

Growing List of Penalties for Local Governments Failing to Meet State Housing Law



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.

HCD noted that, under legislation enacted in recent years, it is authorized “to review any action or failure to act by a local government (that it finds) 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.” And because housing elements are a mandatory part of a city or county’s General Plan, a noncompliant housing element could also impact its General Plan, potentially invalidating it as well. Localities in this situation are subject to a range of penalties or consequences, including:

Legal Suits and Attorney Fees: Local governments with noncompliant housing elements are vulnerable to litigation from housing rights’ organization, 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 to 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 their housing element into compliance.

Financial Penalties: Local governments are subject to court-issued judgements directing jurisdictions to bring a housing element into substantial compliance with state housing element law. If a jurisdiction’s housing element continues to be found out of compliance, courts can fine jurisdictions up to \$100,000 per month, and if they are not paid, multiply that 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.

Streamlined Ministerial Approval Process: Proposed developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need are now subject to less rigorous “ministerial” approvals in order to hasten the production of housing and bring a jurisdiction into compliance with its state-determined housing need allocation.

Housing Laws Figure Prominently in the News

Following are links to a sampling of recent news coverage documenting the risks and challenges faced by cities and counties in the new housing arena:

State can sue:

- In the face of unprecedented housing crisis, California takes action to hold cities accountable for standing in the way of housing <https://www.gov.ca.gov/2019/01/25/housing-accountability/>
- Huntington Beach loses housing case with state of California <https://web.archive.org/web/20210203030515/https://www.latimes.com/socal/daily-pilot/news/story/2021-02-02/huntington-beach-loses-housing-case-with-state-of-california>
- State may revoke Encinitas's compliance status with California housing law <https://www.sandiegouniontribune.com/communities/north-county/encinitas/story/2020-02-14/state-revokes-encinitas-compliance-status-with-california-housing-law>
- Under pressure from state, Simi reverses opposition to proposed 278-unit apartment complex <https://www.vcstar.com/story/news/local/communities/simi-valley/2020/02/08/apartments-low-income-housing-simi-valley-california/4679587002/>

Developers can sue:

- Holland & Knight First in California to Win Lawsuit Under New State Housing Law <https://www.hklaw.com/en/news/pressreleases/2020/05/holland-knight-first-in-california-to-win-lawsuit-new-housing-law>
- Developer Sues Millbrae Over Proposed Housing at Historic El Rancho Inn <https://sanfrancisco.cbslocal.com/2021/06/03/developer-sues-millbrae-over-proposed-housing-at-historic-el-rancho-inn/>

Third parties can sue:

- Controversial Vallco project can continue under SB 35, judge rules <https://sanjosespotlight.com/controversial-vallco-project-can-continue-under-sb-35-judge-rules/>
- City of Coronado sued over failing to comply with state law allowing expedited approval for accessory dwelling units <https://www.sandiegouniontribune.com/business/story/2021-01-21/coronado-sued-over-allegedly-denying-granny-flats>
- Los Altos drops appeal to court-approved housing development <https://www.mv-voice.com/news/2020/09/08/los-altos-drops-appeal-to-block-five-story-downtown-housing-project>
- City Takes Step That Could Expand Housing on the Westside <https://www.sfpublicpress.org/city-takes-step-that-could-expand-housing-on-the-westside/>

Individuals can sue:

- Clovis loses legal challenge, will be forced to zone and plan for low-income housing <https://www.fresnobee.com/news/local/article251227789.html>



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Conversely, an HCD-certified housing element brings with it eligibility for numerous state and regional funding sources, including:

- Permanent Local Housing Allocation
- Affordable Housing and Sustainable Communities Grants
- SB 1 Planning Grants
- CalHOME Program Grants
- Infill Infrastructure Grants
- Pro-Housing Design funding
- Local Housing Trust Funds
- Regional Transportation Funds (such as MTC's OneBayArea Grants)