

## FRESNO COG SIXTH CYCLE RHNA APPEALS PROCESS

Pursuant to [Government Code § 65584.05](#), any local jurisdictions within the Fresno County region, as well as the California Department of Housing and Community Development (HCD), may file an appeal to Fresno COG to modify the Regional Housing Need Allocation (RHNA) allocation of one or more jurisdictions in the Fresno COG RHNA Plan.

### A. BASES OF APPEAL

[Government Code § 65584.05](#)(b) states that appeals shall be limited to the following circumstances:

- 1. Local Planning Factors and Affirmatively Furthering Fair Housing:** The council of governments failed to adequately consider the information submitted about Local Planning Factors and Affirmatively Furthering Fair Housing from the Local Jurisdiction Survey pursuant to subdivision (b) of [§ 65584.04](#).
- 2. Methodology:** The council of governments failed to determine the share of the regional housing need in accordance with the information described in [Government Code § 65584.04](#) and in a manner that furthers, and does not undermine the five objectives listed in [Government Code § 65584](#)(d).
- 3. Changed Circumstances:** A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted pursuant to subdivision (b) of [§ 65584.04](#). Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

Pursuant to [Government Code § 65584.05](#), appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in [Government Code § 65584](#)(d). An appeal must be consistent with the development pattern of the Sustainable Communities Strategy.

### B. SCOPE OF APPEAL LIMITATIONS

Existing law limits COG's scope of review of appeals. Fresno COG shall not grant any appeal based upon the following:

- 1.** Any other criteria other than the criteria in [Government Code § 65584.05](#) (b), summarized above.
- 2.** A local jurisdiction's existing zoning ordinances and land use restrictions, including but not limited to, the contents of the local jurisdiction's current general plan. Pursuant to [Government Code § 65584.04](#)(e)(2)(B), COGs may not limit their consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.
- 3.** Any local ordinance, policy, voter-approved measure or standard limiting residential development. Pursuant to [Government Code § 65584.04](#)(g)(1), any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in a city's or county's share of regional housing need.
- 4.** Prior underproduction of housing in a jurisdiction from the previous regional housing need allocation. Pursuant to [Government Code § 65584.04](#)(g)(2), prior underproduction of housing in

a jurisdiction from the previous housing need allocation, as determined by each jurisdiction's annual production report submitted pursuant to [Government Code § 65400\(a\)\(2\)\(H\)](#) cannot be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

5. Stable population numbers in a jurisdiction. Pursuant to Government Code Section [65584.04\(g\)\(3\)](#), stable population growth from the previous regional housing needs cycle cannot be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

### C. APPEAL HEARING BODY

The Fresno COG Policy Board has delegated the responsibility of considering appeals regarding regional housing need allocations to the Fresno COG RHNA Appeals Committee. The RHNA Appeals Committee will consist of elected representatives from each of the following: an eastside city, westside city, Fresno, Clovis, and the County. Voting on decision points is completed by simple majority of the Committee members in attendance. All decisions on RHNA appeals made by the RHNA Appeals Committee are considered final and will not be reviewed by the Fresno COG Policy Board.

### D. APPEAL PROCEDURE

1. **Deadline to File:** The 45-day period to file appeals will commence upon release of the proposed allocation, scheduled for July 5, 2022. To comply with Government Code § 65584.05(b), appeals to the draft allocation of the regional housing need must be filed by 5:00 p.m. August 19, 2022. Late appeals will not be accepted.
2. **If No Appeals are Filed:** If no appeals are filed, the draft allocation shall be issued as the proposed final allocation plan.
3. **Form of Appeal:** The local jurisdiction or HCD shall state the basis and specific reasons for its appeal on the RHNA Appeal Request Form prepared by Fresno COG. The Appeal Request Form is included as an attachment to these procedures. Additional documents may be submitted by the local jurisdiction as attachments, and all such attachments should be properly labeled and numbered.
4. **Comments on Appeals:** At the close of the period for filing appeals, Fresno COG shall notify all other local governments within the region and HCD of all appeals and shall make all materials submitted in support of each appeal publicly available on its website.  
  
Local governments and the department may, within 45 days, comment on one or more appeals. All comments must be filed by 5:00 p.m. on October 3, 2022. Late comments will not be accepted.  
  
Members of the public who are interested in receiving notification about comments received can be added to the distribution list by emailing [mprince@fresnocog.org](mailto:mprince@fresnocog.org). Fresno COG will notify jurisdictions, HCD, and members of the public who have requested to be added to the distribution list about comments received following the end of the comment period.
5. **Appeals Hearing:** Fresno COG will conduct one public hearing to consider all appeals filed and comments received on the appeals no later than November 2, 2022. Notice shall be provided to the appealing jurisdictions, commenting jurisdictions, HCD, and members of the public who have requested to be added to the distribution list at least 21 days in advance of the hearing. Consistent with the requirements of the Brown Act, members of the public may submit written comments in advance of the meeting or provide oral comments at the meeting. Per

Government Code Section 65584.05(i), Fresno COG may extend the deadline to conduct the appeals hearing by up to thirty (30) days.

