

City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: AUGUST 6, 2024

FROM: COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT WARDS: ALL

SUBJECT: WORKSHOP – NO NET LOSS POLICY IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 65863 AND 66300

ISSUE:

Receive and file an overview of California Government Code Sections 65863 and 66300, the City's current practice/policy to address No Net Loss and provide direction for future Council Committee items.

RECOMMENDATIONS:

That the City Council:

1. Receive and file a report on applicable State Law and existing City policies pertaining to No Net Loss; and
2. Direct staff to continue existing policies or return to a City Council Committee with options to update City policies.

BACKGROUND:

The State of California has identified the housing shortage as a legislative priority due to its documented and compounding impacts on the economy, public health, and collective welfare. The California Government Code includes No Net Loss policies to ensure that cities maintain enough land and capacity for continued housing production that meets the diverse needs of California households. This report will focus on two different No Net Loss laws found in the Government Code, their required applications, and current existing city policies to address both.

DISCUSSION:

No Net Loss in the Housing Crisis Act of 2019 - Government Code Section 66300

Senate Bills 330 and 8

In 2019, Senate Bill 330 was signed into law establishing the Housing Crisis Act (HCA) of 2019 and amending several sections of the Government Code to increase residential development, protect existing housing inventory, and expedite permit processing. Included in these

amendments is a No Net Loss provision aimed at preventing reductions in a city's ability to accommodate needed housing development.

Residential development capacity, or the maximum number of units that residentially zoned land can accommodate, is determined by:

- the General Plan, which prescribes intended land use, intensity (for non-residential development) and allowable densities (for residential development); and
- the Zoning Code, which implements General Plan land use policies with specific allowed uses and development standards on a site-by-site basis.

For example, a one-acre property in the Mixed-Use Urban (MU-U) Zone has development capacity for up to 40 units, based on the per-acre density allowed by the General Plan and Zoning. A similarly sized property in the Mixed-Use Neighborhood (MU-N) Zone has development capacity for up to 10 units. It is important to note that development capacity is not determined by existing units, or even resulting units from a project, but rather a presumed number that has been planned for and studied in the General Plan.

Intended to preserve the existing residential development capacity of cities, the HCA amended Government Code Section 66300 to read, with respect to land that is designated for residential development as of January 1, 2018:

[Cities shall not enact a development policy] that would change the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, or zoning district in effect at the time of the change, below what was allowed under the land use designation or zoning ordinances of the [city].

This provision restricts downzoning, or processing a Zone Change or General Plan Amendment for a property that would decrease the allowable density, resulting in a decrease in residential development capacity. This also includes rezoning a parcel that currently allows residential to a zone that does not permit residential (for example, rezoning a parcel from MU-U to Commercial General [CG]). A general example of downzoning is rezoning a one-acre MU-U property that could have accommodated up to 40 dwelling units to an MU-N zoning designation that would accommodate up to 10 units, effectively decreasing the site's development capacity by 30 units.

The HCA is not, however, a blanket prohibition on downzoning. Downzoning is permitted only when an application for upzoning or rezoning of a separate property is processed and approved concurrently to ensure no net loss in residential development capacity occurs. As opposed to downzoning, upzoning would increase the allowable density of a property therefore increasing its development capacity. Building upon the initial example, the downzoning of a one-acre MU-U property to MU-N would only be permitted if a separate application is processed to increase another property's capacity by 30 units.

The No Net Loss provision brought by SB 330 was intended to sunset on January 1, 2025. However, SB 8, which passed in 2021, extended these requirements to January 1, 2030. It also removed the January 1, 2018, baseline year and substituted language that makes the downzoning provisions applicable to the residential development capacity that exists at whatever time the zone change application is submitted to the City. It is essential for jurisdictions to demonstrate compliance with the HCA and No Net Loss. Jurisdictions found out of compliance risk Housing Element decertification, which would result in ineligibility for essential state and federal funding and could expose the City to litigation by private parties or the State of California.

City of Riverside HCA No Net Loss Current Practice

The City's current practice places the burden of No Net Loss compliance on applicants who are requesting the downzoning of a property. Should an applicant request a downzoning that reduces the residential development capacity of the City, the applicant must find another property and/or project in the City that can be upzoned to offset the reduction in development capacity. While most cities have opted for a similar practice, some peer cities have adopted a unit bank policy which allows the city to administer the transfer of development capacity from one property to another. These policies, however, are only recently adopted and have not been assessed for effectiveness or compliance with the requirements of the HCA.

