

Date of Hearing: April 29, 2026

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2741 (Muratsuchi) – As Amended April 23, 2026

SUBJECT: Housing element: inventory of land: substantial compliance

SUMMARY: Allows a local government to use a zoning classification that allows for a “mix of uses” for owner-occupied and rental multifamily residential use with specified minimum densities to satisfy the requirement to rezone sites for lower income households in their housing element if they have not met their Regional Housing Needs Allocation (RHNA) in the previous housing element cycle. Specifically, **this bill:**

- 1) Defines, for purposes of the bill, the following:
 - a) “Allow for a mix of uses” means that the zoning for the site permits residential use, nonresidential use, or a mix of residential and nonresidential uses, including, without limitation, vertical, and horizontal mixed-use projects.
 - b) “Total floor area” means to combine the floor area for existing uses that are proposed to remain with the floor area for new proposed uses. For the purposes of calculating the total floor area for the project, “site” shall be defined as the parcel or assemblage of parcels upon which the project is proposed.
 - c) “Determination by a court of competent jurisdiction” only refers to a determination of substantial compliance.
- 2) Allows a local government to use a zoning classification that includes, but is not limited to, an overlay zone, mixed-use zone, combining district, or similar zone (mixed-use or overlay zone) that permits owner-occupied and rental multifamily residential use with minimum density and development standards to satisfy the requirement to rezone sites for lower income households in their housing element.
- 3) Requires a rezoning program that uses a mixed-use or overlay zone to include a written explanation of the housing and affordability incentives of the mixed-use or overlay zone.
- 4) Allows a mixed-use or overlay zone to allow a mix of uses if either of the following apply:
 - a) At least 50% of the lower income housing need is accommodated on sites designated for residential uses and for which nonresidential uses or mixed uses are not permitted.
 - b) All of the lower income housing need is accommodated on sites that allow a mix of uses, provided that those sites allow 100% residential use and require that, if an applicant seeks to develop a mixed-use project that includes both residential and nonresidential uses on a single site, at least 50% of the total floor area of the mixed-use project be dedicated to residential uses.
- 5) Provides that the changes made by this bill to Housing Element Law shall apply only to the sixth housing element revision cycle and retroactive to January 1, 2019.

- 6) Removes the provision in existing law that finds a housing element or amendment to be in substantial compliance if either of the following apply:
 - a) The findings of the Department of Housing and Community Development (HCD) have not been superseded by subsequent contrary findings by HCD or by a decision of a court.
 - b) The decision of a court has not been overturned or superseded by a subsequent court decision or by statute.
- 7) Provides that if a court of competent jurisdiction finds that, despite HCD's finding of substantial compliance, the adopted housing element or amendment is not in substantial compliance with Housing Element Law, the adopted housing element or amendment shall be considered to be in substantial compliance until the earlier of the following:
 - a) The date HCD finds that a newly adopted housing element or amendment is in substantial compliance with Housing Element Law.
 - b) Two hundred seventy days after a court order, writ, or judgment is issued requiring the local agency to bring its housing element into compliance.

EXISTING LAW:

- 1) Requires all of the following for a rezone program necessary to accommodate a jurisdiction's lower income regional housing needs allocation (RHNA):
 - a) Requires sites to accommodate 100% of the need for housing for lower income households for which site capacity has not been identified in the inventory of sites on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20% of the units are affordable to lower income households during the planning period;
 - b) Requires sites in a rezone program to be zoned with minimum density and development standards that permit at least 16 units per acre in an incorporated city within a nonmetropolitan county and shall be at least 20 units per acre in suburban jurisdiction and metropolitan counties and have adequate infrastructure, as defined; and
 - c) Requires that at least 50% of the lower income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the lower income housing need on sites designated for mixed use if those sites allow 100% residential use and require that residential use occupy 50% of the total floor area of a mixed-use project. (Government Code (GOV) § 65583.2).
- 2) Establishes that a local agency's housing element or housing element amendment is considered to be in "substantial compliance" with Housing Element Law if either of the following applies:
 - a) HCD has found the adopted housing element or amendment to be in substantial compliance, and that finding has not been superseded; or,

