



Housing Element Compliance Incentives

Incentives for Housing Element Compliance: 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 the following:

Permanent Local Housing Allocation (PLHA): Helps cities and counties increase the supply of housing for households at or below 60% of area median income, increase assistance to affordable owner-occupied workforce housing, assist persons experiencing or at risk of homelessness, facilitate housing affordability, meet RHNA requirements, and ensure geographic equity in fund distribution.

Affordable Housing and Sustainable Communities (AHSC): The AHSC Program funds land-use, housing, transportation, and land preservation projects to support infill and compact development that reduce greenhouse gas ("GHG") emissions. Funding for the AHSC Program is provided from the Greenhouse Gas Reduction Fund (GGRF), an account established to receive Cap-and-Trade auction proceeds.

SB 1 Planning Grants: State-funded Sustainable Communities grants help cities pay for local transportation improvements.

CalHOME Program: The purpose of the CalHOME Program is to enable low- and very low-income households to become or remain homeowners through grants to local public agencies and nonprofit developers to assist individual first-time homebuyers through deferred-payment loans for down payment assistance, home rehabilitation, including manufactured homes not on permanent foundations, acquisition and rehabilitation, homebuyer counseling, self-help mortgage assistance, or technical assistance for self-help homeownership.

Infill Infrastructure Grants (IIG): IIG provides grant assistance, available as gap funding for infrastructure improvements necessary for specific residential or mixed-use infill development projects or areas.

Prohousing Designation Program: Prohousing designated jurisdictions will be awarded preference points on competitive funding applications (e.g. IIG, AHSC, Transformative Climate Communities (TCC), etc.). Local Early Action Planning (LEAP) and Regional Early Action Planning (REAP) grants can be utilized to establish prohousing policies for the purposes of eventually earning a Prohousing Designation.

Local Housing Trust Fund Program (LHTF): The LHTF Program provides matching funds to local and regional housing trust funds dedicated to the creation, rehabilitation, or preservation of affordable housing, transitional housing and emergency shelters.

Regional Transportation Funding: Transportation funding for some regions depend on local jurisdiction housing element compliance (e.g. **One Bay Area Grant funding (OBAG)**, **SANDAG's Active Transportation Grant Program**, etc.).

Housing Element Noncompliance Consequences

Penalties and Consequences of Housing Element Noncompliance

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:

General Plan Inadequacy: The housing element is a mandatory element of the General Plan. When a jurisdiction's housing element is found to be out of compliance, its General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan can no longer make permitting decisions.

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 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.

Newer Consequences of Housing Element Noncompliance

Financial Penalties: Court-issued judgement 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.