

Growth Requirements Under State Law

Issue Brief

Document #6, City of Davis General Plan / Housing Element Update

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This paper addresses the issues of:

- Is the City required to grow under State law?
- How many units are we required to accommodate?
- What if the City chooses not to grow and meet these requirements?

Is the City required to grow under State law?

California General Plan law requires each city and county to have land zoned to accommodate its fair share of the regional housing need. This share is also known as the Regional Housing Needs Allocation (RHNA). The jurisdiction is not required to make development happen, but it must facilitate housing production by ensuring that the land is available and that unnecessary development constraints have been removed. This means that such housing is permitted under zoning or the city has clearly committed to such zoning with a specified time frame, typically required in the first couple years of the Housing Element's timeframe. The fair-share requirements include an aggregate number of housing units comprised of specific amounts of units required at the low-income, moderate-income, and above-moderate-income levels.

The demonstration that land is available to meet the fair share requirement must be made as part of the City's update to our Housing Element of the General Plan. For Davis and other jurisdictions in the SACOG region, the Housing Element must be approved by the State Department of Housing and Community Development (HCD) and adopted by the City Council by June 30, 2008. The Housing Element must also include analysis of other local housing needs, constraints to meeting housing needs, and an overall housing program. If a jurisdiction's zoning ordinance does not have the necessary residential land available at the time that its Housing Element is adopted, the jurisdiction must include policies that state the timing and intent to rezone land at the required densities to meet the jurisdiction's fair share.

How many units are we required to accommodate?

At this time, we do not know what kind of fair share will be allocated to Davis for the 2006-2013 Housing Element cycle. In September 2006, SACOG received its regional fair-share requirements from the State of California Department of Housing and Community Development, based on employment and population trends within the State. In early 2007, SACOG may issue preliminary draft allocations to its local jurisdictions. By July 2007, the SACOG Board must adopt the plan for assigning the fair-share requirements to the cities and counties in the region. At this point of adoption, Davis will be formally assigned its fair-share requirement.

During the previous Housing Element cycle, the City of Davis had a total fair-share allocation of 1,962 units. That allocation included 79 very-low income units, 384 low-income units, 621 moderate-income units, and 878 above moderate income units. (The above moderate income units consisted of 45% of the total.) The City was able to demonstrate that it had land zoned for 2,382 units during the 2000-2006 period, sufficient to meet the fair share.

The implementation of a growth guideline adopted in a Council resolution in March 2005 of approximately 260 units per year, plus exempt housing, would allow for development of around

2,000 units during the current 7.5-year cycle. This number of units likely could not be accommodated on land currently zoned for residential purposes; however, this number could be accommodated within existing city limits with the approval of rezonings. See an associated informational paper titled “Residential Units to Count Toward Fair Share Requirements for Period From January 2006 Through June 2013.”

The regional housing needs allocation for the current (2006-2013) cycle is approximately 50 percent higher than the regional allocation for the previous cycle. In the previous cycle, SACOG was able to divide the allocation amongst the jurisdictions consistent with each general plan. It is unclear whether that can occur during the current cycle. City staff is closely monitoring the allocation process and participating in SACOG’s meetings on the allocation methodology. Based on conversations with SACOG staff, it is anticipated that the blueprint plan will be used in the allocation to local jurisdictions.

What if the city chooses not to grow or meet these requirements?

Over the recent years (since 2000, and especially since 2004), state law has imposed increasingly severe consequences for failure to accommodate the allocated housing units. We do know that the ability for both the City and local developers to secure affordable housing funds from the state would be greatly reduced if we do not have a certified Housing Element. This would include funding from both the State Department of Housing and Community Development (HCD) and the California Housing Finance Agency (CalHFA) who both require evidence of an approved housing element with applications for funding. Without an approved Housing Element, awards of funding commitments from both of these agencies would greatly reduce or become nonexistent. Transportation and other program funds are not specifically tied to the Housing Element, but may be linked to the Blueprint process as SACOG develops priorities for funding.

Of special concern is the state law provision that limits a jurisdiction’s ability to deny an affordable housing development if the units are needed to help meet fair share (65589.5). If the City does not have an adopted Housing Element that demonstrates its ability to provide affordable housing, an application for such development may have legal bearings to gain approval. The city would still retain its ability, however, to deny a project that is on agricultural land and is surrounded on at least two sides by land in agricultural use. In urbanized areas, the city may only deny an application to build mixed-income housing or affordable housing on otherwise zoned land (such as industrial zoned land) if there would be an immitigable adverse impact on public health or safety, or if there is inadequate water or wastewater facilities to serve the project.

