



# Frequently Asked Questions

## Malibu 2021-2029 Housing Element Update

### 1. What is a Housing Element?

State law<sup>1</sup> requires each city to adopt a comprehensive, long-term General Plan for its physical development. General Plans include several “elements” that address various topics. The Malibu General Plan<sup>2</sup> is organized into the following elements: Land Use, Circulation and Infrastructure, Conservation, Open Space and Recreation, Safety and Health, Noise, and Housing.

Most portions of city General Plans have a “time horizon” of 20-25 years; however, State law requires that Housing Elements be updated every 8 years. Housing Element planning periods are sometimes referred to as *cycles*. The City’s current Housing Element covers the planning period extending from 2013 to 2021, which is referred to as the “5<sup>th</sup> Housing Element cycle” in reference to the five required updates that have occurred since the comprehensive revision to State Housing Element law in 1980. Every city in the Southern California Association of Governments (“SCAG”) region<sup>3</sup> is required to prepare a Housing Element update for the 6<sup>th</sup> planning cycle, which spans the 2021-2029 period, regardless of when the other elements of the General Plan were adopted.

State law<sup>4</sup> establishes detailed requirements for Housing Elements, which are summarized in California Government Code Section 65583:

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

---

<sup>1</sup> California Government Code Sec. 65300 *et seq.*

<sup>2</sup> <http://acode.us/codes/malibu-general-plan/>

<sup>3</sup> The SCAG region includes Los Angeles, Orange, Riverside, San Bernardino, Ventura and Imperial counties.

<sup>4</sup> California Government Code Sec. 65580 *et seq.*



## 2. What are the most important issues that must be addressed in the Housing Element?

The major issues that must be addressed in the Housing Element are: 1) how City policies, plans and regulations help to meet the region’s housing needs for people at all income levels; and 2) how City land use regulations accommodate the special housing needs of persons with disabilities or other difficulties.

- **Accommodating Regional Housing Needs.** Every community is dependent on a variety of low- and moderate-income workers in jobs such as child and elder care, medical support, business and personal services, retail trade, and maintenance. While governmental programs provide funding assistance for affordable housing, city plans and regulations determine the type of housing that can be built. Therefore, a sufficient supply of affordable housing is dependent on both financial assistance and city development regulations.

Under State law<sup>5</sup> all cities are required to plan for additional housing to accommodate population growth and existing housing problems such as overcrowding and high housing cost. State law recognizes that most housing is built by private developers, not cities. However, cities are required to adopt policies, plans, and development regulations to encourage a variety of housing types that are affordable for persons at all income levels, including multi-family rental housing and accessory dwelling units (“ADUs”). The Regional Housing Needs Assessment (“RHNA”) is the process by which each jurisdiction’s share of new housing needs is determined (see #4 below).

- **Housing for Persons with Special Needs.** Under State law<sup>6</sup> cities must also ensure that their plans and regulations encourage the provision of housing for persons with special needs including:
  - ✓ Reasonable accommodation for persons with disabilities
  - ✓ Transitional and supportive housing
  - ✓ Residential care facilities
  - ✓ Emergency shelters and “navigation centers”

## 3. What is “affordable” housing?

By definition, housing is considered “affordable” when total housing cost, including utilities, is no more than 30% of a household’s gross income. State law describes five income categories, which are based on county median income as shown in Table 1.

**Table 1. Household Income Categories**

Income Category	% of county median income
Extremely low	Up to 30%
Very low	31-50%
Low	51-80%
Moderate	81-120%
Above moderate	Over 120%

Source: California Government Code Sec. 65584(f)

<sup>5</sup> California Government Code Sec. 65583

<sup>6</sup> California Government Code Sec. 65583(a)(5)



Affordable housing costs for all jurisdictions in Los Angeles County that correspond to these income categories are shown in Table 2. Affordability figures are adjusted each year and are based on family size.

Table 2. Income Categories and Affordable Housing Costs – Los Angeles County

Income Category	Maximum Income	Affordable Rent	Affordable Price (est.)
Extremely low	\$35,450	\$886	*
Very low	\$59,100	\$1,478	*
Low	\$94,600	\$2,365	*
Moderate	\$96,000	\$2,400	\$375,000
Above moderate	>\$96,000	>\$2,400	>\$375,000

Assumptions:

- Based on a family of 4 and 2021 State income limits
- 30% of gross income for rent or principal, interest, taxes & insurance plus utility allowance
- 10% down payment, 3.75% interest, 1.25% taxes & insurance, \$350 HOA dues

\* For-sale affordable housing is typically at the moderate-income level

Source: Cal. HCD; JHD Planning LLC

#### 4. What is the “RHNA” why is it important?

Each California city is required to plan for new housing to accommodate a share of regional needs. The Regional Housing Needs Assessment (“RHNA”) is the process established in State law<sup>7</sup> by which each city’s housing needs are determined.

Prior to each Housing Element planning cycle the region’s total housing need is determined by the California Department of Housing and Community Development (“HCD”) based upon economic and demographic trends, existing housing problems such as overcrowding and overpayment, and additional housing needed to ensure reasonable vacancy rates and replace units lost due to demolition or natural disasters. The total housing need for the region is then distributed to cities and counties by SCAG based upon criteria established in State law.<sup>8</sup>

In 2019 HCD determined that the total new housing need for the entire SCAG region in the 6<sup>th</sup> Housing Element cycle is 1,341,827 units. SCAG then prepared a RHNA plan that allocates a share of the RHNA to each jurisdiction in the region.<sup>9</sup> Table 3 shows the RHNA allocations for Malibu, Los Angeles County, and the entire SCAG region.

