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Orange County cities sue state over 'erroneous' homebuilding goals

Lawsuit contends state housing officials grossly overestimated Southern California's projected housing needs for the next decade.



New construction continues at Sierra Fountains at 16839 Ramona Avenue in Fontana on Wednesday, January 27, 2021. Construction of the new affordable housing developments is now under way in Southern California, though California cities and counties still lag in building enough homes to meet state goals established for each of the state's 539 municipalities. (Photo by Mark Rightmire, Orange County Register/SCNG)

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Orange County cities sued the state housing department over its projected homebuilding requirements for the next decade, arguing the state agency grossly overestimated the number of new residences Southern California must plan for by 2030.

The state Department of Housing and Community Development determined [Southern California needs 1.34 million new homes](#) in the coming decade. The lawsuit, filed last week by the Orange County Council of Governments, said the correct number should be about 651,000 new housing units.

"Orange County's citizens and taxpayers deserve to be treated fairly under the law," Anaheim Councilmember Trevor O'Neil, council of governments chair, said when the 34-city body voted on May 27 to authorize the lawsuit. "Simply, HCD did not follow the statutes outlined in state law to develop the projected number of units needed in the next eight years to adequately house Orange County's population."

The countywide council of governments decided to file the lawsuit after a wider planning agency — the Southern California Association of Governments, or SCAG — rejected calls for litigation over the state's new homebuilding requirement.

State officials issued a statement disputing the lawsuit.

"HCD stands by the credibility and legality of its Regional Housing Needs Determinations for the sixth cycle housing element throughout the state," state housing Communications Analyst Alicia Murillo said in an email. "The methodology accurately captures housing needs in compliance with legislation passed in 2017 and 2018."

New legislation added requirements that state officials take into account overcrowding and the number of cost-burdened households in a region, indicators that there's too little housing.

But the lawsuit contends the overcrowding and cost burden data "grossly overestimates the projected housing needs" and resulted in double counting.

According to the lawsuit, the state also used the wrong population forecast for the region and inaccurate vacancy rates.

The state's "determination that ... regional housing need totals 1,341,827 units is erroneous and based on an incorrect application of the law," the suit states.

It added that a three-fold increase in the region's housing requirement from current projections "was arbitrary and capricious."



The lawsuit seeks a court order requiring a new housing needs assessment for the SCAG region.

One housing advocate acknowledged that while the size of the state's projected housing need came as a shock to cities, their projection of 651,000 new homes is too low.

"I don't agree with (the cities') assessment. I think it's way too low," said Elizabeth Hansburg, co-founder of People for Housing OC. "The people who are pushing back against (the state housing requirements) are people who have secure housing. ... These are the people who are not feeling the housing shortage."

Under the state's Regional Housing Needs Assessment program, cities and counties are required to amend their general plans every five to eight years to include zoning for the projected housing need at all income levels.

Failure to plan adequately for the required number of homes can result in the loss of state grants for parks, homeless services and a wide variety of other programs.

In some cases, a local government is blocked from disapproving certain housing projects. Local governments also can lose the ability to issue new building and zoning permits. In one case, the state sued Huntington Beach for failure to have a state-approved housing plan on file.

State housing officials already rejected SCAG's earlier appeal seeking a major reduction in the housing projection for a region that includes Orange, Los Angeles, Riverside, San Bernardino, Ventura and Imperial counties. SCAG staff had argued in 2019 that the region's true housing need for the next decade is about 824,000 to 921,000 dwelling units.

Southern California's 191 cities and six counties now must complete their general plan revisions by October.

Regionwide, SCAG cities and counties were required to plan for just over 412,000 new homes during the eight years ending next October, or a third of the number required for the next eight-year planning period.

Orange County's burden under state calculations increased four-fold to 183,861 new units by October 2029.

That's up from just under 38,000 new homes Orange County was required to plan for during the "planning cycle" that ran from October 2013 through next October.



Seventeen Orange County cities were among [more than 40 Southern California jurisdictions that appealed](#) their RHNA allocations last fall. In all but a few cases, regional officials upheld the original allocations.

Many of the appeals cited studies by Freddie Mac and the Embarcadero Institute that came up with much lower estimates for the state's housing needs.

In September 2020, 32 Orange County mayors signed a letter urging SCAG to explore the "new and credible data" in those two studies and reconvene a team to study possible litigation against the state. Ultimately, however, the litigation team decided not to sue.

The Orange County lawsuit projected the housing need for 11 sample cities is only 12,000 new housing units, compared with the state projection of nearly 89,000 new units.

For example, Garden Grove needs just 1,512 new homes by 2030, but is required to plan for 19,168, the suit said. Irvine needs just 7,690 but is required to plan for 23,610. Costa Mesa's true need, the suit says, is 1/28th of the 11,760 it's required to plan for.

Local governments rely mainly on private builders to do the actual construction, and [few California cities have been meeting even the lower homebuilding goals](#) of the past eight-year cycle — especially for low-income housing.

But state lawmakers increasingly are stepping up pressure on cities and counties to get the homes built. Builders, for example, get "by right" approval to develop projects that include affordable housing units in jurisdictions that fall behind homebuilding goals.

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For more than a decade, Jeff Collins has followed housing and real estate, covering market booms and busts and all aspects of the real estate industry. He has been tracking rents and home prices, and has explored solutions to critical problems such as Southern California's housing shortage and affordability crisis. Before joining the Orange County Register in 1990, he covered a wide range of topics for daily newspapers in Kansas, El Paso and Dallas. A Southern California native, he studied at UC Santa Barbara and UC Irvine. He later earned a master's degree from the USC School of Journalism.

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