



CATALYSTS FOR LOCAL CONTROL: Town Hall Series

**SB 9 LEGAL CHALLENGE
& POTENTIAL RHNA
LAWSUIT**

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An aerial night photograph of a modern housing development. The houses are illuminated from within, and some have external lighting. A semi-transparent rectangular box is overlaid on the center of the image, containing the word 'OVERVIEW' in white capital letters. The background shows a cityscape and mountains under a twilight sky.

OVERVIEW

- Overall statutory theme
- SB 9 Legal Challenge
- RHNA State Audit
- Why/How to Get Involved

An aerial night photograph of a modern housing development. The scene shows a cluster of contemporary houses with various rooflines, some featuring brickwork and others with flat roofs. A prominent brick house with a gabled roof is in the foreground. A paved walkway with integrated lighting runs through the development. In the background, a city skyline is visible under a twilight sky, with mountains in the distance. A semi-transparent rectangular box is overlaid on the center of the image, containing the text "OVERALL STATUTORY THEME".

OVERALL STATUTORY THEME

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HOUSING ISSUES

- Rapidly growing homelessness
- Increasing lack of affordability in urban areas/job centers
- Increasing costs of land, labor, and supplies
- Investor-driven markets
- Inflation

STATE'S VIEWS ON HINDRANCES TO HOUSING

- NIMBYism
- Over-regulation by local governments
- Lack of incentives for builders

OVERALL STATUTORY THEME

ATTEMPTS TO ADDRESS HOUSING ISSUES

- SB 330, SB 8 – land use controls; prohibitions on lowering residential density; ministerial approval of development applications
- SB 35 – failure to meet RHNA targets → ministerial approval of certain residential development projects with affordability component and no CEQA review
- SB 9 and SB 10 – elimination of single family zoning and overturning of voter initiative process; ministerial approval

RESULTS

- Reduction in public health and safety and environmental protections
- Gentrification and sides with investors and developers
- Failure to address underlying lack of housing and affordability
- Erosion of due process, transparency, and equal protection

An aerial night view of a city with a semi-transparent text box in the center. The city is illuminated with various lights, including streetlights and building lights, creating a bokeh effect. The text box is a dark rectangle with a thin white border, and the text inside is white and bold.

SB 9 – APPLICABLE LAW

SB 9 – APPLICABLE LAW

- Ministerial approval of lot splits and/or up to two housing units in a single-family zone or where single-family residences are the primary use
- Only objective development standards may be applied
- Unit of at least 800 sq. ft. must be allowed; lot splits must be at least 1,200 sq. ft.
- Very few exceptions apply

SB 9 – TWO LAWSUITS

General Law vs. Charter Law Cities

- General Law cities
 - Bound by the ***State's general laws***, even with respect to municipal affairs (e.g., policing, elections, employees, land use)
 - State laws will pre-empt city laws/rules based on a Statewide interest or concern
- Charter Law Cities
 - Bound by a city's ***charter and has supreme authority*** over municipal affairs ("home rule")
 - Charter only needs to state the city intends to exercise its full power under the CA Constitution over all municipal affairs
 - ***Exception***: where the state has stated an issue is of Statewide concern and State intends to occupy the field of regulation

SB 9 – TWO LAWSUITS

Municipal Affair: land use, zoning, single family zoning

- *Miller v. Bd. of Public Works of City of Los Angeles* (1925) 195 Cal. 477, 486, 492-93: "In California it is well settled that there is no objection to zoning ordinances as such. There are many decisions in this jurisdiction upholding the right to zone for use. ... The establishment of single family residence districts offers inducements not only to the wealthy but to those of moderate means to own their own homes. ... It is needless to further analyze and enumerate all of the factors which make a single family home more desirable for the promotion and perpetuation of family life than an apartment, hotel, or flat. It will suffice to say that there is a sentiment practically universal, that this is so."

SB 9 – TWO LAWSUITS

General Law City Lawsuit

Not reasonably related to Statewide concern – Nowhere in the text of SB 9 is there a reference to or requirement to make the new homes or lots subject to affordability covenants

- SB 9 does not allow a city to address public health or safety concerns
- SB 9 disrupts a city's housing element and State housing laws
- SB 9 excludes certain areas unevenly and unfairly
- SB 9 removes public engagement and lacks due process

Two cities: *Lakewood and Rancho Palos Verdes*

Hearing date: None yet, but expected to be late summer 2023

SB 9 – TWO LAWSUITS

Matter of Statewide Concern to Override Charter City

- (i) whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair';
- (ii) there is an actual conflict between State law;
- (iii) whether the State law addresses a matter of 'statewide concern;' and
- (iv) whether the law is '***reasonably related*** to ... resolution' of that concern [citation] ***and*** '***narrowly tailored***' to avoid unnecessary interference in local governance.