These sections of the housing element law have been adopted within the past few years. Due to their recent adoption, no case law is available to tell us how vulnerable localities could be sued, or be forced to approve a development. The statute does not say whether the Council would be required to certify an environmental impact report (EIR), consent to annexation of land, or make findings to override significant environmental impacts of a project. Council should note that any allocation not adequately provided for within an adopted Housing Element, would lead to both denial from HCD and based on the requirements of Chapter 614, in the Statutes of 2005 (AB 1233) would be added to the next State allocation requirement for Davis to provide for in its subsequent Housing Element in order to gain HCD approval.

As a reminder, development projects necessary to meet fair-share requirements are exempt from the voter approval provisions of Measure J, but only if the units are restricted to being permanently affordable.

Summary of Staff Research To-Date

Staff has contacted HCD staff and staff from other slow growth cities. There is no clear information about how much a slow-growth city can influence its allocation if the intent is to keep it low. The following conclusions seem reasonable based on research by staff:

1. Trends for compliance are becoming more serious. As housing demands increase, especially those for affordable housing, the State is getting more serious (not less) about local jurisdictions meeting fair share requirements through their housing elements. For example, revisions made to Section 65583 of State Housing Law in 2004 now require that sites identified in a Housing Element be zoned for housing as a permitted use, or that the locality commit to rezoning non-residential sites identified in the Housing Element with the first one to two years of its implementation. By contrast, in previous years Housing Elements were permitted to include sites with zoning that included housing as a conditionally permitted use. The only region to have completed a housing element update under this new requirement is SanDAG (the San Diego County Region). The Housing Elements for three of those jurisdictions are in compliance according to HCD and nine are out of compliance, including one city's attempt at a self-certified element.
2. Regional allocations come from the state to the councils of governments. Based on population projections produced by the Department of Finance, regional population forecasts used in preparing regional transportation plans, and in consultation with each council of government, the Department of Housing and Community Development determines the regional share of the statewide housing need. (65584 (a))
3. Jurisdictions can influence their allocations, to an extent. A slow growth city can influence its allocation by the COG to an extent but not completely. Staff is currently participating in SACOG's methodology discussions. The COGs consider a range of factors (see next paragraph). The allocations process also includes the potential for appeal of draft allocations, but the final decision is made by the COG. (65584.05)
4. SACOG methodology will be based upon state goals and requirements. SACOG's methodology for allocations is currently being developed, and will hopefully be available early in 2007. The COGs consider the city's general plan, jobs-housing balance, regional growth projections, market demand, and constraints to housing production (such as water and sewer capacity) (65584.04). The presence of physical constraints seems to be factor in establishing allocations for jurisdictions along the California coast that are lower than those for inland areas. SACOG is also using the Blueprint land use projections to some extent.
5. Compact, higher density infill would be consistent with various goals. Should a city like Davis want to preserve agricultural land and avoid sprawl, the accommodation of fair share requirements through compact, higher density infill development would be consistent with State, COG and local goals. The issue, of course, would be the acceptability of the higher densities at the local neighborhood level.

6. Jurisdictions are legally required to meet fair-share allocations, with a range of available mechanisms. Once the allocation is officially adopted by the COG, the city must show available sites. There is no procedure for relief at that point, even for slow-growth cities. Some of the ways slow-growth cities are showing available sites are:
 - Opportunities for higher density housing as permitted uses in multi-family zones, even if currently developed with lower density uses, and mixed use zones.
 - Opportunities for accessory dwelling units as permitted uses.
 - Redesignation of industrial land, military bases, school sites, or other in-fill sites.
 - Providing City-owned surplus properties for housing development.
 - Allowing residential uses in more planning zones (e.g. commercial zones).
 - Permitting duplex units on corner lots in low-density residential zones.
 - Combining smaller irregular parcels suitable for assembly and residential development.
 - Increase height restrictions in mixed-use or high density residential zones.
 - Up to 25% of the allocation can be the rehabilitation or preservation of housing, made affordable.

7. Penalties. Staff cannot estimate the monetary consequences to affordable housing or other funding that could occur if the City does not have a certified housing element. It is unclear how far the State will extend its legal powers to force the city to approve a project that would provide its fair share requirements.

Attachment

HCD, Overview of State Housing Element Law.