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DIVISION OF HOUSING POLICY DEVELOPMENT**

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**April 23, 2020**

**MEMORANDUM FOR:** Planning Directors and Interested Parties

**FROM:** Zachary Olmstead, Deputy Director  
Division of Housing Policy Development

**SUBJECT:** **AB 686 Summary of Requirements in  
Housing Element Law  
Government Code Section 8899.50,  
65583(c)(5), 65583(c)(10), 65583.2(a)**

AB 686 creates new requirements for all state and local agencies (including, but not limited to, all cities, counties, cities and counties, and housing authorities) to ensure that their laws, programs and activities affirmatively further fair housing, and that they take no action inconsistent with this obligation. AB 686 also creates new requirements specifically in Housing Element Law, which is the focus of this document.

Beginning January 1, 2019, all housing elements must now include a program that promotes and affirmatively furthers fair housing opportunities throughout the community for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (FEHA), Government Code Section 65008, and any other state and federal fair housing and planning law.<sup>1</sup>

Additionally, all housing elements due on or after January 1, 2021, must contain an Assessment of Fair Housing (AFH) consistent with the core elements of the analysis required by [the federal Affirmatively Furthering Fair Housing \(AFFH\) Final Rule of July 16, 2015](#).<sup>2</sup> Many important terms relevant to the AFH are defined in HUD's 2015 AFFH Rule.<sup>3</sup> The housing element land inventory and identification of sites must be consistent with a jurisdiction's duty to AFFH and the findings of its AFH.

Under state law, affirmatively further fair housing means "taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."<sup>4</sup>

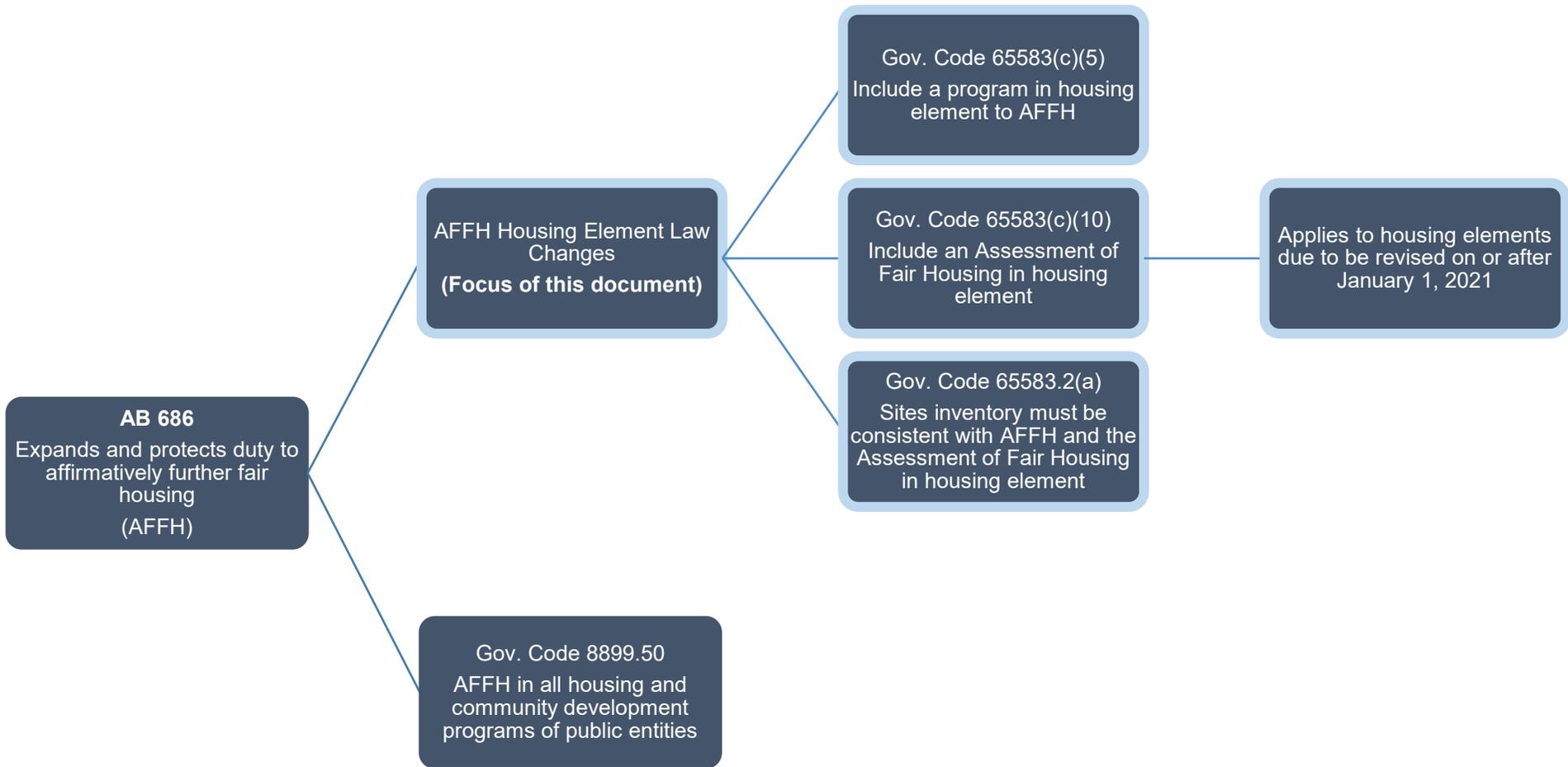
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<sup>1</sup> See page 10 for a list of applicable protected characteristics.