Regional Housing Need Assessment No Net Loss (Government Code Section 65863)

Regional Housing Needs Assessment (RHNA) Allocation and Obligation

Every eight years, the California Department of Housing and Community Development (HCD) conducts the RHNA process. This process results in an estimated number of housing units that must be planned for and accommodated across the State for the 8-year cycle to keep pace with housing need and expected demand. HCD considers observed and expected population growth, household characteristics and employment growth to determine the overall RHNA need for the State.

California law requires that every city and county accommodate its fair share of the RHNA during each eight-year cycle. RHNA allocations for individual jurisdictions are determined by the regional planning agency for the area, in the City's case the Southern California Association of Governments (SCAG) and reflects four household income levels (very low income, low income, moderate income, and above-moderate income). For the 6th Cycle 2021-2029 Housing Element, the City of Riverside's RHNA obligation is 18,458 units. Table 1 shows the City's assigned RHNA allocation and remaining obligation as of the writing of this staff report.

Table 1 – City of Riverside RHNA Obligation

Income level	Total Allocation	Remaining Obligation
Very Low Income	4,861	4,861
Low Income	3,064	2,510
Moderate Income	3,139	2,601
Above-Moderate Income	7,394	697
Total	18,458	10,699

The Housing Element must demonstrate that there is enough suitable land available, appropriately zoned and feasibly developable to accommodate the development of at least 18,458 units at the income levels indicated throughout the City over the 6th Cycle. This demonstration is accomplished through the Housing Element's Opportunity Sites Inventory.

Opportunity Sites Inventory and Methodology

The 6th Cycle Housing Element includes an inventory of potential sites to accommodate the City's RHNA obligation. Sites were selected as those with the most development opportunity based on the following criteria:

- Undeveloped or underdeveloped sites;
- Sites with high land value but low value of improvements (such as older, smaller buildings – improvement-to-value ratio);
- Excess zoned development capacity such as buildable height or floor area;
- Sites with vacant buildings or high rates of vacancy;
- Sites already zoned for housing during the previous 5th Cycle Housing Element Update that are still available for development;
- Lot sizes suitable for development (larger than 0.5 and smaller than 10 acres); and
- Sites with good access to transportation, employment, amenities, and services.

Sites were excluded from the inventory and deemed to have less development potential based on the following criteria:

- Existing zoning protected by Proposition R and Measure C (i.e., sites zoned RC – Residential Conservation or RA-5 – Residential Agriculture);
- Location within housing-restrictive zones (Airport Land Use Compatibility Zone);
- Location within a high Fire Hazard Severity Zone;
- Location within a mapped floodplain;
- Lack of available infrastructure services such wet and dry utilities; and
- Sites located far from transportation, employment, amenities, and services.

When determining which sites are best suited to accommodate lower-income RHNA, the City considered the following:

- Proximity to transit, access to amenities such as parks and services;
- Locational scoring criteria for Low-Income Housing Tax Credit (TCAC) Program funding;
- “Default” density assumptions in accordance with Government Code Section 65583.2(c)(3)(B). State law allows cities to assume that sites zoned for more than 30 units per acre will be more feasibly developed with housing for lower-income families and therefore can be counted toward the portion of the City's RHNA for lower-income households.

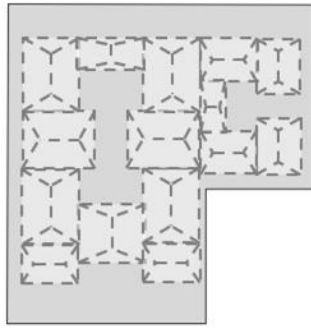
Through detailed analysis, public outreach, and input from the Planning Commission and City Council, the final adopted inventory resulted in 209 sites that could accommodate 8,408 lower income units and 12,587 moderate and above moderate units, for a total of 20,995 units or approximately 13% more than required by RHNA.

