

# Enforcement of Housing Element Law: Pleasanton

*This brief is part of the Turner Center series “Statewide Goals, Local Tools: Case Studies in Affordable Housing Development in California.”*

Legal recourse remains an imperfect but important tool for enforcing housing policy. Litigation can be costly and time-intensive, but it can also be a key strategy for communities that lack local governmental responsiveness and an organized base of residents.<sup>1</sup> This holds particularly true when low- and moderate-income households cannot afford to live in a locality, effectively leaving them without a voice to impact the policies keeping them out. In the landmark housing discrimination lawsuit *Urban Habitat Program, et al. v. the City of Pleasanton, et al. (Urban v. Pleasanton)*, the Alameda County Superior Court struck down Pleasanton’s cap on new housing, undoing decades-long anti-growth policies that had constrained housing production. Led by a regional housing coalition, *Urban v. Pleasanton* signaled to cities throughout the state that strict growth controls and shortages of affordable housing were in violation of state law. The following case study demonstrates the potential for local and regional housing advocates to leverage housing element law to compel local action on issues of housing affordability, transit, and sustainable growth.

## Background

Pleasanton is an affluent, amenity-rich job center located in the Tri-Valley area, and within the eastern sub-region of the San Francisco Bay Area. Home to more than 4,000 businesses, Pleasanton’s infrastructure, access to major business markets, highly-educated workforce, and high-value, cost-competitive workspace has turned the city into a major jobs center in the Bay Area.<sup>2</sup> Though it offers 20,000 entry-level jobs, good schools, safe communities, parks, and access to Bay Area Rapid Transit (BART), Pleasanton

has restrictive land use policies that have prevented thousands of lower-income workers from being able to afford housing within city boundaries.<sup>3</sup>

Pleasanton’s restrictive land use practices are the result of the decisions of a slow-growth majority on the City Council and citizens at the ballot box. In 1978, the council adopted a Growth Management Ordinance capping building permits to manage the residential growth rate according to infrastructure and environmental constraints.<sup>4</sup> Almost a decade later, the city modified the ordinance to limit the total number of annual housing unit construction permits.<sup>5</sup> This ordinance was again reaffirmed in 1998, setting the annual limit at an absolute maximum of 750 units.<sup>6</sup>

To reinforce slow-growth housing policies, residents used initiative and referendum powers to aggressively control the pace, location, nature, and amount of residential development in Pleasanton.<sup>7</sup> In 1996, voters approved Measure GG—with a majority 75 percent of the vote<sup>8</sup>—barring the city from building more than 29,000 units of housing “until the end of time.”<sup>9</sup> The measure could, however, be amended by a citizen vote.<sup>10</sup> At the same time, voters also ratified an Urban Growth Boundary (UGB) limiting the city’s extent of outward development.<sup>11</sup>

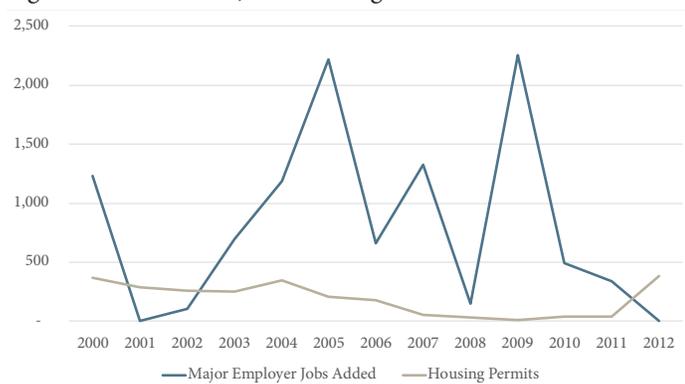
The combination of the housing cap, local ballot measures, city ordinances, General Plan provisions, and zoning decisions effectively placed a moratorium on affordable housing construction in Pleasanton. For example, while developers could still apply for multifamily building permits, the city refused to zone for apartment buildings (otherwise referred to as high-density development). While not all high-density buildings are affordable, affordable housing developers depend on high-density zoning to take advantage of economies of scale. By spreading the costs of land, development, and operations over more units, high-density proj-

ects can cut the cost per unit. Because Pleasanton didn't zone for high-density, each project had to be debated and approved as a separate planned unit development (PUD), adding time, cost, and risk of rejection.

