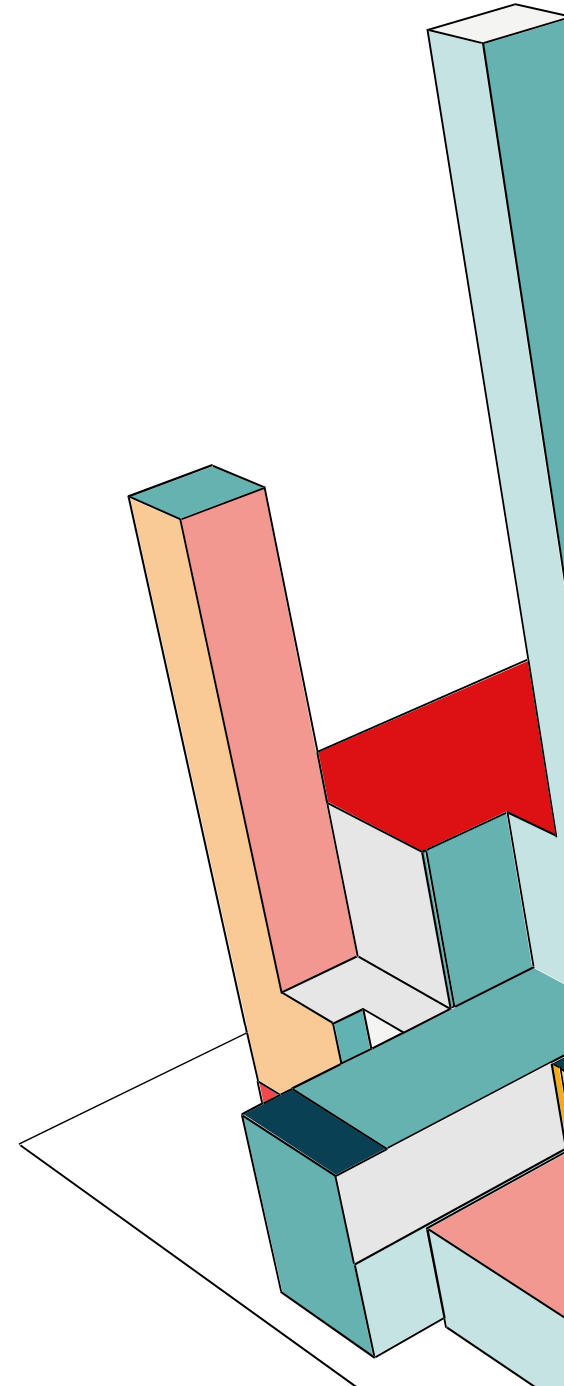


FINANCIAL IMPACTS OF NOT HAVING COMPLIANT HOUSING ELEMENT

**-JUNE 2024
J MICHELS**

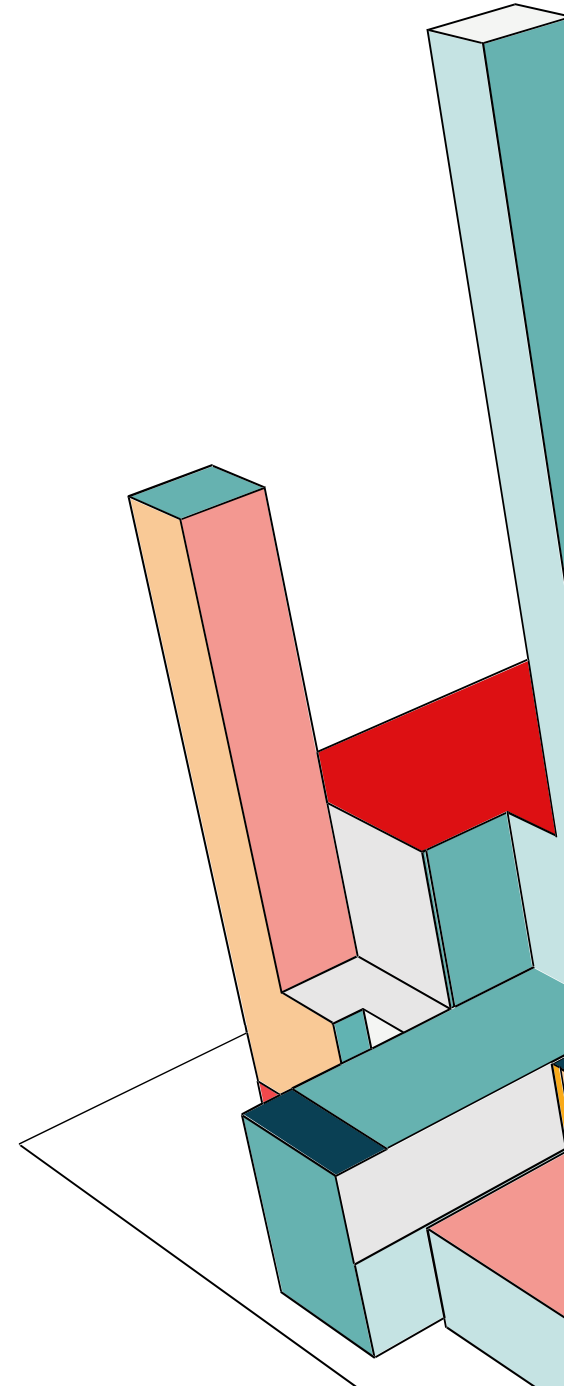
AGENDA

- Introduction - Housing Element background
- Current Status of City of HB Housing Element
- Revenue Impacts of Housing Element Non Compliance
- Local Control Impact and Penalties
 - Builders Remedy
 - Fines
- Possible Legal Outcomes (unknown; not covered here)
- Sources