<sup>2</sup> Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015).

<sup>3</sup> 80 Fed. Reg. at 42,353-55.

<sup>4</sup> Gov. Code § 8899.50 (a)(1).



## AB 686 Housing Element Requirements

All housing elements must now include a program that promotes and affirmatively furthers fair housing opportunities throughout the community. AB 686 also requires that all housing elements due on or after January 1, 2021, must contain an Assessment of Fair Housing. Finally, the housing element land inventory and identification of sites must be consistent with a jurisdiction's duty to AFFH and the findings of its Assessment of Fair Housing. These requirements are detailed below.

### 1. Include a Program that Affirmatively Furthers Fair Housing and Promotes Housing Opportunities throughout the Community for Protected Classes (applies to housing elements beginning January 1, 2019)<sup>5</sup>

#### A program to AFFH must include:

- a. Meaningful Actions:<sup>6</sup> Affirmatively furthering fair housing (AFFH) includes taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity for all groups protected by state and federal law by:
  - i. Replacing segregated living patterns with integrated and balanced living patterns
  - ii. Transforming racially and ethnically concentrated areas of poverty into areas of opportunity (without displacement)
  - iii. Fostering and maintaining compliance with civil rights and fair housing laws
  - iv. Note: Meaningful actions include actions that will promote fair housing opportunities for low- and moderate- income tenants and tenants of affordable housing, including subsidized housing.
- b. Timeline of Concrete Actions: As with other programs of the housing element, the program(s) to AFFH must include a schedule of concrete actions and a timeline for implementation.<sup>7</sup>
- c. No Actions Inconsistent with AFFH: The jurisdiction must not take any action that is materially inconsistent with its obligation to affirmatively further fair housing.<sup>8</sup>
  - i. Existing state law requires that housing elements are internally consistent and that the housing element and the other components of a jurisdiction's General Plan are internally consistent.<sup>9</sup> AB 686 specifically requires that jurisdictions take no action that is materially inconsistent with its obligation to affirmatively further fair housing. Not only does this apply to other policies, programs, and actions in the housing element, and the other General Plan elements, it broadly applies to all of the jurisdiction's activities relating to housing and community development.<sup>10</sup>

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<sup>5</sup> Gov. Code § 65583 (c)(5)

<sup>6</sup> Gov. Code § 8899.50 (a)(1)

<sup>7</sup> Gov. Code § 65583 (c)

<sup>8</sup> Gov. Code, § 65583 (c)(10)(A)

<sup>9</sup> Gov. Code § 65583 (c)(7)

