² State of California, Department of Finance, *E-5 City/county Population and Housing Estimates, 2005, Revised 2001-2004 DRU Benchmark*. Sacramento, California, May 2005.

³ State of California, Department of Finance, *E-1 City/County Population Estimates, with Annual Percent Change, January 1, 2004 and 2005*. Sacramento, California, May 2005.

⁴ State of California, Department of Finance, *Legal Immigration of California in 2002*. Sacramento, California, October 2003.

⁵ Construction Industry Research Board, *California Construction Review*, May 31, 2005.

⁶ *Ibid*

Increasing Housing Costs/Decreasing Homeownership

California's homeownership rate in 2004 was the second lowest in the nation (59.7 percent) and 10 percentage points lower than the national homeownership rate (69 percent).⁷ As of December 2005, only 14 percent of California's households could afford to buy the median priced single-family home, while nationwide, affordability was 49 percent⁸. The California Association of Realtors reported December 2005's median price of an existing, single-family detached home in California was \$548,430 representing a 16 percent increase over December 2004's median price of \$474,270.⁹ The disparity between housing production and need has resulted in double-digit year-to-year percentage increases in the median price over recent years.¹⁰ California households, with a median household income of \$54,140, are \$73,810 short of the \$127,950 qualifying income needed to purchase a median-priced home at \$545,910 in California, according to the California Association of Realtors Homebuyer Income Gap Index™ (HIGI) report for the third quarter of 2005.¹¹ Following is a comparison of several county and community median home prices reported for December 2005 and 2004 to reflect regional differences in the State.¹²

County	Median Price	% Change from Prior Year
Riverside/San Bernardino	\$394,790	20.7%
Los Angeles	\$552,760	19.3%
Central Valley	\$354,790	17.0%
Orange	\$702,290	12.0%
Santa Clara	\$734,950	11.4%
Sacramento	\$379,010	9.0%

Growing Income Inequality

While housing prices have been escalating, numerous studies have documented a widening gap in earnings reported by low-income versus high-income households throughout the nation. The share of reported earned income attributable to the top 20 percent of taxpayers has been rising whereas it has been falling for the bottom 80 percent.¹³

⁷ US Census Bureau, Housing Vacancies and Homeownership Annual Statistics, 2004.

⁸ California Association of Realtors, *Press Release*, February 9, 2006, <http://www.car.org/index.php?id=MzU5Mjg=>.

⁹ Ibid

¹⁰ California Association of Realtors, *Press Release*, February 25, 2005.

¹¹ California Association of Realtors, *Press Release*, November 1, 2005, <http://www.car.org/index.php?id=MzU2MjY=>.

¹² California Association of Realtors, *Press Release*, February 9, 2006

¹³ *California's Changing Income Distribution*, Office of the Legislative Analyst, State of California, August 2000.

Rent/Wage Gap/Tight Housing Market

California is second only to Massachusetts in terms of the hourly wage needed to afford a two-bedroom apartment at fair market rent (FMR). In California, an extremely low-income household (earning \$19,327, 30 percent of the Area Median Income of \$64,422) can afford monthly rent up to \$483, while the FMR for a two bedroom unit is \$1,104. A worker earning minimum wage (\$6.75 per hour) must work 126 hours per week in order to afford the average two-bedroom unit. The Housing Wage in California is \$21.24; this is the amount a full time (40 hours per week) worker must earn per hour in order to afford the average two-bedroom unit, and is more than three times (315 percent) the minimum wage (\$6.75 per hour).¹⁴

One of the main factors that accommodated the housing shortfall in the 1990s was a reduction in both homeowner and rental vacancy rates, demonstrated by the significant drop in vacancy rates between 1990 and 2001. The homeowner vacancy rate decreased from 1.8 to 1.2 percent, while the rental vacancy rate decreased from 6.0 percent to 5.4 percent during the same time period.¹⁵ Vacant units were used to absorb a significant amount of the housing demand during the later half of the 1990s, resulting in extremely tight housing markets limiting mobility in many populous metropolitan areas; an option that is no longer available to help address California's housing shortage.

Overpaying

Over four out of ten of all California households are renters, and renters face the greatest affordability challenges. In 1997, nearly a quarter of the renter households in the State's metropolitan areas (1 million out of 4.2 million households) spent more than half of their income on rent.¹⁶ HUD (Census 2000) data indicates that 35 percent of California households and 40 percent of renters spend more than 30 percent of their income on housing.¹⁷ In 2002, almost half a million of California's working families were "officially" poor with incomes below the federal poverty level (FPL). Many more families (nearly 1.4 million) with incomes above the FPL, up to twice the FPL, still fell short of earning an income level to provide an adequate standard of living.¹⁸

¹⁴ *Out of Reach 2004*, National Low Income Housing Coalition.