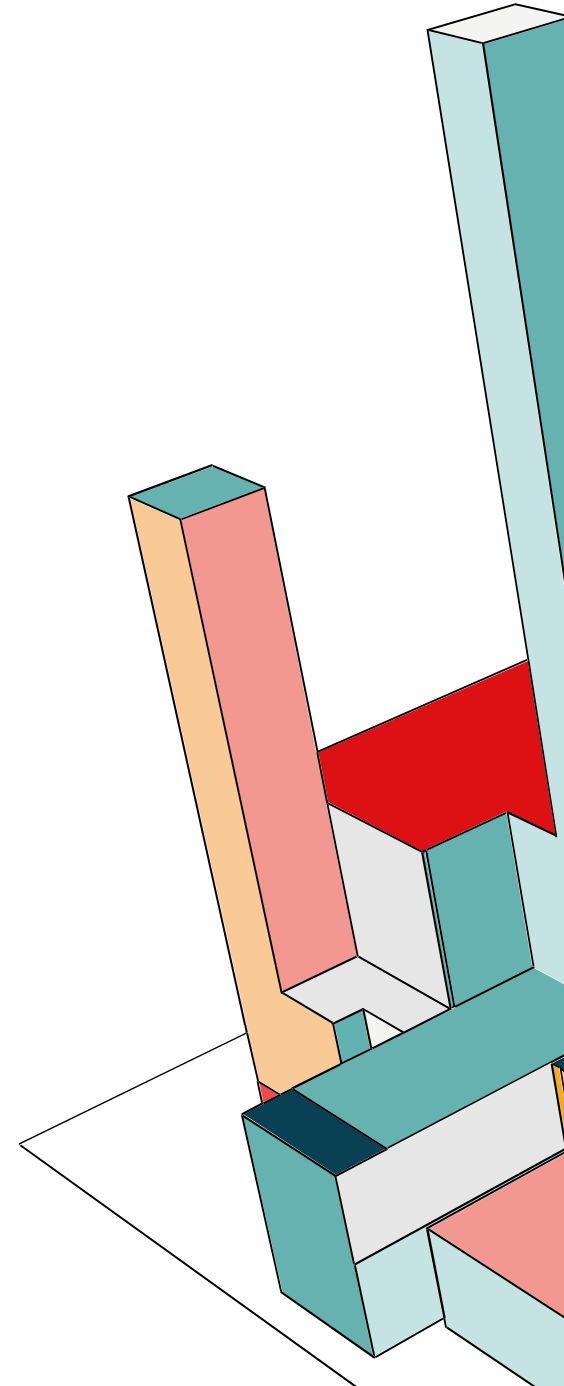
HOUSING ELEMENT BACKGROUND

- Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing plans as part of their "general plan" (also required by the state). General plans serve as the local government's "blueprint" for how the city and/or county will grow and develop and include eight elements: land use, transportation, conservation, noise, open space, safety, environmental justice, and housing.
- California's Housing Element Law acknowledges that, in order for the private market to adequately address the housing needs and demand of Californians, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain) housing development. As a result, housing policy in California rests largely on the effective implementation of local general plans and, in particular, local housing elements.