<sup>10</sup> Gov. Code, § 8890.50 (b)

## 2. Conduct an Assessment of Fair Housing<sup>11</sup>

- a. AB 686 amended Government Code Section 65583 to include Section 65583 (c) (10) (A) (i) through (iv) which specifies the components of the required assessment of fair housing (AFH). These components are to be included in the appropriate existing sections required in a jurisdiction's housing element. Below, the components are organized by recommended housing element section:
  - i. *Recommended Housing Element Section: Needs Assessment*
    1. (10) (A) (i). A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and outreach capacity.
    2. (10) (A) (ii). An analysis of available federal, state, and local data and local knowledge to identify:
      - a. Integration and segregation patterns and trends
      - b. Racially or ethnically concentrated areas of poverty
      - c. Disparities in access to opportunity
      - d. Disproportionate housing needs within the jurisdiction, including displacement risk. Analyze fair housing data, including standard publicly available data, as well as local data and knowledge. This analysis can be conducted in concert with other data collection and analysis that is conducted as part of the housing element needs assessment
    3. (10) (A) (iii). An assessment of the contributing factors for the fair housing issues identified under clause (ii).
  - ii. *Recommended Housing Element Section: Needs Assessment Or Constraints*
    1. (10) (A) (iv). An identification of the jurisdiction's fair housing priorities and goals, with priority to those factors identified in clause (iii) that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance. This requirement includes identification of metrics and milestones for determining what fair housing results will be achieved.
  - ii. *Recommended Housing Element Section: Programs*
    1. (10) (A) (v). Strategies and actions to implement those priorities and goals identified in the housing needs assessment (per Section 65583 (c) (10) (A) (i-iii)). These strategies and actions may include, but are not limited to:<sup>12</sup>
      - a. Enhancing mobility strategies and promoting inclusion for protected classes
      - b. Encouraging development of new affordable housing in high-resource areas
      - c. Place-based strategies to encourage community revitalization, including preservation of existing affordable housing
      - d. Protecting existing residents from displacement
    2. These actions, taken together, must address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of

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<sup>11</sup> Gov. Code, § 65583 (c)(10)

<sup>12</sup> See page 11 for further examples of strategies to AFFH.

opportunity, fostering and maintaining compliance with civil rights, and must affirmatively further fair housing.

**b. Notes on AFH Preparation:**

- i. The AFH requirements shall be interpreted consistent with the Affirmatively Furthering Fair Housing (AFFH) Final Rule and accompanying commentary published by the United States Department of Housing and Urban Development contained in Volume 80 of the Federal Register, Number 136, pages 42272 to 42371, inclusive, dated July 16, 2015.<sup>13</sup>
  1. HUD's [AFFH Rule Guidebook](#) (Dec. 2015) provides useful information about how to perform an AFH.
  2. Amendment, suspension, or revocation of the HUD 2015 AFFH Rule does not impact the requirement under state law to interpret AFH requirements consistent with the 2015 AFFH Rule.
- ii. Development of an AFH must include meaningful community participation, consultation, and coordination that is integrated with the broader stakeholder outreach and community participation process for the overall housing element. This engagement should be consistent with the requirements set forth in the AFFH Rule.<sup>14</sup> Key stakeholders and collaborators to consider:
  1. Public Housing Authorities (PHAs) in California are subject to the general mandate of AB 686 (as well as the federal AFFH rule) and should collaborate with their housing element jurisdiction(s) as part of their AFFH obligation. Local jurisdictions should engage with their PHAs at the earliest opportunity to ensure that PHAs are an integral part of the jurisdiction's AFH analysis and goal setting.
  2. Housing and community development providers and advocacy groups.
  3. Community members that are members of protected classes and advocacy organizations that represent protected classes.
- iii. Jurisdictions that have prepared an Analysis of Impediments to Fair Housing Choice (AI) or AFH in conjunction with their participation in federal housing programs may adapt relevant sections into their housing element AFH.<sup>15</sup> However, if the AI or AFH was not completed pursuant to the 2015 AFFH Final Rule, adaptation of the relevant sections may not be sufficient to meet the jurisdiction's obligations under section 65583(c)(10).

