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**Element of Accountability:
Strengthening Enforcement of California’s
Housing Element Law**

Jonathan D. Bremen

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Element of Accountability: Strengthening Enforcement of California's Housing Element Law

*Jonathan D. Bremen**

California's housing crisis, marked by a severe shortage of affordable housing, soaring costs, and rising homelessness, has reached alarming proportions. Despite decades of efforts, the state continues to grapple with a housing market that significantly underserves low- and middle-income residents, forcing many to devote high portions of their income to housing. On paper, California's Housing Element Law appears to be a valuable tool to address the crisis by requiring cities and counties to plan for housing needs across all economic segments. Widespread non-compliance with the law, however, has prompted both the state Attorney General and private parties to seek judicial intervention.

This Article is the first-ever comprehensive empirical study of Housing Element litigation. It examines the role of litigation as an enforcement tool, analyzing patterns in housing element lawsuits and the judicial remedies imposed under California Government Code section 65755. Despite the law's clear mandates, the evidence reveals that litigation is often an empty threat: the likelihood of being sued is low, settlements are common, and courts frequently hesitate to impose meaningful penalties. Political incentives for local governments to resist compliance further complicate enforcement.

By uncovering these limitations, this Article addresses why litigation has failed to drive widespread compliance with the Housing Element Law. The Article then evaluates potential reforms, including increased incentives for litigation, mandatory suspensions of development authority, and specialized administrative courts. The Article also explores the idea of dispensing with Housing Element Law altogether in favor of social housing.

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I. INTRODUCTION

California's housing crisis is characterized by a severe shortage of affordable housing units, escalating housing costs, and increasing homelessness. Indeed, in 2015, the California Supreme Court acknowledged this crisis, stating:

It will come as no surprise to anyone familiar with California's current housing market that the significant problems arising from the scarcity of affordable housing have not been solved over the past three decades. Rather, these problems have become more severe and have reached what might be described as epic proportions in many of the state's localities.¹

The state's booming population, economic expansion, and geographic constraints have significantly outpaced housing development, creating one of the most constrained housing markets in the nation—and it has been this way since at least 1975.²

The crisis is most acutely felt by low- and middle-income households, who often struggle to find affordable housing options.³ High housing costs have forced many families to spend disproportionate amounts of their income on rent or mortgages, leaving less income available for other necessities.⁴ This financial strain has contributed to rising rates of homelessness, as individuals and families are unable to secure stable housing.⁵

California's Department of Housing and Community Development (HCD) underscores this issue, framing it within a national context: "California's housing affordability crisis is an acute example of a national problem. In 2021, there was no state in the U.S. where a worker earning minimum wage could afford to rent a modest two-bedroom by working a 40-hour week."⁶ HCD further emphasizes that "[l]ow-wage workers and low-income renters will continue to be cost-burdened until we create permanent solutions to widespread housing unaffordability nation-

¹ Cal. Bldg. Indus. Ass'n v. City of San Jose, 351 P.3d 974, 977 (Cal. 2015).

² Jessie Agatstein, *The Suburbs' Fair Share: How California's Housing Element Law (and Facebook) Could Set a Housing Production Floor*, 44 REAL EST. L.J. 219, 225 (2015).

³ See PAUL G. LEWIS, PUB. POL'Y INST. OF CAL., CALIFORNIA'S HOUSING ELEMENT LAW: THE ISSUE OF LOCAL NONCOMPLIANCE 1 (2003).

⁴ See *id.* (citing LITTLE HOOVER COMM'N, REBUILDING THE DREAM: SOLVING CALIFORNIA'S AFFORDABLE HOUSING CRISIS, at i (2002)).

⁵ See Cullen Conboy, Note, *The Uneventful History of Government Code Section 65759*, 57 UC DAVIS L. REV. ONLINE 35, 38 (2024).

⁶ See CAL. DEPT OF HOUS. & CMTY. DEV., A HOME FOR EVERY CALIFORNIAN: 2022 STATEWIDE HOUSING PLAN 7 (2022) [hereinafter 2022 PLAN], <https://www.hcd.ca.gov/docs/statewide-housing-plan.pdf> [<https://perma.cc/84C8-7VVF>].

wide.”⁷ In other words, without structural reforms, the cycle of financial strain and displacement will persist, condemning millions to housing insecurity and deepening the socioeconomic divides in our society.

California’s Housing Element Law, enacted in 1967 and substantially amended in 1980,⁸ represents a landmark effort to address the state’s housing challenges through comprehensive planning. The law requires that every city and county develop a housing element as part of its general plan, ensuring that local governments systematically plan for their housing needs across all economic segments.⁹ However, there has been and continues to be a high degree of noncompliance with Housing Element Law. Indeed, the City of Huntington Beach has openly thumbed its nose at the State of California. In May 2024, then-Mayor Gracey Vander Mark and City Attorney Michael Gates jointly issued a statement, declaring, “We refuse to surrender our City to Sacramento’s nonsensical and overreaching mandates.”¹⁰ The City of Menlo Park failed to revise its housing element for twenty years, even though the state requires an update every seven years.¹¹

The California Legislature has enacted plenty of carrots and sticks to encourage compliance. One stick is litigation, and non-compliance has led private parties and the California Attorney General to sue various cities, seeking judicial remedies. Given the theoretical risk of losing land use authority and incurring substantial attorney fees, one might expect jurisdictions to fear housing element lawsuits. However, this Article demonstrates that litigation often falls short as a motivator for compliance.

In the first-ever comprehensive empirical study of housing element litigation, I examined every housing element lawsuit in California since 1982 and uncovered a striking reality: the rarity of litigation, the prevalence of settlements, and the judiciary’s re-

⁷ *Id.*

⁸ California’s Housing Element Law originated in 1967, but the mandate for periodic updates with state oversight was not fully established until 1980. See CAL. GOV’T CODE §§ 65580–65589.8 (West 2025); William C. Baer, *California’s Fair-Share Housing 1967–2004: The Planning Approach*, 7 J. PLAN. HIST. 48, 60 (2008).

⁹ § 65580(d).

¹⁰ Press Release, Gracey Van Der Mark, Huntington Beach Mayor, & Michael Gates, City Att’y, Huntington Beach Statement on Court Ruling vs. State of California (May 16, 2024), https://www.huntingtonbeachca.gov/news_detail_T4_R62.php [<https://perma.cc/5TN7-7DLH>].

¹¹ See Conboy, *supra* note 5, at 60.

luctance to impose meaningful remedies have allowed, or even encouraged, cities to remain out of compliance.

Part II provides a comprehensive background on the Housing Element Law, tracing its evolution and significance. Part III examines litigation efforts by private parties and the state Attorney General, focusing on the statutory remedies available to courts. Part IV discusses the persistent problem of noncompliance, addressing the primary ways that jurisdictions fail to comply and exploring why noncompliance is so widespread. Part V presents empirical evidence gleaned from hundreds of hard-to-find trial court documents that identify trends in housing element litigation and judicial responses to noncompliance. Finally, Part VI explores whether litigation, as currently applied, serves as an effective enforcement tool and suggests various reforms to strengthen California's ability to address its housing crisis.

II. BACKGROUND

California has a crisis-level housing shortage that, at least partly, stems from the failure of local governments to approve affordable housing to meet the needs of all Californians. For decades, the Legislature has found that California has been suffering from “a severe shortage of affordable housing, especially for persons and families of low and moderate income” and that “there is an immediate need to encourage the development of new housing.”¹² As HCD explains:

California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs.¹³

¹² § 65913(a).

¹³ 2022 PLAN, *supra* note 6. Housing crises are not a modern phenomenon, nor are they unique to California or the United States. In the 1870s, a significant debate arose in Germany's worker and democratic press concerning the lack of housing for laborers in key industrial cities. See Glyn Robbins, *150 Years Ago, Friedrich Engels Correctly Assessed What's Wrong with Housing Under Capitalism*, JACOBIN (July 25, 2022), <https://jacobin.com/2022/07/housing-question-capitalism-friedrich-engels> [https://perma.cc/3675-S2EP]. Indeed, in 1872 and 1873, famed German philosopher Friedrich Engels published several articles in *Volksstaat*, entitled “The Housing Question,” in which he weighed in on the debate. *Id.* Notably, Engels concluded the housing crisis was a symptom of the broader exploitation and inequality inherent in capitalism. See *id.*

Several economic factors contribute to the housing crisis in California. The state's economy has experienced substantial growth, attracting a significant influx of residents seeking job opportunities.¹⁴ However, the pace of housing construction has not kept up with this population growth. Indeed, HCD says, "Production averaged less than 80,000 new homes annually over the last [ten] years, and ongoing production continues to fall far below the projected need of 180,000 additional homes annually."¹⁵ In addition to low production, the high cost of coastal land, stringent zoning regulations, and environmental restrictions have further contributed to high housing costs.¹⁶

The California Legislature has acknowledged, in unambiguous terms, the scale of the state's housing predicament:

California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.¹⁷

"[L]owest-income seniors, people with disabilities, families with children, [and] veterans" are particularly vulnerable to the housing crisis.¹⁸ Historical patterns of segregation and discrimination have left many Black and brown neighborhoods with fewer resources and less investment, resulting in a higher prevalence of substandard housing conditions.¹⁹ Additionally, systemic barriers prevent many low-income families from accessing stable and affordable housing.²⁰

¹⁴ See CAL. DEP'T OF HOUS. & CMTY. DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES 1 (2018) [hereinafter CA HOUS. FUTURE], https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf [https://perma.cc/54GU-862N].

¹⁵ *Id.*

¹⁶ See Stefan Ecklund, *Too Close to Home?: The Constitutionality of California's S.B. 9*, 56 LOY. L.A. L. REV. 981, 984–85 (2023).

¹⁷ CAL. GOV'T CODE § 65589.5(a)(2)(A) (West 2025).

¹⁸ NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: THE HIGH COST OF HOUSING, at A (2024), https://nlihc.org/sites/default/files/2024_OOR_1.pdf [https://perma.cc/68MT-4TTJ].

¹⁹ See generally RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 43–54 (2017) (reviewing the widespread adoption of racial zoning ordinances by cities in the twentieth century and their impact); JESSICA TROUNSTINE, SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES 73–97 (2018) (outlining the factors and historical context that contributed to the widespread adoption of racial zoning ordinances).

²⁰ See NAT'L LOW INCOME HOUS. COAL., *supra* note 18, at 7.

The most visible and distressing impact of California’s housing crisis is the rising rate of homelessness. Cities like Los Angeles and San Francisco have seen significant increases in their homeless populations.²¹ The lack of affordable housing is a primary driver of homelessness, with many individuals and families unable to find or maintain stable housing due to the high cost of living.²² California has taken the stance that long-term solutions require not only immediate support for homeless individuals but also systemic changes to increase the availability of affordable housing and prevent homelessness from occurring in the first place.²³

A. Historical Background of Housing Element Law

“The commodification and zoning of land enabled exclusion and segregation of the dispossessed and persons of color and relegated those without means to the fringes and least desirable places.”²⁴ California’s Housing Element Law, first enacted in a nascent form in 1967,²⁵ “emerged from the national recognition during the Civil Rights movement that racial segregation was endemic to and greatly enabled by the power of local governments to zone their commu-

²¹ Liam Dillon & Brittny Mejia, *Why It’s So Hard to Fix Housing Overcrowding in Los Angeles*, L.A. TIMES (Oct. 19, 2022, at 5:00 PT), <https://www.latimes.com/homeless-housing/story/2022-10-19/overcrowding-los-angeles-housing-fix> [<https://perma.cc/RA7Q-656H>]; Lara Korte & Jeremy B. White, *Rising Homelessness Is Tearing California Cities Apart*, POLITICO (Sep. 21, 2022, at 4:30 ET), <https://www.politico.com/news/2022/09/21/california-authorities-uproot-homeless-people-00057868> [<https://perma.cc/8SFE-WTT6>].

²² CA HOUS. FUTURE, *supra* note 14, app. A, at 6 (“Researchers have associated flat incomes during periods of increasing rent levels, along with shortfalls of affordable housing, with homelessness rates. For example, research found that every \$100 increase in median rent was associated with a 15 percent increase in homelessness in metropolitan areas and a 39 percent increase in non-metro areas. As individuals attempt to exit homelessness, housing affordability impacts the length of stay in homelessness, because individuals may have difficulty finding homes that they can afford or must compete in tight markets with other renters who likely have stronger employment, credit, and rental histories. Low rental-housing vacancy rates in a community, common especially in coastal regions, also contribute to increased rents, increased homelessness, and difficulties exiting homelessness.” (citation omitted)); *see generally* GREGG COLBURN & CLAYTON PAGE ALDERN, HOMELESSNESS IS A HOUSING PROBLEM (2022) (explaining how “[r]egional variation in rates of homelessness can be explained by the costs and availability of housing”).

²³ *See* David Roberts, *The Future of Housing Policy Is Being Decided in California*, VOX (Apr. 4, 2018, at 6:22 PT), <https://www.vox.com/cities-and-urbanism/2018/2/23/17011154/sb827-california-housing-crisis> [<https://perma.cc/3XFZ-HB5W>].

²⁴ PUB. INT. L. PROJECT, CALIFORNIA HOUSING ELEMENT MANUAL 13 (5th ed. 2023) [hereinafter PILP MANUAL], <https://www.pilpa.org/publications/housing> [<https://perma.cc/EM2M-ZCM3>].

²⁵ 1967 Cal. Stat. 4033.

nities to serve discriminatory parochial interests.”²⁶ Initially, the law’s implementation was hampered by vague requirements and a lack of enforcement mechanisms.²⁷ However, as housing issues persisted, the state legislature introduced amendments to strengthen the law.

In 1980, the Housing Element Law was substantially amended to mandate local planning for affordable housing, requiring every city and county to develop a housing element as part of its general plan.²⁸ “This mandate aims at ensuring that each community accepts responsibility for the housing needs of not only the resident population but also of those households who might reasonably be expected to live within the jurisdiction were a variety and choice of housing appropriate to their needs available.”²⁹ As political scientist Paul G. Lewis puts it, “the concept of fair share was fully enshrined in state law.”³⁰ This statute also instituted a local obligation to regularly review and update housing elements.³¹

Notably, the new law established the Regional Housing Needs Assessment (RHNA), which allocated housing needs to local governments based on regional growth forecasts. RHNA introduced a systematic approach to determining housing needs and distributing them among local governments.³² This process

²⁶ PILP MANUAL, *supra* note 24, at 14. *But see* Agatstein, *supra* note 2 (asserting the Housing Element Law was the “brainchild of California’s Building Industry Association” (citing Baer, *supra* note 8, at 55)).

²⁷ Baer, *supra* note 8, at 55–56.