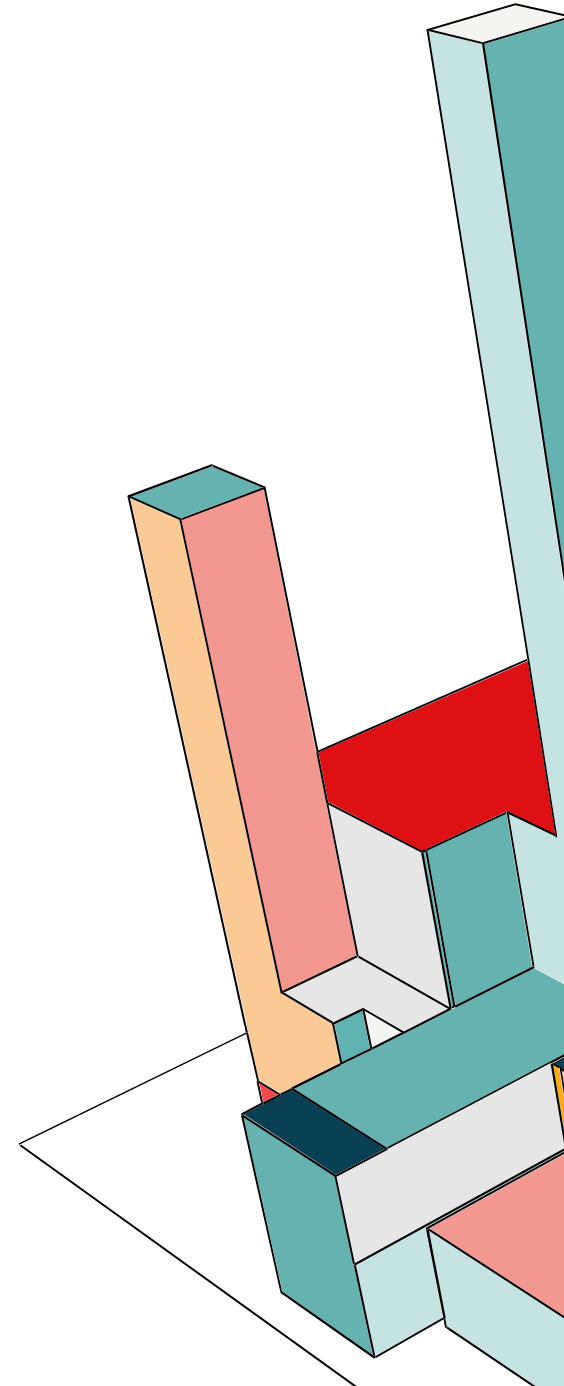
HB HOUSING ELEMENT STATUS

- Current housing element covers 2021-2029 (8 years)
 - Requires City of HB to zone for 13,000+ units
 - Southern California Association of Governments (SCAG)
 - 6 counties, 16 Tribal governments, 191 cities
 - Determines housing allocations
 - HB appealed 2021-2029 allocation with SCAG and lost
- HB First submission on 12/7/2021 (was due 10/15/2021)
- HCD rejection 2/4/2022
- November 2022 (preliminary approval HCD) revision completed
- December 2022 - new CC tabled vote on Housing Element and commensurate zoning changes
- January 2023 - after 2 study sessions, CC voted not to move forward with changes in favor of legal challenge
 - City is considered out of compliance (7 OC cities are OOC)



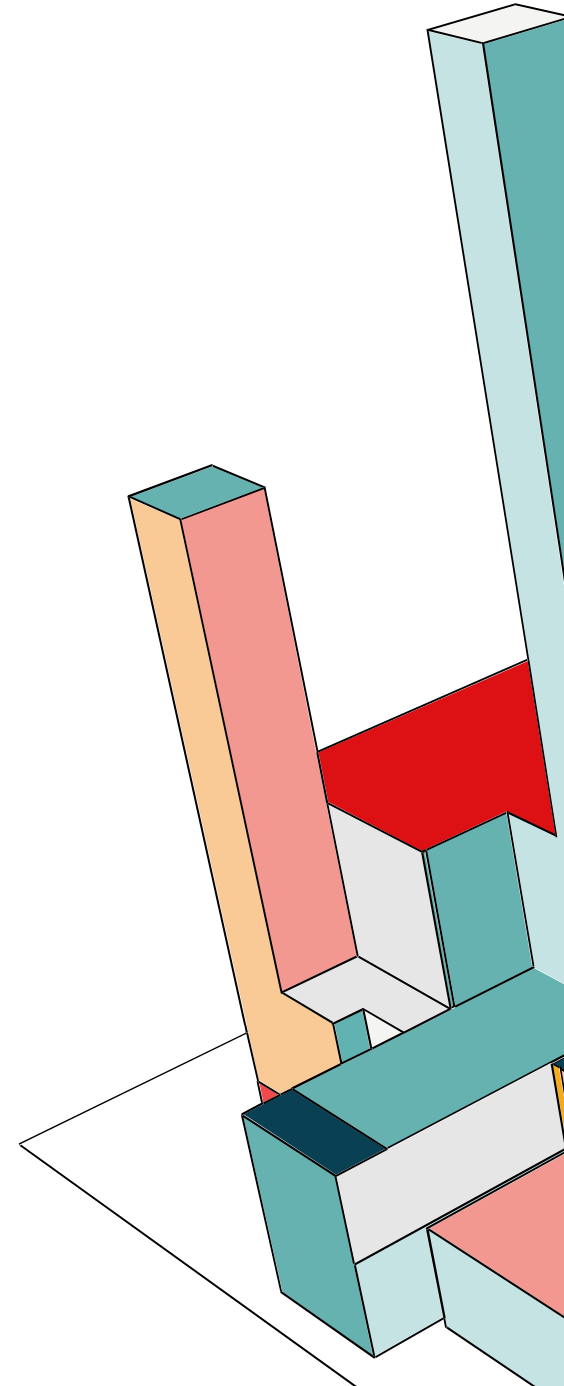
REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

- Federal funding sources largely unaffected, but many CA grants and fund opportunities have housing element compliance as a requirement
- Summary of potential revenue source impacts:
 - Community Development Block Grant
 - Infill Infrastructure Grant Program
 - Orange County Housing Finance Trust
 - Affordable Housing & Sustainable Communities Program (N/A)
 - SB2 Funding (Permanent Local Housing Allocation Program)
 - Project Homekey
 - CalTrans Sustainable Communities Grant Program



