

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

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June 3, 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 6th Cycle Housing Element – Letter of Inquiry

The purpose of this letter is to inquire about the status of the City of Atherton's (City) 6th cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). As you are aware, the 6th cycle update was due January 31, 2023. Therefore, the City is out of compliance with Housing Element Law.¹ HCD is requesting the City provide a specific timeline by no later than July 3, 2024 for (1) submitting an updated draft housing element and (2) obtaining compliance with Housing Element Law.

6th Cycle Housing Element Submission and Review History

The 6th 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 6th cycle due date of January 31, 2023, pursuant to Government Code section 65588. HCD records are as follows:

- 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 an element which was 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 has not submitted a subsequent draft of its housing element since receiving HCD's second findings letter.

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

AB 1398, Statutes of 2021

Please note, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that fails to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until any rezones necessary to accommodate a shortfall of sites are completed.²

Consequences of Noncompliance

Various consequences may apply if the City does not have a housing element in compliance with Housing Element Law. First, noncompliance results 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
- SB 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.³ 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.⁴

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.⁵

² Gov. Code, § 65588, subd. (e)(4)(C)(iii).

³ Gov. Code, § 65585, subd. (j).

⁴ Gov. Code, § 65585, subd. (l).

⁵ 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)).

Conclusion

HCD recognizes that, ultimately, state housing laws are effective only with the cooperation of local governments and understands staffing and resource constraints that 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, the City must make a draft housing element available for public comment, submit the draft housing element to HCD for review, consider HCD's written findings, adopt the housing element, and submit it to HCD for review and certification.⁶

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 content of this letter, please contact Brandon Estes at Brandon.Estes@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief
Housing Accountability Unit

⁶ Gov. Code, § 65585, subds. (b)-(h).