(*Anderson v. City of San Jose* (2019), 42 Cal.App.5th 683, 698–699 (review denied Mar. 11, 2020))

SB 9 – TWO LAWSUITS

Charter City Lawsuit

- 1. *Not reasonably related*** to Statewide concern
- 2. *Not narrowly tailored*** to avoid unnecessary interference into local governance

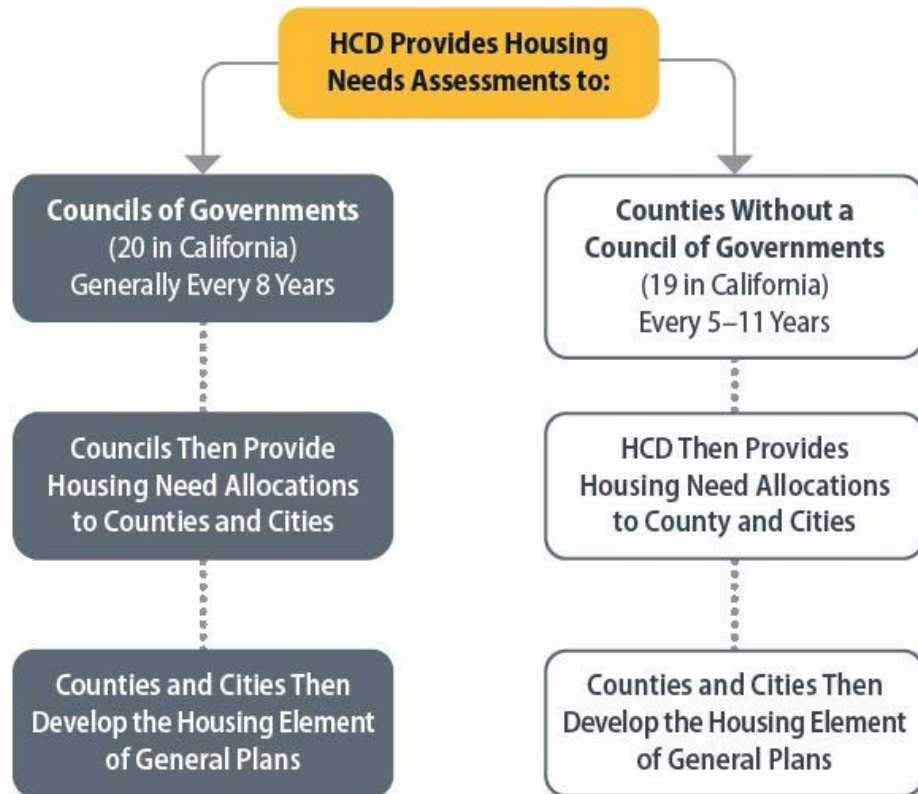
- SB 9 does not allow a city to address public health or safety concerns
- SB 9 disrupts a city's housing element and State housing laws
- SB 9 excludes certain areas unevenly and unfairly
- SB 9 removes public engagement and lacks due process

Four cities: *Carson, Redondo Beach, Torrance, Whittier*
Hearing date: April 27, 2023

An aerial photograph of a suburban neighborhood. In the foreground, several houses with dark roofs and light-colored walls are visible, arranged along a street. The middle ground shows more houses and a green hill in the background. The text "RHNA STATE AUDIT & POTENTIAL LITIGATION" is overlaid in the center of the image.

RHNA STATE AUDIT & POTENTIAL LITIGATION

RHNA – STATE AUDIT



FACTOR	DESCRIPTION
Anticipated Population Growth	Projection of future population growth in the region.
Household Formation Rate	The rate at which individuals form new households in the region.
Household Size	The number of people per household in the region.
Vacancy Rates	The percentage of homes available for rent or sale compared to the total number of housing units, less vacation and seasonal homes.
Overcrowding	The percentage of households that have more than one resident per room in a housing unit.
Replacement Needs	Replacement of housing units lost during the planning period, such as because of deterioration.
Cost-Burdened Households	The percentage of households that are paying more than 30 percent of their income on housing costs.
Units Lost to Emergencies	The loss of housing units during a state of emergency declared by the Governor, such as in wildfires, if the lost units have not yet been rebuilt or replaced.
Jobs/Housing Balance	The relationship between the number of jobs in a region and the number of housing units in that same region.
Other Characteristics	Other characteristics of the composition of the projected population.

RHNA – STATE AUDIT

State Auditor's Findings Regarding HCD's RHN Determination

1. HCD failed to provide adequate analysis to support their healthy ***vacancy rate*** assumptions.
2. HCD made data and ***calculation errors***.
3. HCD was inconsistent in its use of ***comparable regions***.
4. HCD failed to consider ***jobs-housing balance*** and inconsistently addressed housing lost through wildfires.
5. DOF, which calculates population projections, ***did not show assumptions*** it made in its determination of household need.

