

# Report on Authorization Under California Constitution Article 34

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# Article 34 Background

- ❖ Article 34 is a provision in the California Constitution that requires voter approval before a public body can develop, construct, or acquire a low RENT housing project.
- ❖ State legislation implements Article 34 through Health and Safety Code Section 37000 et seq.
  - Section 37001 excludes certain projects from the definition of “low rent housing project.”
    - For example, a common exclusion is for projects that have no more than 49% of the units restricted for low-income households, provided other conditions are met.
  - Section 37001.5 excludes certain activities from “develop, construct, or acquire.”
    - For example, Article 34 does not apply if a public entity is providing assistance and monitoring construction to the extent the public entity is carrying out governmental functions, performing conventional activities of a lender, or imposing constitutional or statutory mandates of funding.
- ❖ Other definitions and exclusions apply and projects should be evaluated individually.



## Current Authorization Under Article 34

In 1978, the City voters provided authorization for purposes of Article 34, subject to the limit that low rent housing does not exceed 5% of the total dwelling units within the City.

Below is a summary of the City's capacity under the voter-approved Article 34 limit (as of November 2023).

Total Dwelling Units (Based on 2020 census)	<b>39,751</b>
Current Article 34 Cap (5% of 2020 census)	1,988
Units Built Subject to Article 34	1,267
Units Under Construction Subject to Article 34	266
Units In Pre-Construction Phase <i>Potentially</i> Subject to Article 34*	478
Projected Article 34 Units (assuming all 2,012 potential units included)	2,012

*\*The City evaluates whether a project is subject to Article 34 at various phases of the project depending on information about financing, affordability requirements, and other relevant factors, as information becomes available. Thus, it is possible that some of these units are not ultimately counted towards the Article 34 limit.*



## Next Steps

- California voters will decide whether to repeal Article 34 at the November, 2024 General Election (this was originally scheduled for March, 2024, but moved during the last state legislative session)
- If voters do not repeal Article 34, then the City will likely exceed voter approved limits for projects subject to Article 34
- The City may authorize a ballot measure for the November, 2024 General Election that requests approval of increased Article 34 authority. City staff intends to return to the City Council in March seeking authorization to propose this measure and call an election. This authorization would be necessary if Article 34 is not repealed in the statewide election.

NOTE:

With this authorization the City is NOT committing any funding, guaranteeing new units will be built, and permits, environmental reviews, and City Council approval are still required for any developments.



**Proposed Article 34 Ballot Measure  
OPTIONS to CONSIDER for INCREASING CAPACITY**

<b>STATUS QUO</b>	<b>INCREASE by QUOTA</b>	<b>INCREASE BY %</b>	<b>INCREASE WITH NO LIMIT</b>
<ul style="list-style-type: none"><li>No further capacity available.</li></ul>	<ul style="list-style-type: none"><li>Increase by a set quota amount such as the RHNA allocation or a specific number.</li></ul>	<ul style="list-style-type: none"><li>Increase by a percentage, potentially 8%</li></ul>	<ul style="list-style-type: none"><li>Unlimited capacity</li></ul>



## Proposed Article 34 Ballot Measure PRO/CONS OF OPTIONS

	STATUS QUO	INCREASE by QUOTA	INCREASE BY %	INCREASE WITH NO LIMIT
<b>PRO</b>	<ul style="list-style-type: none"> <li>None.</li> </ul>	<ul style="list-style-type: none"> <li>Allows for construction of low-income housing units up to the quota established.</li> <li>The use of a specific number or an allocation such as RHNA provides a threshold for community.</li> <li>Provides the City with the ability to address the need for additional affordable housing.</li> </ul>	<ul style="list-style-type: none"> <li>Allows for construction of low-income housing units to continue based on the City's growth.</li> <li>The % that is established would be based on total dwelling units within the City allowing a proportionate amount of affordable housing to the City's growth.</li> <li>Provides some limit that requires community input.</li> </ul>	<ul style="list-style-type: none"> <li>Allows option to construct limitless number of low-income housing units.</li> </ul>
<b>CONS</b>	<ul style="list-style-type: none"> <li>Without additional capacity, it is possible the construction of low-income housing units with government financing or assistance could be halted in the City.</li> <li>Limits the City in meeting it's General Plan goals under the Housing Element and RHNA.</li> <li>Limits Housing Opportunities to Low-Income Households.</li> </ul>	<ul style="list-style-type: none"> <li>This option may limit capacity per quota established.</li> <li>Will require more frequent request for ballot measures to be approved, depending on quota established.</li> </ul>	<ul style="list-style-type: none"> <li>Limited by % established.</li> </ul>	<ul style="list-style-type: none"> <li>Removes voter participation</li> </ul>

If article 34 is repealed, then the City will have no restrictions.

