

# Consequences for Non-Compliance with Housing Element Law



## Overview

Per state housing law, all jurisdictions in the state are required to complete an update of the Housing Element every eight years. The California Department of Housing and Community Development (HCD) issues an adoption schedule which specifies the deadline by which each jurisdiction must complete their update. For the upcoming sixth Housing Element cycle, the City of Laguna Hills and other jurisdictions within the Southern California Association of Governments (SCAG) region are subject to a deadline of February 11, 2022 (October 15, 2021, plus a 120 day grace period) to adopt the update. This update of the Housing Element would cover the period of 2021 to 2029. State housing law also gives HCD the authority to review Housing Element compliance with all relevant laws. Upon confirmation of the documents' compliance, HCD issues a letter to this effect; at this point, the document is said to be "certified". By electing to not prepare a Housing Element for the 2021 to 2029, the City would experience several direct consequences, including a change to its Housing Element schedule and reduced eligibility for certain grant funds, and would also expose the City to potential litigation and associated loss of local land use control or financial costs.

In brief, consequences for non-compliance with Housing Element law can include the following. More detail follows this list:

- Four-year update penalty (Section 65588(e)(4)(A))
- RHNA carries over to the next Housing Element cycle (essentially doubling next RHNA obligation) (Section 65584.09)
- Various State grant and loan programs require a certified Housing Element
- General Plan could be found inadequate
- Vulnerable to lawsuits and fees
- Cities can lose local control of land use decisions through court intervention (AB 72)
  - » Court can suspend local control of building permits

## Change in Housing Element Schedule

Per Government Code Section 65588(e)(4), if the City does not adopt a Housing Element by 120 days after the October 15, 2021 deadline, the eight-year cycle will be revised to a four-year cycle until the jurisdiction has adopted at least two consecutive revisions by the statutory deadline. By increasing the frequency with which the City is required to update its Housing Element, the City is likely to experience a substantially increased administrative burden and cost to complete the mid-cycle update. Depending on the timing of the updates, the jurisdiction may be subject to completing as many as three updates within an eight-year period in order to realign its update schedule with the required schedule.

## Grant Funds

Several state funding programs either require applicant jurisdictions to have a current certified Housing Element or prioritize funding for jurisdictions that have a current certified Housing Element.

For example, Planning Grants funded by Senate Bill (SB) 2 (2017) require applicant jurisdictions to have a certified Housing Element in order to receive grant funds. The State's Infill Infrastructure Grant Program of 2019 also required a compliant Housing Element of applicant jurisdictions seeking program funds to complete infill projects. Some competitive Community Development Block Grant (GDBG) funding requires recipient jurisdictions to have certified Housing Elements including the General Allocation, Planning and Technical Assistance, Infill Incentive Grant, or Workforce Housing Reward Programs.

Other grant funding programs, including the Building Equity and Growth in Neighborhoods (BEGIN) and Home Investments Partnerships (HOME) programs, provide additional points within the grant evaluation criteria for jurisdictions with a certified Housing Element. The California Infrastructure and Economic Development Bank also awards priority to applicants located in a jurisdiction with a certified Housing Element as part of its Infrastructure State Revolving Fund Program.

## Litigation Exposure

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As part of AB 72 (2017-2018) the California Office of the Attorney General may be notified that the City's Housing Element is out of compliance with Housing Element law, and the City may be subject to enforcement actions. The State may also remove certification of the City's Housing Element if, in the future, the City does not act in accordance with state law. According to HCD's published enforcement strategy, decertification of Housing Element compliance is considered a precursor step to referring the case to the Attorney General's office<sup>1</sup>, and a thirty-day notice is provided prior to decertification, giving jurisdictions opportunities to respond to compliance issues.

In 2006, local advocates filed a lawsuit against the City of Pleasanton in the case known as *Urban Habitat, et al. v City of Pleasanton*, alleging that the City had not followed Housing Element laws requiring the City to meet its fair share of regional housing needs when it implemented a housing cap that was lower than its RHNA. The City also failed to complete a required rezone program within the specified one year of adoption of the Housing Element. The California Attorney General joined the suit in 2009. In 2010, the Alameda County Superior Court ordered that the City complete its rezone program and cease the implementation of the housing cap. Since this lawsuit, Assembly Bill (AB) 72 (2017) was passed which allows the state to refer violations directly to the Attorney General's office, which may increase the likelihood of litigation.

In 2011, the City of Folsom was subject to a lawsuit from the Sacramento Housing Alliance. Complaints made as part of the suit were varied and included identifying the sunset of the city's inclusionary zoning policy as inconsistent with their Housing Element, failure to implement several Housing Element programs, and failure to amend densities for sites identified to accommodate its RHNA. The City was ordered to comply with its previously adopted Housing Element, including maintaining the inclusionary zoning program.

In 2019, the City of Huntington Beach was subject to a lawsuit from the State due to non-compliance with the Housing Element requirements. The City approved an amendment to its Beach and Edinger Corridors Specific Plan, which substantially reduced the number of affordable housing units provided compared to the amount identified in its Housing Element. The City addressed this by filing a compliant Housing Element with additional lower-income sites identified. The City also cited an inability to access homeless response funding as a driver for adopting a compliant Housing Element<sup>2</sup>.

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<sup>1</sup> <https://www.hcd.ca.gov/community-development/accountability-enforcement.shtml>

<sup>2</sup> <https://www.planetizen.com/news/2020/01/108168-housing-litigation-california-attorney-general-yields-results>