RHNA – STATE AUDIT

If HCD were to do a re-assessment of their RHN determinations, it would not guarantee that all RHN determinations in EACH region will decrease.

- Audit showed some housing needs were under-projected due to not counting homes destroyed by wildfire

HCD's response to the State Audit said that it will institute processes to ensure accuracy and transparency.

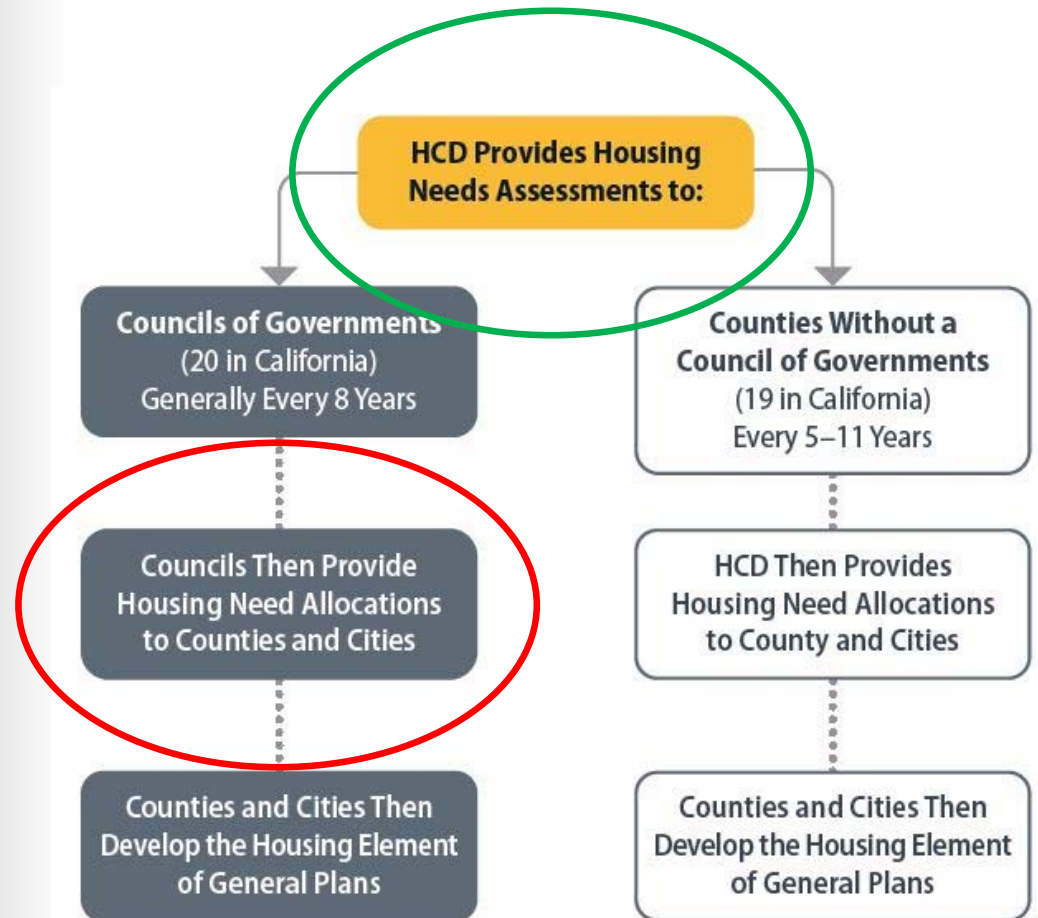
- Multiple-review processes have been instituted.
- Documentation to be provided by September 2022 to show how HCD considered all factors required under Gov. Code § 65584.
- HCD disagrees that its 5% total vacancy rate is wrong, but said it will analyze trends and compile updated research by February 2023.

RHNA – POTENTIAL LITIGATION

Legal Arguments

- Vacancy rates under Gov. Code § 65584.01(b)(1)(E) (“...the vacancy rate for a healthy ***rental housing market*** shall be considered no less than 5 percent.”)
- ***COG’s population forecast*** to be used to the extent the forecast varies from the DOF by less than 1.5%, per Gov. Code § 65584.01(a)
- Use of “comparable regions” when evaluating household overcrowding and cost-burden rates
- Other statutory violations?

POTENTIAL LITIGATION: *City of Irvine and City of Coronado cases*





WHY/HOW TO GET INVOLVED?

- State will continue to erode local control, not only with land use but other areas of municipal affairs
- Make comments known to lawmakers and decision-makers
- Support Local Governments retaining local control and power on behalf of the community

THANK YOU

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