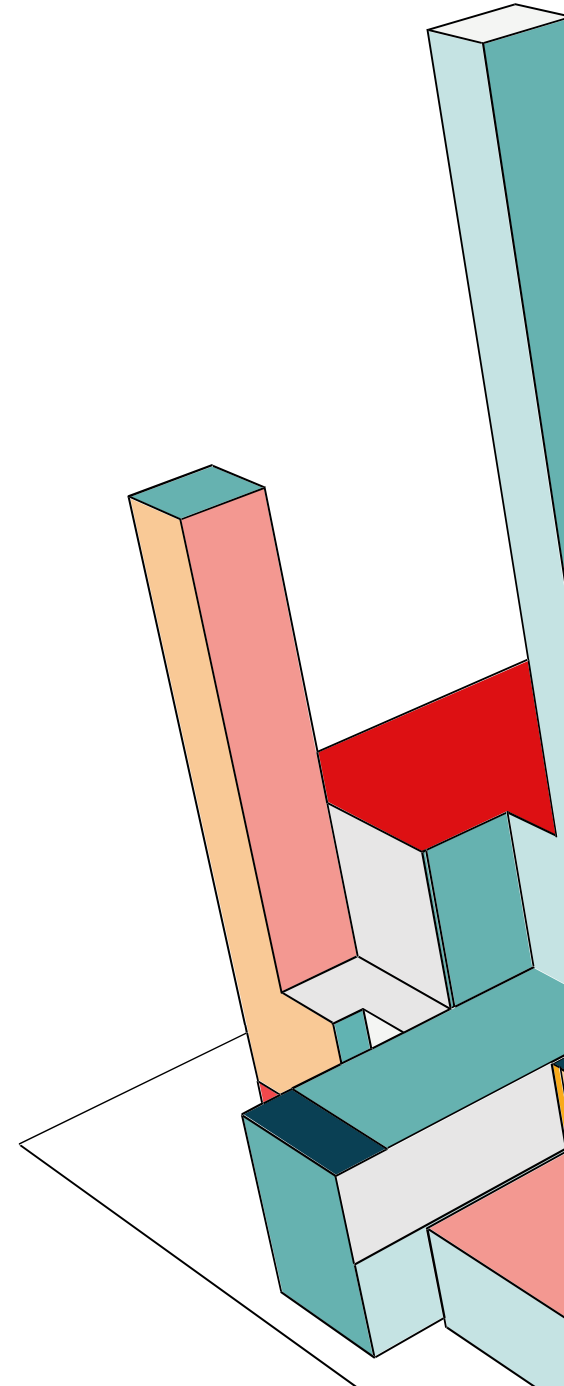
REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

- Community Development Block Grant (CDBG)
 - Federally funded
 - Not tied to Housing Element
 - HB received \$1.15M in annual allocation
 - Funding appears secure (>50 year funding)



REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

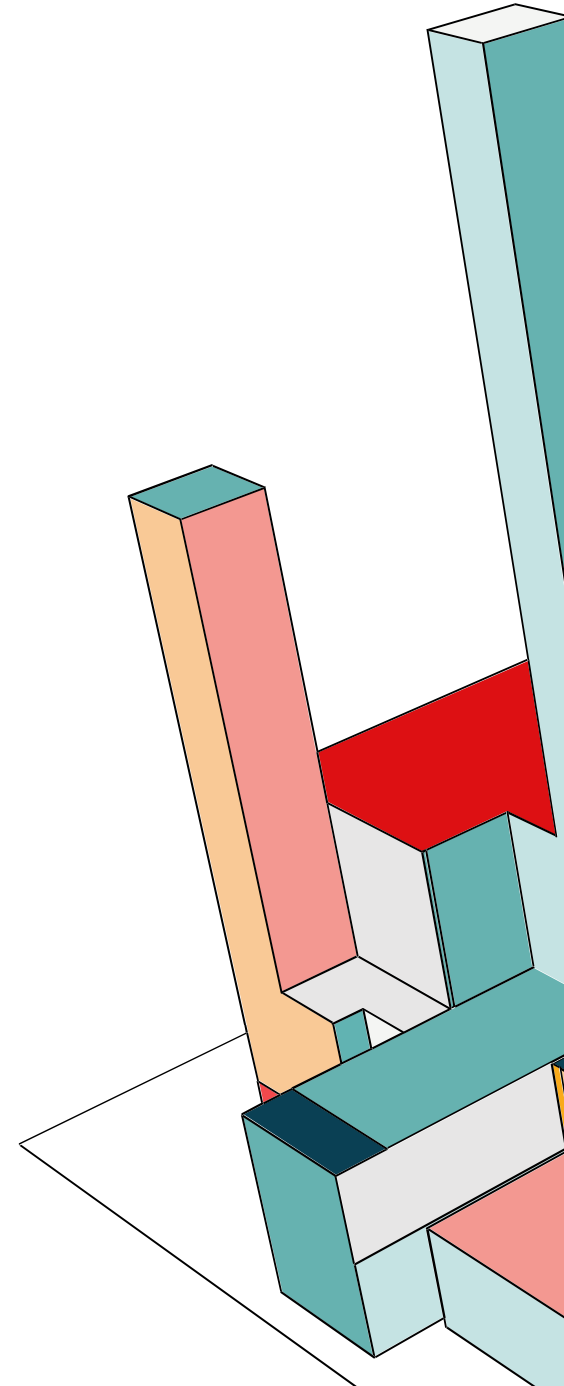
- Infill Infrastructure Grant Program
 - Requires Housing Element compliance (cannot apply)
 - Funding potential example 1:
 - 50 units 60% AMI 2 bdrm rental @ \$46,300 per unit
 - Funding potential \$2,315,000
 - Funding potential example 2:
 - 50 units 120% AMI 2 bdrm ownership @49,000 per unit
 - Funding potential \$2,450,000



REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

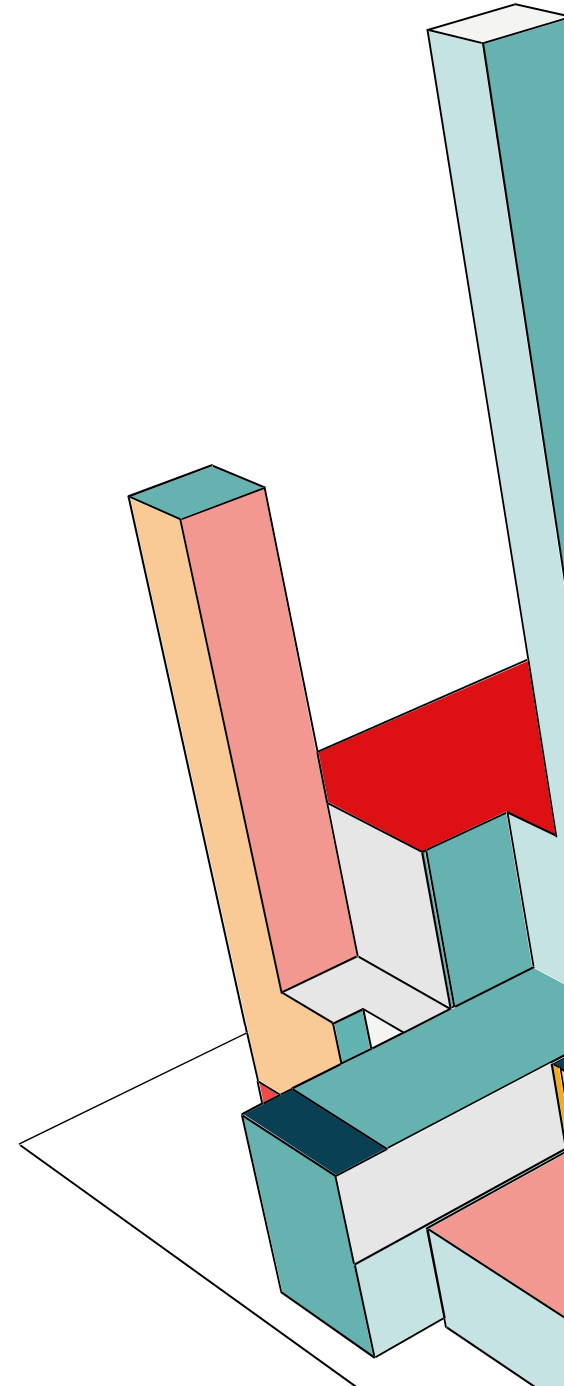
- Orange County Housing Finance Trust
 - 2019 Joint Powers Authority authorized by OC Board of Supervisors (to secure funding for purpose below)
 - 28/34 Orange County cities (90%+ of population)
 - Goal to secure funding for 2500 affordable housing units by 2025
 - Thru 2024, funded 2100 units for \$42.9M
 - OCHFT \$17.7M * MHSA \$ 25.2M
 - HB Ineligible to apply due to Housing Element noncompliance
 - 2024- Just awarded funding for 8 of 9 projects avg. \$3M each

*MHSA 1% CA income tax on >\$1M earnings (eff 2005)



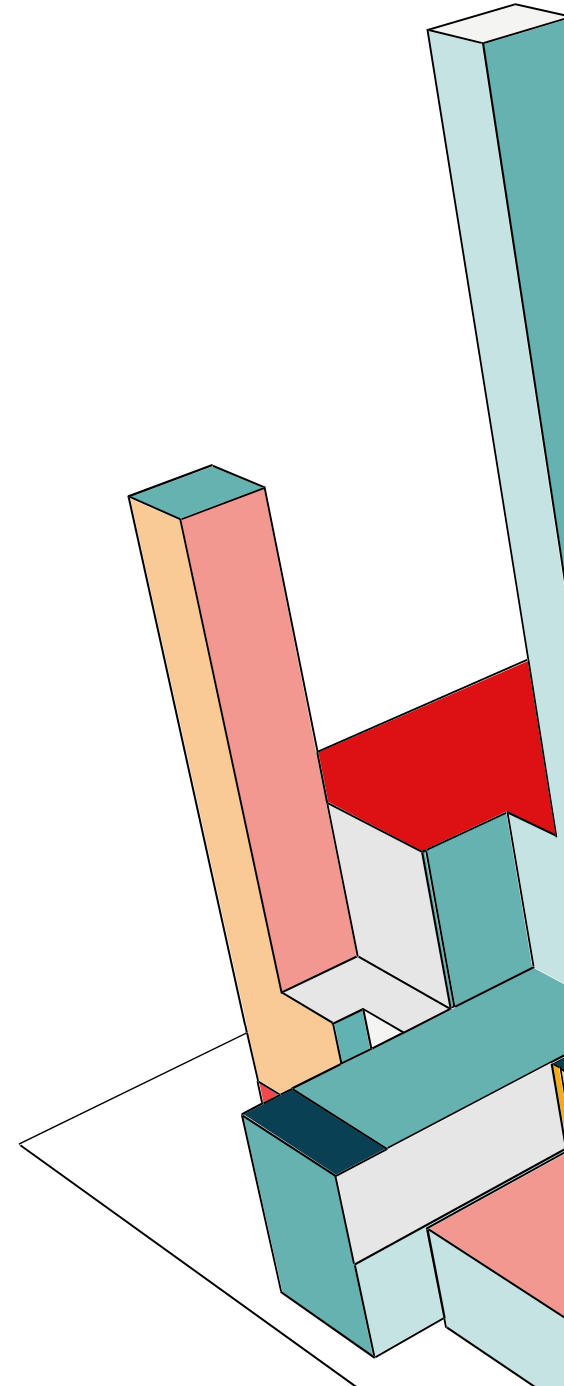
REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

- Affordable Housing and Sustainable communities
 - Average Median Income (AMI) too high in HB
 - Would not apply



