



## ANALYSIS AND RECOMMENDATION OF NEW STATE LAW SB 2: MAXIMIZING OPPORTUNITIES FOR DEFINING/ADVANCING HOPE POSITION

*A specific action recommendation and a discussion of next steps for advancing HOPE's position are presented in the final sections of this policy paper.*

### Context and Requirements<sup>1</sup>

Effective January 1, 2008, SB 2 requires every California city and county to:

- Engage in a more detailed analysis to **identify and analyze the housing and services needs of homeless persons and families and assess the unmet need for emergency shelter**<sup>2</sup> in their next Housing Element;
- **Designate zoning districts adequate for facilities to accommodate the identified need for emergency shelters** in its Housing Element, wherein emergency shelters must be allowed without a conditional use or other discretionary permit and are exempt from CEQA (California Environmental Quality Act)<sup>3</sup>;
- **Describe a program to reduce constraints on the development of transitional and supportive housing** beyond complying with the requirement that transitional and supportive housing must be treated as a residential use of property, subject only the same restrictions that apply to other housing of the same type in that zone<sup>4</sup>; and,
- **Comply with the broadened scope of the Housing Accountability Act**<sup>5</sup> which now includes emergency shelters as well as supportive and transitional housing.

The Planning and Zoning Law requires the housing element of the general plan of a city or county to contain, among other things, an assessment of housing needs including an inventory of land suitable for residential development, and a program with a 5-year schedule of actions that the local government is undertaking or intends to undertake to

<sup>1</sup> Based on January 11, 2008 Law Alert, Goldfarb & Lipman and Legislative Counsel's Digest of SB 2, (Government Code Chapter 633), Cedillo, Local planning.

<sup>2</sup> SB 2 definitions: Emergency Shelter as housing for homeless persons intended for occupancy of less than 6 months, where no person is denied occupancy because of inability to pay; Transitional Housing as rental housing for stays of at least six months but where there is a limit on the length of stay and units are recirculated to another person after a set period; and Supportive Housing as that occupied by low-income persons with disabilities and certain other disabled persons wherein supportive services are provided and there is no limit on the length of stay.

<sup>3</sup> Local government can apply certain written, objective development and management standards, such as the number of beds and length of stay. Where communities already have enough emergency shelters to meet the identified need, they may require a conditional use permit for emergency shelters.

<sup>4</sup> For example, supportive housing located in a single-family residence must be treated like any other single-family home.

<sup>5</sup> Housing Accountability Act (Government Code §65589.5 formerly Anti-NIMBY Law) strictly limits the grounds under which cities and counties may deny certain types of housing.

implement the goals and objectives of the housing element. This program is also required to identify adequate sites with zoning that permits owner-occupied and multifamily residential use by right, including the development of farm worker housing for low- and very low-income households. **SB 2 adds emergency shelters to these provisions, requiring a local government to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit.**

In addition, the Planning and Zoning Law also requires that a local agency not disapprove a housing development project, including farm worker housing for very low-, low-, or moderate-income households, or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions. **SB 2 adds emergency shelters, transitional housing and supportive housing to these provisions and revised conditions upon which a disapproval or a conditional approval of an emergency shelter is based.**

**By increasing the duties of local public officials, the bill imposes a state-mandated local program.**

SB 2 applies to any Housing Element submitted to the CA Department of Housing and Community Development (HCD) for review for the first time after March 31, 2008. **San Mateo County jurisdictions are required to have their Housing Elements approved by June 30, 2009, which generally means that they need to be submitted to HCD by around March 31, 2009.**

Although HCD (the State agency responsible for certification of housing elements) generally takes no legal action against a community for not getting an approved Housing Element, the consequences are significant. Jurisdictions without approved Housing Elements are not eligible for certain state and local funding (e.g., HEART, C/CAG TOD Incentive, MHP, Prop 1C infrastructure, and potentially MTC monies in the future.) In addition, a jurisdiction without a certified Housing Element may lose some decision-making autonomy in particular situations relative to zoning and planning, (e.g., if a jurisdiction is sued under environmental quality laws it may lose the presumption, and acquire a burden of proof for, the adequacy of its findings).

#### **Connection to Countywide Housing Element Update Project**

In San Mateo County, an innovative partnership among all of the county's 21 jurisdictions (all 20 cities and the county) has been formed. Co-sponsored by San Mateo County's Department of Housing (DOH) and the City/County Association of Governments (CCAG). Called "21 Elements," the countywide housing element update project provides opportunities for municipalities to share resources, successful strategies and best practices in order to create higher quality certified Housing Elements and stronger local partnerships to address the county's housing needs.<sup>6</sup>

Staff of the 21 Elements project is charged with developing common data and customizable policy text on topics that are common to many or all jurisdictions to be used in the updates of Housing Elements, including those now required by SB 2.

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<sup>6</sup> For more information about the 21 Elements project, see its website at <http://21elements.com>.

