

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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July 2, 2024

George Rodericks, City Manager  
City of Atherton  
80 Fair Oaks Lane  
Atherton, CA 94027

Dear George Rodericks:

**RE: City of Atherton Failure to Adopt a Compliant 6<sup>th</sup> Cycle Housing Element –  
Notice of Violation**

As you are aware, on June 3, 2024, the California Department of Housing and Community Development (HCD) sent the City of Atherton (City) a Letter of Inquiry regarding noncompliance with Housing Element Law. On June 6, 2024, the City acknowledged receipt of this letter but failed to provide in its a response a specific timeline for (1) submitting an updated draft housing element and (2) obtaining compliance with Housing Element Law. HCD requested these items in a follow-up inquiry on June 13, 2024. However, the City failed to provide a definitive timeline for the requested items. The City's most recent draft does not comply with requirements under Housing Element Law.<sup>1</sup> Therefore, the City is in violation of Housing Element Law.<sup>2</sup>

HCD must review any action or failure to act that it determines to be inconsistent with either an adopted housing element or Government Code section 65583. HCD must then issue written findings to the local government.<sup>3</sup> Additionally, HCD must notify a local government when that local government takes actions that violate Housing Element Law and may refer such violations to the California Office of the Attorney General.<sup>4</sup>

**6<sup>th</sup> Cycle Housing Element Submission and Review History**

The 6<sup>th</sup> cycle planning period for the City of Atherton is January 31, 2023, through January 31, 2031. The City failed to adopt a compliant housing element by its 6<sup>th</sup> cycle due date of January 31, 2023.<sup>5</sup> HCD records are as follows:

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<sup>1</sup> Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code.

<sup>2</sup> Gov. Code, § 65585.

<sup>3</sup> Gov. Code, § 65585, subd. (i)(1)(A).

<sup>4</sup> Gov. Code, § 65585, subd. (j).

<sup>5</sup> Gov. Code, § 65588, subd. (e)(3).

- On August 2, 2022, the City submitted a draft housing element to HCD for review.
- On October 31, 2022, HCD issued a findings letter to the City noting multiple revisions necessary for the housing element to be compliant with Housing Element Law.
- On February 3, 2023, the City submitted a housing element adopted on January 31, 2023, to HCD for review.
- On April 4, 2023, HCD issued a second findings letter to the City noting revisions were still necessary for the housing element to be compliant with Housing Element Law.
- The City failed to submit a subsequent draft of its housing element following receipt of HCD's second findings letter.
- On June 3, 2024, HCD issued a Letter of Inquiry requesting a specific timeline for submitting an updated draft housing element to HCD for review and for obtaining compliance with Housing Element Law.
- On June 6, 2024, the City responded to HCD's Letter of Inquiry but failed to include a target date for submission of its next draft or a timeline for obtaining statutory compliance as requested.
- On June 13, 2024, HCD sent a follow-up inquiry to the City requesting a target date for submission of its next draft or a timeline for obtaining compliance. In its response, the City failed to provide a definitive timeline for the requested items.

### **Technical Assistance Offered**

HCD has made resources and technical assistance available to assist local jurisdictions in creating comprehensive housing elements. This includes \$123 million in planning grants for regions, cities, and counties to prepare, adopt, and implement plans that streamline housing approvals and accelerate housing production. Unfortunately, the City failed to submit an application for a maximum award of \$160,000 through Senate Bill 2 for local planning activities, making it ineligible for a funding award. Furthermore, the City was eligible and applied for a maximum award amount of \$65,000 through the Local Early Action Planning Grant Program for local planning activities. However, while HCD approved that award, the City has not claimed any funds to date.

### **Consequences of Noncompliance**

Various consequences may apply if the City does not have a housing element in compliance with Housing Element Law. First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation Program
- Local Housing Trust Fund Program
- Infill Infrastructure Grant Program
- Senate Bill 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities Program

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of Housing Element Law.<sup>6</sup> Further, state law provides for court-imposed penalties for persistent noncompliance, including financial penalties. For example, Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month, up to \$100,000 per month. If a jurisdiction remains noncompliant, a court can multiply those penalties by a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.<sup>7</sup>

In addition to these legal remedies available in the courts, under the Housing Accountability Act, jurisdictions without a substantially compliant housing element cannot rely on inconsistency with zoning and general plan standards as a basis for denial of a housing project for very low-, low-, or moderate-income households.<sup>8</sup>

## **Findings and Conclusion**

HCD finds that the City has failed to adopt a housing element that meets the requirements of Housing Element Law and is therefore in violation of those statutes. HCD must give the City a reasonable time, no longer than 30 days, to respond to these findings.<sup>9</sup> Therefore, the City has until August 1, 2024, to provide a written response to this notice before HCD may take any of the actions authorized by section 65585, including, but not limited to, referral to the California Office of the Attorney General. In addition, HCD would like to schedule two meetings in person or via telephone within the next 30 days to discuss the City's failure to adopt a compliant housing element.<sup>10</sup>

HCD recognizes that, ultimately, state housing laws are effective only with the cooperation of local governments and understands staffing and resource constraints may hinder efforts to gain compliance. However, housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. Accordingly, state law has established clear disincentives for local jurisdictions that fail to comply with Housing Element Law. To meet the 6th cycle update requirements for a substantially compliant housing element, the City must make a draft housing element available for public comment, submit the draft housing element to HCD

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<sup>6</sup> Gov. Code, § 65585, subd. (j).

<sup>7</sup> Gov. Code, § 65585, subd. (l).

<sup>8</sup> Gov. Code, § 65589.5, subd. (d)(5). For purposes of the Housing Accountability Act, housing for very low-, low-, or moderate-income households is defined as having at least 20 percent of units set aside for lower-income residents or 100 percent of units set aside for moderate- or middle-income residents (Gov. Code, § 65589.5, subd. (h)(3)).

<sup>9</sup> Gov. Code, § 65585, subd. (i)(1)(A).

<sup>10</sup> Gov. Code, § 65585, subd. (k).

for review, consider HCD's written findings, adopt the housing element, and submit it to HCD for review and certification.<sup>11</sup>

HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including referral to the California Office of the Attorney General.

If you have any questions or would like to discuss the contents of this letter, please contact Brandon Estes of our staff at [Brandon.Estes@hcd.ca.gov](mailto:Brandon.Estes@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability

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<sup>11</sup> Gov. Code, § 65585, subds. (b)-(h).