¹⁵ U.S. Census Bureau, *Housing Vacancies and Homeownership Statistics 2002; Homeowner and Rental Vacancies by State 1986 to 2003* (Tables 3 and 4).

¹⁶ *Locked Out: California's Affordable Housing Crisis*, California Budget Project, May 2000.

¹⁷ State of the Cities Data Systems: *Comprehensive Housing Affordability Strategy (CHAS) Data*, Census 2000.

¹⁸ *Working Hard, Falling Short: Investing in California's Working Families*, California Budget Project, January 2005

In many counties, fair market rents exceed the monthly payments families receive from CalWORKs, (the State's cash assistance program for poor families), or the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program, which provides cash assistance to the elderly, blind, and disabled.¹⁹ The two-bedroom FMR exceeds the CalWORKs grant for a family of three in 31 counties, and equals at least 80 percent of the grant level in every California county. In 2003, FMR for a studio apartment exceeds the SSI/SSP grant for an elderly, blind, or disabled recipient in 13 counties, and exceeds 50 percent of the grant in 40 counties.²⁰

Overcrowding

Between 1980 and 1990, the percentage of overcrowded households in California nearly doubled from 6.9 percent to 12.3 percent. Census 2000 reports more than 15 percent of California households were overcrowded with overcrowding most common among low-income households, and most prevalent in renter housing. Roughly 24 percent of renter households statewide were overcrowded; in some counties, nearly a third of renter households are overcrowded. One quarter of all overcrowded renter households contained more than one family. Of all owner and renter overcrowded households, estimates are that more than half are severely overcrowded (more than 1.5 persons per room). Overcrowding increases health and safety concerns and stresses the condition of the housing stock and infrastructure.

Homeless

Although reliable counts of homeless persons are illusive, in 1997 as many as 360,000 Californians were estimated to be homeless.²¹ In the worst circumstances, homeless persons live in places not meant for human habitation: cars, parks, sidewalks, stairwells, and door stoops. An estimated 80,000 to 95,000 children are homeless in California, making the percentage of homeless children greater today than at any time since the Great Depression.²² Many persons in need of emergency shelter and transitional housing are employed but can not find permanent housing that is affordable.

¹⁹ *Locked Out 2004: California's Affordable Housing Crisis*, California Budget Project, January 2004.

²⁰ *Ibid*

²¹ *California Housing Markets 1990-1997*, State Housing Plan Update, State of California Department of Housing & Community Development, 1998.

²² California Housing Law Project, Facts and Issues; Homeless Children; www.housingadvocates.org/default.asp?ID=170

Farmworkers

Employment in California agriculture increased 22 percent between 1985 and 2000. As of September 2000, California farm employment peaked at 486,000.²³ California's total farmworker population (including family members) is estimated to exceed 900,000. Approximately 60 percent of farmworkers are accompanied by a spouse, child or parent. The median number of children in families of farmworker parents is two.²⁴ Farmworkers and their families cope with substandard housing conditions fraught with serious health and sanitation problems. To avoid harassment, they often live out of sight in undeveloped canyons, fields, squatter camps, and back houses.

Privately owned employee housing (licensed by California) has been steadily diminishing. In 1976, employers owned 1,254 employee housing developments sheltering an estimated 45,000 farmworkers and household members. In 2000, there were only approximately 1,000 licensed employee housing developments with capacity for 23,000 farmworkers and household members.

Assisted Housing/Preservation of At-Risk Units

California received fewer federal housing assistance dollars in 1999 for each individual living below the federal poverty level than all but one of the ten largest states. While the federal government spent, on average, \$286 on housing assistance for each impoverished person, California received only \$171 per impoverished person.²⁵ In 2000, 465,340 families were on waiting lists for public housing and rental subsidies in 20 local jurisdictions; only about 130,000 families now live in existing public housing or receive federal tenant-based subsidies in these same 20 jurisdictions. At the rate of two children in each family waiting for housing, almost a million children are on California's housing waiting lists.²⁶

The shortage of subsidized housing and the potential loss of affordability restrictions on a substantial portion of the government-assisted rental housing stock estimated to house more than 375,000 persons is one of California's foremost housing problems. Over the 1990's, thousands of federally-assisted privately-owned rental housing developments have terminated affordability restrictions. Since 1996, California has lost more than 29,000 affordable units due to owners electing to opt-out of subsidy contracts and prepay loans.²⁷ The risk of owners converting units with subsidized rents for market-rate rents is greatest in the State's highest cost rental markets and is both immediate and continuing beyond 2010. In California, the number of federally assisted units approximates

²³ http://migration.ucdavis.edu/rmn/rural_data/housing/housing.html

²⁴ *California's Housing Markets 1990-1997*; California Department of Housing & Community Development, January 1999.