Towards that end, it has commissioned a technical study to:

- translate existing data into summary text and tables for each jurisdiction to satisfy state requirements for analysis of needs and constraints;
- description of relevant best practices; and,
- policy issues where there is emerging countywide consensus.

Staff of the 21 Elements project recognize the intersection of the new requirements in SB 2 with the HOPE Plan and is actively seeking input from those responsible for overseeing the implementation of the HOPE Plan. Recommendations from HOPE would be folded into the scope of the 21 Elements technical study to include preparation of a “menu” of template housing action program items that are congruent with and maximize this opportunity to support the goals and strategic direction outlined in the HOPE Plan.

### **Connection to HOPE**

The HOPE Plan (Plan) is a call to action to prevent and end homelessness in San Mateo County. The Plan is outcome-driven and as such has two overarching desired results:

- Creating 7,900 units of affordable and supportive housing for households which are homeless or at imminent risk of homelessness; and,
- Providing 4,300 households short-term assistance to secure or maintain housing.

The HOPE Plan is built around two key strategies to meet the needs of HOPE's target population (people who are homeless or at-risk of homelessness, defined as renter households that have incomes at or below 30% AMI and a high rent burden defined as paying 50% of their income in rent):

1. **Increasing Affordable Housing Opportunities:** Increase the supply of permanent affordable and supportive housing for people who are homeless and develop strategies to help them to move into permanent housing as rapidly as possible.
2. **Preventing people from becoming homeless:** Prevent individuals and families from becoming homeless in the first place by assisting them to maintain their housing and ensuring homeless people who are leaving institutional settings (such as jails, hospitals, foster care and treatment programs) are able to secure permanent, and where needed supportive, housing as they re-enter the community.

HOPE planners based their recommendations on extensive analysis and discussion of research and emerging best practices in the field, including a:

- shift towards prevention, including re-directing the emergency services system towards evidence-based homelessness prevention practices; and,
- shift towards housing first or rapid re-housing strategies – away from expanding the emergency housing and services system as such and towards focusing resources on helping homeless people rapidly secure permanent affordable housing with needed services in-place to help them maintain it.

**The HOPE Plan intentionally made no recommendation to expand the supply of emergency or transitional housing (except for a small pilot motel voucher program to provide assistance to single individuals.)** Although the HOPE planners recognized that there is a lack of needed resources throughout the housing continuum, including emergency and transitional housing, the greatest need and the most effective use of new and/or redirected resources is for creating and sustaining quality affordable housing (accessible to households

with incomes  $\leq 30\%$  AMI) and, where needed, supportive housing.<sup>7</sup> Since the HOPE Plan was adopted by the County, many cities and other community groups, there have been no plans for new emergency shelter or transitional housing put forth in San Mateo County (with the exception of transitional housing or permanent housing with transitional services for emancipating foster and/or homeless transition-age youth).

Within the specific strategies identified to increase affordable housing opportunities, the Plan recommends removing barriers to and/or creating incentives for the development of extremely low-income affordable and supportive housing by:

- Establishing innovative land use and zoning policies and recommendations;
- Creating clearer, more streamlined building and development processes to shorten the time and decrease the cost of affordable and supportive housing development; and,
- Identifying more suitable, appropriately zoned land and multi-unit buildings appropriate for affordable and supportive housing.<sup>8</sup>

### **Opportunities**

The upcoming Housing Element update process, especially with SB 2's new requirements, provides unique opportunities for our community to advance its goals as articulated in the HOPE Plan — a plan adopted by the County Board of Supervisors and many cities and community-based groups dedicated to ending homelessness. SB 2 strengthens existing housing element requirements to provide the opportunity for the development of supportive housing. Taken together, SB 2's requirements are intended to encourage every jurisdiction in California – through carrot and stick – to embrace its responsibility to make housing opportunities accessible for all of the community's members, particularly those in greatest need due to poverty, disability and chronic illness.

- **SB 2 brings increased visibility to the issue of homelessness** in each jurisdiction in our county by requiring each to identify and analyze the housing and services needs of homeless persons and families and to assess the unmet need for emergency shelter.
- **SB 2 is compatible with and supportive of ten year plans to end homelessness** based on housing first/rapid re-housing strategies that don't include expanding emergency shelters. SB 2 requires a jurisdiction to designate zoning districts adequate to accommodate the unmet need for shelter; **it does not require a jurisdiction to create new emergency shelters.**
- **SB 2 clarifies that transitional and supportive housing throughout California must be treated as a residential use of property** and strictly limits the grounds under which cities and counties may deny it.
- **SB 2 provides an incentive for local jurisdictions to develop a proactive program to reduce constraints on the development of transitional and supportive housing** (and provides a tool in the form of designated zones for emergency shelters that allows affordable and supportive housing advocates to apply pressure to those jurisdictions who choose not to comply with SB 2's requirements.)

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<sup>7</sup> HOPE Plan, page 15.

<sup>8</sup> HOPE Plan, pages 14 – 18.