

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



May 19, 2023

City Manager Steve McClary
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Dear City Manager Steve McClary:

RE: Failure to Adopt a Compliant 6th Cycle Housing Element – Letter of Inquiry

The purpose of this letter is to inquire about the status of Malibu's (City) 6th cycle planning period (6th cycle) housing element pursuant to Government Code section 65588, subdivision (e). As you are aware, the 6th cycle update was due October 15, 2021.

Therefore, the City is out of compliance with State Housing Element Law (Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code). 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 State Housing Element Law no later than June 9, 2023.

6th Cycle Housing Element Submission and Review History

The 6th cycle planning period for the City of Malibu is October 15, 2021, through October 15, 2029. The City failed to adopt a compliant housing element by its 6th cycle due date of October 15, 2021, pursuant to Government Code section 65588. HCD records are as follows:

- On August 25, 2021, the City submitted a draft housing element to HCD for review.
- On October 22, 2021, HCD issued a findings letter to the City noting multiple revisions necessary for the housing element to be compliant with State Housing Element Law.
- On January 21, 2022, the City submitted an element adopted on January 10, 2022, to HCD for review.
- On March 22, 2022, HCD issued a second findings letter to the City noting revisions were still necessary for the housing element to be compliant with State Housing Element Law.

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. (Gov. Code, § 65583, subd. (c)(1)(A), Gov. Code, § 65583.2, subd. (c).)

Consequences of Noncompliance

Various consequences may apply if the City does not have a housing element in compliance with State Housing Element Law. First, noncompliance 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 (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.

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

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).)

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, the City 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 determination of substantial compliance. (Gov. Code, § 65585.)

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 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