Senate Bill 166

In 2017, Senate Bill 166 (SB 166) was signed into law amending section 65863 of the Government Code to include a No Net Loss provision. The provision prohibits a city from causing its inventory of sites to be “insufficient to meet its remaining unmet share of the regional housing need for lower and moderate-income households.” Like the No Net Loss provision of the HCA, SB 166 intended to ensure that there are no reductions in housing capacity. However, SB 166 narrows the scope of capacity to that of the City's Housing Element Opportunity Sites Inventory for low- and moderate-income units.

When an identified opportunity site is developed, it is removed from the Inventory, as that parcel of land is now “built out” and can no longer contribute to meeting the RHNA. In theory, this should result in a balanced account of units and land: As housing is built the RHNA obligation is reduced, and capacity (and *need* for capacity to meet the RHNA) is lessened. However, not all development projects will meet the number of units affordability level/income obligation projected for a Housing Element Site, resulting in inventory capacity in a given income category reducing faster than obligation can be met. SB 166 dictates that if the remaining sites in the Housing Element are not adequate to accommodate the jurisdiction’s share of the regional housing need by income level, the city must identify and make available additional adequate sites within 180 days of project approval. Figure 1 provides general development scenarios as an example to illustrate the balance of inventory capacity and remaining RHNA obligation.

FIGURE 1 – DEVELOPMENT SCENARIOS FOR EXAMPLE HOUSING ELEMENT SITE



Housing Element Site A projected to accommodate 50 low-income units



Lower Income Capacity



Lower Income Obligation



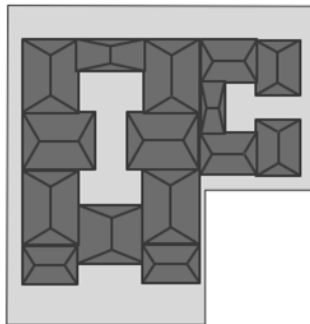
Moderate and AM Capacity



Moderate and AM Obligation

SCENARIO 1: CAPACITY/OBLIGATION BALANCE

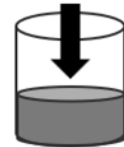
When a site is developed at the same income level and density as projected in the Housing Element



Housing Element Site A projected to accommodate 50 low-income units

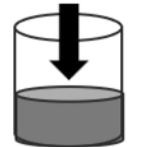
Housing Element Site A is developed with 50 low-income units

Reduced by 50 units



Lower Income Capacity

Reduced by 50 units



Lower Income Obligation



No Change



Moderate and AM Capacity

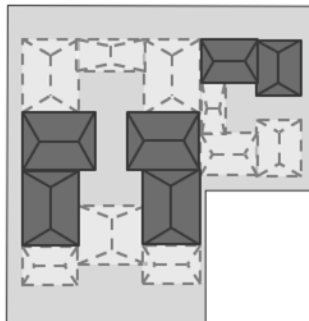
No Change



Moderate and AM Obligation

SCENARIO 2: CAPACITY/OBLIGATION IMBALANCE

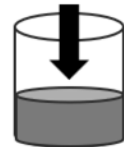
When a site is developed at a different income level and density as projected in the Housing Element



Housing Element Site A projected to accommodate 50 low-income units

Housing Element Site A is developed with 10 Above Moderate units

Reduced by 50 units



Lower Income Capacity

No Change



Lower Income Obligation

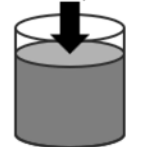


No Change



Moderate and AM Capacity

Reduced by 10 units



Moderate and AM Obligation

City of Riverside RHNA No Net Loss Policy

To ensure the requirements of SB 166 are met and enough inventory sites remain for the remaining RHNA in each income category, the City’s Housing Element Opportunity Sites Inventory provides a No Net Loss “buffer” in that it identifies additional sites to accommodate more housing units *beyond* the City’s assigned RHNA in each income category. This buffer ensures that if sites are not developed at the anticipated density, are developed with uses other than housing, or otherwise become unavailable during the eight-year cycle, there are enough appropriately zoned sites in reserve to ensure the RHNA obligations are continuously met.