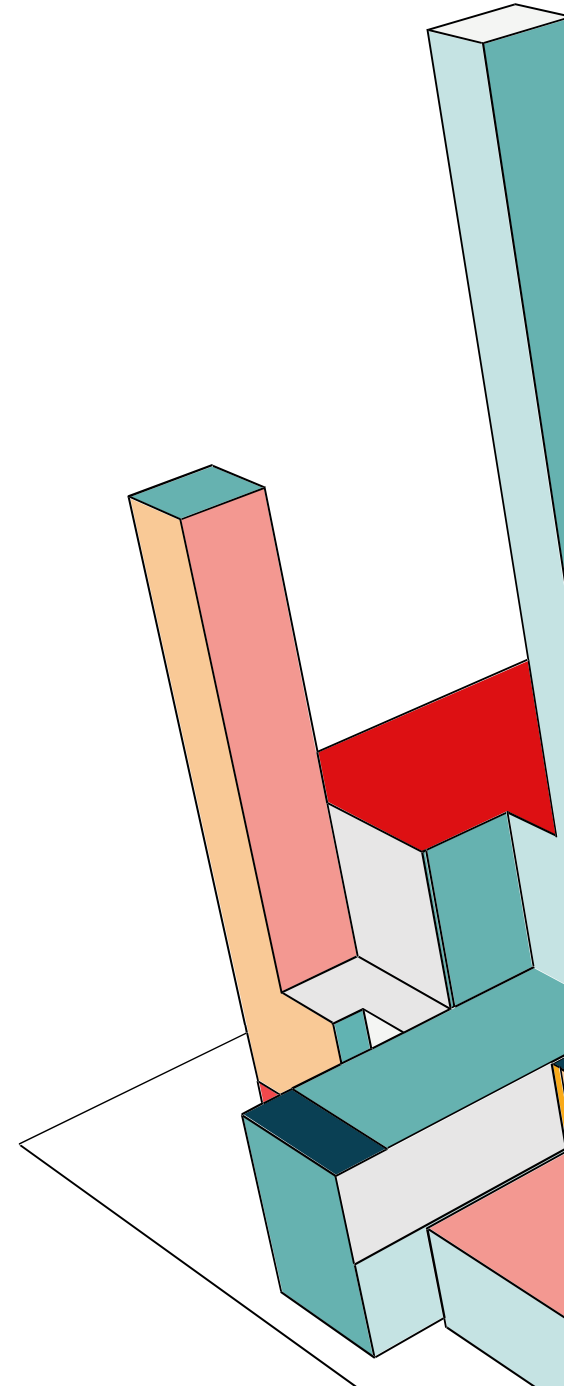
REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

- California SB2 (Permanent Local Housing Allocation)
 - 2017 Building Homes and Jobs Act
 - \$75 Recording fee on RE transactions to be used to increase supply of affordable homes in CA
 - \$625,000 grant not available to HB
 - Being held (for now) until city is in compliance



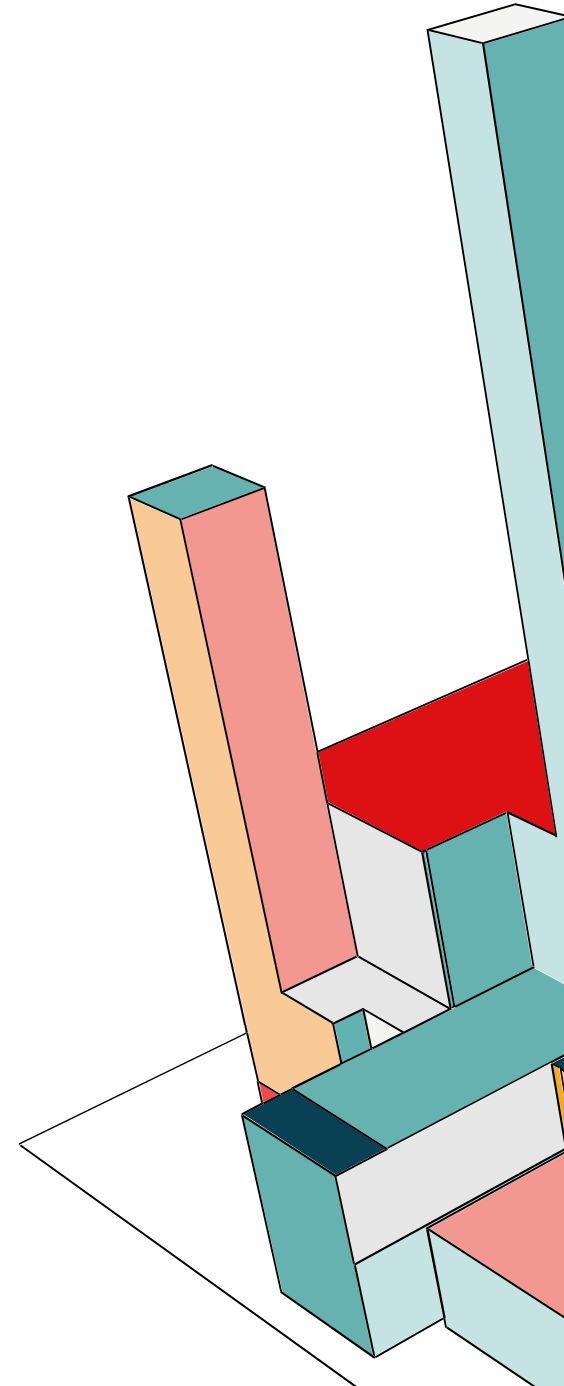
REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

