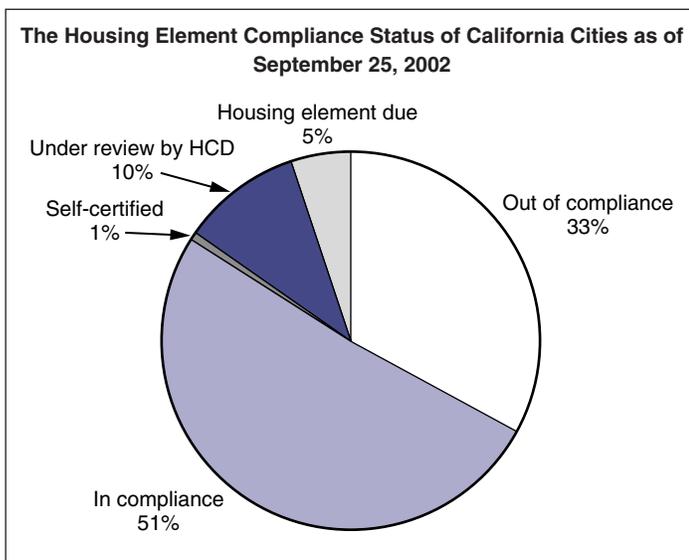


Is It Time to Review California's Housing Element Law?

California's housing element law, first enacted in 1969, is designed to help local officials plan for adequate housing in their communities. In recent years, however, even as California's housing production has failed to keep pace with its population and job growth, many localities have been out of compliance with the law (see the figure). That pattern raises a central question: Why have so many cities and counties been unable or unwilling to meet the state planning requirements for housing?



A high percentage of California cities are out of compliance with the state's housing element law.

In *California's Housing Element Law: The Issue of Local Noncompliance*, Paul Lewis addresses this question by examining which types of city governments tend to be out of compliance with state guidelines. He also tests whether their noncompliance can be linked statistically to lower levels of new housing production. Although his results indicate that non-compliant cities tend to match a particular profile, he finds no strong connection between noncompliance and the

underproduction of new housing—even of multifamily housing, which tends to be more affordable than single-family homes.

The Process—and Its Problems

California's housing element requirement is sometimes regarded as a “fair-share” approach, in which local communities must plan for accommodating a fair proportion of their region's housing need. Working from state estimates of regional housing needs, regional councils of governments assign a housing unit goal to each city and unincorporated area. Cities and counties are then expected to incorporate these goals into their plans over the next five years.

In California, housing production itself has received as much emphasis as the geographic distribution of housing for lower-income families. Indeed, the housing element policy has been viewed as a policy tool to address California's long-standing problem of housing affordability and underproduction, which limits the opportunities of the middle class as well as the poor. To broaden these opportunities, the housing element statute calls on cities and counties to remedy government policies—such as local growth controls, strict building codes, developer fees, and permit procedures—that constrain the production of new housing for all income groups. The law also requires that planners identify sufficient land sites that are suitably zoned to meet future housing needs.

Once a local housing element update has been drafted, the state Department of Housing and Community Development (HCD) decides whether the plan can accommodate the targeted number of units, including specific amounts of housing for households of very low, low, moderate, and above moderate incomes. If so, HCD certifies the housing element. If not, the community may change its plan to incorporate HCD's suggestions. However, if the element is adopted without satisfying HCD, or if the plan fails to be

updated at all, the city or county is regarded as noncompliant. Noncompliance limits local eligibility for state and federal funds for affordable housing, and makes the local government more vulnerable to lawsuits on land-use matters. Conflicts between state and local policymakers over housing elements are common, and most jurisdictions have been noncompliant at one time or another.

Explanations for noncompliance differ dramatically. Some communities argue that state and regional projections fail to reflect local realities, such as a lack of vacant land. Other observers maintain that local noncompliance often reflects an aversion to new housing—particularly affordable units—on the part of upper-income communities. Local antigrowth policies, sometimes imposed by voters, are also seen as a cause of noncompliance. Still another possibility is that many jurisdictions lack the requisite planning capacity or experience to meet the housing element requirement.

State officials periodically seek ways to increase compliance with the housing element law, sometimes by proposing penalties for noncompliant local governments. Housing advocates have long argued that sanctions should be stronger and that the law needs more emphasis on results and less on process. Senate Bill 910, which passed the state senate in 2001 but later died in the assembly, would have required that the state controller fine noncompliant cities and counties.

Testing the Arguments

In his report, Lewis tests these explanations by examining the distinctions between cities that have satisfied the housing element requirements and those that have not. A simple comparison indicates that noncompliant communities are smaller and somewhat wealthier than compliant ones. They also tend to have an older housing stock. Small cities may lack the capacity to undertake the planning efforts needed to reach compliance. They may also be relatively vulnerable to political pressure from homeowners, who often oppose multifamily developments. Moreover, cities with older housing may be more settled and less likely to contain vacant land.

A more detailed statistical analysis indicates that other factors also determine the likelihood of compliance. Drawing on evidence from a survey of city planning directors, Lewis notes that cities experiencing longer review processes for new development proposals have more trouble attaining compli-

ance. The analysis also indicates that adopting an overt limitation on residential growth doubles the chances that a city will be found noncompliant. Holding all other factors equal, Lewis found that cities located in the San Francisco Bay Area, Central Valley, and Inland Empire were more likely to be noncompliant than other cities. Finally, the compliance status of individual communities tended to persist; noncompliance in 1991 was a fairly good predictor of noncompliance in 2002.

Turning to the relationship between compliance and the actual production of new housing, Lewis examined whether a city's compliance status in 1991 helps to predict the percentage increase in the city's housing stock by 2000, examining communities in the metropolitan areas of San Diego, greater Los Angeles, and the San Francisco Bay Area. Controlling for a variety of factors, he found no detectable relationship between compliance and the percentage increase in housing units. Furthermore, noncompliance was not a significant predictor of the rate of multifamily development once other relevant factors were held constant. The analysis did show, however, that the mix of new housing in noncompliant cities tended to be weighted more toward single-family units.

Rethinking Housing Policy

After reviewing the policies of other states with comparable approaches, Lewis identifies three basic problems with California's housing element law. First, it often goes against the grain of local politics by asking cities to plan for the needs of the wider region, not just the needs of current city residents. Second, it may represent a mismatch of goals and policy tools. Specifically, it attempts to tackle the problems of overall housing underproduction with a process-oriented approach developed to prod cities and counties into planning for their share of affordable units. Third, the statute itself is unwieldy, embraces multiple objectives, and is difficult for nonexperts to comprehend.

Lewis concludes that the time is ripe for policymakers and affected interest groups to seek a more workable, transparent, and straightforward approach to housing. These policymakers may need to resolve whether their major goal is a sheer increase in residential construction or an equitable distribution of affordable housing. Using a fair-share planning approach as a tool to encourage overall housing production probably places an unrealistic burden on a fairly fragile policy.

This research brief summarizes a report by Paul G. Lewis, California's Housing Element Law: The Issue of Local Noncompliance (2003, 129 pp., \$12.00, ISBN 1-58213-069-8). The report may be ordered by phone at (800) 232-5343 [U.S. mainland] or (415) 291-4400 [Canada, Hawaii, overseas]. A copy of the full text is also available on the Internet (www.ppic.org). The Public Policy Institute of California is a private, nonprofit organization dedicated to independent, objective, nonpartisan research on economic, social, and political issues affecting California.