Each appeal shall be heard individually before the RHNA Appeals Committee and a preliminary decision on the appeal may be reached by the Committee. At the conclusion of all the individual appeals, the RHNA Appeals Committee will take a final vote determining the outcome for each appeal application. In the event an individual appeal involves a Committee member's or alternate's respective jurisdiction, the member or alternate may not participate in the discussion of or vote on that individual item by the RHNA Appeals Committee. If the Committee decides to take one final vote ratifying prior preliminary decisions, a Committee member may participate in that vote and note for the record their abstention from the portion of the decision relating to their jurisdiction.

Fresno COG staff will apprise the public of any updates to meeting procedures and will include information relevant to public participation in the public noticing of the appeal hearings.

#### E. APPEAL HEARING PROCEDURES

The hearing shall be conducted to provide applicants<sup>1</sup> and jurisdictions that did not file appeals but are the subject of an appeal with the opportunity to make their case regarding a change in their Draft RHNA Allocation or another jurisdiction's Draft RHNA Allocation. The burden is on the applicants to prove that adjustment of the Allocation is appropriate under the statutory standards set forth in the Government Code. The appeals hearing will adhere to the following procedures:

- 1. Initial Arguments:** Applicants who have filed an appeal for a particular jurisdiction will have an opportunity to present their request and reasons to grant the appeal. The information and arguments presented by the applicant shall be limited to what was presented in the written appeal filed by the applicant. In the event of multiple appeals filed for a single jurisdiction, the subject jurisdiction will present their argument first if it has filed an appeal on its own Draft RHNA Allocation. Applicants may present their cases either on their own, or in coordination with other applicants, but each applicant shall be allotted five (5) minutes each. If the subject jurisdiction did not file an appeal on its own Draft RHNA Allocation, it will be given an opportunity to present after all applicants have provided initial arguments on their filed appeals. Any presentation from the jurisdiction who did not appeal but is the subject of the appeal is limited to five (5) minutes unless it is responding to more than one appeal, in which case the jurisdiction is limited to eight (8) minutes.

An appealing jurisdiction may choose to have technical staff present its case at the hearing. At a minimum, technical staff should be available at the hearing to answer any questions from the RHNA Appeals Committee.

- 2. Staff Response:** After initial arguments are presented, Fresno COG will present their recommendation to approve or deny the appeal(s) filed for the subject jurisdiction. The staff response is limited to five (5) minutes.
- 3. Rebuttal:** Applicants and any jurisdiction(s) that did not file an appeal but is the subject of the appeal may elect to provide a rebuttal but are limited to addressing only the arguments and evidence presented in the staff response. Each applicant and any subject jurisdiction(s) will be allotted three (3) minutes each for a rebuttal.
- 4. Extension of Time Allotment:** The Chair of the RHNA Appeals Committee may elect to grant additional time for any presentation, staff response, or rebuttal in the interest of due process and equity.

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<sup>1</sup> For purposes of these procedures, the entity filing an appeal is referred to as an "applicant."

5. **Public Comment:** Members of the public will have an opportunity to comment on the arguments presented related to the appeal(s) for the subject jurisdiction under consideration. Each speaker will be allotted two (2) minutes to speak.
6. **Discussion and Determination:** After arguments and rebuttals are presented, the RHNA Appeals Committee may ask questions of applicants, the subject jurisdiction (if present), and Fresno COG staff. The Chair of the RHNA Appeals Committee may request that questions from the Committee be asked prior to a discussion among Committee members. Any voting Committee member may make a motion regarding the appeal(s) for the subject jurisdiction. The Committee will take a preliminary vote on the appeal(s) for a subject jurisdiction. The Committee is encouraged to make a single determination on the subject jurisdiction after hearing all arguments and presentations on each subject jurisdiction.

The RHNA Appeals Committee shall generally administer appeal hearings according to these procedures. However, the Chair of the Committee has the discretion to adjust the procedures as deemed necessary and formal rules of evidence and procedure do not apply. Further, any alleged failure to adhere to these procedures shall not be grounds for overturning a decision.