²⁸ 1980 Cal. Stat. 3697–98; PILP MANUAL, *supra* note 24, at 15, 23.

²⁹ LEWIS, *supra* note 3, at 16 (quoting DEPT OF HOUS. & CMTY. DEV., DEVELOPING A REGIONAL HOUSING NEEDS PLAN 1 (1988)).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 17.

Under the statute, several factors must be considered in the COG’s allocation of housing growth goals to specific localities:

- Market demand for housing (vacancy rates, housing prices, household structure, construction, absorption, etc.),
- Employment opportunities (current and projected),
- Availability of suitable sites (including residentially zoned as well as nonresidentially zoned land that could be used, and the possibility of redevelopment for housing or for increased densities of housing),
- Availability of services (including current and future capacity, transportation, medical and recreational facilities, etc.),
- Commuting patterns (time, length, transit availability),
- Type and tenure of housing need (including a consideration of special

was designed to guarantee that each of the 539 jurisdictions took its “fair share”³³ of regional housing needs, promoting equitable growth and preventing affluent communities from shirking their responsibilities.

Many further amendments from the 1990s up to the present enhanced the specificity and enforceability of the law.³⁴ These amendments mandated local governments to provide detailed site inventories, demonstrate the feasibility of housing development, and adopt policies to remove barriers to housing production.

B. Process

Under current law, most cities and counties must update their housing elements every eight years.³⁵ Section 65588 sets up a schedule for periodic review of the housing element. The statute prescribes deadlines for completion, staggered by geographic region.³⁶ Each eight-year period is known as a “planning period” or “cycle[].”³⁷ The housing element revision process begins at least two years before the due date, when HCD creates a RHNA for each region based on future household growth projections provided by the state Department of Finance.³⁸ These goals are then adjusted by HCD to account for regional housing vacancies and the anticipated need for replacement units. Additionally, HCD considers advisory input from the region’s council of governments (COG), a body of city and county officials responsible

populations, such as large households, the elderly, students, and the military), and

- Farmworker housing needs.

Id.

³³ See *id.* at 12 (“A number of other states and metropolitan areas have developed fair-share housing legislation, with the term generally referring to a regional process by which each local community works to accommodate a fair proportion of the region’s housing need.”).

³⁴ See Ecklund, *supra* note 16, at 997–99. See generally PILP MANUAL, *supra* note 24 (outlining the statutory requirements for California municipal housing plans).

³⁵ CAL. GOV’T CODE § 65588(e)(3) (West 2025). Although most jurisdictions must update their housing elements every eight years, some jurisdictions must update every four or five years, depending on various factors. *Id.*

³⁶ *Id.*

³⁷ See *id.* § 65588(f)(1); PILP MANUAL, *supra* note 24, at 14.

³⁸ See PILP MANUAL, *supra* note 24, at 36. The RHNA process is controversial. See generally PAAVO MONKKONEN, MICHAEL MANVILLE & SPIKE FRIEDMAN, UCLA LEWIS CTR. FOR REG’L POL’Y STUD., A FLAWED LAW: REFORMING CALIFORNIA’S HOUSING ELEMENT (2019), <https://escholarship.org/uc/item/6dx7914m> [<https://perma.cc/TGQ2-RNGW>] (discussing flaws in the RHNA process and suggesting simplified reforms).

for coordinating regional planning efforts.³⁹ Then each COG allocates the RHNA to the individual cities and counties (jurisdictions) within the region.⁴⁰ A jurisdiction's share of the RHNA is derived from the existing and projected housing needs of people of all income levels in the "area significantly affected" by its general plan.⁴¹ The COG or the subregion must make a diligent effort to procure participation of all economic segments of the region in making the RHNA determination, including at least one public hearing on the proposed methodology.⁴² Once the RHNA is set, each COG then allocates the housing needs among all the jurisdictions within that region.⁴³ The RHNA is broken down into the following income levels: very low income households (0–50% of area median income [AMI]), lower income households (50–80% AMI), moderate income households (80–120% AMI), and above moderate income households (120% AMI or higher).⁴⁴

Once the RHNA has been allocated, each jurisdiction must then prepare a housing element that identifies adequate sites to accommodate that jurisdiction's fair share of the RHNA at each income level.⁴⁵ Each local government must submit its draft housing element to HCD before adoption.⁴⁶ HCD must review the draft element and issue findings as to whether the draft substantially complies with the Housing Element Law.⁴⁷ After adopting the final housing element, the local government must again submit the element to HCD, and HCD must again review and report its findings to the local government.⁴⁸

C. What Must a Housing Element Include?

Housing elements must include: a needs assessment; site inventory; constraints analysis; goals and policies; programs to implement the goals and policies, including identification of sites to accommodate the RHNA; and a section on Affirmatively Furthering Fair Housing.

³⁹ LEWIS, *supra* note 3, at 16.

⁴⁰ PILP MANUAL, *supra* note 24, at 36.

⁴¹ *Id.* (quoting § 65584(a)(1)).

⁴² § 65584.04(d).

⁴³ *Id.* § 65584(b).

⁴⁴ *Id.* § 65584(f)(1)(A)–(D) (citing CAL. HEALTH & SAFETY CODE §§ 50105, 50079.5, 50093 (West 2025)).

⁴⁵ *See id.* §§ 65583, 65583.2.

⁴⁶ *Id.* § 65585(b)(1)(A).

⁴⁷ *Id.* § 65585(d).

⁴⁸ *Id.* § 65585(g)–(h).

The needs assessment provides a detailed analysis of the community's housing needs and the available resources to meet those needs.⁴⁹ This assessment considers various factors, including population growth, demographic changes, and economic conditions.⁵⁰ The assessment must also consider special housing needs, such as those of seniors, people with disabilities, large families, farmworkers, and homeless individuals.⁵¹ The element must also analyze subsidized housing that may be at risk of converting to market-rate housing, providing an inventory of such units, the potential costs of preserving or replacing them, and identifying public or private entities capable of managing or acquiring these developments.⁵²

The site inventory⁵³ of land suitable for residential development is used to identify specific parcels "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" available for residential development.⁵⁴ This inventory includes information on zoning, density, and the suitability of sites for housing.⁵⁵ The inventory must also address the feasibility of development on these sites, considering factors such as infrastructure availability,⁵⁶ environmental constraints,⁵⁷ and market conditions.⁵⁸

The constraints analysis identifies both governmental and nongovernmental barriers to housing development and analyzes efforts to remove them.⁵⁹ Governmental constraints include zoning ordinances, land-use controls, building codes, and permitting processes.⁶⁰ Nongovernmental constraints encompass factors such as land and construction costs, the availability of financing, and market conditions.⁶¹

⁴⁹ *See id.* § 65583(a).

⁵⁰ *See id.* § 65583(a)(1).

⁵¹ *Id.* § 65583(a)(7)(A).

⁵² *Id.* § 65583(a)(9).

⁵³ *See id.* § 65583(a)(3).

⁵⁴ *Id.* § 65583.2(a).

⁵⁵ *Id.* §§ 65583(a)(3), 65583.2.

⁵⁶ *Id.* § 65583.2(b)(5).

⁵⁷ *Id.* § 65583.2(b)(4).

⁵⁸ *Id.* § 65583.2(g)(1).

⁵⁹ *Id.* § 65583(a)(5)–(6).

⁶⁰ *See id.*

⁶¹ *See id.* § 65583(a)(6).

The Housing Element Law requires an analysis of opportunities for energy conservation in residential development, encouraging cities and counties to incorporate weatherization and energy efficiency improvements in publicly subsidized housing rehabilitation projects.⁶² These improvements may include enhancements to the building structure, heating and cooling systems, and electrical systems.⁶³ The analysis must evaluate available public and private subsidies or incentives for energy conservation, as well as potential changes to local building codes that could promote greater energy efficiency.⁶⁴

Housing elements must also include goals, policies, and measurable objectives to address the housing needs and constraints identified above.⁶⁵ It must outline the maximum number of housing units that can be built, rehabilitated, or preserved for various income categories over the planning period.⁶⁶ While the goals should endeavor to meet all identified housing needs, the law allows communities to set more realistic targets if resources are limited. However, these targets must still represent the highest feasible number of units achievable.⁶⁷ The element must provide a clear rationale for these figures, comparing them to the RHNA and offering justification when objectives fall short.⁶⁸ The analysis should account for economic conditions, available resources, and expected funding from state, federal, and local sources.

Affirmatively Furthering Fair Housing (AFFH) is a component of the housing element intended to ensure access to adequate housing for all residents, regardless of race, ethnicity, or economic status.⁶⁹ These programs may include measures to address segregation, promote inclusive zoning practices, and support fair housing organizations.⁷⁰ The concept of AFFH originated from the federal Fair Housing Act of 1968, which mandated all executive departments and agencies to administer housing and

⁶² *Id.* § 65583(a)(8).

⁶³ *Id.*

⁶⁴ *See id.*

⁶⁵ *Id.* § 65583(b)(1).

⁶⁶ *Id.* § 65583(b)(2).

⁶⁷ *Id.*

⁶⁸ PILP MANUAL, *supra* note 24, at 81 (citing Buena Vista Gardens Apartments Ass'n v. City of S.D. Plan. Dep't, 220 Cal. Rptr. 732, 741 (1985)).

⁶⁹ PaaVo Monkkonen, Aaron Barrall & Aurora Echavarría, *Meaningful Action: Evaluating Local Government Plans to Affirmatively Furthering Fair Housing in California*, 35 HOUS. POLY DEBATE 185, 187 (2025).

⁷⁰ PILP MANUAL, *supra* note 24, at 30, 38.

urban development programs “in a manner affirmatively to further the purposes of [the Fair Housing Act].”⁷¹ However, this mandate remained largely unenforced until 2015, when the U.S. Department of Housing and Urban Development (HUD) resurrected it with its “Affirmatively Furthering Fair Housing Rule.”⁷² This rule created a system of accountability for grantees, including local governments, to analyze fair housing issues and develop meaningful actions to address them.⁷³

In 2018, California enacted Assembly Bill 686, which “establish[ed] and incorporat[ed] in[to] the Housing Element Law a state obligation [for] all government agencies to ‘affirmatively further fair housing.’”⁷⁴ This state “duty is independent of and stronger than . . . its federal counterpart,” and it was further strengthened by Assembly Bill 1304 in 2021.⁷⁵

Public participation is also an essential aspect of the housing element process. Local governments must engage residents, community groups, and other stakeholders in the development of the housing element so that the housing element reflects the community’s needs and priorities.⁷⁶ Public participation can take various forms, including public meetings, workshops, surveys, and consultations with community organizations.⁷⁷

III. ENFORCEMENT ACTIONS

Failure to adopt a compliant housing element on time exposes a local government to litigation. This Part outlines the potential administrative and court-ordered remedies for noncompliance and describes the mechanics of litigation.

A. Potential Remedies

In 1982, article 14 of the California Government Code was established by Assembly Bill 1612⁷⁸ as a framework for challenging a general plan or its elements for non-compliance with state

⁷¹ Shashi Hanuman & Nisha Vyas, *Race, Place, and Housing in Los Angeles*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 449, 479 (2021) (quoting 42 U.S.C. § 3608(d)).

⁷² Monkkonen et al., *supra* note 69, at 185.

⁷³ Hanuman & Vyas, *supra* note 71.

⁷⁴ PILP MANUAL, *supra* note 24, at 17 (quoting CAL. GOV’T CODE § 8899.50 (West 2025)).

⁷⁵ *Id.*

⁷⁶ *See id.* at 30.

⁷⁷ *Id.* at 111.

⁷⁸ 1982 Cal. Stat. 46–51 (codified at §§ 65750–63).

law.⁷⁹ This framework was created because many jurisdictions were not adhering to new requirements to implement housing development plans.⁸⁰

The legislation included section 65755, which grants courts broad authority to restrict a jurisdiction's land use powers until it adopts a compliant housing element. The court must order at least one of the following: (1) suspend the jurisdiction's power to issue building permits or related permits; (2) suspend the jurisdiction's authority to approve zoning changes, variances, or both; (3) suspend the jurisdiction's ability to approve subdivision maps for any residential development; (4) mandate approval of residential permits; (5) mandate approval of final subdivision maps; or (6) mandate approval of tentative subdivision maps.⁸¹ Section 65755 requires courts to select at least one of the options above and keep the provision in effect until the jurisdiction has "substantially complied"⁸² with the law on General Plans, of which the Housing Element is a mandatory element.

Failing to adopt a compliant housing element can also cost a jurisdiction access to critical state funding and affordable housing incentives. For example, jurisdictions that are not designated as "pro-housing" by HCD lose competitive points when applying for HCD funding.⁸³ To earn the "pro-housing" designation, a jurisdiction must have a compliant housing element approved by HCD and meet additional standards outlined in the department's emergency regulations.⁸⁴

Courts also have the authority to impose financial penalties on noncompliant local governments and can even appoint a judi-

⁷⁹ Conboy, *supra* note 5, at 37.

⁸⁰ *Id.*

⁸¹ § 65755; *see also* Ben Field, *Why Our Fair Share Housing Laws Fail*, 34 SANTA CLARA L. REV. 35, 43 (1993) (explaining that courts may suspend a locality's land use powers for non-compliance).

⁸² § 65755; Conboy, *supra* note 5, at 44 n.59 ("Substantial compliance [means] actual compliance with respect to the substance essential to every reasonable objective of the statute, as distinguished from mere technical imperfections of form." (alteration in original) (quoting *Hernandez v. City of Encinitas*, 33 Cal. Rptr. 2d 875, 881 (1994))); *id.* ("[F]inding that [the] rent control ordinance did not violate [the] statutory requirement that [the] housing element reasonably address constraints on housing maintenance, [and] deferring to city's judgment that 'rent control has had a positive effect on preserving affordable housing'" (quoting *Black Prop. Owners Ass'n v. City of Berkeley*, 28 Cal. Rptr. 2d 305, 310-11 (1994))).

⁸³ PILP MANUAL, *supra* note 24, at 32 (citing § 65589.9).

⁸⁴ *Id.* at 32-33.

cial agent with expertise in planning to bring the jurisdiction's housing element into substantial compliance.⁸⁵ If a jurisdiction fails to comply with a court order, the court must impose a fine of up to \$100,000 per month, which can be multiplied by a factor of three and then six for continued noncompliance.⁸⁶

Successful plaintiffs in enforcement actions may be awarded attorney fees and costs, providing a financial incentive for private parties to pursue litigation against noncompliant jurisdictions. Petitioners generally request attorney fees based on California's "private attorney general" statute.⁸⁷

The so-called "builder's remedy" is another potential consequence of failing to comply with Housing Element Law.⁸⁸ Under this provision, projects are not required to comply with certain zoning ordinances or general plan land use designations so long as the city is out of compliance with Housing Element Law. However, as Jordan Wright recently noted, "Despite its inaugural ambition, the builder's remedy has not radically increased state housing production—in fact, it has rarely, if ever, been used."⁸⁹

Finally, jurisdictions on an eight-year planning period that do not adopt their element within 120 calendar days from the start date of the planning period must revise and adopt the housing element every four years until timely adopting at least two consecutive revisions by the applicable due date.⁹⁰

⁸⁵ Christopher S. Elmendorf, *Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts*, 71 HASTINGS L.J. 79, 118 (2019).