While Pleasanton's housing development limitations were most often framed in environmental terms, in practice growth limits became tools of exclusion and resulted in "de facto segregation" against people of color, female-headed households, and families with children, all of whom suffer disproportionately from the lack of affordable housing.<sup>12</sup> Residents largely remained in support of the council's hyper-vigilance towards the preservation of open space and "small-town feel."<sup>13</sup> Community comments made in city planning meetings and online newspaper forums revealed community concerns over safety, property values, and, in some cases, an explicit racial animus towards prospective residents of affordable housing.<sup>14</sup>

By 2000, twenty years of anti-growth measures had resulted in a significant gap between job creation and housing production (Figure 1). That year, Pleasanton had 2.3 jobs for each unit of housing—the highest ratio in Alameda County and representing a shortfall of 12,500 homes.<sup>15</sup> From 2000 to 2012 (the year the city adopted a new housing element), the city added 11,433 jobs from major new employers but issued only 3,707 new housing permits.<sup>16</sup> This limited supply contributed to increasing home values. During that same period, home prices increased by 30 percent, with rental prices rising by 38 percent.<sup>17</sup>

Figure 1: Pleasanton's Jobs-Housing Imbalance



Note: Employment data represents jobs created by the 100 largest employers newly located in Pleasanton; housing permit data represents both single-family and multi-family housing units.

Sources: Pleasanton Economic Development Department; US Census Bureau SOCDs Survey of Construction

Pleasanton's jobs-housing imbalance has profound implications for housing affordability and environmental sustainability for the region. By 2000, 35 percent of renters and 29 percent of owners spent more than 30 percent of their income on housing, and 13 percent of renters and 9 percent of owners spent more than 50 percent.<sup>18</sup> The lack of affordable housing also translated into long commutes: of the 47,000 people who worked in Pleasanton, almost 90 percent, or roughly 42,000 people, commuted.<sup>19</sup> Of those commuters, fewer than 10 percent took BART.<sup>20</sup> For those commuters who drove, some came from as far away as Carmichael (105 miles), Newman

(64 miles), Petaluma (69 miles), and Corralitos (71 miles).<sup>21</sup> In exporting their housing needs, Pleasanton had created a sprawling "commute-shed" of low-wage workers, increasing greenhouse gas (GHG) emissions from vehicles to the detriment of the regional environment.<sup>22</sup>

## Enforcement of Housing Element Law: *Urban v. Pleasanton*

California mandates local planning for housing, requiring each city and county to revise and update a detailed housing element as part of its general plan every five to eight years.<sup>23</sup> Cities and counties must make adequate provisions for the existing and projected housing needs of all economic segments of the community based on its Regional Housing Needs Allocation (RHNA).<sup>24</sup> While the body of law around California's housing element requirements (housing element law) does not require communities to develop housing, it does require them to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, housing element law nevertheless acknowledges that adequate zoning, removal of regulatory barriers, protection of existing stock, and targeting of resources are essential to promoting affordable housing.

As the only state-reviewed element of the general plan, the housing element ensures that each locality zones appropriately to meet its "fair share" of regional housing needs.<sup>25</sup> In cases where the jurisdiction does not identify enough sites to accommodate the RHNA, the jurisdiction must allow development at multi-family densities by-right (i.e. without a conditional use permit or other discretionary permits).<sup>26</sup> The element must also estimate the number of units that could be constructed, rehabilitated, or conserved.<sup>27</sup> Finally, it must include a program to remove local governmental constraints to affordable housing development.<sup>28</sup>

Affordable housing advocates can leverage housing elements and housing element law to force action by noncompliant, recalcitrant, or exclusionary jurisdictions. They do so by focusing on three important obligations:

- » **Housing element preparation requires citizen participation.** In preparing its housing element, local governments must include residents and community groups representing all economic segments of the community in the process. This provides an opportunity to advocate for the inclusion of policies and programs that promote affordable housing while forging critical partnerships with groups representing the community.
- » **Jurisdictions must demonstrate the existence of sufficient sites to accommodate their RHNA for each income category.** Housing elements must identify sites appropriate for affordable housing development. If there are insufficient sites to accommodate RHNA in the inventory submitted with the housing element, the locality can be mandated to amend its zoning ordinance. For communities that fail to zone enough sites to meet their affordable housing needs from the last housing element period, a program must be included in its

new housing element to rezone enough sites to meet those needs within one year of its adoption.

