

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

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March 17, 2023

County Administrator Susan S. Muranishi
County of Alameda
1221 Oak Street, Suite 555
Oakland, CA 94612

Dear County Administrator Susan S. Muranishi:

RE: County of Alameda Failure to Submit a Timely 6th Cycle Housing Element Update – Letter of Inquiry

The purpose of this letter is to inquire about the status of the County of Alameda's 6th cycle planning period (6th cycle) Housing Element pursuant to Government Code section 65588, subdivision (e). The 6th cycle update was due January 31, 2023. As of the date of this letter, HCD has not received a draft housing element submittal from the County. Therefore, the County no longer complies with State Housing Element Law (Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code). HCD is requesting the County provide a specific timeline for (1) submitting its draft housing element and (2) obtaining compliance with State Housing Element Law no later than April 16, 2023.

Rezoning Requirements

In addition, pursuant to Government Code section 65588, subdivision (e)(4)(C)(i), any local government that fails to adopt a compliant housing element within 120 days of the statutory deadline must complete any rezoning needed to accommodate the jurisdiction's regional housing needs allocation (RHNA), including for lower-income households, before it can obtain substantial compliance with State Housing Element Law. This 120-day period will end on May 31, 2023.

Additionally, pursuant to Government Code section 65588, subdivision (e)(4)(C)(iii), a local government 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 pursuant to Government Code section 65583, subdivision (c)(1)(A), and Government Code section 65583.2, subdivision (c), are completed. Therefore, if the County fails to adopt a compliant housing element prior to January 31, 2024, one-year after the statutory deadline, HCD cannot find its housing element to be in substantial compliance until all required rezonings are complete.

Consequences of Noncompliance

Various consequences may apply if the County does not have a housing element in compliance with State 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
- 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 State Housing Element Law. Further, state law provides for court-imposed penalties for persistent noncompliance, including financial penalties. For example, Government Code section 65585, subdivision (I)(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.

In addition to these legal remedies available in the courts, under the Housing Accountability Act (Gov. Code, § 65589.5, subd. (d)), 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.¹

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 State Housing Element Law. To meet the 6th cycle update requirements for a substantially compliant housing element, the County must submit a 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. (Gov.

¹ 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 low-income residents or 100 percent of units set aside for middle-income residents. (Gov. Code § 65589.5, subd. (h)(3).)

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Code, § 65585.)

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

Sincerely,

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

Melinda Coy
Proactive Housing Accountability Chief
Local Government Relations and Accountability