⁸⁶ § 65585(1)(1)–(3).

⁸⁷ CAL. CIV. PROC. CODE § 1021.5 (West 2025); see Field, *supra* note 81, at 51 n.120.

⁸⁸ See CAL. GOV'T CODE § 65589.5(h)(11) (West 2025).

⁸⁹ Jordan Wright, *California's "Builder's Remedy" for Affordable Housing Projects: A View from the Legislative History*, 46 ENVIRONS ENV'T L. & POL'Y J. 175, 177 (2023). The New York Times recently noted that, "While the builder's remedy has been on the books since 1990, it was effectively dormant until 2022. Since then, however, developers across the state have filed dozens of plans to build 10- and 20-story buildings in neighborhoods where they had never been allowed." Conor Dougherty, *The Housing Strategy that Has California NIMBYs in a Corner*, N.Y. TIMES (Nov. 20, 2025), <https://www.nytimes.com/2025/11/20/business/economy/california-housing-nimby.html?smid=url-share> [<https://perma.cc/D88T-Z7N4>]. This newfound reliance on the builder's remedy has caused a small surge in builder's remedy lawsuits. See Tabor Brewster, *Judge Rules in Favor of Developer in Linden Lawsuit*, BEVERLY PRESS PARK LABREA NEWS (Aug. 14, 2025), <https://beverlypress.com/2025/08/judge-rules-in-favor-of-developer-in-linden-lawsuit/> [<https://perma.cc/2MAR-CQW8>] ("At least six lawsuits have been filed over builder's remedy projects after developers alleged that the city illegally denied certain projects from moving forward.").

⁹⁰ § 65588(e)(4)(A).

B. Litigation Mechanics

As the California Court of Appeal stated in *Martinez v. City of Clovis*, “[A]ny interested party’ may challenge a local government’s housing element by a traditional mandamus action filed in the superior court under California Code of Civil Procedure section 1085.”⁹¹ Thus, private parties, including affordable housing advocates, developers, and residents, play an important role in enforcing the Housing Element Law. These stakeholders can file lawsuits against local governments that fail to meet their housing planning obligations. Private parties have also been able to obtain substantial attorney fees for their efforts.⁹² Petitioners generally have ninety days from the adoption or amendment of a general plan to file suit. However, there are exceptions for challenges brought to further the development of low- or moderate-income housing, as well as for claims that a project approval conflicts with an inadequate housing element.⁹³

In addition to private parties, the Attorney General of California has broad authority to take legal action against noncompliant jurisdictions.⁹⁴ Such actions can include filing lawsuits to compel local governments to adopt compliant housing elements and to take necessary steps to facilitate housing development.

IV. IS NONCOMPLIANCE A RATIONAL STRATEGY?

Noncompliance with California’s Housing Element Law remains a stubborn problem. Despite clear legal requirements, many jurisdictions fail to meet their obligations, leaving housing needs unaddressed. Today, more than four years after the most recent cycle’s deadline, 13.54% of the 539 jurisdictions remain out of compliance.⁹⁵

Noncompliance is nothing new. In the early 1990s, the compliance rate was abysmal. At the end of 1992, a whopping 81% of the 527 required jurisdictions had failed to adopt compliant hous-

⁹¹ *Martinez v. City of Clovis*, 307 Cal. Rptr. 3d 64, 89 (2023) (alteration in original) (quoting §§ 65587(b), 65583(h)).

⁹² See Order on Attorney Fees, No. 30-2015-00801675 (Cal. Super. Ct. July 8, 2021) (on file with author).

⁹³ Daniel J. Curtin, Jr., *Ramapo’s Impact on the Comprehensive Plan*, 35 URB. LAW. 135, 148 (2003).

⁹⁴ § 65585(i)–(l); CAL. CONST. art. V, § 13.

⁹⁵ *Housing Element Review and Compliance Report*, CAL. DEPT OF HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/planning-and-community-development/housing-element-review-and-compliance-report> [https://perma.cc/Z3XM-HW58] (last visited Dec. 21, 2024).

ing elements.⁹⁶ HCD stepped in to tighten oversight, and by the end of 1995, the compliance rate had risen to 58%.⁹⁷

Some regions are worse offenders than others. In Southern California, for example, local governments were required to adopt compliant housing elements by October 15, 2021. A full year later, only one-third of the 197 jurisdictions had done so.⁹⁸ Worse yet, five jurisdictions had not even submitted a draft housing element for HCD review.⁹⁹ This Part describes the primary ways that jurisdictions fail to comply and discusses the reasons for such noncompliance.

A. What Are the Primary Ways that Jurisdictions Fail to Comply?

Noncompliance typically falls into four main categories: (1) failure to timely adopt a housing element; (2) inadequacy; (3) inconsistency; and (4) failure to implement components of an adopted housing element.

1. Failure to Timely Adopt a Housing Element

This occurs when a jurisdiction fails to adopt a housing element that complies with state law by the statutory deadline. Since a nonexistent housing element cannot possibly include the mandated components, a late submission is also considered inadequate. (See subsection 3 below.) However, if a tardy housing element eventually meets all the statutory requirements, it can later achieve substantial compliance with state law.

2. Inadequacy

An inadequate housing element in California refers to a housing element that does not “substantially comply” with the requirements of state law. Although local governments have discretion in preparing housing elements, they must adhere to the statutory provisions to ensure compliance. In essence, this means the housing element fails to adequately plan for the housing

⁹⁶ Nico Calavita, Kenneth Grimes & Alan Mallach, *Inclusionary Housing in California and New Jersey: A Comparative Analysis*, 8 HOUS. POL’Y DEBATE 109, 118 (1997).

⁹⁷ *Id.*

⁹⁸ PAAVO MONKKONEN ET AL., NYU FURMAN CTR., CALIFORNIA’S STRENGTHENED HOUSING ELEMENT LAW: EARLY EVIDENCE ON HIGHER HOUSING TARGETS AND REZONING? 21 (2023), https://furmancenter.org/files/California’s_Strengthened_Housing_Element_Law_508.pdf [<https://perma.cc/96YK-HRVS>].

⁹⁹ *Id.*

needs of all economic segments of the community. A housing element that lacks any of the required components outlined in the Housing Element Law is considered inadequate.

3. Inconsistency

Consistency in the housing element context has two dimensions. First, the general plan must be internally consistent.¹⁰⁰ Every element of the plan, including the housing element, must align with the others. For example, the land use element cannot designate a parcel for commercial use if the housing element identifies it as a residential site. Contradictions within the general plan undermine its purpose as a coherent blueprint for development.

Second, the general plan holds a “constitutional” status over all local land use and zoning decisions.¹⁰¹ This means that every development-related action (e.g., zoning ordinances, subdivision maps, specific plans, building permits, developer agreements, or redevelopment plans) must be consistent with the general plan. Local governments, whether chartered or general law, cannot approve actions that conflict with any part of the plan.¹⁰²

4. Failure to Implement Components of an Adopted Housing Element

The adoption of a housing element includes a duty to implement its programs.¹⁰³ Failure to take necessary actions can lead to noncompliance. If a jurisdiction fails to identify or rezone sufficient sites to meet its share of lower-income housing needs by the time the next housing element is due, it must rezone enough sites within one year to accommodate those needs. Approving development that contradicts the housing element’s provisions, such as downzoning sites intended for higher density or approving market-rate development on sites identified for affordable housing, can also violate the “No-Net-Loss” statute.¹⁰⁴ This stat-

¹⁰⁰ CAL. GOV’T CODE § 65300.5(a) (West 2025).

¹⁰¹ *O’Loane v. O’Rourke*, 42 Cal. Rptr. 283, 288 (1965); *see* § 65860(a) (explaining that zoning must be consistent with the general plan); *Sierra Club v. Kern Cnty. Bd. of Supervisors*, 179 Cal. Rptr. 261, 264 (1981) (affirming the notion that zoning ordinances must comply with the general plan); PILP MANUAL, *supra* note 24, at 25.

¹⁰² §§ 65860, 65454, 66473.5, 65583(c); CAL. HEALTH & SAFETY CODE §§ 33300–33002 (West 2025).

¹⁰³ PILP MANUAL, *supra* note 24, at 33.

¹⁰⁴ CAL. GOV’T CODE § 65863 (West 2025).

ute mandates that jurisdictions maintain sufficient sites to always meet the housing needs of all income categories.¹⁰⁵

B. Why Do Jurisdictions Fail to Comply?

In 2003, political scientist Paul G. Lewis authored the only existing comprehensive study on why jurisdictions fail to comply with California's Housing Element law.¹⁰⁶ In the study, he acknowledged that "[l]arge majorities of jurisdictions in the state have been noncompliant at some point."¹⁰⁷ By examining census data, land use patterns, and local policy measures, he measured differences in noncompliant versus compliant jurisdictions. The data led him to identify several theories to explain the high level of noncompliance.

First, Lewis identified the age of a jurisdiction's housing stock as a key predictor of compliance.¹⁰⁸ Specifically, jurisdictions with older housing were significantly less likely to comply. These communities, he explained, "may be more settled and have a more established community character; they are also likely to contain less vacant land."¹⁰⁹

Second, he found that jurisdictions with explicit antigrowth policies—particularly those that had recently enacted new growth restrictions—were disproportionately out of compliance. In fact, "each restrictive growth policy that has been adopted by the city approximately doubles the odds that it will be found noncompliant."¹¹⁰ Jurisdictions where the approval process for new development had become increasingly cumbersome were less likely to meet HCD's standards.¹¹¹

Finally, Lewis highlighted the role of local capacity. Smaller jurisdictions, those with limited staff, resources, and technical expertise, were significantly more likely to fall short. "Cities with smaller populations are more likely to be noncompliant, all else equal," he observed.¹¹² By contrast, "governments of larger cities may have a greater capacity to undertake the broad range of

¹⁰⁵ PILP MANUAL, *supra* note 24, at 33.

¹⁰⁶ See LEWIS, *supra* note 3, at 1.

¹⁰⁷ *Id.* at vii.

¹⁰⁸ *Id.* at ix.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 51–52.

¹¹¹ *Id.* at 51.

¹¹² *Id.* at ix.

planning efforts needed to reach compliance and may also be more insulated from the political pressure of homeowners.”¹¹³

In addition to these potential reasons for noncompliance, Lewis found that the longer a city had gone since its housing element update deadline, the more likely it was to come into compliance. Statistically, each passing month increased the odds of compliance by roughly 5%.¹¹⁴ At the same time, jurisdictions that had failed to comply in the early 1990s were disproportionately likely to remain noncompliant a decade later. In his words, “non-compliance in 1991 . . . was a fairly good predictor of noncompliance in 2002.”¹¹⁵ Thus, local patterns of resistance appear to persist, sometimes regardless of changing legal frameworks or state-level prodding.

Much of the literature assumes that the threat of litigation compels local governments to comply with California’s Housing Element Law.¹¹⁶ As Lewis observed, the prospect of a lawsuit “is a major motivator for local governments in expending time and resources on housing elements.”¹¹⁷ In practice, the planning director of Long Beach testified, the housing element “is the only element that is prepared defensively, rather than as a guide to local policy and decision making.”¹¹⁸ In most cities, he explained, it is not crafted by visionaries but by legal counsel: It is “a joint effort by the city attorney and the planning department to make sure that the document is defensible in court.”¹¹⁹

¹¹³ *Id.*

¹¹⁴ *Id.* at 52–53.

¹¹⁵ *Id.* at ix.

¹¹⁶ See, e.g., PILP MANUAL, *supra* note 24, at 32 (“Just the threat of this remedy often provides a powerful incentive for the local government to negotiate adoption of an adequate element.”); Agatstein, *supra* note 2, at 231 (opining that the “threat of paying hundreds of thousands of dollars in attorney fees” remains a strong motivator for housing element litigation, while also acknowledging that in the 1990s “the threat of a developer-citizen suit was a false one” (citing Field, *supra* note 81, at 50–53)); Baer, *supra* note 8, at 60–61 (observing that “[h]aving a non-compliant general plan via a nonconforming housing element could shut down all zoning and building activity in a city,” but also noting that “[d]espite this threat, there have been few such suits, a frequently charged weakness in the process”); Calavita, Grimes & Mallach, *supra* note 96, at 117 (“Another incentive for preparing housing elements is the threat of litigation.”); Wright, *supra* note 89, at 199 (explaining that a lawsuit or its threat “may prompt cities to take more seriously their housing obligations” due to legislative changes easing the path for challengers).

¹¹⁷ LEWIS, *supra* note 3, at 22.

¹¹⁸ *Id.* (quoting *Housing Element Law: A Summary Report from the Interim Hearing*, S. Comm. on Loc. Gov’t 62 (1993)).

¹¹⁹ *Id.* at 22–23 (quoting *Housing Element Law: A Summary Report from the Interim Hearing*, S. Comm. on Loc. Gov’t 62 (1993)).

Many commentators warn that the consequences of losing in court can be severe. As municipal law attorney Michael Colantuono cautioned lawmakers, failure to comply may result in the suspension of a city's land-use authority, a court-ordered freeze on all permitting, and a 120-day scramble to produce a new, legally compliant housing element, often under the costly guidance of outside consultants.¹²⁰ The jurisdictions, meanwhile, would be responsible not only for its own legal expenses, but also those of the prevailing party.¹²¹

But as compelling as this account may be, my empirical analysis suggests it is wrong. The threat of litigation is largely illusory. In fact, noncompliance often functions as a rational strategy. Even before turning to the data, the theoretical logic is clear: suing a city for failing to plan does not create new land, reduce planning costs, or win over local opponents of affordable housing. Litigation does not build trust or resources. Instead, it drains public coffers and hardens political opposition.

Worse still, the strategy can backfire. A court order may compel a city to revise its housing policies on paper, but it cannot compel local officials or residents to embrace the underlying goals. On the contrary, lawsuits can provide local leaders with a useful enemy: the meddling state. In this way, noncompliance becomes a political weapon. Jurisdictions defy the state, rally local opposition, and reap electoral rewards, all while avoiding meaningful consequences. Some jurisdictions have spent millions of dollars litigating their resistance instead of using those resources to fund compliance in the first place.