- Project Homekey (unhoused support)
 - SCAG is clearing house for funding (So Cal region + LA)
 - All funds distributed by June 2026
 - \$2.6B distributed in rounds 2/3
 - HB received \$16M for conversion of Quality Inn on Beach Blvd
 - Funded prior to current non compliance of Housing Element
 - HB currently ineligible to apply for funding



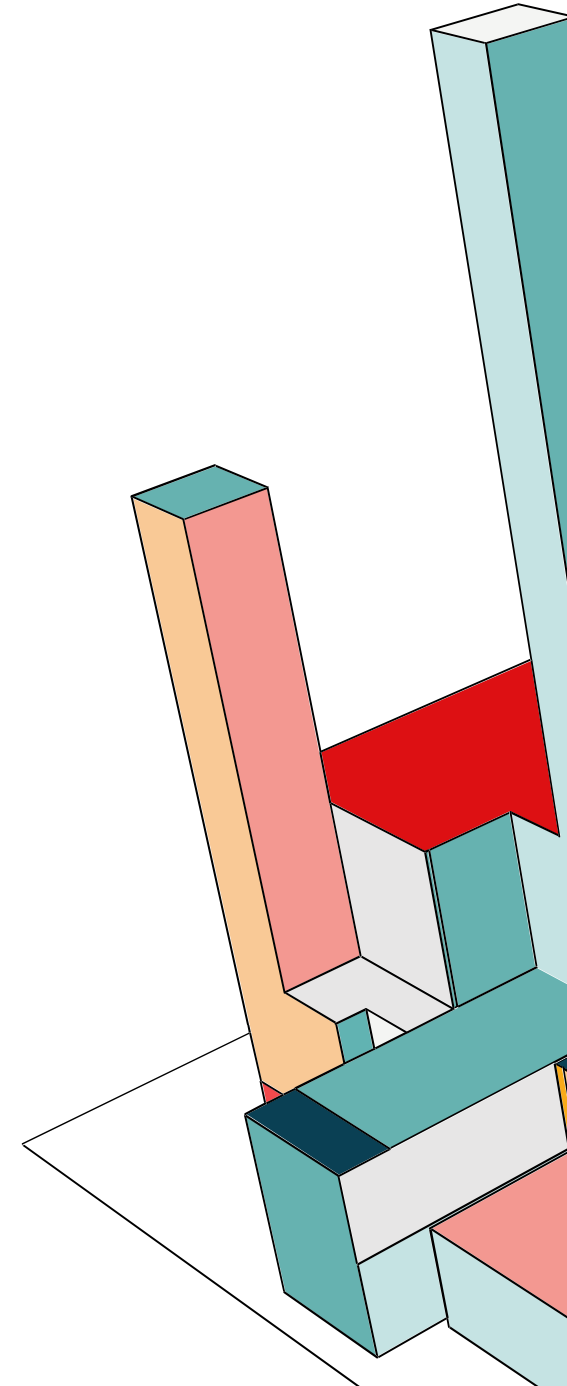
REVENUE IMPACTS OF HOUSING ELEMENT NON COMPLIANCE

- CalTrans Sustainable
 - Requires housing element compliance
 - Avg awards \$462,000 for planning efforts



