

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

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December 16, 2025

Jordan Klein, Director
Planning and Development Department
City of Berkeley
1947 Center Street, 3rd Floor
Berkeley, CA 94704

**RE: City of Berkeley 6th Cycle Housing Element Update Rezone Requirements –
Letter of Inquiry**

Dear Jordan Klein:

The purpose of this letter is to inquire about the status of the City of Berkeley's (City) 6th Cycle Housing Element implementation program related to sites to accommodate the Regional Housing Needs Allocation (RHNA) pursuant to Government Code section 65585, subdivision (i). The California Department of Housing and Community Development (HCD) sent the City a letter on February 28, 2023, finding the City's housing element in substantial compliance with Housing Element Law.¹ This was based on, among other reasons, the City's commitment to complete Program 32 (By-Right Approval on Reuse Sites) to allow by-right processing of sites identified in previous housing elements pursuant to Government Code section 65583.2, subdivision (c).

Rezoning Requirements

Pursuant to Government Code section 65583, subdivision (c)(1)(A), all rezoning actions must be completed generally three years from the statutory deadline (January 31, 2023) if the local government adopted a sixth cycle housing element and HCD found the adopted element to be in substantial compliance within one year of the statutory deadline.²

¹ Gov. Code, § 65580 et seq.

² Please note that for the sixth and previous cycles, the jurisdiction's actual rezone deadline is either three years after either the date the housing element is adopted pursuant to Government Code section 65585, subdivision (f), or 90 days after receipt of comments from HCD pursuant to section 65585, subdivision (b), whichever is earlier. However, for the ease of implementation, HCD is using three years from the statutory deadlines as a general benchmark.

Consequences of Failure to Implement Program 32

Government Code section 65585, subdivision (i), grants HCD authority 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. Failure to implement rezone actions in Program 32 by the statutory deadline means the City's housing element will no longer substantially comply with Housing Element Law, and HCD may revoke its finding of substantial compliance.

Various consequences may apply if the City does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General, court-imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the application of the "builder's remedy."³

Conclusion

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 ensure the City continues to meet the 6th cycle update requirements for a substantially compliant housing element, HCD requests that the City provide an update on the status and timeline of implementation of Program 32 by January 15, 2026 and submit any adopted rezones and accompanying resolutions to HCD for review.

HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (i), including issuance of a Corrective Action Letter and revocation of HCD's finding of housing element compliance.

HCD looks forward to receiving your written response to this inquiry. If you have any questions or would like to discuss the content of this letter, please contact Reid Miller, Housing Policy Specialist, at Reid.Miller@hcd.ca.gov.

Sincerely,



Melinda Coy
Housing Accountability Unit Chief

³ Gov. Code, §§ 65585, subds. (j), (l)(1), (i); 65589.5, subd. (d)(6) and (h)(11).