What emerges is not a story of local governments cowering in the shadow of litigation, but of calculated resistance, in which the costs of defiance are outweighed by its benefits.

¹²⁰ *Id.* at 23 n.5 (“A prudent locality can manage this risk only by keeping its housing element up to date and building a voluminous record to ensure the element is legally defensible. Those communities which have failed to do so, often for budgetary reasons, have run significant risks and some have paid a significant price If a city loses such a case . . . , its land-use authority will be suspended . . . , it will have just 120 days to prepare a new element, often necessitating the retention of consultants, and it will likely pay not only its own legal fees, but those of its opponents During the preparation of a new element, nothing gets built, not even housing, without a court order” (alterations in original) (quoting Michael Colantuono, *Housing Element Law: A Summary Report from the Interim Hearing*, S. Comm. on Loc. Gov't 75–76 (1993)).

¹²¹ *Id.*

V. EMPIRICAL EVIDENCE

In this Part, I present empirical evidence that supports the conclusion that litigation, often viewed as the primary enforcement mechanism of the Housing Element Law, may not be as formidable as it seems. By examining litigation trends, analyzing how California trial courts apply remedies under section 65755, and investigating compliance data, I reveal patterns—or the lack thereof—that explain why compliance remains elusive despite clear legal mandates.

A. The Data Set

To construct a data set capable of supporting my analysis, I compiled a list of every documented housing element case I could find from 1982 to the present.¹²² I chose 1982 as the starting point, because this was the year article 14 took effect. My search yielded eighty-five cases in which either the private parties or the California Attorney General sued jurisdictions for noncompliance with Housing Element Law. For each case, I documented:

- Filing Date
- Case Name
- Case Number
- Court Jurisdiction
- Decision on the Merits
- Whether the Case Settled
- Whether the Parties Filed a Stipulated Judgment
- Relief Requested
- Remedy Imposed, if Any
- Nature of the Dispute
- Whether the Jurisdiction was Rural or Urban¹²³
- Attorney Fee Award, if Any

¹²² Although I endeavored to find every case, it is possible I overlooked some.

¹²³ I used the 2020 Census for this data point. *2020 Census Urban Areas FAQs*, U.S. CENSUS BUREAU (Feb. 2023), https://www2.census.gov/geo/pdfs/reference/ua/Census-UA_2020FAQs_Feb2023.pdf [<https://perma.cc/U8SW-9BUR>] (“For the 2020 Census, an urban area will comprise a densely settled core of census blocks that meet minimum housing unit density requirements, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core. To qualify as an urban area, the territory identified according to criteria must encompass at least 2,000 housing units or at least 5,000 people. ‘Rural’ encompasses all population, housing, and territory not included within any urban area.”).

B. The Method

Identifying all the housing element cases proved to be the most challenging task. While many cases were located through legal research platforms like Westlaw, Lexis, and Bloomberg, additional lists were obtained from resources such as the Public Interest Law Project (PILP) manual,¹²⁴ the Californians for Homeownership (CFH) website,¹²⁵ the Housing Defense Fund (CalHDF) website,¹²⁶ and the Yes In My Back Yard (YIMBY) website,¹²⁷ as well as through direct inquiries to housing advocacy groups. Since trial court documents are rarely included in these databases, I turned to the case access pages of individual Superior Court websites to find relevant court documents.¹²⁸ For the three federal cases, I relied on the Public Access to Court Electronic Records (PACER) system to obtain the necessary documents.¹²⁹

For each case, I sought specific documents to understand its key details and outcomes. The operative petition provided basic case information and outlined the claims brought by the petitioners. Judgments, writs, or court orders revealed the ultimate outcome and any remedies imposed by the court. Proposed Judgments showed the relief that the petitioners requested. In cases where attorney fees were awarded by the court rather than through settlement, I collected the relevant attorney fee orders. When available, I also gathered stipulated judgments and settlement documents, as these occasionally included information about attorney fee amounts.

Collecting complete data proved to be a significant challenge. Many courts destroy older case records, making them unavailable for review. Some courts retain older documents only on microfilm, which can only be accessed in person. Others provide no online access to case records at all. In many instances, the only

¹²⁴ PILP MANUAL, *supra* note 24, at 150–51.

¹²⁵ *Our Mission*, CALIFORNIANS FOR HOMEOWNERSHIP [hereinafter CFH], <https://www.caforhomes.org> [<https://perma.cc/GM6E-3DN7>] (last visited Dec. 21, 2024).

¹²⁶ *Our Work*, CALHDF (Mar. 5, 2024), <https://calhdf.org/about-us/our-work/> [<https://perma.cc/UU3X-X852>].

¹²⁷ YES IN MY BACK YARD, <https://www.yesinmybackyard.org/> [<https://perma.cc/LB6S-GPTB>] (last visited Oct. 15, 2025).

¹²⁸ *E.g.*, *Access a Case*, SUPER. CT. OF CAL., CNTY. OF L.A., <https://www.lacourt.ca.gov/pages/lp/access-a-case> [<https://perma.cc/N3VD-T26H>] (last visited Dec. 21, 2024).

¹²⁹ PUB. ACCESS TO CT. ELEC. RECS., <https://pacer.uscourts.gov/> [<https://perma.cc/6W9R-LHZH>] (last visited Oct. 15, 2025).

way to obtain the necessary documents was to request copies directly from the attorneys who litigated the cases.

Once I had collected data for every housing element case I could find, I organized and analyzed the data to address two basic research questions:

- (1) What are the general trends in housing element litigation since 1982?
- (2) Are courts following section 65755's mandates when ordering remedies for noncompliance?¹³⁰

C. Findings

The findings below discuss: (1) general observations about the data set; and (2) an analysis of housing element cases in which the court issued a judgment in the petitioner's favor.

1. General Observations

This section explores general trends and observations about housing element litigation, focusing on four key aspects: frequency, geography, claim types, and attorney fees. First, I analyze the increasing frequency of lawsuits, including recent spikes driven by new nonprofit advocacy efforts and the Attorney General's heightened enforcement efforts. Next, I examine the geographic distribution of cases, which are heavily concentrated in urban hubs like Los Angeles and the Bay Area. I then turn to the types of claims petitioners bring, noting a shift from earlier emphasis on inadequacy claims to a recent dominance of untimely adoption cases, likely due to their procedural simplicity. Finally, I discuss the financial dimension of litigation, particularly the variability of attorney fees, which range from modest sums in quickly resolved cases to multimillion-dollar awards in protracted disputes. Together, these insights provide a comprehensive view of the evolving landscape of housing element lawsuits.

¹³⁰ I also endeavored to address a third research question: How does litigation affect various jurisdictions' tendencies to timely adopt a compliant housing element? However, I only recently acquired the relevant data from HCD. Therefore, I intend to address this question more fully in a subsequent piece.

a. Frequency

Since 1982, there appears to be an upward trend in the number of housing element lawsuits filed. (See Figure 1.) There was a spike between 2000–2005, when there were nineteen housing element lawsuits filed. There has also been a recent spike: twenty-nine lawsuits were filed between 2022–2024.

This recent spike may be attributed to two phenomena. First, a few recently formed nonprofit housing advocate groups have focused their efforts on litigating housing element cases. CFH “is a 501(c)(3) non-profit organization that works to address California’s housing crisis by enforcing [housing] laws and fighting unlawful policies that limit access to housing affordable for families at all income levels.”¹³¹ CFH filed seventeen housing element lawsuits, all of them in 2022 and 2023.¹³² California Housing Defense Fund (CalHDF) is “a non-profit housing organization that uses legal advocacy and education to hold cities accountable and get housing built.”¹³³ My data shows that until 2023, CalHDF had not filed any housing element lawsuits. But in 2023, CalHDF filed four housing element lawsuits.¹³⁴ Two of

¹³¹ CFH, *supra* note 125.

¹³² See *Californians for Homeownership, Inc. v. City of Richmond*, No. N23-0178 (Cal. Super. Ct. filed Jan. 24, 2023); *Californians for Homeownership, Inc. v. City of Belvedere*, No. CIV2300179 (Cal. Super. Ct. filed Jan. 25, 2023); *Californians for Homeownership, Inc. v. City of Beverly Hills*, No. 23STCP00143 (Cal. Super. Ct. filed Jan. 18, 2023); *Californians for Homeownership, Inc. v. City of Bradbury*, No. 22STCP01381 (Cal. Super. Ct. filed Apr. 18, 2022); *Californians for Homeownership, Inc. v. City of Claremont*, No. 22STCP03414 (Cal. Super. Ct. filed Sep. 16, 2022); *Californians for Homeownership, Inc. v. City of Fullerton*, No. 30-2022-01281840-CU-WM-CJC (Cal. Super. Ct. filed Sep. 16, 2022); *Californians for Homeownership, Inc. v. City of La Habra Heights*, No. 22STCP01394 (Cal. Super. Ct. filed Apr. 18, 2022); *Californians for Homeownership, Inc. v. City of La Mirada*, No. 22STCP03418 (Cal. Super. Ct. filed Sep. 16, 2022); *Californians for Homeownership, Inc. v. City of Laguna Hills*, No. 30-2022-01255365-CU-WM-CJC (Cal. Super. Ct. filed Apr. 19, 2022); *Californians for Homeownership, Inc. v. City of Manhattan Beach*, No. 22STCP01417 (Cal. Super. Ct. filed Apr. 19, 2022); *Californians for Homeownership, Inc. v. City of South Pasadena*, No. 22STCP01388 (Cal. Super. Ct. filed Apr. 18, 2022); *Californians for Homeownership, Inc. v. City of Vernon*, No. 22STCP01397 (Cal. Super. Ct. filed Apr. 18, 2022); *Californians for Homeownership, Inc. v. City of Pino-le*, No. N23-0177 (Cal. Super. Ct. filed Jan. 19, 2023); *Californians for Homeownership, Inc. v. City of La Cañada Flintridge*, No. 23STCP00699 (Cal. Super. Ct. filed Mar. 3, 2023); *Californians for Homeownership, Inc. v. County of Santa Clara*, No. 23CV410822 (Cal. Super. Ct. filed Feb. 3, 2023); *Californians for Homeownership, Inc. v. City of Novato*, No. CIV2300180 (Cal. Super. Ct. filed Jan. 25, 2023); *Californians for Homeownership, Inc. v. City of Daly City*, No. 23-CIV-00585 (Cal. Super. Ct. filed Feb. 3, 2023).

¹³³ CALHDF, <https://calhdf.org/about-us/> [<https://perma.cc/JZN3-WCEU>] (last visited Dec. 21, 2024).

¹³⁴ *Cal. Hous. Def. Fund v. City of Cupertino*, No. 23CV410817 (Cal. Super. Ct. filed Feb. 3, 2023); *Cal. Hous. Def. Fund v. City of Martinez*, No. N23-0305 (Cal. Super. Ct. filed

these lawsuits, against the City of Cupertino and the City of Palo Alto, were filed with YIMBY as a co-petitioner.¹³⁵ YIMBY is a nonprofit organization with the stated mission “to end the housing shortage and achieve affordable, sustainable, and equitable housing for all.”¹³⁶ In addition to the Cupertino and Palo Alto cases, YIMBY filed three other housing element lawsuits in 2023.¹³⁷

Second, the recent spike in the number of housing element lawsuits correlates with the Attorney General’s increased enforcement efforts. Even though it has authority to take legal action, the Attorney General has historically not been involved in filing housing element lawsuits. (See Figure 2.) Indeed, up until 2023, the Attorney General had only been involved in four housing element cases: (1) as amicus curiae on behalf of the respondent city in *Black Property Owners Association v. City of Berkeley*;¹³⁸ (2) as petitioner-intervenor in *Urban Habitat Program v. City of Pleasanton*;¹³⁹ (3) as counsel for petitioner in *California Department of Housing & Community Development v. City of Huntington Beach* in 2019;¹⁴⁰ and (4) as petitioner-intervenor in *Californians for Homeownership, Inc. v. City of Fullerton* in 2022.¹⁴¹

The right of private parties to sue may have removed motivation for the state to expend resources pursuing litigation. Indeed, the specter of attorney fee awards appears to have effectively motivated public interest groups to litigate housing element cases. As Figure 3 illustrates, the top five attorneys for petitioners include PILP, CFH, California Rural Legal Assistance (CRLA), Legal Services of Northern California (LSNC), and YIMBY.¹⁴² These are all nonprofit organizations that advocate for

Feb. 3, 2023); Cal. Hous. Def. Fund v. City of Pleasant Hill, No. N23-0293 (Cal. Super. Ct. filed Feb. 2, 2023); Cal. Hous. Def. Fund v. City of Palo Alto, No. 23CV410811 (Cal. Super. Ct. filed Feb. 3, 2023).

¹³⁵ *City of Cupertino*, No. 23CV410817; *City of Palo Alto*, No. 23CV410811.

¹³⁶ YES IN MY BACK YARD, *supra* note 127.

¹³⁷ Yes In My Back Yard v. City of Burlingame, No. 23-CIV-00519 (Cal. Super. Ct. filed Feb. 1, 2023); Yes In My Back Yard v. City of Sausalito, No. CIV2300652 (Cal. Super. Ct. filed Mar. 8, 2023); Verified Petition for Writ of Mandate at 1, Yes In My Back Yard v. Town of Fairfax, No. CIV2300248 (Cal. Super. Ct. filed Feb. 1, 2023).

¹³⁸ 28 Cal. Rptr. 2d 305, 307 (Ct. App. 1994).

¹³⁹ Complaint in Intervention at 1, No. RG 06 293831 (Cal. Super. Ct. filed Oct. 17, 2006).

¹⁴⁰ No. 30-2019-01046493 (Cal. Super. Ct. filed Jan. 25, 2019).

¹⁴¹ No. 30-2022-01281840-CU-WM-CJC (Cal. Super. Ct. filed Jan. 18, 2024).

¹⁴² YIMBY Law “is the legal arm of the pro-housing movement and is housed in YIMBY Action’s 501c3 affiliate, Yes In My Back Yard.” *Who We Are*, YES IN MY BACK

housing in California. Notably, three of these five organizations—PILP, CRLA, and LSNC—provide legal services to low-income clients.¹⁴³ However, recent developments suggest that the state is beginning to assume a more prominent role in enforcement. In 2017, HCD created the Housing Accountability Unit, which was authorized by Assembly Bill 72.¹⁴⁴ In 2021, Attorney General Bonta announced the creation of a Housing Strike Force within the California Department of Justice to advance housing access across the state.¹⁴⁵ This new strike force appears to have filed or threatened to file four lawsuits against various jurisdictions in 2023 and 2024.¹⁴⁶ Thus, it appears that the state is taking a more active role in enforcing Housing Element Law.

b. Geography

As the heat map in Figure 4 shows, housing element lawsuits have been concentrated in a few geographical areas—namely, the Los Angeles metropolitan area and the Bay Area. This is hardly surprising for several reasons. First, these regions are more populated. (See Figure 4.1.) More people create greater housing demand, which amplifies the stakes of noncompliance with housing element requirements. Furthermore, greater population density

YARD, <https://www.yimbylaw.org/about-us> [<https://perma.cc/9TUJ-T9YZ>] (last visited Nov. 9, 2025).

