

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

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April 30, 2025

Michael Blay, City Manager
City of Upland
460 N. Euclid Avenue
Upland, CA 91786

Dear Michael Blay:

**RE: City of Upland 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 Upland'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 October 15, 2021, through October 15, 2029.¹ The City failed to adopt a compliant housing element by its 6th cycle due date of October 15, 2021. Therefore, the City is out of compliance with Housing Element Law.²

The California Department of Housing and Community Development (HCD) issued a letter to the City on November 21, 2024, finding the City's draft housing element had met most of the statutory requirements of Housing Element Law. However, the housing element cannot be found in substantial compliance until the City has completed its necessary rezones; specifically, the City's commitment to complete rezoning actions in Program 6 (Adequate Sites to Accommodate Regional Housing Needs) to rezone adequate sites to satisfy its Regional Housing Needs Allocation (RHNA) shortfall.

HCD is requesting the City provide a revised and specific timeline for (1) completing necessary rezones, (2) submitting an updated draft housing element, and (3) obtaining compliance with Housing Element Law no later than May 30, 2025.

6th Cycle Housing Element Submission and Review History

HCD records are as follows:

- On September 24, 2021, the City submitted an initial draft housing 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 November 22, 2021, HCD issued a findings letter to the City noting multiple revisions necessary for the housing element to be compliant with Housing Element Law.
- On March 24, 2022, the City submitted a subsequent draft housing element to HCD for review.
- On May 23, 2022, HCD issued a second findings letter to the City noting multiple revisions that were still necessary for the housing element to be compliant with Housing Element Law.
- On October 25, 2022, the City submitted an element which was adopted on October 24, 2022, to HCD for review.
- On December 22, 2022, HCD issued a third findings letter to the City noting revisions were still necessary for the housing element to be compliant with Housing Element Law.
- On May 19, 2023, HCD issued a Letter of Inquiry to the City regarding noncompliance with Housing Element Law.
- On June 9, 2023, the City responded to HCD's Letter of Inquiry with a timeline establishing August 9, 2023, as a date for its next draft housing element submission.
- On November 22, 2023, HCD issued a Notice of Violation to the City regarding the City's extended noncompliance with Housing Element Law.
- On December 19, 2023, the City met with HCD staff for a technical assistance call following its Notice of Violation.
- On December 21, 2023, the City officially responded to HCD's Notice of Violation with a timeline establishing February 28, 2024, as the date for its next draft housing element submission.
- On February 13, 2024, the City submitted a subsequent draft housing element to HCD for review.
- On April 12, 2024, HCD issued a fourth findings letter to the City noting multiple revisions were still necessary for the housing element to be compliant with Housing Element Law.
- On May 20, 2024, the City submitted a subsequent draft housing element to HCD for review.
- On June 17, 2024, HCD issued a fifth findings letter to the City noting that the housing element met most of the statutory requirements of Housing Element Law but cannot be found in substantial compliance until the City has completed necessary rezones to address the shortfall of sites to accommodate the RHNA.
- On September 25, 2024, the City submitted an element which was adopted on September 23, 2024, to HCD for review.
- On November 21, 2024, HCD issued a sixth findings letter to the City noting that the housing element cannot be found in substantial compliance until the City has completed necessary rezones to address the shortfall of sites to accommodate the RHNA.
- As of the date of this letter, the City has not submitted rezone documentation since receiving HCD's sixth 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 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

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
- 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.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.

Moreover, 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 failure to adopt court-ordered housing element revisions assessed from the date of initial violation until the date the violation is cured, including all investigation and prosecution costs in a successful lawsuit.⁴ Other potential ramifications could include the loss of local land use authority to a court-appointed agent.⁵

³ Gov. Code, § 65585, subd. (j).

⁴ Gov. Code, § 65009.1, subd. (a)(1).

⁵ Gov. Code, § 65585, subd. (l).

In addition to these legal remedies available in the courts, under the Housing Accountability Act, jurisdictions that do not maintain a compliant housing element may lose control over where and when very low-, low-, or moderate-income housing and emergency shelters are built, in what is commonly known as the 'Builder's Remedy'.⁶

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. HCD also acknowledges the City's measurable effort towards achieving compliance in cooperation with HCD. 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.⁷

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 Isaac O'Connell of our staff at Isaac.OConnell@hcd.ca.gov.

Sincerely,



Fidel Herrera
Proactive Housing Accountability Senior Manager
Housing Accountability Unit

⁶ Gov. Code, § 65589.5, subd. (d)(6).

⁷ Gov. Code, § 65585, subds. (b)-(h).