- b) A court of competent jurisdiction has determined the housing element or amendment to be in substantial compliance, and that determination has not been overturned or superseded. (GOV § 65585.03)
- 3) Provides, for purposes of the Housing Accountability Act (HAA), that a housing element or amendment is considered in substantial compliance only if it was in substantial compliance, based on a determination by HCD or a court, at the time a preliminary application was submitted, or, if no preliminary application was submitted, at the time a complete application was submitted. (GOV § 65589.55)

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author’s Statement.** According to the author, “California cities are working in good faith to comply with state housing law by submitting housing elements to the California Department of Housing and Community Development for certification. However, recent court decisions have created uncertainty around the use of residential overlay zoning—an essential tool for identifying housing sites in built-out communities. Without legislative clarity, previously certified housing elements across the state are vulnerable to legal challenge and potential exposure to immediate ‘builder’s remedy’ projects.

“This bill provides clarity by affirming the lawful use of overlays and allowing jurisdictions that relied on state guidance the opportunity to correct their housing elements if a court finds them noncompliant. Cities should not be penalized for acting in good faith to follow California law and take meaningful steps to increase housing production.”

- 2) **Background.** The RHNA process is used to determine how many new homes, and the affordability level of those homes, each local government must plan for in its housing element to cover the duration of the next planning cycle. The regional housing need determination (RHND) is assigned at the COG level, while RHNA is suballocated to subregions of the COG or directly to local governments. RHNA is currently assigned via 4 income categories: very low-income (0-50% of AMI), low-income (50-80% of AMI), moderate income (80-120% of AMI), and above moderate income (120% or more of AMI). Beginning with the seventh cycle, two new income categories will be incorporated for acutely low-income (0-15% of AMI) and extremely low-income (15-30% of AMI).

The cycle begins with HCD and DOF projecting new RHND numbers every five or eight years, depending on the region. DOF produces population projections and the COG also develops projections during its Regional Transportation Plan update. Then, 26 months before the housing element due date for the region, HCD must meet and consult with the COG and share the data assumptions and methodology that they will use to produce the RHND. The COG provides HCD with its own regional data on several criteria, including:

- a) Anticipated household growth associated with projected population increases.
- b) Household size data and trends in household size.
- c) The percentage of households that are overcrowded, as defined, and the overcrowding rate for a comparable housing market, as defined.

- d) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.
- e) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs, as specified.
- f) Other characteristics of the composition of the projected population.
- g) The relationship between jobs and housing, including any imbalance between jobs and housing.
- h) The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market, as defined.
- i) The loss of units during a declared state of emergency during the planning period immediately preceding the relevant housing element cycle that have yet to be rebuilt or replaced at the time of the data request.

HCD can take this information and use it to modify its own methodology, if it agrees with the data the COG produced, or can reject it if there are other factors or data that HCD feels are better or more accurate. Then, after a consultation with the COG, HCD makes written determinations on the data it is using for each of the factors noted above and provides that information in writing to the COG. HCD uses that data to produce the final RHND, which must be distributed at least two years prior to the region's expected housing element due date. The COG must then take the RHND and create an allocation methodology that distributes the housing need equitably amongst all the local governments in its region.

The RHNA methodology is statutorily obligated to further all of the following objectives:

- a) Increase the housing supply and mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which must result in each jurisdiction receiving an allocation of units for low- and very low-income households.
 - b) Promote infill development, socioeconomic equity, the protection of environmental and agricultural resources, and achievement of regional climate change reduction targets.
 - c) Promote an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.
 - d) Allocate a lower proportion of housing needs to an income category when a jurisdiction already has a disproportionately high share of households in that income category.
 - e) Affirmatively further fair housing.
- 4) **Adoption and Implementation of Housing Elements.** Counties and cities must plan for new housing through the housing element of each community's General Plan, which outlines

a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Localities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including an accelerated deadline for completing rezoning, exposure to the "builder's remedy," public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's RHNA, described above. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. Depending on whether the jurisdiction met its statutory deadline for housing element adoption, it will have either one year (if it failed to meet the deadline) or three years (if it met the deadline) from its adoption deadline to complete that rezoning program.