¹⁴³ *Who We Are*, PUB. INT. L. PROJECT (Sep. 23, 2025), <https://www.pilpca.org/about> [<https://perma.cc/7S5W-PCUM>]; *About CLRA*, CAL. RURAL LEGAL ASSISTANCE, INC., <https://crla.org/about-crla> [<https://perma.cc/A855-XZWS>] (last visited Nov. 16, 2025); *What We Do*, LEGAL SERVS. N. CAL., <https://lsnc.net/what-we-do> [<https://perma.cc/6VC8-ERW9>] (last visited Nov. 16, 2025).

¹⁴⁴ Assemb. B. 72, 2017–2018 Leg., Reg. Sess. (Cal. 2017); CAL. DEP'T OF HOUS. & CMTY. DEV., ANNUAL REPORT 2022–23, at 9 (2023).

¹⁴⁵ Press Release, Rob Bonta, Att'y Gen., Off. of the Att'y Gen., Attorney General Bonta Launches Housing Strike Force, Announces Convening of Tenant Roundtables Across the State (Nov. 3, 2021), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-launches-housing-strike-force-announces-convening-tenant> [<https://perma.cc/L4ZG-K9VJ>].

¹⁴⁶ Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief at 1, *People ex rel. Bonta v. City of Elk Grove*, No. 23WM000004 (Cal. Super. Ct. filed May 1, 2023); Petition and Complaint in Intervention at 1, *Gracia ex rel. Bonta v. City of San Bernardino*, No. CIVSB2301828 (Cal. Super. Ct. filed Aug. 24, 2023); *People ex rel. Bonta v. City of Huntington Beach*, No. 30-2023-01312235-CU-WM-CJC (Cal. Super. Ct. filed Mar. 8, 2023); Petition for Writ of Mandate and Complaint for Declaratory Relief at 1, *People ex rel. Bonta v. City of Coronado* (Oct. 20, 2023), <https://oag.ca.gov/system/files/attachments/press-docs/Petition%20for%20Writ%20of%20Mandate.pdf> [<https://perma.cc/EX7Y-SRB3>] (unfiled); Petition for Writ of Mandate and Complaint for Declaratory Relief at 1, *People ex rel. Bonta v. City of Malibu* (Apr. 22, 2024), <https://oag.ca.gov/system/files/attachments/press-docs/People%20of%20California%20v.%20City%20of%20Malibu%20-%20Petition%20and%20Complaint.pdf> [<https://perma.cc/UZT8-ZJQG>] (unfiled).

can attract more attention from advocacy groups, media, and policymakers, making these areas natural focal points for enforcement efforts and lawsuits. Second, there are lots of HCD jurisdictions in these areas, creating more opportunities for noncompliance and, consequently, litigation.¹⁴⁷ Third, Los Angeles and the Bay Area are in coastal areas, where local community opposition to developments has been common.¹⁴⁸ Local governments, therefore, may be inclined to drag their feet on—or completely shirk—compliance.¹⁴⁹

c. Claim Types

Petitioners in housing element lawsuits typically advance claims in four main categories: (1) failure to timely adopt a housing element, (2) inconsistency, (3) inadequacy, and (4) failure to implement components of an adopted housing element.

As shown in Figure 5, untimely adoption claims have risen sharply, accounting for twenty-three of the thirty-seven lawsuits filed between 2020 and 2024. While this trend might suggest that jurisdictions are struggling to meet deadlines, it is more likely the result of a “low-hanging fruit” effect. Proving untimely adoption is relatively straightforward: If a housing element was not adopted by the statutory deadline, the jurisdiction is automatically in violation of the law. In contrast, other claims, such as those involving inconsistency or substantive inadequacy, require more detailed evidence and are therefore harder to litigate.

Inconsistency claims have been relatively rare across all periods, suggesting that once a jurisdiction adopts a compliant housing element, it tends to align the rest of its general plan accordingly.

Inadequacy claims, however, have remained a constant feature of litigation, with the highest number (seven claims) filed between 2020 and 2024. This reflects a persistent issue with the substantive content of housing elements, as jurisdictions struggle

¹⁴⁷ *Statutory Determinations for Limiting Jurisdictions’ Abilities to Restrict Development*, CAL. DEPT OF HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/planning-and-community-development/statutory-determinations> [<https://perma.cc/PSJ2-RBG8>] (last visited Nov. 14, 2025).

¹⁴⁸ Ecklund, *supra* note 16, at 985.

¹⁴⁹ To truly grasp the dynamics behind this concentration of lawsuits, I would need to dig into HCD’s compliance data. For example, the data might show that rural jurisdictions may comply with Housing Element Law more than urban jurisdictions. Because I have only recently acquired the relevant data, such an analysis will have to wait for a subsequent piece.

to meet the legal requirements for comprehensive and actionable housing plans.

Claims based on the failure to implement programs became prominent starting in the late 1990s and have persisted ever since. Three developments may explain their rise. First, *Urban Habitat Program v. City of Pleasanton* clarified that when a jurisdiction fails to carry out a program in its housing element, it violates a mandatory duty and triggers a three-year statute of limitations under California Code of Civil Procedure section 338.¹⁵⁰ Second, the Legislature codified the right to bring such claims by adding section 65583(h), which explicitly authorizes enforcement through a traditional writ of mandate under California Code of Civil Procedure section 1085.¹⁵¹ Third, section 65585 was amended to empower HCD to revoke its approval of a housing element if a jurisdiction fails to implement programs that were central to that approval.¹⁵²

Overall, while earlier lawsuits were dominated by inadequacy and untimely adoption claims, recent years have seen a broader distribution of issues. Untimely adoption remains the most common claim, but failures to implement programs and inconsistency continue to play a significant role in enforcement efforts.¹⁵³

d. Attorney Fees

It is difficult to find accurate data on attorney fees. For many older cases, the court documents have been destroyed. For many settled cases, it was impossible to find whether attorney fees were included in the parties' private settlements. However, I found attorney fee data in several stipulated judgments. I also found data on a few attorney fee awards in the Los Gatos Town Council Meeting Minutes, which lists several housing element lawsuits and discloses the amount of attorney fees the jurisdiction paid.¹⁵⁴ Although I

¹⁵⁰ 80 Cal. Rptr. 3d 300, 311 (Ct. App. 2008).

¹⁵¹ See S.B. 375, 2007–2008 Leg., Reg. Sess. ch. 728 (Cal. 2008).

¹⁵² Assemb. B. 72, 2017–2018 Leg., Reg. Sess. ch. 370 (Cal. 2017); PILP MANUAL, *supra* note 24, at 32.

¹⁵³ Again, compliance data from HCD could help verify or refute these conclusions. Such data would demonstrate whether the types of claims brought in these lawsuits genuinely reflect shortcomings on the part of local jurisdictions, or if, instead, they reveal strategic decision-making by the advocacy groups driving the litigation.

¹⁵⁴ TOWN OF LOS GATOS: COUNCIL AGENDAS AND REPS. (Oct. 21, 2016, at 16:25 PT), <https://weblink.losgatosca.gov/WebLink/DocView.aspx?id=593968&dbid=0&repo=LFTOWN> [<https://perma.cc/LQ7A-3YKM>].

could not independently verify the amounts, they may be helpful for understanding how jurisdictions view the risk of paying attorney fees if they are sued for noncompliance.

As demonstrated in Figure 6, a few attorney fee awards were quite large. In *Kennedy Commission v. City of Huntington Beach*, filed in 2015, the City of Huntington Beach was ordered to pay the petitioners \$3,531,201.¹⁵⁵ In *Urban Habitat Program v. City of Pleasanton*, filed in 2006, the City of Pleasanton agreed to pay \$1,990,000 in attorney fees as part of a stipulated judgment.¹⁵⁶ Those two cases are extreme examples though. Most attorney fee awards are in the tens of thousands of dollars, and a few are in the hundreds of thousands of dollars range. Of course, no attorney fees have been awarded in cases where the petitioners lost.

Importantly, because courts tend to use the “lodestar” method for determining appropriate attorney fees, the length of the litigation is directly related to the attorney fee amount.¹⁵⁷ The *Kennedy Commission* case had multiple appeals and dragged on for several years.¹⁵⁸ *California Housing Defense Fund and YIMBY v. City of Cupertino* resolved very quickly, which is why the petitioners were only awarded \$15,000 in attorney fees.¹⁵⁹

2. Outcomes and Remedies

Of the eighty-five housing element cases examined, forty-eight were settled before a hearing on the merits (see Figure 7). In five cases, it remains unclear whether they settled or proceeded to a merits hearing.¹⁶⁰ One case is ongoing and therefore cannot be categorized as either settled or adjudicated on the mer-

¹⁵⁵ Order on Attorney Fees, *supra* note 92.

¹⁵⁶ Judgment Pursuant to Stipulation, No. RG 06 293831 (Cal. Super. Ct. Aug. 19, 2010) (on file with author).

¹⁵⁷ Under this method, the court determines a reasonable hourly rate and multiplies it by the number of hours reasonably spent on the litigation, resulting in a presumptively reasonable fee known as the lodestar figure. See *PLCM Grp., Inc. v. Drexler*, 997 P.2d 511, 518 (Cal. 2000). “The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided.” *Id.*

¹⁵⁸ *Kennedy Comm’n v. City of Huntington Beach*, 308 Cal. Rptr. 3d 461, 468–77 (Ct. App. 2023).

¹⁵⁹ Stipulated Judgment at 6, No. 23CV410817 (Cal. Super. Ct. Jan. 8, 2024).

¹⁶⁰ Several documents mentioned cases against the Cities of Sacramento and Lincoln filed by LSNC. Sources also referenced a case against the City of Seal Beach. However, I could not locate court records for these three cases.

its.¹⁶¹ This leaves thirty-three cases that proceeded to a merits hearing on noncompliance with Housing Element Law. Of these, fourteen were denied on the merits, while nineteen resulted in court decisions granting the petition.

To understand how well courts are adhering to the mandates of section 65755, I analyzed the remedies imposed or declined by the courts. However, court-ordered remedies are difficult to evaluate because judges rarely explain their reasoning on the record. Proposed orders often provide some insight into the final judgment, but even they can leave significant gaps.

In eleven of the cases where petitions were granted, the process unfolded as expected.¹⁶² After the court ruled in favor of the petitioners, it entered a judgment that included one or more of the required remedies under section 65755. For example, in *Ivory v. County of Yuba*, the judgment ordered Yuba County to “[r]efrain from granting any and all categories of subdivision map approvals, zoning changes, variances, building permits and other related permits, in the Plumas Lake Specific Plan area, until Yuba County complies with [the Housing Element Law].”¹⁶³

The court’s language incorporates section 65755, subdivisions (a)(1), (a)(2), and (a)(3). In other words, the court suspended the authority of Yuba County in all three ways under the statute.

In other cases, the petitioners submitted a proposed order that included section 65755 remedies. The court then adopted the proposed judgment—often by simply crossing out the word “proposed”—and entered the judgment with the section 65755 reme-

¹⁶¹ Verified Petition for Writ of Mandate and Complaint for Declaratory Relief at 1, *Yes In My Back Yard v. City of Sausalito*, No. CIV2300652 (Cal. Super. Ct. filed Mar. 8, 2023).

¹⁶² See *Buena Vista Gardens Apartments Ass’n v. City of S.D. Plan. Dep’t*, 220 Cal. Rptr. 732, 744 (Ct. App. 1985); *Comm. for Responsible Plan. v. City of Indian Wells*, 257 Cal. Rptr. 635, 636–37 (Ct. App. 1989); *Modification of Order, Harris v. County of Madera*, No. 49063 (Cal. Super. Ct. filed 1993); *Hoffmaster v. City of San Diego*, 64 Cal. Rptr. 2d 684, 686, 688 (Ct. App. 1997); *Peremptory Writ of Mandate, Ivory v. County of Yuba*, No. 054694 (Cal. Super. Ct. filed Aug. 24, 1994); *Order and Judgment Granting Writ of Mandate, Aldrich v. County of Sonoma*, No. 220025 (Cal. Super. Ct. Dec. 14, 2000); *Saldana v. County of Santa Cruz*, No. H028899, 2006 WL 979281, at *1 (Cal. Ct. App. Apr. 14, 2006); *Mejia v. City of Mission Viejo*, No. 06CC05478, at 2–3 (Cal. Super. Ct. Apr. 26, 2006); *Friends of Aviara v. City of Carlsbad*, 148 Cal. Rptr. 3d 805, 807 (Ct. App. 2012); *Kennedy Comm’n v. City of Huntington Beach*, 224 Cal. Rptr. 3d 665, 672 (Ct. App. 2017); *Californians for Homeownership, Inc. v. City of Beverly Hills*, No. 23STCP00143, 2023 WL 9317058, at *1 (Cal. Super. Ct. Dec. 21, 2023).

¹⁶³ *Order Granting Petitioners’ Request for Peremptory Writ of Mandate and Judgment Theron for Petitioners*, No. 054694 (Cal. Super Ct. Aug. 24, 1994).

dies intact. For instance, in *Californians for Homeownership, Inc. v. City of Beverly Hills*, the court's judgment was identical to the petitioner's proposed order, stating:

Pursuant to subdivision (a)(1) of Government Code section 65755, the Court hereby suspends the authority of Respondent to issue building permits pursuant to Division 13 (commencing with section 17910) of the Health and Safety Code, and all other related permits, except for permits that create new residential bedrooms or units, and except for permits subject to subdivision (b) of Government Code section 65755, until the City has substantially complied with the requirements of Article 5 of Chapter 3 of Division 1 of Title 7 of the Government Code (commencing with Government Code Section 65300).¹⁶⁴

This remedy is drawn verbatim from section 65755(a)(1).¹⁶⁵ The only notable difference is the exemption for permits related to “new residential bedrooms or units.”¹⁶⁶ This exemption likely reflects the petitioner's priorities as an affordable housing organization. The petitioner's goal was not to halt development entirely but to ensure that the litigation advanced the creation of housing—particularly affordable housing—in Beverly Hills. By allowing permits for new housing to proceed, the remedy aligned with the broader objective of increasing housing opportunities while still enforcing compliance with state law. Indeed, it is easy to imagine the political pressure faced by Beverly Hills city leaders from the community when construction permits were suddenly out of reach. Notably, the remedies in *Californians for Homeownership, Inc. v. City of Beverly Hills* were far more limited than those imposed in the Yuba County case discussed earlier, as they did not include any restrictions on zoning or subdivision map approvals.

