

HOUSING ELEMENT COMPLIANCE



YIMBY LAW

What are the consequences when a city does not adopt a certified Housing Element, or falls out of compliance with their Housing Element?



FINES & FEES

If a court finds a city to be out of compliance, the court can order the city to pay fines to the California state housing trust fund, attorney's fees to the plaintiff, or both. Cal. Gov. Code § 65585(l)(1) defines an escalating structure of fines with a minimum amount of \$10,000 per month and a maximum of \$100,000 per month. Continued failure to achieve a certified Housing Element allows the court to multiply the fines by a factor of three per month and later a factor of six per month.



FUNDING DISQUALIFICATION

In the event that a city is unable to produce a compliant Housing Element and get it certified by the state, that city is no longer eligible for a variety of state funds, including certain bonds, grants, and loans. Several state and federal funding programs consider compliance with housing element law as an eligibility or ranking criterion, e.g., SB 1 grant, Affordable Housing & Sustainable Communities program, SB 2 planning grant, Prop 1 Housing Program & Veterans Fund.



MANDATED COMPLIANCE

Courts can issue an order that a community bring its Housing Element into compliance. In *Sacramento Housing Alliance v. City of Folsom* (2011), the court forced the city to reinstate its inclusionary ordinance and update its Housing Element due to the previous element being insufficient. In extreme cases, Cal. Gov. Code § 65585(l)(3)(B) allows a court to appoint an agent with all powers necessary to bring a city's Housing Element into compliance with state law.



SUSPENSION OF LOCAL LAND USE POWER

Courts have the authority to suspend local land use powers to remove or reinstate policies as well as remove specific parcels and sites from local land use oversight. In *Mejia v. City of Mission Viejo* (2006), the court not only mandated that the city bring its Housing Element into compliance, the court also suspended Mission Viejo's land use authority over three parcels of land to preserve them for affordable housing.



COURT APPROVAL OF HOUSING DEVELOPMENTS

If a city fails to adopt a compliant housing element, the Housing Accountability Act requires that city to approve any proposed housing development project that has 20% of units set aside for low-income residents or 100% of units set aside for middle-income residents irrespective of its compliance with the applicable zoning or general plan (Cal. Gov. Code § 65589.5(d)).



MORATORIUM ON ALL PERMITS

Courts may also issue a moratorium on all permits in a city until its Housing Element is certified by HCD. Sonoma, Sacramento, and Mendocino Counties have all been subject to such moratoriums in the past as a result of legal settlements (Cal. Gov. Code § 65755(a)).

Watch a short HCD explainer on [Housing Element compliance and accountability here](#)