Since the adoption of the Housing Element, 20 parcels in the Opportunity Sites Inventory have been approved for developments that do not match the density or income level projected in Housing Element. While these projects may contribute to reducing the City’s RHNA obligation, they also reduce the inventory’s capacity for housing by making sites unavailable, specifically for lower and moderate-income units. Staff continually tracks the development of identified opportunity sites and the remaining buffer. Table 1 compares the planned capacity of the Housing Element sites inventory, remaining capacity thus far in the planning period, remaining RHNA obligation, and remaining buffer that allows for compliance with SB 166 as of June 2024.

Table 1 – City’s progress on Capacity and Obligation

Income Level	Planned Capacity ¹	Remaining Capacity	Remaining Obligation	Remaining Buffer
Lower income	8,408	7,967	7,371	596
Moderate and Above Moderate	12,587	12,189	3,298	8,891
Total	20,995	20,156	10,669	9,487

¹The total number of units for all sites in that income category at time of Housing Element Adoption.

It is important to note that applications for market-rate (i.e., above-moderate income) development are far more common than affordable (i.e., lower- or moderate-income) development resulting in a decrease in the City’s obligation in the Moderate and Above-Moderate income categories. However, these market-rate developments are not being realized on sites that contribute to the Moderate and Above-Moderate planned capacity. Consequently, the Moderate and Above-Moderate obligation is decreasing at a much faster rate than Moderate and Above-Moderate capacity. This results in a buffer (i.e., gap between inventory capacity and remaining obligation) that is growing in that income category.

Conversely, sites are becoming unavailable in the Lower Income category more quickly than new affordable development is reducing the remaining Lower Income obligation, and therefore the buffer in that category is shrinking. If the surplus buffer in any category were to be completely exhausted and convert to a deficit (i.e., no adequate sites in the inventory available to accommodate development in that income category), SB 166 requires that suitable replacement sites be identified and zoned appropriately within 180 days. In this situation, development of an inventory site that does not match the density or income level projected for that site in Housing Element also cannot be approved until the replacement sites are identified.

It is important to note that this situation is common, particularly for jurisdictions with limited available land and large RHNA allocations, because lower-income housing development relies on extremely competitive state and federal grant funding and other financing mechanisms whereas moderate and above-moderate development is largely privately financed. This is part of the reason why the original proposed Opportunity Sites Inventory for the 6th Cycle Housing Element included an even larger buffer than that which was ultimately adopted.

Should additional opportunity sites need to be identified to accommodate lower and moderate-income housing during the planning period, a developer could identify another site and/or Staff would need to identify appropriate replacement sites. This process would include working with community stakeholders and decision makers for appropriate site selection consistent with Housing Element methodology and community outreach practice. Replacement sites must also be approved by the California Department of Housing and Community Development.

STRATEGIC PLAN ALIGNMENT

The City Council Workshop on No Net Loss contributes to the Envision Riverside 2025 City Council Strategic Plan Priority 5 – High Performing Government – Goal 5.2 Utilize technology, data, and process improvement strategies to increase efficiencies, guide decision making, and ensure services are accessible and distributed equitably throughout all geographic areas of the City.

This Update aligns with the following Cross-Cutting Threads as follows:

1. **Community Trust** – The City Council Workshop on No Net Loss aligns with the Community Trust Cross-Cutting Thread as the workshop summarizes the requirements of State Law for City’s regulatory ability and implementation of the Housing Element which sought public input in their development and benefits all residents in the City.
2. **Equity** – The City Council Workshop on No Net Loss aligns with the Equity Cross-Cutting Thread in that it provides a summary of progress made on the assigned RHNA Obligation which accounts for a diverse housing stock at all income levels.
3. **Fiscal Responsibility** – The City Council Workshop on No Net Loss aligns with the Fiscal Responsibility Cross-Cutting Thread as it details the requirements of State Law and allows City Leadership and opportunity to prioritize which policies to invest time and resources to.
4. **Innovation** - The City Council Workshop on No Net Loss aligns with the Innovation Cross-Cutting Thread as it reports on the implementation of the Housing Element and summarizes innovative approaches to remain in compliance with State Law.
5. **Sustainability and Resiliency** – The City Council Workshop on No Net Loss Sustainability and Resiliency Cross-Cutting Thread as it includes a Housing Element implementation and considers the needs of residents without compromising future generations.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

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Approved by:	Rafael Guzman, Assistant City Manager
Approved as to form:	Phaedra A. Norton, City Attorney

Attachment: Presentation