

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

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August 25, 2022

Ashley Jones, City Manager  
City of Del Mar  
1050 Camino del Mar  
Del Mar, CA 92014

Dear City Manager Ashley Jones:

**RE: City of Del Mar Failure to Adopt a Compliant 6<sup>th</sup> Cycle Housing Element –  
Letter of Inquiry**

The purpose of this letter is to inquire about the status of the City of Del Mar's (City) 6<sup>th</sup> cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). As you are aware, the 6<sup>th</sup> cycle update was due April 15, 2021, and 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 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 September 25, 2022.

**6<sup>th</sup> Cycle Housing Element Submission and Review History**

The 6<sup>th</sup> cycle planning period for the City is April 15, 2021, through April 15, 2029. The City failed to submit a compliant adopted housing element by its 6<sup>th</sup> cycle due date of April 15, 2021, pursuant to Government Code section 65588. HCD records are as follows:

- On October 20, 2020, the City submitted a draft housing element to HCD for review.
- On December 17, 2020, 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 4, 2021, the City submitted informal draft revisions for technical assistance to HCD.
- On April 12, 2021, the City submitted an element adopted March 25, 2021, to HCD for review.
- On July 9, 2021, 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.

- On December 21, 2021, the City submitted an element adopted December 13, 2021, to HCD for review.
- On March 21, 2022, HCD issued a third 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 failed 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.

### **Consequences of Noncompliance**

There are various consequences that may apply if the City 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, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. 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 continues to remain noncompliant, a court can multiply the penalties up to 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.<sup>1</sup>

## Conclusion

As a reminder, 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 6<sup>th</sup> cycle update requirements for a substantially compliant housing element, the City must consider HCD's written findings from previous drafts, adopt the housing element, and submit it to HCD for review and certification before it can be considered compliant. (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](mailto:Kevin.Hefner@hcd.ca.gov).

Sincerely,



Melinda Coy  
Senior Housing Accountability Manager

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<sup>1</sup> 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).)