- » **Housing element law provides housing proponents legal leverage in gaining approval for developments.** If a locality fails to adopt a housing element or adopts one that is inadequate, a court can order the local government to halt all market rate development until an adequate element is adopted, or order approval of a specific affordable housing development. If the local government fails to implement a program by the date specified in the element, a court can order the jurisdiction to carry out the program. Finally, if a local government fails to rezone and/or implement housing programs, a housing element can be decertified.

Responding to a lack of affordability in Pleasanton, a coalition of advocates from Citizens for a Caring Community (CCC) began advocating for change to Pleasanton's growth control zoning ordinances. In 2002, the CCC joined a campaign to prevent the passage of Measure V,<sup>29</sup> a ballot initiative banning housing development on a 318-acre property intended for an affordable senior citizen project.<sup>30</sup> Even though 40 percent of voters had come out in favor of the affordable housing development, the initiative passed.<sup>31</sup>

The CCC then turned its attention to Pleasanton's 2001 Housing Element Update. The group included former city councilmember and housing advocate Becky Dennis. Building on Dennis' insider expertise, the CCC sought training and support from regional housing organizations in challenging the draft housing element. In 2002, the group wrote a detailed letter to the California Department of Housing and Community Development (HCD) calling attention to the city's housing cap and the significant obstacles it presented in meeting Pleasanton's housing needs.<sup>32</sup> The letter also drew attention to the governmental constraints in place and underscored the importance of creating a program to mitigate the impact of the cap on the provision of affordable housing for very low- and low-income households.

These efforts led to the enactment of Program 19.1, Pleasanton's affordable housing assessment program, requiring the city to identify and rezone for high-density residential use to meet its RHNA obligation. Under Program 19.1, the city had one year after the adoption of the housing element to satisfy this requirement. In 2003, HCD conditionally approved the draft housing element. After the city failed to meet its obligations under Program 19.1, HCD decertified Pleasanton's housing element citing failure to meet the conditions of conditional compliance.

At almost the same time that Pleasanton's housing element was decertified, the number of units that could be built under the housing cap became too small to meet the city's RHNA. Reports from city staff disclosed that only 1,686 new units could possibly be built under the cap, far fewer than the 2,889 units in the city's RHNA.<sup>33</sup> In 2006, Public Advocates (a public interest law firm retained by CCC) sent a demand letter to the city detailing violations of both the housing cap and rezoning under Program 19.1. When the city failed to respond their demands, Public Advo-

cates and the California Affordable Housing Law Project filed a lawsuit against the city. *Urban v. Pleasanton* charged the city with violating state laws requiring communities to meet their fair share of regional housing needs as well as discriminating against people of color, female-headed households, and families with children.

Typically, cities do not lose housing element cases because no affordable housing has been built, but rather because their housing elements do not contain a provision required by housing element law.<sup>34</sup> According to data compiled by the legal firm Goldfarb Lipman in 2013, 46 housing element lawsuits involving 38 jurisdictions have been filed under housing element law.<sup>35</sup> Of those cases, most plaintiffs challenged housing elements not for substantive non-compliance with housing element law, but rather for being inadequately updated or implemented.<sup>36</sup> Most housing element cases are settled in trial court; only rarely has a court found a housing element to be substantively out of compliance with state law.<sup>37</sup> The latter was the result sought by the complainants in *Urban v. Pleasanton*.

