

Fresno County Sixth Cycle Multi-Jurisdictional Housing Element

California housing element law requires every jurisdiction to prepare and adopt a housing element as part of their required general plans. It's typical for each jurisdiction to prepare its own separate general plan and housing element. However, in 2016, 13 of the 16 jurisdictions in Fresno County, with help from Fresno COG, prepared a multi-jurisdictional 5th cycle housing element. This was unique, and helped a number of local cities become compliant with their housing element for the first time in years. Compliance is important as many grants and funding opportunities require a current housing element.

The 6th cycle housing elements are now underway and must be submitted to the state for certification by the end of 2023. While legislative changes have increased the cost and complexity of the housing element since the 5th cycle, there are some advantages in pursuing a joint effort. Local jurisdictions have again requested Fresno COG hire a consultant to be paid for by participating member agencies.

Challenges of 6th Cycle Housing Elements

- New legislation increases the level of analysis, community engagement, new requirements for suitable sites inventory, and a robust analysis and requirements related to fair housing
- This leads to a substantial commitment in cost and staff time
- Need to start ASAP (due Dec. 2023, and this typically takes 18-24 months to prepare)
- The housing element update will trigger other required general plan updates: safety element (SB 379) and environmental justice element (SB 1000)

Opportunities with a Multi-jurisdictional Effort

- Economies of scale: the required background report, standardized policies and programs, CEQA compliance, and a combined community engagement effort will save jurisdictions time and money
- Compliance with housing element law for jurisdictions that may not have the staff or funding to pursue an individual housing element
- A cohesive approach to addressing new requirements and coordination with HCD, the state agency in charge of certifying the housing element

Timeline for Next Steps

February 1, 2022	March 1, 2022	April 28, 2022	May 2022
Fresno COG release RFP for consultant	Deadline for jurisdictions to let FCOG know if they will participate or not	MOU and \$10,000 deposit from participating jurisdictions due Policy Board authorization to enter contract with preferred consultant	Project kick-off

Additional Details

- The total consultant contract is approximately \$2 million, with the estimated cost for each of the thirteen small cities approximately \$115,000, and \$180,000 for the City of Fresno and the County
- The estimated cost is a maximum and would likely cost less. Additionally, Fresno COG is working with HCD to determine if Regional Early Action Planning (REAP) grant funding can be used for this effort to help reduce the cost for participating jurisdictions
- Fresno COG will act as a fiscal agent so that participating jurisdictions do not need to provide their share of the funding up front
- Fresno COG will begin requesting reimbursement monthly after July 1, 2022

Questions?

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THE GOOD NEWS: QUALIFYING FOR FUNDING WITH YOUR NEW HOUSING ELEMENT

Various state grant and loan programs require an HCD-certified housing element. Examples of active state funding sources that require housing element compliance for eligibility include:

- Permanent Local Housing Allocation (PLHA)
- Affordable Housing and Sustainable Communities (AHSC)
- SB 1 Planning Grants
- CalHOME Program
- Infill Infrastructure Grants (IIG)
- Prohousing Designation Program
- Local Housing Trust Fund Program (LHTF)

Contact your grant writer for further information on these grants.

THE BAD NEWS: CONSEQUENCE OF INACTION (NO HOUSING ELEMENT)

California's Housing and Community Development (HCD) department in April 2021 issued guidance to cities and counties about the consequences of falling short in adopting or otherwise complying with previously adopted housing elements. There are serious penalties for not complying.

HCD is authorized to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law. Examples of penalties and consequences of housing element noncompliance:

LEGAL SUITS AND ATTORNEY FEES

Local governments with noncompliant housing elements are vulnerable to litigation from housing rights' organizations, developers, and HCD. If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid by its own attorneys. Potential consequences of lawsuits include mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.

LOSS OF PERMITTING AUTHORITY

Courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction's General Plan and housing element into substantial compliance with State law. The court may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring its housing element into compliance.

FINANCIAL PENALTIES

Court-issued judgements directing the jurisdictions to bring its housing element in substantial compliance with state housing element law. If a jurisdiction's housing element continues to be found out of compliance, courts can multiply financial penalties by a factor of six.

COURT RECEIVERSHIP

Courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction's housing element into substantial compliance with housing element law

Source: California Department of Housing and Community Development (April 2021). *Housing Element Noncompliance Consequences*. <https://hcdca.gov.app.box.com/s/kaz1lly4bfxhsr3ty2lvaz6l5s8k0i54>