

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

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September 9, 2025

Chris Hoem, Interim City Manager
City of Atwater
1350 Broadway Avenue
Atwater, CA 95301

Dear Chris Hoem:

**RE: City of Atwater 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 Atwater's (City) 6th cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). The 6th cycle planning period for the City is January 31, 2024, through January 31, 2032.¹ The City failed to adopt a compliant housing element by its 6th cycle due date of January 31, 2024. Therefore, the City is out of compliance with Housing Element Law.²

The California Department of Housing and Community Development (HCD) is requesting the City provide a specific timeline for (1) submitting an updated draft housing element and (2) obtaining compliance with Housing Element Law, no later than October 9, 2025.

6th Cycle Housing Element Submission and Review History

HCD records are as follows:

- On July 2, 2024, the City submitted an initial draft housing element to HCD for review.
- On September 30, 2024, HCD issued a findings letter to the City noting multiple revisions necessary for the housing element to be substantially compliant with Housing Element Law.
- On March 14, 2025, the City submitted a subsequent draft element to HCD for review.

¹ Gov. Code, § 65588, subd. (e)(3).

² Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code.

- On May 8, 2025, 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.
- As of the date of this letter, the City has not submitted a subsequent draft of its housing element since receiving HCD's second findings letter.

AB 1398, Statutes of 2021

Please note, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a jurisdiction fails to adopt a compliant housing element within one year from the statutory deadline, its housing element cannot be found in compliance until any rezones necessary to accommodate the jurisdiction's Regional Housing Needs Allocation (RHNA) are completed. Once the City completes the rezone, a copy of the resolution or ordinance should be transmitted to HCD. HCD will review the documentation and issue correspondence identifying the updated status of the City's housing element compliance.

Consequences of Noncompliance

Consequences apply if the City does not have a housing element in substantial 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
- Senate Bill 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities Program

Second, under the Housing Accountability Act, jurisdictions that do not have a substantially compliant housing element are subject to the Builder's Remedy.³

In addition, jurisdictions that do not have a compliant housing element may face additional legal ramifications, including referral of the City to the Attorney General's Office for its violations of state law.⁴ Further, state law provides for court-imposed penalties for persistent noncompliance, including enhanced financial penalties. Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month, up to \$100,000 per month for jurisdictions that fail to comply with a court order to bring its housing element into compliance. If a jurisdiction remains noncompliant, a court may multiply those penalties by a factor of three and then six, depending on the duration of the continued noncompliance.⁵

³ Gov. Code, § 65589.5, subds. (d)(6), (f)(6), and (h)(11).

⁴ Gov. Code, § 65585, subds. (i)(1)(A) and (j).

⁵ Gov. Code, § 65585, subds. (l)(2) and (3).

Finally, in any action brought by the Attorney General or HCD to enforce the adoption of housing element revisions, jurisdictions are subject to additional fines of between \$10,000 and \$50,000 per month for each violation, accrued from the date of the violation until the date the violation is cured, including investigation costs, expert fees, attorneys' fees, costs, and any other relief the court deems appropriate.⁶ If a jurisdiction fails to comply after six months from the imposition of fees, the court may also appoint a receiver.⁷

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, and the timely implementation thereof, 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 for review, consider HCD's written findings, adopt the housing element, and submit it to HCD for review and certification.⁸

If you have any questions or would like to discuss the content of this letter, please contact Mary Milner of our staff at mary.milner@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fidel Herrera', with a stylized, flowing script.

Fidel Herrera
Section Chief, Housing Element Implementation
Housing Accountability Unit

⁶ Gov. Code, § 65009.1, subd. (a).

⁷ Gov. Code, § 65585, subd. (l)(3)(B).

⁸ Gov. Code, § 65585, subds. (b)-(h).