In 2009, the California Attorney General's office joined the suit, amid concern that a lack of affordable housing and the resulting jobs-housing imbalance would prevent the region from meeting GHG reduction targets set by Assembly Bill 32 (2006), the state's landmark climate change law. At this time, it was an extremely rare occurrence for the state's Attorney General to become involved in a housing-related case. As of 2017, procedural changes brought about by Assembly Bill 72 enable HCD to refer violations of housing element law directly to the Attorney General's office.<sup>38</sup>

## Outcome and Results of the Case

Under housing element law, if certain conditions are met, a court may compel a jurisdiction to implement programs or rezoning. The court may also order approval of an affordable housing development.<sup>39</sup> In its decision on *Urban v. Pleasanton* in 2010, the Alameda County Superior Court struck down Pleasanton's housing cap, ordering the city to complete its rezoning and upending decades of restrictive housing policies. The presiding judge on the case also ordered a moratorium on all new development in Pleasanton until a settlement was reached. As the first court decision to enforce fair-share requirements, *Urban v. Pleasanton* signaled to other cities that strict growth controls and shortages in affordable housing would not be upheld by the state. By enforcing RHNA fair share requirements, *Urban v. Pleasanton* has given housing proponents a new tool to challenge exclusionary land use policies.

Later that same year, the city appointed a Housing Element Update Task Force to meet monthly with experts, service providers, and members of the public. The resulting updated housing element included a new construction goal of 4,000 units, of which most were targeted to moderate- or low-income households. Pleasanton formally adopted a new housing element in February 2012,<sup>40</sup> and between 2013 and 2017 the city permitted 1,711 new units of housing, including 279 below-market-rate units.<sup>41</sup>

Living in Pleasanton remains financially challenging for many, but the city's cap on growth has been decisively eliminated. The action forced by *Urban v. Pleasanton* is momentous not only because of its immediate impact on Pleasanton's housing shortage, but because it provides precedent for those who wish to challenge restrictive housing policies on legal grounds. Bringing a legal challenge to a city's housing element is a costly, time-consuming, and resource-intensive strategy, but it can also be successful in compelling action.

## Lessons Learned

- » **Legal recourse remains a useful yet imperfect tool in enforcing housing policy.** In certain cities, the only way to change restrictive housing policy is through litigation. Yet, local litigation can be costly and time-intensive. In addition, litigation cannot provide uniformity in addressing affordable housing issues across the state.
- » **Regional housing coalitions play an important role in advocating for underrepresented communities.** With the housing crisis deepening economic and racial segregation and disparity, many communities look to guidance and support from regional organizations to access the critical tools and land use expertise necessary to engender local change. In turn, regional housing coalitions can draw important linkages between state and local housing policy, and use that information towards forming new policy.
- » **Building community capacity at the local level is key to lasting success.** For housing policies to have a real and sustained impact over time, political buy-in and community support are arguably the most powerful tools in addressing housing affordability needs within a community.

## Useful Sources

National Low Income Housing Coalition, 2018 Advocates' Guide  
<https://nlihc.org/explore-issues/publications-research/advocates-guide>

Dept. of Housing and Community Development, Building Blocks:  
 A Comprehensive Housing Element Guide  
<http://www.hcd.ca.gov/community-development/building-blocks/index.shtml>

