



Meeting Date: 3/23/2022

Agenda Item: \_\_\_\_\_

## City Council Meeting

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**REPORT TO:** Orange Cove City Council

**REPORT FROM:** Shun Patlan, Planner *SP* **REVIEWED BY:** Tristan Suire

**AGENDA ITEM:** Fresno County Multi-Jurisdictional Housing Element

**ACTION REQUESTED:** ☐ Ordinance ☒ Resolution ☐ Motion ☐ Receive/File

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### RECOMMENDED ACTION BY PLANNING COMMISSION

1. To adopt Resolution 2022-17, approving the participation of the City of Orange Cove in the Fresno County Multijurisdictional Housing Element update and cost sharing agreement.

### EXECUTIVE SUMMARY

California housing element law requires every jurisdiction to prepare and adopt a housing element as part of the general plans. It's typical for each jurisdiction to prepare its own separate general plan and housing element. However, due to new legislation (AB 686) and its new requirements has increased the complexity and increases level of analysis, community engagement, new requirements for suitable sites inventory and robust analysis related to fair housing.

Due to the new legislation most city planning consultants are hesitant on taking on new housing element up-dates. However, in 2016 13 of the 16 jurisdictions in Fresno County with the help from Fresno COG, prepared a multi-jurisdictional 5<sup>th</sup> cycle housing element. This was unique but helped a number of local cities become compliant with their housing element.

Fresno COG has invited the City of Orange to participate in the Fresno County Sixth Cycle Multi-Jurisdictional Housing Element along with sixteen other cities. The estimated costs for the City of Orange Cove is \$115,000.00 with a \$10,000.00 deposit by April 28, 2022. COG is currently soliciting proposals and anticipates the policy board authorization to enter contract with the consultant also on April 28, 2022. The Fresno COG will prepared a Cooperative Agreement which is forthcoming for each jurisdictional to execute. Project is scheduled to begin in May 2022

**Fiscal Impact:**

Typically, staff budgets for the costs of up-dating its Housing Element each housing cycle up-date. The 6<sup>th</sup> Cycle Housing Element Up-date must be completed by end of 2023. Therefore, the up-date will impact the city's general fund in the amount of \$115,000.00 (minus any grant funding to reduce the amount). The costs will be expended within the 2021-2022 and 2022-23 fiscal year budgets.

Fresno COG has also mentioned that they will be pursuing with HCD to determine if Regional Early Action Planning grant funding can be used for this effort to help reduce the cost for participating jurisdictions.

**Conclusion:**

Various State Grants and Loan Programs require cities/counties to have a HCD-Certified Housing Element to be eligible to apply for said grants.

The approval of the resolution would allow the Fresno Council of Governments to hire a consultant to perform the coordinated update. The Resolution to participate will be accompanied by a \$10,000 down payment, and will adopt the Fresno County Cost Sharing Agreement for the project, agreeing to reimburse Fresno Council of Governments for the actual cost. Staff highly recommends that the City Council approve this resolution.

**ATTACHMENTS**

- i. Resolution 2022-17

## 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 5<sup>th</sup> 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?

Meg Prince, Senior Regional Planner, Fresno Council of Governments  
[mprince@fresnocog.org](mailto:mprince@fresnocog.org)



### **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>

**RESOLUTION 2022-17**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE COVE  
APPROVING THE PARTICIPATION OF THE CITY OF ORANGE COVE IN THE  
FRESNO COUNTY MULTIJURISTICTIONAL HOUSING ELEMENT UPDATE AND  
COST SHARING AGREEMENT.**

**WHEREAS**, Government Code Section 65588 requires local agencies to review and revise the housing elements to their comprehensive general plan in compliance with Section 65580 through 65589, Chapter 1143, Article 10.6, and

**WHEREAS**, the Fresno Council of Governments (FCOG) is a Joint Powers agency created by the fifteen incorporated cities in Fresno County and the County of Fresno, pursuant to Government Code Sections 6500 et. Seq., and

**WHEREAS**, the local government agencies in Fresno County have requested FCOG to hire a consultant to perform a coordinated update to the housing element of each local agency's General Plan at no cost to FCOG, and

**WHEREAS**, FCOG convened a Project Development Team (PDT) consisting of the local member agencies, to review the Request for Proposal, evaluate bids, select a consultant, develop a cost sharing arrangement and make a recommendation to the FCOG board to hire the consultant, and

**WHEREAS**, the cost sharing arrangement includes the cost of the consultant and \$75,000 to cover FCOG administration, and

**WHEREAS**, each participating member agency agrees to reimburse FCOG for the cost of the Fresno County Multijurisdictional Housing Element Study in accordance with the cost sharing arrangement attached herein, and

**WHEREAS**, time is of the essence and each participating member agency agrees to facilitate the flow of information to the consultant to provide a timely report, and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council adopts the Fresno County Multijurisdictional Housing Element Cost Sharing Arrangement and agrees to participate in the study and reimburse FCOG for actual cost incurred.

**THE FOREGOING RESOLUTION** was passed and adopted by the City Council of the City of Orange Cove this 23rd day of March, 2022.

AYES:

NOES:

ABSTAIN:

ABSENT:

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Victor P. Lopez, Mayor

ATTEST:

I hereby certify that the foregoing is a true copy of a resolution of the City Council duly adopted at a regular meeting thereof held on the 23rd day of March, 2022.

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June Bracamontes, City Clerk