**3. Prepare the Housing Element Land Inventory and Identification of Sites through the Lens of Affirmatively Furthering Fair Housing<sup>16</sup>**

- a. Prior to AB 686, Housing Element Law has required jurisdictions to identify adequate sites, appropriately zoned and available to accommodate its Regional Housing Need Allocation (RHNA). The housing element must demonstrate that there are adequate sites zoned for the development of housing for households at each income level sufficient to accommodate the number of new housing units needed at each income level as identified in the RHNA.

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<sup>13</sup> Gov. Code, § 65583 (c) (10) (A), citing Gov. Code § 8899.50

<sup>14</sup> 24 CFR § 5.158

<sup>15</sup> Gov. Code, § 65583 (c)(10)(B)

<sup>16</sup> Gov. Code, § 65583.2 (a)

- b.** AB 686 now requires that a jurisdiction identify sites throughout the community, in a manner that is consistent with its duty to affirmatively further fair housing (AFFH) and the findings of its AFH, pursuant to Section 65583(c)(10)(A). In the context of AFFH, the site identification requirement involves not only an analysis of site capacity to accommodate the RHNA, but also whether the 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.<sup>17</sup> At the most basic level, this requirement suggests two courses of action relating to the identification of sites:
- i.** Ensure that sites zoned to accommodate housing for lower-income households are not concentrated in lower resource areas and segregated concentrated areas of poverty, but rather dispersed throughout the community, including in areas with access to greater resources, amenities, and opportunity.
  - ii.** Where sites zoned to accommodate housing for lower-income households are located in lower resource areas and segregated concentrated areas of poverty, incorporating policies and programs in the housing element that are designed to remediate those conditions, including place-based strategies that create opportunity in areas of disinvestment (such as investments in enhanced infrastructure, services, schools, jobs, and other community needs).

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<sup>17</sup> Gov. Code, § 8890.50 (b)

## Supplemental Information

### Statutory Language:

#### Government Code 8899.50

(a) For purposes of this section, the following terms have the following meanings:

(1) "Affirmatively furthering fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.

(2) "Public agency" means all of the following:

(A) The state, including every state office, officer, department, division, bureau, board, and commission, including the California State University.

(B) A city, including a charter city, county, including a charter county, city and county, and a redevelopment successor agency.

(C) A public housing authority created pursuant to the Housing Authorities Law (Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code).

(D) A public housing agency, as defined in the United States Housing Act of 1937 (codified at 42 U.S.C. Sec. 1437 et seq.), as amended.

(E) Any other political subdivision of the state that is a grantee or subgrantee receiving funds provided by the United States Department of Housing and Urban Development under the Community Development Block Grant program, the Emergency Solutions Grants program, the HOME Investment Partnerships program, or the Housing Opportunities for Persons With AIDS program.

(b) A public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

(c) This section shall be interpreted consistent with the Affirmatively Furthering Fair Housing Final Rule and accompanying commentary published by the United States Department of Housing and Urban Development contained in Volume 80 of the Federal Register, Number 136, pages 42272 to 42371, inclusive, dated July 16, 2015. Subsequent amendment, suspension, or revocation of this Final Rule or its accompanying commentary by the federal government shall not impact the interpretation of this section.

(d) In selecting meaningful actions to fulfill the obligation to affirmatively further fair housing, this section does not require a public agency to take, or prohibit a public agency from taking, any one particular action.

## **Government Code 65583**

The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

### **Government Code 65583(c)**

(c) A program that sets forth a schedule of actions during the planning period, each with a timeline for implementation, that may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, the utilization of appropriate federal and state financing and subsidy programs when available, and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

#### **Government Code 65583(c)(5)**

(5) Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law.

#### **Government Code 65583(c)(10)**

(10) (A) Affirmatively further fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2. The program shall include an assessment of fair housing in the jurisdiction that shall include all of the following components:

- (i) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.
- (ii) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.
- (iii) An assessment of the contributing factors for the fair housing issues identified under clause (ii).

(iv) An identification of the jurisdiction's fair housing priorities and goals, giving highest priority to those factors identified in clause (iii) that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved.