This contrast between the tailored remedies in *Californians for Homeownership, Inc. v. City of Beverly Hills* and the broader enforcement seen in other cases, such as the Yuba County case, highlights the variability in how courts apply section 65755 remedies. However, this inconsistency becomes even more apparent in cases where courts decline to impose section 65755 remedies altogether. In two cases (*People ex rel. Bonta v. City of Huntington Beach* and *Californians for Homeownership, Inc. v. City of La Cañada Flintridge*), petitioners included section 65755 remedies

¹⁶⁴ No. 23STCP00143, 2023 WL 9317058, at *1 (Cal Super. Ct. Dec. 21, 2023).

¹⁶⁵ CAL. GOV'T CODE § 65755(a)(1) (West 2025).

¹⁶⁶ *City of Beverly Hills*, 2023 WL 9317058, at *1.

in their proposed judgments, yet the courts struck those provisions before entering judgment.¹⁶⁷

This raises an important question: Why would courts decline to impose mandatory remedies under section 65755? In *People ex rel. Bonta v. City of Huntington Beach*, the City argued that section 65755 did not apply because Huntington Beach is a charter city.¹⁶⁸ However, the court rejected this argument, relying on the Court of Appeal's order on a writ petition that the state had previously filed in this case.¹⁶⁹ Indeed, with the enactment of Senate Bill 1037 in 2024 adding section 65009.1, the Legislature made it even clearer that article 14 applies to charter cities.¹⁷⁰

Nor does this reasoning hold in *Californians for Homeownership, Inc. v. City of La Cañada Flintridge*, because La Cañada Flintridge is not a charter city.¹⁷¹ Some scholars suggest that in the *La Cañada Flintridge* case, the court lacked appellate guidance about whether section 65755 applied to rezoning cases as opposed to facial consistency of the housing element.¹⁷² In any

¹⁶⁷ Order Granting First Amended Petition for Writ of Mandate at 4–6, *People ex rel. Bonta v. City of Huntington Beach*, No. 30-2023-01312235-CU-WM-CJC (Cal. Super. Ct. June 20, 2024); *Californians for Homeownership, Inc. v. City of La Cañada Flintridge*, No. B333151, 2024 WL 5242913, at *1 (Cal. Ct. App. Dec. 27, 2024).

¹⁶⁸ Christopher S. Elmendorf et al., *Making It Work: Legal Foundations for Administrative Reform of California's Housing Framework*, 47 *ECOLOGY L. Q.* 973, 997 n.119 (2020) (“A charter city is a city whose electorate has voted to incorporate as a charter city, which entitles the city to a degree of autonomy under the California Constitution.” (citation omitted)).

¹⁶⁹ Minute Order at 4, *People ex rel. Bonta v. City of Huntington Beach*, No. 30-2023-01312235-CU-WM-CJC (Cal. Super. Ct. May 15, 2024) (“[T]he City argues that Article 14 does not apply to charter cities such as itself. Here, the Court is bound to follow the Court of Appeal's ruling in this matter.” (citing *People of California v. Super. Ct.*, D083339, at 2–3 (Cal. Ct. App. Jan. 18, 2024))).

¹⁷⁰ CAL. GOV'T CODE § 65009.1(e)(2) (West 2025) (“The remedies in Article 14 . . . of Chapter 3 apply to actions against all cities, including charter cities, to enforce the requirements of Section 65585 as a mandatory element of a general plan under Article 5 . . . of Chapter 3. This paragraph is declaratory of existing law.”).

¹⁷¹ See *Charter Cities*, LEAGUE OF CAL. CITIES, <https://www.cacities.org/UploadedFiles/LeagueInternet/6b/6bbb4ee3-88f9-4d8f-93ad-0075a7b486c4.pdf> [https://perma.cc/4XZ2-KCSX] (last visited Dec. 21, 2024). Notably, Indian Wells was not a charter city in 1989 when the court imposed section 65755 remedies. See *Comm. for Responsible Plan. v. City of Indian Wells*, 257 Cal. Rptr. 635, 636–37, 641 (Ct. App. 1989). But it became a charter city in 2003. DUDEK, *WESTERN COACHELLA VALLEY MUNICIPAL SERVICE REVIEW 6-2* (2007), https://lafco.org/wp-content/uploads/documents/archives/6.0_Indian_Wells.Final_Draft.pdf [https://perma.cc/HBY4-TCGX].

¹⁷² E-mail from Kenneth Stahl, Professor, Chap. Univ., Dale E. Fowler Sch. of L., to Jonathan Bremen, Assoc. Clinical Professor of L., Loy. L. Sch., L.A. (Feb. 18, 2025, at 16:45 PT) (on file with author).

event, additional clarification is needed to confirm why the courts omitted remedies in these cases.

An unusual pattern also emerged in four cases where courts entered stipulated judgments after a decision on the merits.¹⁷³ A stipulated judgment, or consent decree, is an agreement between the parties that includes a proposed judgment or order.¹⁷⁴ Such agreements are often governed by California Code of Civil Procedure section 664.6 and allow one party to seek judicial enforcement if the other party breaches the stipulation.¹⁷⁵ While stipulated judgments are typically associated with settlements that require ongoing judicial oversight,¹⁷⁶ their use in post-merits decisions raises questions.

Why would courts encourage parties to negotiate remedies when section 65755 explicitly mandates that judges impose one of the prescribed remedies? Courts, one might think, would eagerly enforce strict penalties against jurisdictions blatantly ignoring their legal obligations. Yet judicial intervention has been remarkably restrained.¹⁷⁷

One explanation may lie in the perceived difficulty of applying section 65755. Courts often express reluctance to intervene in local planning decisions, citing a lack of expertise in land use policy and a historical deference to local government authority. As one source explains: “A source of judicial reluctance to intervene in fair share housing disputes is the courts’ conception of their role in local land use decision-making. During the latter half of this century, the courts generally deferred to localities’ decisions on local land use questions.”¹⁷⁸

Rather than fully enforcing section 65755, some courts appear to be bifurcating relief. They order jurisdictions to adopt a

¹⁷³ See Judgment Pursuant to Stipulation, *Martinez v. City of Clovis*, No. 19CECG03855 (Cal. Super. Ct. Mar. 19, 2024); Notice of Settlement, *Sacramento Hous. All. v. City of Folsom*, No. 34-2011-80000833 (Cal. Super. Ct. Apr. 11, 2013); Stipulated Judgment, *Rios v. City of Camarillo*, No. CIV218903 (Cal. Super. Ct. Aug. 27, 2003); Stipulation and Judgment, *Guyton v. City of Alameda*, No. 646480-8 (Cal. Super. Ct. May 3, 1990).

¹⁷⁴ See *Cal. State Auto. Ass’n Inter-Ins. Bureau v. Super. Ct.*, 788 P.2d 1156, 1158–59 (1990).

¹⁷⁵ See *id.* at 1159.

¹⁷⁶ See EILEEN C. MOORE & MICHAEL PAUL THOMAS, CALIFORNIA CIVIL PRACTICE GUIDE PROCEDURE § 20:1 (Apr. 2025 ed. 2025).

¹⁷⁷ Field, *supra* note 81, at 57.

¹⁷⁸ *Id.*

compliant housing element with oversight from HCD, while requiring the parties to brief and negotiate proposed remedies.¹⁷⁹ In some instances, courts even ask the parties to resolve the matter through stipulation.¹⁸⁰

This hesitation may also stem from a lack of clear guidance. HCD, which is responsible for reviewing housing elements, has not issued directives to help courts craft and implement effective remedies under section 65755's mandates. Without such guidance, judicial reluctance is likely to persist, undermining the enforcement power of section 65755.

VI. ISSUES AND PROPOSED REFORMS

The Housing Element Law, designed to address California's severe housing crisis, has one clear expectation: Local governments must plan for housing needs across all income levels. Yet, decades after its enactment, compliance remains elusive. Critics say the law lacks teeth and that "the incentives for localities to comply are just not good enough."¹⁸¹ The evidence presented here lends weight to that critique and adds another layer to the discussion: Litigation, often seen as the big stick of enforcement, may not be as formidable as it appears.

This Part begins by identifying the persistent issues that undermine the effectiveness of California's Housing Element Law, including the lack of strong enforcement mechanisms, the limitations of litigation, and the political resistance that enables noncompliance. It then turns to potential solutions, suggesting various approaches to meaningful reform.

A. Issues

The first issue is that the risk of getting sued is remarkably low. For a city or county, the odds of facing a housing element lawsuit are slim, especially in regions with fewer resources or less public scrutiny.

¹⁷⁹ PILP MANUAL, *supra* note 24, at 49–50.

¹⁸⁰ *See* Judgment Pursuant to Stipulation, *Martinez v. City of Clovis*, No. 19CECG03855 (Cal. Super. Ct. Mar. 19, 2024); Notice of Settlement, *Sacramento Hous. All. v. City of Folsom*, No. 34-2011-80000833 (Cal. Super. Ct. Apr. 11, 2013); Stipulated Judgment, *Rios v. City of Camarillo*, No. CIV218903 (Cal. Super. Ct. Aug. 27, 2003); Stipulation and Judgment, *Guyton v. City of Alameda*, No. 646480-8 (Cal. Super. Ct. May 3, 1990).

¹⁸¹ *See* Agatstein, *supra* note 2, at 225.

The barriers for petitioners are high. For low- and moderate-income individuals, the high cost of litigation poses a significant barrier.¹⁸² Moderate-income individuals lack access to free legal services and rarely organize for class actions, while low-income individuals must rely on overburdened legal services offices focused on urgent cases with immediate impacts.¹⁸³ Although legal services organizations have brought most of the housing element lawsuits, such litigation—which is often lengthy and unlikely to produce direct benefits for low-income plaintiffs—is deprioritized in favor of more immediate solutions to housing needs.¹⁸⁴ You might think that developers would want to sue jurisdictions so they can build there, but “developers are hesitant to seek a judicial remedy in localities where they intend to have future development.”¹⁸⁵

Even when lawsuits are filed, the outcomes often fail to strike fear into local governments. Settlements are common, allowing jurisdictions to avoid meaningful penalties. When cases reach a judgment, courts hesitate to wield their most powerful tool—suspending a city’s land use authority under section 65755. Instead, courts order stipulated judgments or narrow remedies, sidestepping the broader enforcement powers at their disposal.

Stipulated judgments, which often result from negotiations between petitioners and jurisdictions after the court has decided the merits of the case, tend to prioritize expediency over accountability. While they can expedite compliance and avoid protracted litigation, stipulated judgments often impose only minimal requirements on jurisdictions and lack the robust enforcement mechanisms necessary to deter future noncompliance. For example, such judgments may require a jurisdiction to submit a compliant housing element within a specified timeframe but fail to include broader sanctions, such as suspending land use authority, that could drive systemic changes in local housing policy. In effect, stipulated judgments let jurisdictions off easy, allowing them to meet the bare minimum requirements while avoiding the political and financial consequences of a full judicial remedy.

This brings us to the politics. For some local leaders, resisting state mandates is a badge of honor. Cities like Huntington Beach

¹⁸² Field, *supra* note 81, at 50–51.

¹⁸³ *Id.* at 51–52.

¹⁸⁴ *Id.* at 52.

¹⁸⁵ CA HOUS. FUTURE, *supra* note 14, at 56.

show that defiance can be spun as a political triumph, turning council members into local heroes for “standing up” to Sacramento.¹⁸⁶

Thus, the Housing Element Law has become a cost-benefit analysis. Is the risk of a lawsuit greater than the cost of compliance? For many jurisdictions, the calculus favors resistance. Even in cases where jurisdictions are ordered to pay substantial sums, the impact is often muted. Take Huntington Beach, for example. The city was ordered to pay around \$3.5 million in attorney fees after losing the 2015 housing element lawsuit, yet it has continued to resist state housing mandates.¹⁸⁷ For cities like Huntington Beach, the financial burden of attorney fees becomes just another line item in the cost of doing business or, more accurately, the cost of resisting compliance. Moreover, attorney fees may be minimal if the jurisdiction promptly agrees to comply after being sued. This dynamic allows jurisdictions to delay compliance with little consequence, effectively gambling on the likelihood of enforcement and treating a lawsuit as merely the trigger to meet their obligations belatedly and without substantial loss.

This calculus may soon shift. California’s Attorney General and newly active nonprofits are sharpening their focus on housing enforcement. Groups like CFH, YIMBY, and CalHDF have made it clear that they are watching, and they are ready to act. The Attorney General’s Housing Strike Force is no empty gesture; its recent lawsuits suggest a new era of enforcement.

Notably, one critical piece is missing from this analysis: whether jurisdictions sued for noncompliant housing elements adopt compliant elements faster than those that remain noncompliant but are never sued. I attempted to analyze HCD data going back to 1982 to explore this question, but my efforts were thwarted by significant data access issues. After filing a Public Records Act request, HCD provided the comprehensive data necessary for such an analysis. I hope to explore this data in a subsequent piece. Specifically, I intend to construct a timeline for each housing element cycle, identifying every noncompliant housing element submission, when (if ever) it was certified by HCD, and whether the jurisdiction had faced litigation. By further categorizing these cases—such as jurisdictions sued and granted re-

¹⁸⁶ Press Release, Van Der Mark & Gates, *supra* note 10.

¹⁸⁷ *Id.*; Order on Attorney Fees, Kennedy Comm’n v. City of Huntington Beach, No. 30-2015-00801675 (Cal. Super. Ct. July 8, 2021) (on file with author).

lief, sued and denied, those that settled, and those that avoided lawsuits altogether—we could better assess whether lawsuits act as a meaningful catalyst for compliance. Such an analysis could clarify whether litigation serves as an effective enforcement tool or merely forces jurisdictions to meet their obligations in a delayed and piecemeal fashion.

B. Reforms

Over the years, scholars and policymakers have proposed a range of reforms to address the chronic shortcomings of California's Housing Element Law. Some of the strongest reforms are: (1) expanding the volume of litigation; (2) strengthening judicial enforcement; and (3) establishing dedicated administrative bodies to adjudicate compliance disputes. Each of these strategies has merit. Yet none, on its own, is likely to resolve the structural mismatch between California's housing mandates and its capacity to deliver affordable homes. In the long run, a more radical solution may be required: a significant investment in publicly built social housing.