Local governments have a statutory deadline to submit a housing element based on region. Ninety days before the deadline to adopt a housing element, localities must submit a draft to HCD. HCD must review the draft element within 90 days of receipt and provide written findings as to whether the draft amendment substantially complies with Housing Element Law. If HCD finds that the draft element does not substantially comply with the law, the local agency may either make changes to the draft element to substantially comply with the law or adopt the element and make findings as to why it complies with the law despite HCD's findings.

Following adoption of a housing element, a local agency submits it to HCD. When a local government adopts its housing element without making the changes HCD provides, the process is called "self-certification." Despite the fact that the process allows a local agency to adopt a housing element without making the changes required by HCD to be in substantial compliance, a local agency is not considered compliant until receiving ultimate approval from HCD. AB 1886 (Alvarez), Chapter 267, Statutes of 2024, further clarified that a housing element is in compliance when both a local agency has adopted a housing element and HCD has found the element in compliance.

- 3) ***New Commune DTLA LLC v. City of Redondo Beach***. As part of the Housing Element, local governments must prepare a site inventory and zone sites to accommodate all the RHNA for lower income households. When the site inventory does not identify enough sites to accommodate each income level of the RHNA a local government must include a rezoning program to address this shortfall. A rezoning program to address unmet needs for lower income housing shall "permit owner-occupied and rental multifamily residential use by right for developments in which at least 20% of the units are affordable to lower income households during the planning period." The sites must be zoned with "minimum density and development standards" of "at least 20 units per acre" in suburban jurisdictions. Further, at least 50% of the lower income housing is required to be "accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted."

However, for certain mixed-use sites, existing law allows a local government to

“accommodate all of the lower income housing need on sites designated for mixed use if those sites allow 100% residential use and require that residential use occupy 50% of the total floor area of a mixed-use project.”

In the 6th RHNA cycle, HCD approved over 100 housing elements that relied on the use of “overlay zones.” These “overlay zones” permitted residential uses, even where the underlying zoning did not require residential use at the density required for a rezoning program under Housing Element Law. For example, a local government could have used a residential overlay zone on a site with 100% commercial base zoning. This use of an overlay zone may allow a commercial project to be approved without any residential component.

In a recent court case, *New Commune DTLA LLC v. City of Redondo Beach*, the court invalidated the City of Redondo Beach’s housing element because “overlay zones cannot be used to satisfy the minimum density and residential use requirements...where the base zoning expressly permits development that does not include housing.” The court found that an overlay zone does not meet the standard required for rezoning programs intended to accommodate lower income housing.

As a result of this case, more than 100 cities’ housing elements may be out of compliance with Housing Element Law and are vulnerable to legal challenge, despite following HCD’s guidance and having a HCD certified housing element. If a housing element is found by the courts to be out of compliance with Housing Element law, a city or county is subject to the Builder’s Remedy, which makes housing an eligible use on sites that are not zoned residential with certain restrictions.

- 4) **Bill Summary.** This bill allows local governments to use mixed use or overlay zones if either of following apply:
- a) At least 50% of the lower income housing need is accommodated on sites designated exclusively for residential use.
 - b) All of the lower income housing need is accommodated on sites that allow 100% residential use and require, if an applicant seeks to develop a mix of residential and nonresidential uses, that a minimum of 50% of the total floor area is dedicated to residential uses.

This bill defines “allow for a mix of uses” to mean that the zoning for the site permits residential use, nonresidential use, or a mix of residential and nonresidential uses, including, without limitation, vertical, and horizontal mixed-use projects. This bill requires “total floor area” to combine the floor area for existing uses that are proposed to remain with the floor area for new proposed uses. For the purposes of calculating the total floor area for the project, “site” means the parcel or assemblage of parcels upon which the project is proposed.

This bill also creates a safe harbor of 270 days for local governments that have an HCD-approved housing element that a court finds out of compliance. The housing element would be in compliance until the date HCD finds the newly adopted housing element in compliance or 270 days after the judgment.