²⁵ *Ibid*

²⁶ "The Long Wait, The Critical Shortage of Housing in California," K. Williams, Corp. for Supportive Housing, June 2000.

²⁷ California Housing Partnership Corporation, June 2003.

150,000.²⁸ California's experience with market-rate conversion of the older-assisted stock suggests that unless new incentives are created to retain Section 8 assistance, 15 to 20 percent of owners of Section 8 inventory are likely to opt-out and terminate their relationship with HUD. Due to tight rental markets in many parts of California, the State has had a level of prepayment and conversion among older-assisted HUD properties that is triple the amount of any other State.

²⁸ California Housing Partnership Corporation, June 2003.

ATTACHMENT 3

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**OVERVIEW OF STATE HOUSING ELEMENT LAW**

State law requires each city and county to adopt a general plan containing at least seven elements including housing. Unlike the other mandatory general plan elements, the housing element, required to be updated every five years, is subject to detailed statutory requirements and mandatory review by a State agency (Department of Housing and Community Development). Housing elements have been mandatory portions of general plans since 1969. This reflects the statutory recognition that the availability of housing is a matter of statewide importance and that cooperation between government and the private sector is critical to attainment of the State's housing goals. The regulation of the housing supply through planning and zoning powers affects the State's ability to achieve its housing goal of "decent housing and a suitable living environment for every California family" and is critical to the State's long-term economic competitiveness.

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. Housing element law is the State's primary market-based strategy to increase housing supply and choice. The law recognizes that in order for the private sector to adequately address housing needs and demand, local governments must adopt land-use plans and regulatory schemes that provide opportunities for, and do not unduly constrain, housing development.

The Department is required to allocate the region's share of the statewide housing need to Councils of Governments (COG) based on Department of Finance population projections and regional population forecasts used in preparing regional transportation plans. The COG develops a Regional Housing Need Plan (RHNP) allocating the region's share of the statewide need to the cities and counties within the region. The RHNP should promote the following objectives to:

- (1) Increase the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner;
- (2) Promote infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns; and
- (3) Promote an improved intraregional relationship between jobs and housing.

Housing element law recognizes the most critical decisions regarding housing development occur at the local level within the context of the periodically updated general plan. The RHNP component of the general plan requires local governments to balance the need for growth, including the need for additional housing, against other competing local interests. The RHNP process of housing element law promotes the State's interest in encouraging open markets and providing opportunities for the private sector to address the State's housing demand, while leaving the ultimate decision about how and where to plan for growth at the regional and local levels. While land-use planning is fundamentally a local issue, the availability of housing is a matter of statewide importance. The RHNP process requires local governments to be accountable for ensuring that projected housing needs can be accommodated. The process maintains local control over where and what type of development should occur in local communities while providing the opportunity for the private sector to meet market demand.

In general, a housing element must at least include the following components:

A Housing Needs Assessment including:


- Existing Needs - The number of households overpaying for housing, living in overcrowded conditions, or with special housing needs (e.g., the elderly, large families, homeless) the number of housing units that need rehabilitation, and assisted affordable units at-risk of converting to market-rate.
- Projected Needs - The city or county's share of the regional housing need as established in the RHNP prepared by the COG. The allocation establishes the number of new units needed, by income category, to accommodate expected population growth over the planning period of the housing element. The RHNP provides a benchmark for evaluating the adequacy of local zoning and regulatory actions to ensure each local government is providing sufficient appropriately designated land and opportunities for housing development to address population growth and job generation.

A Sites Inventory and Analysis:

The element must include a detailed land inventory and analysis including a sites specific inventory listing properties, zoning and general plan designation, size and existing uses; a general analysis of environmental constraints and the availability of infrastructure, and evaluation of the suitability, availability and realistic development capacity of sites to accommodate the jurisdiction's share of the regional housing need by income level. If the analysis does not demonstrate adequate sites, appropriately zoned to meet the jurisdictions share of the regional housing need, by income level, the element must include a program to provide the needed sites including providing zoning that allows owner-occupied and rental multifamily uses "by-right" with minimum densities and development standards that allow at least 16 units per site for sites needed to address the housing need for lower-income households.

 **An Analysis of Constraints on Housing:**

Governmental - Includes land-use controls, fees and exactions, on- and off-site improvement requirements, building codes and their enforcement, permit and processing procedures, and potential constraints on the development or improvement of housing for persons with disabilities.

 **Housing Programs:**

Programs are required to identify adequate sites to accommodate the locality's share of the regional housing need; assist in the development of housing for low- and moderate-income households; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote equal housing opportunity; and preserve the at-risk units identified.

 **Quantified Objectives:**

Estimates the maximum number of units, by income level, to be constructed, rehabilitated, and conserved over the planning period of the element.