#### F. DETERMINATION OF APPEAL AND POST-APPEAL REALLOCATION OF REGIONAL HOUSING NEEDS

The RHNA Appeals Committee shall issue a written final determination on all filed appeals after the conclusion of the public hearing. The written final determination shall consider arguments and comments presented on revising the Draft RHNA Allocation of the subject jurisdiction and make a determination that either accepts, rejects, or modifies the appeal for each subject jurisdiction. Per Government Code Section 65584.05(e)(1), the RHNA Appeals Committee has the discretion in its final determination on an appeal to require the adjustment of the allocation of a local jurisdiction that is not the subject of an appeal, if the adjustment(s) are supported by evidence and the RHNA Appeals Committee makes specific findings in its determination on the appeal.

The final determinations shall be based upon the information and methodology set forth in Government Code Section 65584.04 and whether the revision is necessary to further the objectives listed in Government Code Section 65584(d). The final determination shall include written findings as to how the determination is consistent with Government Code Section 65584.05. The final determinations for all appeals will be ratified by the RHNA Appeals Committee following release of the written final determinations on all filed appeals. The decision of the RHNA Appeals Committee shall be final, and local jurisdictions shall have no further right to appeal.

In accordance with Government Code Section 65584.05(f), after the conclusion of the appeals process, Fresno COG shall distribute the adjustments proportionally (based on the methodology) to all Fresno County jurisdictions, if the adjustments total 7 percent or less of the regional housing need. If the adjustments total more than 7 percent of the regional housing need, then Fresno COG shall develop a methodology to distribute the amount greater than the 7 percent to local governments. If, consistent with Government Code Section 65584.05(e)(1), the RHNA Appeals Committee's final determination included adjustments to the allocations of a jurisdiction or jurisdictions that were not the subject of an appeal, these adjustments may be excluded from the cumulative total adjustments to be reallocated proportionally to all jurisdictions in the region.

#### G. FINAL RHNA PLAN

After Fresno COG reallocates units to all local jurisdictions resulting from any successful appeals, the Fresno COG Policy Board shall review and consider adoption of the Fresno COG's Sixth Cycle Final RHNA Plan. This is scheduled to occur between September 2022 and January 2023.

## FRESNO COG SIXTH CYCLE REGIONAL HOUSING NEEDS ASSESSMENT APPEAL REQUEST

Submit appeal requests and supporting documentation to [mprince@fresnocog.org](mailto:mprince@fresnocog.org)  
by 5:00 pm PST on August 19, 2022. **Late submissions will not be accepted.**

**Jurisdiction Whose Allocation is Being Appealed:** \_\_\_\_\_

Date: \_\_\_\_\_

Filing Party: \_\_\_\_\_

**APPEAL AUTHORIZED BY:**

(Jurisdiction or HCD)

Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### IDENTIFY ONE OR MORE BASES FOR APPEAL [Government Code Section 65584.5(b)]

- Local Planning Factors and Affirmatively Furthering Fair Housing:** The council of governments failed to adequately consider the information submitted about Local Planning Factors and Affirmatively Furthering Fair Housing from the Local Jurisdiction Survey pursuant to subdivision (b) of [§65584.04](#).
- Existing and projected jobs and housing relationship.
  - Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
  - Availability of land suitable for urban development or for conversion to residential use.
  - Lands protected from urban development under existing federal or state programs.
  - County policies to preserve prime agricultural land.
  - Distribution of household growth assumed for the 2022 SCS.
  - County-city agreements to direct growth toward incorporated areas of county.
  - Loss of units contained in assisted housing developments.
  - Households paying more than 30% or 50% of their income in rent.
  - The rate of overcrowding.
  - Housing needs of farmworkers.
  - Housing needs generated by the presence of a university campus within a jurisdiction.
  - Housing needs of individuals and families experiencing homelessness.
  - Loss of units during a declared state of emergency.
  - The region's greenhouse gas emissions targets to be met by the 2022 SCS.
  - Affirmatively furthering fair housing.
- Methodology:** The council of governments failed to determine the share of the regional housing need in accordance with the information described in [Government Code §65584.04](#) and in a manner that furthers, and does not undermine the five objectives listed in [Government Code §65584\(d\)](#).
- Changed Circumstances:** A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted pursuant to subdivision (b) of [§65584.04](#). Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

Pursuant to [Government Code §65584.05](#), appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code [§65584\(d\)](#). An appeal must be consistent with the development pattern of the Sustainable Communities Strategy.

**Number of units requested to be reduced or added to jurisdiction's Draft RHNA Allocation:**

Number of Units Reduced: \_\_\_\_\_ Number of Units Added: \_\_\_\_\_

**Brief description of appeal request and statement on why this revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d) and how the revision is consistent with, and not to the detriment, of the development pattern in the sustainable communities strategy.**

Please include supporting documentation as needed and attach additional pages if you need more room.



**List of supporting documentation, by title and number of pages**

(Numbers may be continued to accommodate additional supporting documentation):

- 1.
- 2.
- 3.