## Endnotes

1. Quoted in Rein, M. (2011). “Rethinking Green, Sharing the Dream: Lawsuit Lifts Pleasanton’s Housing Cap.” *Urban Habitat*.
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4. City of Pleasanton. (2017). “Chapter 17.36 Growth Management Program.” Pleasanton Municipal Code. Retrieved from: [http://qcode.us/codes/pleasanton/?view=desktop&topic=17-17\\_36-17\\_36\\_010](http://qcode.us/codes/pleasanton/?view=desktop&topic=17-17_36-17_36_010).
5. Fulton, W. (2009). “In Brief: AG Challenges Pleasanton Growth Management - CP&DR,” California Planning & Development Report. Retrieved from: <http://www.cp-dr.com/articles/node-2367>.
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7. Pendall, R. (2006). “From Hurdles to Bridges: Local Land-Use Regulations and the Pursuit of Affordable Rental Housing.” *Revisiting Rental Housing: A National Policy Summit*. Joint Center for Housing Studies of Harvard University. 1–53.
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10. Measure GG was amended by Measures PP and QQ in 2008 by public vote. Those measures reaffirmed the 29,000 units housing cap, and reaffirmed that the City had no discretion to allow any waiver to the housing cap, and excluded in-law units and extended-stay motel rooms from the housing cap.
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13. Rein, M. (2011). “Rethinking Green, Sharing the Dream: Lawsuit Lifts Pleasanton’s Housing Cap.” *Urban Habitat*.
14. Ibid.
15. Inter-Regional Partnership. “Alameda County 2000-2015 Growth Projections.” Association of Bay Area Governments.
16. Pleasanton Economic Development Department. (2015). “Large (100+) Employers 2015.” City of Pleasanton. Retrieved from: [www.cityofpleasantonca.gov](http://www.cityofpleasantonca.gov).
17. Turner Center tabulations of Zillow Home Value Index and Rent Index; calculations from 12/15/10 – 12/14/14. As of 2017, 43 percent of renters and 26 percent of owners spent 30 percent or more of their income on housing, and 20 percent of renters and 10 percent of owners spent 50 percent or more..
18. Turner Center tabulations of US Census Bureau, Decennial Census 2010.
19. Cities 21. (2009). “Transforming Office Parks into Transit Villages.” EPA. Retrieved from: [http://www.cities21.org/cms/Cities21\\_EPA\\_final\\_report.pdf](http://www.cities21.org/cms/Cities21_EPA_final_report.pdf).
20. Data compiled by BART between July 2010 and May 2011 showed an average of 3,666 people taking

the train from Pleasanton during the evening commute.

21. Cities 21. (2009). “Transforming Office Parks into Transit Villages.” EPA. Retrieved from: [http://www.cities21.org/cms/Cities21\\_EPA\\_final\\_report.pdf](http://www.cities21.org/cms/Cities21_EPA_final_report.pdf).  
Commute data retrieved from: <http://www.cities21.org/BABPC/HBPtractShed.png>.
22. A “commute-shed” can be defined as the area that workers are known to commute to for employment, assuming maximum travel time or distances.
23. California Gov’t Code § 65588.
24. Since 1980, the State of California has required each jurisdiction to plan for its share of the state’s housing need for people of all income levels (California Gov’t Code § 65583). The Regional Housing Need Allocation (RHNA) (California Gov’t Code §65583(c)(1) & §65583.2(h)) is the process by which each community is assigned its share of the housing need for an eight-year period. Each jurisdiction’s responsibility for planning for housing is divided into four income categories that address all levels of housing affordability: very low-income (50 percent or less of area median income); low-income (50-80 percent of median); moderate-income (80-120 percent of median); and above moderate-income (more than 120 percent of median). COGs calculate housing needs by looking at population and employment growth, existing employment, and household and employment growth near transit in the entire region and in each city or town. A jurisdiction’s housing needs obligation reflects its share of regional growth. Once a jurisdiction receives its RHNA, it must update the housing element of its General Plan to show how it plans to meet the housing needs of its community.
25. California Gov’t Code § 65584.
26. California Gov’t Code § 65589.4.
27. California Gov’t Code §65583.9 (b)(1).
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33. Public Advocates. (2006). “Letter to Pleasanton City Manager Nelson Fialho,” June 20, 2006.
34. California Gov’t Code § 65580 et seq.
35. Kautz, B. (2013). “Housing Elements: Beware of What You Promise.” 2013 Annual Conference: City Attorneys’ Track. League of California Cities Annual Conference, Sacramento, CA: Goldfarb & Lipman LLP, 1–18.
36. Ibid.
37. Ibid. Where the Court of Appeal has analyzed the content of a housing element (as opposed to ruling on remedies for a clearly inadequate housing element), in only three instances has the Court found a

housing element to be inadequate. In the last three cases to reach the Court of Appeal, all the housing elements were found to substantially comply with state law.

38. California Gov't Code § 65585
39. Ibid.
40. City of Pleasanton. "Housing Element." Retrieved from: <http://admin.cityofpleasantonca.gov/civicax/filebank/blobdload.aspx?BlobID=28977>
41. Department of Housing and Community Development. "5th Cycle Annual Progress Report Permit Summary." Retrieved from: <http://www.hcd.ca.gov/community-development/housing-element/index.shtml>

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