Table 3. 6<sup>th</sup> Cycle RHNA – Malibu, Los Angeles County and SCAG Region

	Malibu	Los Angeles County	SCAG Region
RHNA allocation 2021-2029 (housing units)	79	812,060	1,341,827

Source: SCAG, 3/4/2021

The RHNA distributes each jurisdiction’s total housing need among the income categories shown in Tables 1 and 2 above (the extremely-low and very-low categories are combined for RHNA purposes). The 6<sup>th</sup> cycle RHNA allocation for Malibu by income category is shown in Table 4.

<sup>7</sup> California Government Code Sec. 65584 et seq.

<sup>8</sup> California Government Code Sec. 65584(d)

<sup>9</sup> <https://scag.ca.gov/housing>



Table 4. 6<sup>th</sup> RHNA by Income Category – Malibu

Very Low	Low	Moderate	Above Moderate	Total
28	19	17	15	79

Source: SCAG, 3/4/2021

### 5. Is the RHNA a construction quota or mandate?

The RHNA allocation identifies the amount of additional housing a jurisdiction would require in order to have enough housing at all price levels to fully meet the needs of its existing population plus its expected population growth over the next 8 years while avoiding problems like overcrowding and overpayment. The RHNA is a planning requirement that identifies housing need, *not a construction quota or mandate*. Jurisdictions are not required to build housing or issue permits to achieve their RHNA allocations, but State law establishes specific requirements when housing production falls short of RHNA allocations. One such requirement is streamlined review of housing development applications that meet specific standards.<sup>10</sup> Other than requirements for streamlined permit processing, there are currently no legal or financial penalties imposed on cities that do not achieve their RHNA allocations.

### 6. What must cities do to comply with the RHNA?

The Housing Element must analyze the city’s potential capacity for additional housing based on an evaluation of land use patterns, development regulations, development constraints (such as infrastructure availability and environmental conditions) and real estate market factors. The analysis must be prepared at a parcel-specific level of detail and identify properties where additional housing could be built consistent with current regulations. This evaluation is referred to as the “sites analysis” and State law requires the analysis to demonstrate that the city has adequate capacity to fully accommodate its RHNA allocation in each income category. If the sites analysis does not demonstrate that adequate capacity exists to fully accommodate the RHNA, the Housing Element must describe what steps will be taken to increase capacity commensurate with the RHNA – typically through amendments to land use and zoning regulations that could facilitate additional housing development.

Under State law, areas that are zoned to allow residential or mixed-use development at a density of at least 20 units/acre in small cities like Malibu are considered appropriate for affordable housing in the very-low and low income categories. Potential accessory dwelling units (“ADUs”) can also accommodate future housing need in all income categories.

The City’s preliminary analysis indicates that sufficient capacity exists for additional housing to accommodate Malibu’s 2021-2029 RHNA allocation at all income levels. In 2013 an Affordable Housing Overlay Zone was adopted to allow multi-family residential development on approximately 9 acres of land with potential for approximately 150 units, which exceeds the RHNA allocation of 79 units.

<sup>10</sup> California Government Code Sec. 65913.4 (SB 35 of 2017)



### 7. Housing development is very expensive in Southern California. What happens if cities don't achieve their assigned housing needs?

Housing development is very expensive, particularly in coastal areas, and housing that is affordable to low- and moderate-income families typically requires large subsidies. While State housing law is based on the premise that every city has an obligation to use its governmental powers to encourage housing development at all income levels, it is recognized that available financial resources are not sufficient to produce all of the affordable housing needed. Therefore, if a city has adopted appropriate plans and regulations to encourage housing development commensurate with its RHNA allocation, it will not be penalized if actual production does not achieve assigned needs. However, under some circumstances State law requires that cities provide streamlined permit processing of housing developments if housing production falls short of RHNA goals.

### 8. What is “certification” of the Housing Element and why is it important?

The State Legislature has delegated authority to the California Department of Housing and Community Development (“HCD”) to review Housing Elements and issue findings regarding the elements’ compliance with the law.<sup>11</sup> If HCD issues a finding that the Housing Element is in substantial compliance with State law it is referred to as “certification” of the Housing Element. In 2013 HCD determined that Malibu’s current Housing Element was in full compliance with State law. The City is now preparing a Housing Element update for the 2021-2029 period.

Housing Element certification is important for two main reasons:

- **Local control.** The General Plan establishes the foundation for the City’s land use plans and regulations, and the Housing Element is part of the General Plan. If the City were challenged in court on a planning or zoning matter and the Housing Element were found by the court to be out of compliance, the court could order changes to City land use plans or regulations and assume control over some City land use decisions. HCD certification establishes a “rebuttable presumption of validity”<sup>12</sup> that the Housing Element complies with State law, which would support the City’s legal defense. Recent laws also allow for courts to impose fines if a jurisdiction fails to adopt a compliant Housing Element.<sup>13</sup>
- **Eligibility for grant funds.** Some State grant funds are contingent upon Housing Element certification.

<sup>11</sup> California Government Code Sec. 65585

<sup>12</sup> California Government Code Sec. 65589.3.

<sup>13</sup> AB 101 of 2019



### 9. How can I find out more about the 2021 Housing Element update?

A webpage has been established on the City's website for the Housing Element update at:

<https://www.malibucity.org/370/Housing-Element-Update>

This webpage will be updated periodically with meeting notices, documents and other materials regarding the Housing Element update. In addition, interested persons are encouraged to submit questions or comments regarding the Housing Element update to Justine Kendall, Housing Element Project Manager at: [jkendall@malibucity.org](mailto:jkendall@malibucity.org)

...