1. More Widespread Litigation

One frequently suggested fix is to expand the quantity of housing element litigation.¹⁸⁸ The Housing Element Law, after all, provides housing advocates with statutory leverage. If jurisdictions fail to comply, they may be sued and penalized. And yet, for decades, this litigation pathway has remained largely theoretical. As early as the 1990s, critics noted that the “threat” of enforcement was largely hollow.¹⁸⁹ Low-income tenants had more urgent legal needs than suing cities over general plan documents, and chronically underfunded and overburdened legal aid organizations rarely had the capacity to undertake such time-consuming and technical cases.¹⁹⁰

My empirical analysis confirms that this pattern has endured. Even today, the threat of litigation remains minimal. While recent years have seen a modest uptick in lawsuits, some initiated by the Attorney General and others by nonprofit housing advocates, the overall volume remains low. As a result, most

188 See PILP MANUAL, *supra* note 24, at 24–25, 137–38.

189 Agatstein, *supra* note 2, at 230.

190 *Id.* at 231 (citing Field, *supra* note 81, at 51–52).

jurisdictions can safely assume that they will not be sued, even if they ignore their housing element obligations.

Could that change? Possibly. If litigation became more common, it might alter the calculus. The cost-benefit analysis for a noncompliant city would shift if the likelihood of being dragged into court rose meaningfully. Whether current litigation trends will rise to that threshold remains an open question. Future data may show whether recent lawsuits are changing behavior.

If they do, California may have to decide whether to subsidize enforcement more directly by increasing funding to legal aid organizations or the Attorney General's Office to support housing element litigation. Such an investment could enhance deterrence. But unless accompanied by broader structural reforms, it is unlikely to be a silver bullet. In addition, taxpayers may rightly wonder whether the cost of litigation-based enforcement justifies the marginal gains in compliance.

To stimulate litigation, some commentators have proposed that the California Legislature adopt a two- or three-times attorney fee multiplier to advocates who prevail in housing element litigation.¹⁹¹ In theory, this would sweeten the incentive for private parties to challenge noncompliant jurisdictions and thereby pressure jurisdictions to take their obligations more seriously. However, my evidence suggests that the deterrent effect of large fee awards is, at best, inconsistent. Consider Huntington Beach: After failing to comply with its housing element obligations during the fifth planning cycle, the city was ordered to pay \$3.5 million in attorney fees.¹⁹² Yet despite this hefty penalty, it remained out of compliance in the next cycle. If such a high-profile financial hit cannot alter municipal behavior, it is unclear what price point would.

To be sure, pro-housing organizations would benefit from a fee multiplier. But whether this would meaningfully increase litigation remains uncertain. Only a handful of nonprofits in California have the necessary expertise and resources to pursue complex housing element lawsuits. These cases can span years before yielding a final judgment or any fee recovery, and the costs of lit-

¹⁹¹ *Id.* at 267–68.

¹⁹² Press Release, Van Der Mark & Gates, *supra* note 10; Order on Attorney Fees, Kennedy Comm'n v. City of Huntington Beach, No. 30-2015-00801675 (Cal. Super. Ct. July 8, 2021) (on file with author).

igation are steep in the meantime. Moreover, many pro-housing organizations rely on large private law firms to provide pro bono staffing for these lawsuits. When fee awards are issued, those firms often receive a substantial portion of the recovery. In effect, a fee multiplier might expand the coffers of elite firms more than it would build the enforcement capacity of underfunded housing advocates.

2. Stronger Judicial Enforcement

At present, judicial enforcement is rather toothless. Courts must fully embrace their authority under section 65755 by consistently imposing robust remedies that compel compliance. Suspending land use authority or halting approvals for market-rate developments are powerful tools that, if applied uniformly, could create the deterrent effect the law currently lacks. Beyond deterrence, preliminary evidence suggests that when courts swiftly impose stringent orders under section 65755, jurisdictions are prompted to comply more quickly by adopting adequate housing elements.¹⁹³ More importantly, the frequent use of stipulated judgments and weak court orders undermines the protective potential of these remedies. Specifically, when development authority is not immediately curtailed following a jurisdiction's loss in a housing element case, the jurisdiction may continue to approve market-rate or commercial developments on sites that could otherwise be allocated for affordable housing in a compliant housing element. This not only delays compliance but also erodes the availability of land for housing those most in need.

To address this issue, the Legislature could amend section 65755 to require courts to suspend development approval powers¹⁹⁴ in all instances of noncompliance, regardless of whether the court also orders specific developments to proceed.¹⁹⁵ Such a mandatory provision would preserve critical sites for affordable housing development.

3. Administrative Courts

Finally, the California Legislature could consider establishing specialized administrative courts within HCD modeled after

¹⁹³ See Field, *supra* note 81, at 43–44. Once again, data from HCD would be invaluable in confirming whether this pattern holds true.

¹⁹⁴ See CAL. GOV'T CODE § 65755(a)(1)–(3) (West 2025).

¹⁹⁵ See *id.* § 65755(a)(4)–(6), (b).

the Air Pollution Control Districts' hearing boards.¹⁹⁶ These hearing boards are typically composed of five members: one attorney, one professional engineer, one medical professional, and two public members.¹⁹⁷ Similar to the Air Districts' hearing boards, these courts could include administrative judges or attorneys, urban planning experts, and community members. Unlike Superior Court judges, who often lack familiarity with the nuances of the Housing Element Law and may be hesitant to interfere in local land use decisions, administrative courts would bring a depth of knowledge and experience that would guarantee consistent and effective enforcement. For example, administrative courts would likely be more willing to impose the full range of mandatory remedies under section 65755, ensuring that noncompliant jurisdictions face immediate and meaningful consequences for failing to meet their obligations.

The benefits of such administrative courts extend beyond their subject-matter expertise. By consolidating these cases under specialized courts, the state could reduce the procedural delays and inefficiencies that currently plague the Superior Court system.¹⁹⁸ Administrative courts are inherently designed to handle focused and technical legal issues, making them more adept at navigating the complex interplay of housing policy, statutory requirements, and local governance.¹⁹⁹ As a result, they could process cases more quickly and perhaps at a lower cost, alleviating the burden on the court system while delivering swifter resolutions for both petitioners and jurisdictions.

Other states utilize administrative bodies to adjudicate or enforce fair-share housing laws. Massachusetts employs a Housing Appeals Committee (HAC), an administrative tribunal, to handle appeals from developers if their affordable housing developments are denied.²⁰⁰ The HAC can overturn local zoning decisions if a town has not met its affordable housing goals unless there are health or safety concerns that outweigh the regional

¹⁹⁶ This is not a novel idea. *See generally* Field, *supra* note 81 (recommending in 1993 that administrative bodies adjudicate housing element disputes).

¹⁹⁷ CAL. HEALTH & SAFETY CODE § 40801 (West 2025).

¹⁹⁸ *See* Field, *supra* note 81, at 52.

¹⁹⁹ *See id.* at 75–76.

²⁰⁰ Carolina K. Reid, Carol Galante & Ashley F. Weinstein-Carnes, *Addressing California's Housing Shortage: Lessons from Massachusetts Chapter 40B*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 241, 247 (2017).

housing needs.²⁰¹ Rhode Island and Illinois use administrative tribunals for builder's remedy cases.²⁰² In Washington and Florida, a state agency reviews housing plans and may challenge a plan before an administrative tribunal.²⁰³ In Washington, this is the specialized Growth Management Hearing Board; in Florida, it is the general-purpose Division of Administrative Hearings.²⁰⁴ Finally, Oregon's Land Conservation and Development Commission can enjoin noncompliant local governments from issuing land use permits.²⁰⁵

4. Social Housing

While the legal and administrative reforms discussed above may incrementally improve compliance with California's Housing Element Law, they are unlikely to solve the state's chronic underproduction of affordable housing. Publicly funded social housing is a more promising solution. Indeed, those who have worked inside the housing element process, and readers of this Article, will recognize just how convoluted, costly, and ultimately inefficient the current system has become.

The Housing Element Law imposes substantial financial and administrative burdens on cities. Municipalities routinely hire specialized consultants to navigate the complex statutory requirements,²⁰⁶ and the planning process is "expensive (in terms of money spent on consultants and plan preparation and of people's time)."²⁰⁷

The risks of noncompliance only add to the cost. Jurisdictions that fall short must pay penalties.²⁰⁸ They may also face litigation, and if they lose, they are often required to pay not only their own legal fees but also those of the prevailing party.²⁰⁹ In some cases, courts have even appointed external agents to rewrite a jurisdiction's housing element at the jurisdiction's expense.²¹⁰

²⁰¹ *Id.* at 248.

²⁰² Elmendorf, *supra* note 85, at 97–98.

²⁰³ *Id.* at 110–11.

²⁰⁴ *Id.* at 110 n.185.

²⁰⁵ *Id.* at 103–04.

²⁰⁶ Darrel Ramsey-Musolf, *State Mandates, Housing Elements, and Low-Income Housing Production*, 32 J. PLAN. LITERATURE 117, 123 (2017).

²⁰⁷ MONKKONEN ET AL., *supra* note 98, at 28.

²⁰⁸ PILP MANUAL, *supra* note 24, at 54–55.

²⁰⁹ *See id.* at 56–57.

²¹⁰ *See id.* at 57 (citing CAL. GOV'T CODE § 65585(l)(3) (West 2025)).

And what is gained from all this? Precious little actual housing.²¹¹ The entire process forms part of an “expensive ‘paper chase.’”²¹² It consumes enormous public and nonprofit resources with little direct connection to housing production. Legal aid organizations must finance years-long lawsuits. The judicial system must dedicate judges, clerks, and other resources to resolve compliance disputes. Meanwhile, the construction of new housing remains elusive.

This “energy- and money-guzzling bureaucratic maze”²¹³ is not just a nuisance, but a contributor to California’s housing affordability crisis. As experts have noted, the state’s “exceptionally high housing costs” are partly a consequence of its convoluted and overlapping land use schemes.²¹⁴

And yet, no one seems to know how much the housing element regime actually costs Californians. To my knowledge, no comprehensive study has tallied the full financial footprint of compliance across the state. But anecdotally, it appears enormous. I am currently considering conducting such a study to address a simple question: How much housing could we build with the money we currently spend on planning for it? I suspect the answer would be sobering.

I also believe social housing is the best solution to California’s housing crisis. Social housing is publicly built, permanently affordable, and designed to serve a broad range of incomes.²¹⁵ Unlike the private housing market, which is profit-driven and vul-

²¹¹ See, e.g., Moira O’Neill, Eric Biber & Nicholas J. Marantz, *Measuring Local Policy to Advance Fair Housing and Climate Goals Through a Comprehensive Assessment of Land Use Entitlements*, 50 PEPP. L. REV. 505, 518 n.70 (2023) (“[T]here is no connection between Housing Element compliance and housing production . . .” (citing Paul G. Lewis, *Can State Review of Local Planning Increase Housing Production?*, 16 HOUS. POLY DEBATE 173, 190–92 (2005))); MONKKONEN ET AL., *supra* note 98, at 9 (“A comprehensive study from 2005 presented strong evidence that the process did not matter: municipalities in compliance with RHNA were no more likely to produce new housing than noncompliant cities.” (citing Lewis, *supra*)).

²¹² Agatstein, *supra* note 2, at 232.

²¹³ Ecklund, *supra* note 16, at 984 (quoting Liam Dillon, *California Lawmakers Have Tried for 50 Years to Fix the State’s Housing Crisis. Here’s Why They’ve Failed*, L.A. TIMES (June 29, 2017, at 3:00 PT), <https://www.latimes.com/projects/la-pol-ca-housing-supply/> [<https://perma.cc/R2CC-DNB8>]).

²¹⁴ Reid, Galante & Weinstein-Carnes, *supra* note 200, at 256.

²¹⁵ Galen Herz, *Social Housing Is Becoming a Mainstream Policy Goal in the US*, JACOBIN (Feb. 21, 2021), <https://jacobin.com/2021/02/social-housing-public-affordable-california-maryland> [<https://perma.cc/9Q22-BLM3>].

nerable to economic cycles, social housing is planned to meet collective needs, not investor returns.

The federal government once embraced public housing, beginning with the Housing Act of 1937.²¹⁶ Through the mid-20th century, hundreds of thousands of units were built to house working- and middle-class families.²¹⁷ But starting in the 1970s, federal support waned as budgets were cut, and programs like the Low-Income Housing Tax Credit (LIHTC) replaced direct investment.²¹⁸ LIHTC delivers fewer units, often with limited affordability periods, and has been criticized as inefficient.²¹⁹

California followed suit, relying on a complex web of incentives and mandates, including the Housing Element Law, hoping the private sector would deliver what the public needed.²²⁰ But the results have been insufficient to meet demand.²²¹

Critics often point to deteriorating U.S. public housing projects,²²² but these failures were the result of systematic underfunding,²²³ racial segregation,²²⁴ and political resistance,²²⁵ not

²¹⁶ For a brief history of public housing in the United States, including the Housing Act of 1937, see MAGGIE MCCARTY, CONG. RSCH. SERV., R41654, INTRODUCTION TO PUBLIC HOUSING 1–7 (2014).

²¹⁷ *Id.* at 3.

²¹⁸ Saoirse Gowan & Ryan Cooper, *Social Housing in the United States*, PEOPLE'S POLY PROJECT (Apr. 2018), <https://www.peoplespolicyproject.org/wp-content/uploads/2018/04/SocialHousing.pdf> [<https://perma.cc/759Z-65DL>].

²¹⁹ *Id.*

²²⁰ See generally ELAINE M. HOWLE, STATE AUDITOR, CALIFORNIA'S HOUSING AGENCIES: THE STATE MUST OVERHAUL ITS APPROACH TO AFFORDABLE HOUSING DEVELOPMENT TO HELP RELIEVE MILLIONS OF CALIFORNIANS' BURDENSOME HOUSING COSTS, REP. 2020-108 (2020) (describing California's network of housing incentives and mandates designed to spur private-sector development).

²²¹ See *id.* at 5 (“[T]he Legislature has . . . declared that in California, private investment alone cannot achieve the needed construction of housing at costs that are affordable to people of all income levels”); see also DEREK SAGEHORN, EAST BAY FOR EVERYONE, CALIFORNIA HOUSING CORPORATION: THE CASE FOR A PUBLIC SECTOR HOUSING DEVELOPER (2021) (explaining the reasons why the private sector has been insufficient on its own to provide enough affordable housing for low-income households).

²²² MAGGIE MCCARTY, CONG. RSCH. SERV., R41654, INTRODUCTION TO PUBLIC HOUSING 7 (2014); see Meagan Day, *We Can Have Beautiful Public Housing*, JACOBIN (Nov. 13, 2018), <https://jacobin.com/2018/11/beautiful-public-housing-red-vienna-social-housing> [<https://perma.cc/5TGH-LQCC>]; Ryan Cooper & Saoirse Gowan, *The Solution Is Social Housing*, JACOBIN (Apr. 5, 2018), <https://jacobin.com/2018/04/affordable-housing-crisis-peoples-policy-project> [<https://perma.cc/9SNN-D6SX>].