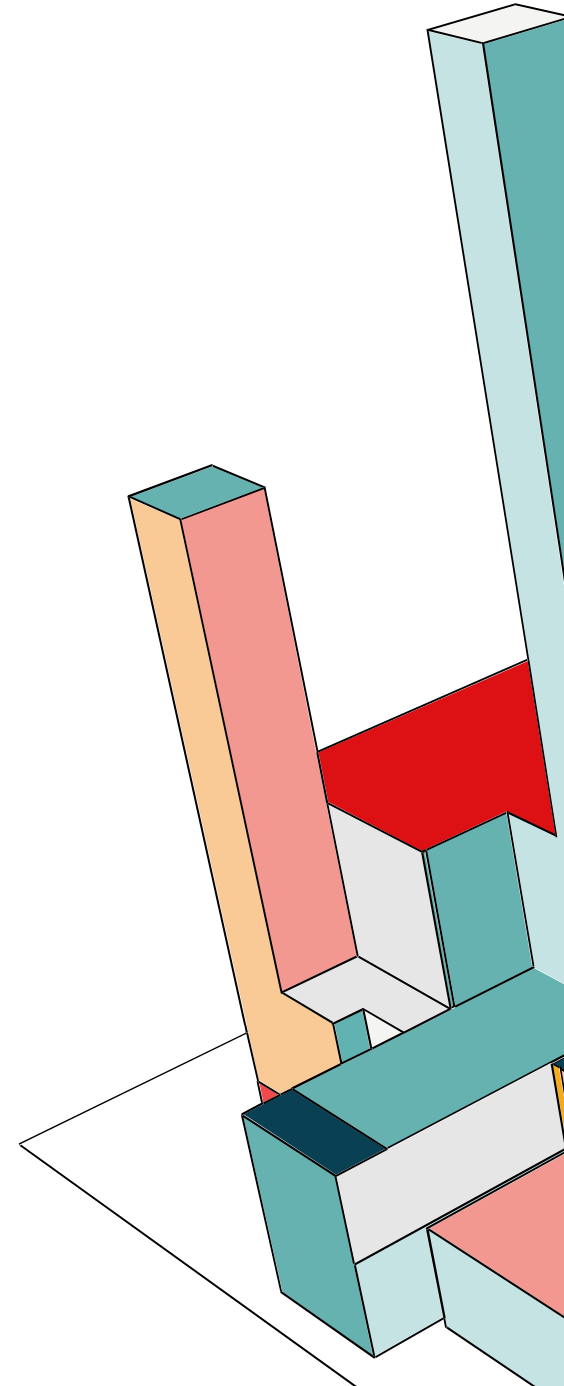
LOCAL CONTROL IMPACT & PENALTIES

- What is Builders Remedy?
 - Government Code section 65589.5(d)(5), known as the "Builder's Remedy," is a provision of California's Housing Accountability Act that prevents jurisdictions without a substantially compliant housing element from denying certain housing projects, even if such projects do not comply with the jurisdiction's zoning ordinance or general plan.
- Projects that meet specific affordability thresholds. In order to qualify, a project must include:
 - Twenty percent of the total units sold or rented to lower-income households;
 - One-hundred percent of the units sold or rented to moderate-income households; or
 - The project must be an emergency shelter
- Projects submitted prior to Housing Element compliance can move forward even after compliance is achieved. (ex: La Canada Flintridge, Santa Monica- see sources)



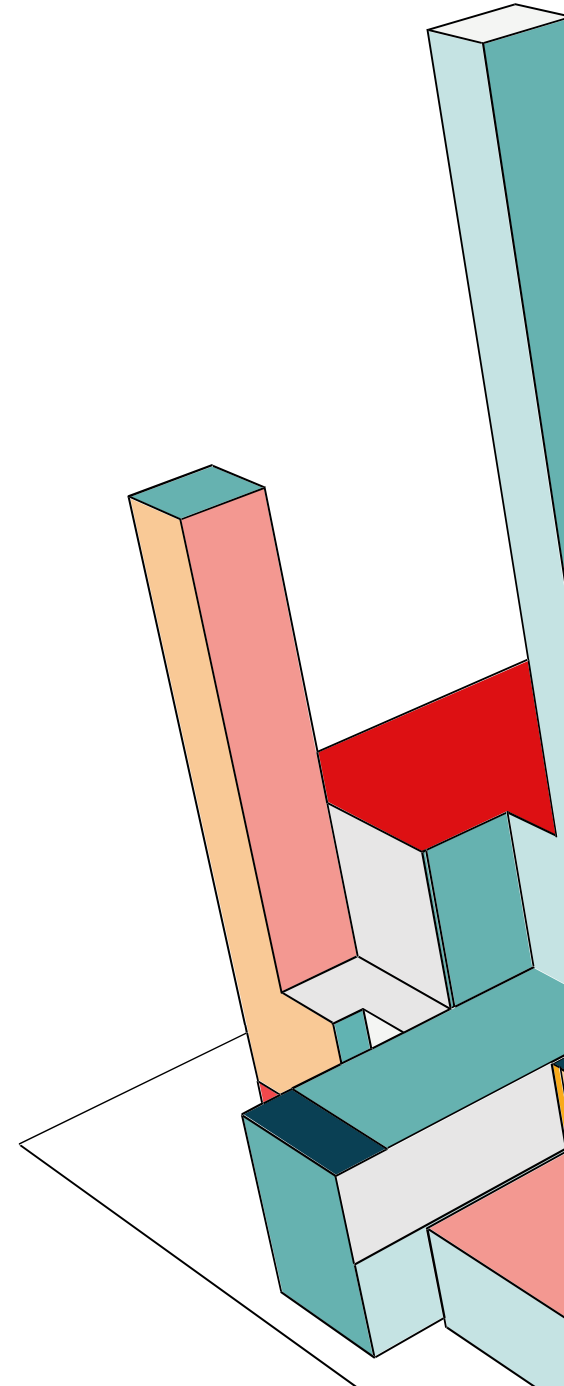
FINES, PENALTIES AND OTHER IMPACTS

- Many actions can be taken (See Sources for Golfarb Encinitas memo)
 - From \$10,000 per month (after 6 months of non compliance) up to \$600,000 per month
 - If city loses lawsuits, subject to payment of attorney's fees by other party
 - Housing period will go from every 8 years to every 4 years
 - Lack of local planning control



SOURCES

- [Housing Elements | California Department of Housing and Community Development](#)
- [How Cities Can Use California's Housing Element to Get New Housing Built - Legal Planet \(legal-planet.org\)](#)
- [24 Legislative Update: 56 New Laws Targeting Housing Development Become Effective in California - Buchalter Law Firm](#)
- [California Court of Appeal Decision Provides New Guidance on Housing Elements, Fair Housing Law | Insights | Holland & Knight \(hklaw.com\)](#)
- [orahuntingtonbeachdraftout020422.pdf \(ca.gov\)](#) (rejection) 2022)
- [Planning Grants and Local Housing Strategies Map \(arcgis.com\)](#) (HB SB2 funding eligibility revoked 11/23 max fundings \$625,000)



SOURCES

- [California builder's remedy speeds new housing projects 'Godzilla next door': How California developers gained new leverage to build more homes \(calmatters.org\)](#) (Santa Monica 2023)
- [La Cañada Flintridge loses ruling on affordable-housing plan - Los Angeles Times \(latimes.com\)](#) (La Canada Flintridge 2024)
- [The Kennedy Com. v. City of Huntington Beach :: 2023 :: California Courts of Appeal Decisions :: California Case Law :: California Law :: US Law :: Justia](#) (2019 HB)
- [54893d532ea26cba8d732768289175ea Goldfarb Encinitas memo re housing element penalties.pdf \(ehq-production-us-california.s3.us-west-1.amazonaws.com\)](#)