The changes established by this bill apply to the 6th housing element cycle and onward.

This bill is author sponsored.

- 5) **Policy Considerations.** This bill provides a city or county with 270 days to adopt a compliant Housing Element after a court has found the city's or county's housing element to be out of compliance with Housing Element Law, despite a previous determination of substantial compliance by HCD. This safe harbor provision applies any time a housing element is deemed to be out of compliance by a court, which may include occasions where a city has not completed its rezoning program or implementation program as required by existing Housing Element Law. The Committee may wish to consider if this "safe harbor" provision should apply this broadly.
- 6) **Previous Legislation.** AB 1886 (Alvarez), Chapter 267, Statutes of 2024, clarified that a housing element or amendment is not considered substantially compliant with housing element law until the local agency has adopted a housing element that HCD has determined is in substantial compliance with housing element law, as specified.

AB 1889 (Wicks), Chapter 268, Statutes of 2024, amended the HAA to revise the standards a housing development project must meet in order to qualify for the "Builder's Remedy," which authorizes projects to bypass local development standards in jurisdictions that fail to adopt a substantially compliant housing element. AB 1889 also expanded the scope of actions that constitute disapproval of a housing development project by a local government for the purposes of the HAA.

- 7) **Arguments in Support.** The City of Redondo Beach writes in support, "AB 2741 addresses two areas that have created uncertainty for local governments. First, the bill confirms that cities may satisfy required rezoning programs by applying a zoning classification, such as an affordable housing overlay zone, that permit owner-occupied and rental multifamily housing at required minimum densities and development standards. This clarification is particularly important for built-out community like ours, where infill opportunities are limited and flexible zoning tools are essential to meeting Regional Housing Needs Allocation (RHNA) requirements. The flexibility of a housing overlay zone makes it more appealing and affordable to a property owner or developer to build housing on a portion of a property without fully eliminating existing uses that may be necessary for fiscal feasibility.

"The bill also provides clearer guidance on how HCD determines whether a housing element remains in substantial compliance with state law. Establishing more predictable standards helps cities address identified deficiencies while continuing to process housing applications, and it provides greater certainty for both local governments and housing developers."

- 8) **Arguments in Opposition.** The California Building Industry Association writes in opposition, "AB 2741 would allow a housing element that has been found out of compliance by a court to continue to be treated as "substantially compliant" for up to 270 days. This provision weakens one of the accountability mechanisms in state housing law. Under current law, consequences for noncompliance—such as the application of the Builder's Remedy—serve as a critical incentive for jurisdictions to adopt compliant housing elements in a timely manner. By delaying the consequences of noncompliance even after a judicial determination, the bill reduces the urgency for jurisdictions to correct deficiencies and risks prolonging barriers to housing development..."

"The bill's provisions related to the use of overlay zones and minimum density standards introduce additional complexity into housing element compliance. While CBIA supports flexible approaches that can facilitate housing development, these changes may create

ambiguity in how jurisdictions demonstrate adequate site capacity and could lead to inconsistent application across jurisdictions.

“AB 2741 would effectively overturn recent court interpretations regarding housing element compliance, raising concerns about legal uncertainty and potential unintended consequences.”

- 9) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee, where it passed on a 9-0 vote on April 22, 2026.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association California Chapter *(If Amended)*
California State Association of Counties (CSAC) *(If Amended)*
City of Hermosa Beach *(If Amended)*
City of Rancho Palos Verdes *(If Amended)*
City of Redondo Beach
City of Torrance
League of California Cities *(If Amended)*
Rural County Representatives of California (RCRC) *(If Amended)*
South Bay Cities Council of Governments
Urban Counties of California (UCC) *(If Amended)*

Opposition

California Building Industry Association
California Rural Legal Assistance Foundation, INC. *(Unless Amended)*
California YIMBY
Public Advocates *(Unless Amended)*
Public Interest Law Project *(Unless Amended)*
South Pasadena Residents for Responsible Growth
Western Center on Law & Poverty *(Unless Amended)*

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