²²³ Gowan & Cooper, *supra* note 218; MCCARTY, CONG. RSCH. SERV., R41654, at 5–6 (discussing chronic underfunding and the Omnibus Budget Reconciliation Act of 1981).

²²⁴ MCCARTY, CONG. RSCH. SERV., R41654, at 3–4 (discussing “great opposition to new public housing development in some predominantly white communities”); Herz, *supra* note 215; Sagehorn, *supra* note 221, at 20; Gowan & Cooper, *supra* note 218.

inherent flaws in the model. Elsewhere, governments made different choices and saw different outcomes.²²⁶ In Vienna, for example, social housing makes up over half the housing stock, and the city is consistently ranked among the most livable in the world.²²⁷

California can learn from those models and avoid the old pitfalls. A modern social housing system should be mixed-income, governed with tenant input, and distributed across regions, not concentrated in already disadvantaged communities. It should be seen not as a handout, but as infrastructure like roads, schools, and water systems.

Around the world, cities and countries are returning to this idea. Finland’s “Housing First” model combines social housing with wraparound services and has reduced the nation’s homeless population by 14%.²²⁸ Sweden’s “Million Homes Program” built one million new units in less than a decade and created an oversupply of affordable housing for decades afterward, proving that large-scale municipal housing construction can “eliminate a major housing shortage over a short period of time.”²²⁹ In Montgomery County, Maryland, the local government is building mixed-income developments directly, without relying on private developers.²³⁰ Seattle voters recently approved a publicly owned housing developer.²³¹ Even in Sacramento, momentum is building. Assembly Bill 309, introduced in 2023, proposed a statewide, publicly owned, mixed-income, social housing program.²³² Alt-

²²⁵ MCCARTY, CONG. RSCH. SERV., R41654, at 3, 8; Gowan & Cooper, *supra* note 218.

²²⁶ Gowan & Cooper, *supra* note 218.

²²⁷ Day, *supra* note 222; David Walsh, *Vienna Named the World’s Most Liveable City Again in 2024 Ahead of these European Cities*, EURONEWS (July 28, 2024, at 15:14 GMT), <https://www.euronews.com/next/2024/07/28/vienna-named-the-worlds-most-liveable-city-again-in-2024-with-europe-dominating-the-top-3> [<https://perma.cc/X9Z2-GE3E>].

²²⁸ Gowan & Cooper, *supra* note 218.

²²⁹ *Id.*

²³⁰ Herz, *supra* note 215.

²³¹ See H. Jacob Carlson & Gianpaolo Baiocchi, *Social Housing: How a New Generation of Activists Is Reinventing Housing*, SHELTERFORCE (June 30, 2023), <https://shelterforce.org/2023/06/30/social-housing-how-a-new-generation-of-activists-are-reinventing-housing/> [<https://perma.cc/K7D5-4PN8>] (discussing Seattle’s 2023 ballot initiative that created a municipal social housing developer); Jackie Mitchell, *Voters in Seattle Approve Initiative 135, Creating the Social Housing Developer*, BALLOTPEDIA: NEWS (Feb. 23, 2024, at 11:42 PT), <https://news.ballotpedia.org/2023/02/23/voters-in-seattle-approve-initiative-135-creating-the-social-housing-developer/> [<https://perma.cc/W6KS-8V5R>].

²³² See generally Julie Gilgoff, *The California SHIMBY Movement: Social Housing in My Backyard*, 60 CAL. W. L. REV. 1 (2023) (discussing Assembly Bill No. 309 and comparing it with a competing bill, Senate Bill No. 555).

though Governor Gavin Newsom ultimately vetoed the bill,²³³ it showed that Californians are interested in a broader conversation about a public option for housing.

Indeed, social housing is popular nationwide. A 2020 national poll found that a majority of likely voters, including many independents and Republicans, support the idea of publicly owned housing open to all income levels.²³⁴ Framed as a public option for those priced out of the market, the idea seems to resonate.

VII. CONCLUSION

California's Housing Element Law was meant to ensure affordable housing, not generate paperwork. But as this Article shows, enforcement has become performative, and noncompliance has become a political strategy. Cities have learned to defy the law with impunity, betting that consequences will be slow and superficial. Although litigation helps at the margins, it cannot replace bold public investment. To meet its housing mandate, California must move beyond carrots and sticks and start building.

²³³ Assemb. B. 309, 2023–2024 Reg. Sess. (Cal. 2023).

²³⁴ See ETHAN WINTER, DATA FOR PROGRESS, VOTERS WANT A PUBLIC OPTION FOR BROADBAND, CHILD CARE AND HOUSING; LIKELY VOTERS ALSO FAVOR MASSIVE PUBLIC INVESTMENTS IN INFRASTRUCTURE 2–3 (Jan. 26, 2021), <https://www.filesforprogress.org/memos/public-option-for-broadband-child-care-housing.pdf> [<https://perma.cc/622B-ZK2C>].

VIII. APPENDIX

Figure 1

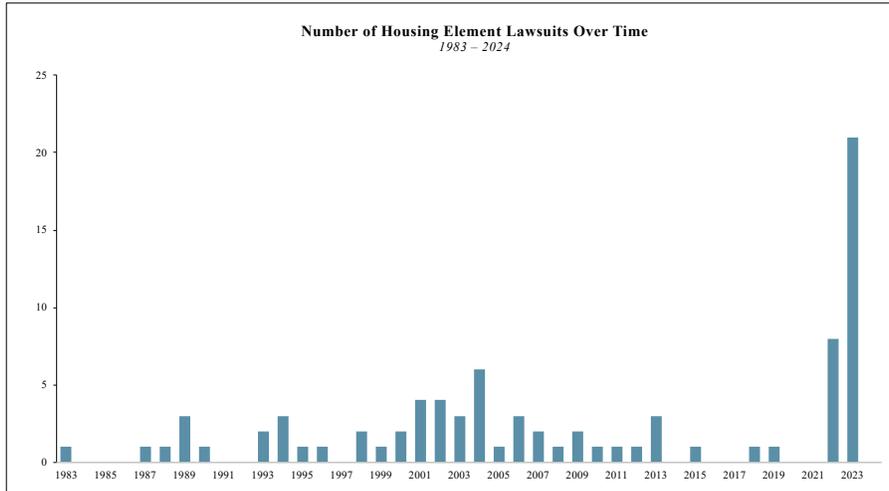


Figure 2

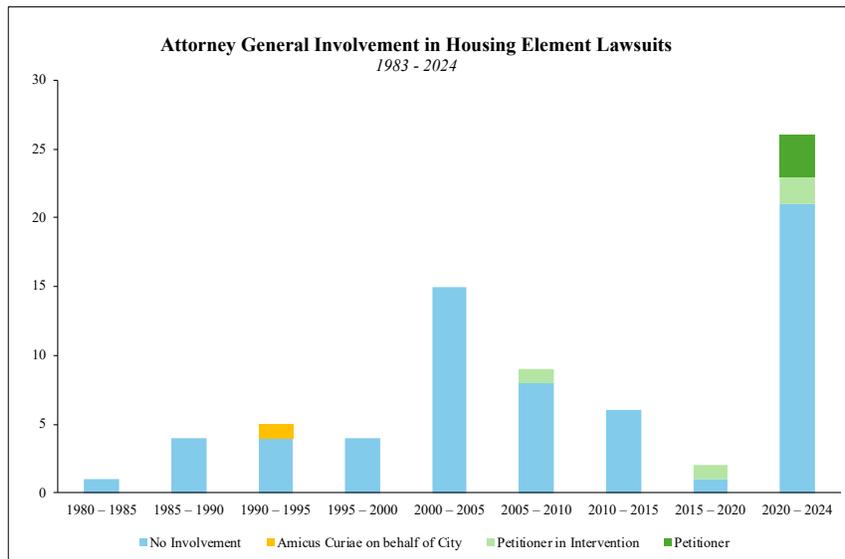


Figure 3

#	Public Interest Organizations Acting as Counsel for Petitioner	Number of Petitions
1	Public Interest Law Project	34
2	Californians for Homeownership	17
3	California Rural Legal Assistance	14
4	Legal Services of Northern California	10
5	Yimby Law	5
6	California Housing Defense Fund	4
7	Public Advocates, Inc	4
8	Western Center on Law and Poverty	3
9	Legal Aid Society of Alameda County	2
10	Legal Aid Society of Orange County	2
11	Public Law Center	2
12	Affordable Housing Advocates	1
13	Bay Area Legal Aid	1
14	Central California Legal Services	1
15	Channel County Legal Services Association	1
16	Community Legal Aid	1
17	Law Foundation of Silicon Valley	1
18	Legal Aid Society of San Diego	1
19	Neighborhood Legal Services	1
20	North Bay Legal Services	1

Figure 4

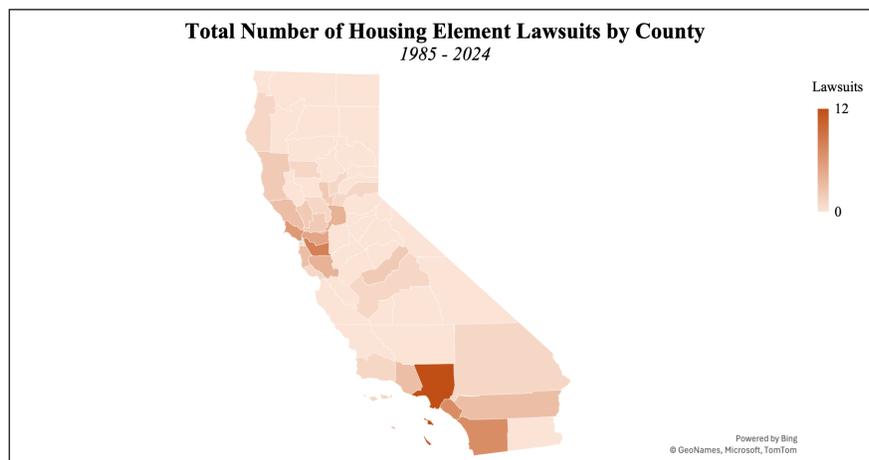


Figure 4.1

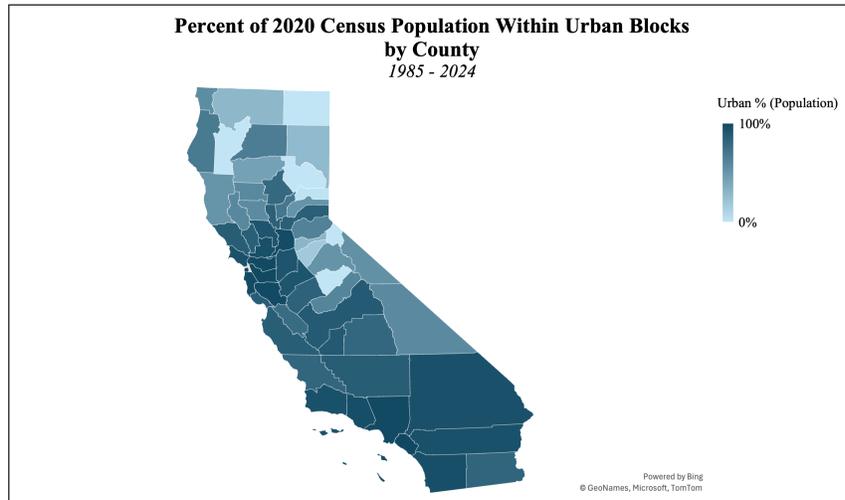


Figure 5

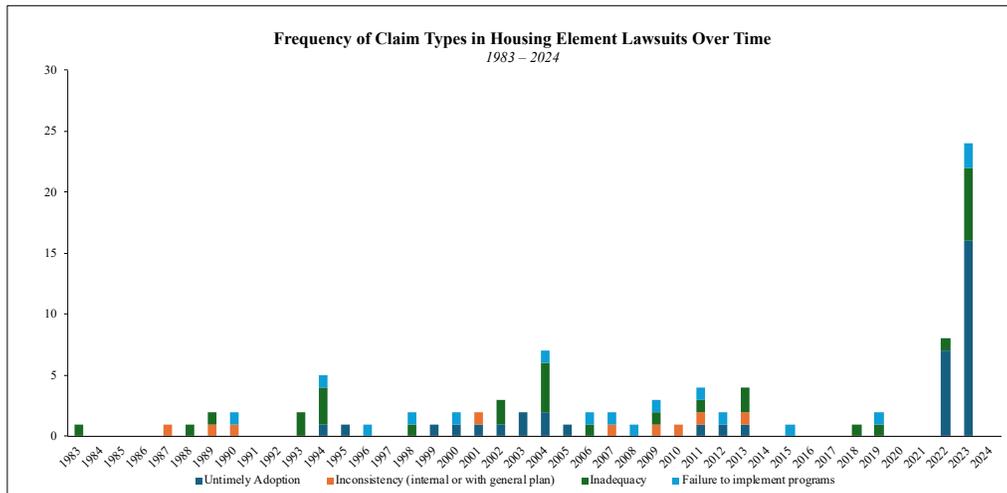


Figure 6

Attorney Fees Awards	
Cases where fees were not awarded	17
Cases where fees were awarded	15
<i>Case Name</i>	<i>Fee Amount</i>
<i>Kennedy Commission v. City of Huntington Beach</i>	\$3,531,201.00
<i>Urban Habitat Program v. City of Pleasanton</i>	\$1,990,000.00
<i>Osorio v. City of Pittsburg and Pittsburg Redevelopment Agency</i>	\$325,000.00
<i>Sacramento Housing Alliance v. City of Folsom</i>	\$220,420.00
<i>The People of California, et. al. v. The City of Elk Grove</i>	\$150,000.00
<i>Peninsula Interfaith Action v. City of Menlo Park</i>	\$114,000.00
<i>Winterhawk v. City of Benicia</i>	\$90,000.00
<i>Gutierrez et. al. v. City of Oxnard et. al.</i>	\$50,000.00
<i>Sonoma County Housing Action Group v. City of Rohnert Park</i>	\$21,940.00
<i>California Housing Defense Fund and YIMBY v. City of Cupertino</i>	\$15,000.00
<i>Average fee amount, where known</i>	\$650,756
Ongoing	5
Unknown	48

Figure 7

Summary of Litigation Outcomes	
Total Number of Cases	85
Settlement	48
Stipulated Judgment	28
No Stipulated Judgment	15
Unknown	5
Trial	33
Denied	14
Granted	19
Ongoing	1
Unknown	3