



Housing Policy and Practices Advisory Group

Staff Report: Zoning Appropriate for Lower-Income

Overview: The determination of the appropriateness of zoning to accommodate lower-income need is one of the most challenging areas of the site inventory statute. While most jurisdictions use the default densities set in statute to address this requirement, some unintended consequences as well as misunderstandings of the law have caused controversy and debate at all levels of government.

HCD Preliminary Proposals:

A) HCD will convene a subgroup specifically to look at the density issues relating to the analysis for zoning appropriate for lower-income. The objectives of the group will be to determine if density is the best proxy, and develop potential amendments to the statute.

Type of Recommended Change			
<input type="checkbox"/> Policy	<input type="checkbox"/> Procedural	<input checked="" type="checkbox"/> Legislative	<input type="checkbox"/> No Change

B) HCD to continue to provide guidance and assistance but no other statute changes would be needed.

Type of Recommended Change			
<input checked="" type="checkbox"/> Policy	<input type="checkbox"/> Procedural	<input type="checkbox"/> Legislative	<input checked="" type="checkbox"/> No Change

Background Information:

Relevant Government Code Sections:

65583.2.

(c)(3)For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

- (i) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.
- (ii) For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 10 units per acre.
- (iii) For a suburban jurisdiction: sites allowing at least 20 units per acre.
- (iv) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

(d) For purposes of this section, a metropolitan county, nonmetropolitan county, and nonmetropolitan county with a micropolitan area shall be as determined by the United States Census Bureau. A nonmetropolitan county with a micropolitan area includes the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) (1) Except as provided in paragraph (2), a jurisdiction shall be considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it shall be considered metropolitan. A county, not including the City and County of San Francisco, shall be considered suburban unless the county is in an MSA of 2,000,000 or greater in population in which case the county shall be considered metropolitan.

(2) (A) (i) Notwithstanding paragraph (1), if a county that is in the San Francisco-Oakland-Fremont California MSA has a population of less than 400,000, that county shall be considered suburban. If this county includes an incorporated city that has a population of less than 100,000, this city shall also be considered suburban. This paragraph shall apply to a housing element revision cycle, as described in subparagraph (A) of paragraph (3) of subdivision (e) of Section 65588, that is in effect from July 1, 2014, to December 31, 2023, inclusive.

(ii) A county subject to this subparagraph shall utilize the sum existing in the county's housing trust fund as of June 30, 2013, for the development and preservation of housing affordable to low- and very low income households.

(B) A jurisdiction that is classified as suburban pursuant to this paragraph shall report to the Assembly Committee on Housing and Community Development, the Senate Committee on Transportation and Housing, and the Department of Housing and Community Development regarding its progress in developing low- and very low income housing consistent with the requirements of Section 65400. The report shall be provided twice, once, on or before December 31, 2019, which report shall address the initial four years of the housing element cycle, and a second time, on or before December 31, 2023, which report shall address the subsequent four years of the housing element cycle and the cycle as a whole. The reports shall be provided consistent with the requirements of Section 9795.

(f) A jurisdiction shall be considered metropolitan if the jurisdiction does not meet the requirements for “suburban area” above and is located in a MSA of 2,000,000 or greater in population, unless that jurisdiction’s population is less than 25,000 in which case it shall be considered suburban.

(g) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

Discussion:

The default density option was established as part of the Housing Element Working Group in 2003 for the purpose of providing flexibility to jurisdictions and greater certainty regarding a standard for HCD review. Pursuant to Government Code Section 65583.2(c)(3), the housing element must demonstrate appropriate densities to accommodate a jurisdiction’s regional need for lower-income households. Local jurisdictions have options to meet this requirement. A jurisdiction may provide an analysis based on factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households. A jurisdiction may alternatively use the optional statutory “default” density standards deemed appropriate to accommodate housing for lower income households. The default density option is not a mandated density. Default densities are established using population based criteria as detailed in 65583.2(b)(i) through (iv) and 65583.2(d) through (f). The default density standard provides a streamlined option for local governments to meet the density requirement. No analysis is required to establish the appropriateness of the default density and the Department must accept that density as appropriate in its review

The issue of densities that are appropriate to accommodate the lower-income need has been a point of contention across the State. Common issues include:

- The misunderstanding on the part of local governments and advocacy groups that “default densities” are not state mandated density requirements.
- Uncertainty on what constitute an “adequate” analysis.
- Default Densities are not realistic in rural areas that are in large MSA’s i.e. Central Valley farming communities within the Fresno MSA.
- Higher Densities alone do not necessarily lead to affordable housing.

- Unincorporated portions of a County which is part of a MSA (e.g. Sutter County) are subject to the minimum density requirement of 20 units/acre when rezoning. As this density is not typically built or supported by the market or available infrastructure, sites with this zoning density are unlikely to be developed in the planning period.
- In super- rural and rural counties, the rezone requirement density is higher than the default density.

Relevant survey information:

- Allowing regions to meet housing and SCS goals following SCS growth patterns instead of default densities is the most pressing matter for the future success of low-income housing in California.
- Given the unfortunate community resistance to higher density, HCD should maintain, at a minimum, the default densities currently assigned to jurisdictions.
- Jurisdictions should analyze whether higher densities could maximize existing land resources to promote other environmental and transportation goals, and not only consider financial feasibility.
- Default densities for some cities are too low so are irrelevant. Consider higher density defaults to maximize existing land resources.
- Revision of default densities should include eliminating them and returning to a model where jurisdictions had to justify all densities to HCD with data that indicates that affordable housing can actually be built at those densities in those places.
- Local agencies must have the ability to override state mandated density when the effect on community infrastructure is too deleterious.
- Change the default density for suburban cities with 100,000 or more residents from 30 du/ac to 20 du/ac. This would give cities more flexibility in land use planning and encourage the development of affordable housing.
- Default Densities should not be lowered. A revision might allow for higher densities for mixed use projects.
- Probable use of density bonus should be included in the calculation of fulfilling the RNHA numbers.
- While not perfect, default densities are an important gauge of potential affordability.
- Default densities should be augmented by other factors that influence affordability such as parking requirements, availability of high quality transit.
- Default densities are very troubling in rural areas. Opposition to RNHA numbers is opposition to big block density. Suggest changes to policy that allow low rural density housing in keeping with community character.
- For communities with very high property values, higher densities may only result in luxury condo/apartment developments. For lower-income communities (with correspondingly lower property values) a "floor" of 22 or 30 du/ac may result in no development because it is economically infeasible.

- In addition to financial feasibility, the analysis should consider the role of higher density to maximize existing land resources to promote other environmental and transportation goals.
- The people who live in a community should be the ones to determine directly how their local community is to grow and develop. People who do not want high-density are not considered.
- Sometimes higher density is not a proxy for affordability with the changes in housing trends. Developing other ways to determine affordability is important to consider.
- Revisit the decision to only base affordability on density, and to not count projected inclusionary units as affordable.
- The economics are not supporting the default density, and therefore, instead of encouraging building of affordable sites, it may be making indefinite vacant parcels.