(v) Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.

(B) A jurisdiction that completes or revises an assessment of fair housing pursuant to Subpart A (commencing with Section 5.150) of Part 5 of Subtitle A of Title 24 of the Code of Federal Regulations, as published in Volume 80 of the Federal Register, Number 136, page 42272, dated July 16, 2015, or an analysis of impediments to fair housing choice in accordance with the requirements of Section 91.225 of Title 24 of the Code of Federal Regulations in effect prior to August 17, 2015, may incorporate relevant portions of that assessment or revised assessment of fair housing or analysis or revised analysis of impediments to fair housing into its housing element.

(C) The requirements of this paragraph shall apply to housing elements due to be revised pursuant to Section 65588 on or after January 1, 2021.

#### **Government Code 65583.2(a)**

(a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites throughout the community, consistent with paragraph (10) of subdivision (c) of Section 65583, that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584.

### **Protected Classes Covered by the California Fair Employment and Housing Act**

Race, color, national origin, religion, sex, familial status, disability, age, ancestry, sexual orientation, gender identity, gender expression, genetic information, marital status, citizenship status, veteran or military status

- UNRUH: primary language, or immigration status, citizenship status  
Covered under the Unruh Civil Rights Act, which applies to most housing accommodations in California.

### **Protected Classes Covered by Government Code Section 65008**

- Race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information
- Government Code Section 65008 provides additional protections for income and financing characteristics in relation to planning and land use decisions:  
Local jurisdictions cannot take actions, enact or administer ordinances to deny or condition the enjoyment of residence, landownership, tenancy, or any other land use in the state because of:
  - The method of financing
  - The intended occupancy by persons who are very low, low, moderate, or middle income (income does not exceed 150 percent of the median income for the county)
  - Protected characteristics of the intended occupants

### **Protected Classes Covered by Federal Law**

Race, color, religion, national origin, sex, familial status, disability

**Examples of types of potential Affirmatively Furthering Fair Housing strategies include:**

- Mobility-based strategies to provide better access to opportunities for all members of the community, particularly protected classes
- Strategies to encourage development of new affordable housing in high resource areas
- Place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement
- Strategies to improve enforcement of fair housing laws, community outreach and engagement capacity, and fair housing resources
- Strategies to stem the tide of displacement, including robust tenant protections
- Strategies to address wet and dry utility infrastructure and service deficiencies in disadvantaged communities
- Strategies to mitigate negative environmental, neighborhood, housing, and health impacts associated with the siting and operation of “Locally Unwanted Land Uses” (e.g., industrial, agricultural, agricultural processing, waste storage and processing, energy production land uses, etc.) in and around disadvantaged neighborhoods and communities
- Strategies to preserve mobilehome parks
- Strategies to promote a range of community-based housing options for people with disabilities
- Strategies to prevent discriminatory evictions (e.g., just cause eviction protections)
- Adoption of inclusionary housing policies and/or other policies to facilitate the development of deed-restricted affordable housing that is integrated with market-rate housing
- Strategies to ensure affordable housing opportunities for people who have criminal history
- Promotion of policies that encourage community ownership and stewardship of land to develop affordable housing, such as community land trust models
- As part of a larger anti-gentrification and anti-displacement strategy, adoption of policies that promote opportunities for tenants to purchase their buildings upon notification of an intent to sell by their landlords

Remove constraints to and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Gov. Code 65583(c)(3), including:

- Ensuring affordable housing complies with federal and state requirements to build units accessible to people with disabilities
- Developing a program to subsidize the cost of reasonable modifications to make housing accessible for people with disabilities

**Examples of local policies that should be analyzed as potential impediments to fair housing choice:**

- Nuisance and/or crime-free multi-housing ordinances
- Ordinances that restrict the siting of family child-care facilities
- Shelter standards that unduly restrict the siting of emergency shelters
- Policies that restrict or prohibit religious gatherings or other religious activities in residential areas
- Ordinances that restrict or prohibit the siting of board-and-care homes (licensed and unlicensed) and sober-living homes