

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

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July 20, 2023

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

Dear City Manager Steve McClary:

**RE: City of Malibu Failure to Adopt a Compliant 6<sup>th</sup> Cycle Housing Element –  
Notice of Violation**

The California Department of Housing and Community Development (HCD) has reviewed the City of Malibu's (City) June 7, 2023, response to the Letter of Inquiry sent on May 22, 2023, which requested an update on the status of the City's 6th cycle housing element, due October 15, 2021. The City's most recent draft does not comply with requirements under State Housing Element Law (Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code), and the City's proposed timeline for compliance is inconsistent with Government Code section 65588, subdivision (e). Therefore, the City is in violation of State Housing Element Law (Gov. Code, § 65585). Specifically, the City's June 7, 2023, letter states that the City does not expect to submit a revised draft until February 8, 2024, well over two years into the planning period.

Under Government Code section 65585, HCD must review any action or failure to act that it determines to be inconsistent with either an adopted housing element or Government Code section 65583. HCD must then issue written findings to the local government. (Gov. Code, § 65585, subd. (i).) Additionally, HCD must notify a local government when that local government takes actions that violate Government Code sections 65589.5 and 65583 and may refer such violations to the California Office of the Attorney General. (Gov. Code, § 65585, subds. (i)(1), (j).)

**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.

### **Technical Assistance Offered**

HCD has made resources and technical assistance available to assist local jurisdictions in creating comprehensive housing elements. This includes \$123 million in planning grants for regions, cities, and counties to prepare, adopt, and implement plans that streamline housing approvals and accelerate housing production. Under that program, the City was eligible for an award of \$160,000 through SB 2 and \$65,000 through the Local Early Action Planning Grant for local planning activities. Unfortunately, the City failed to submit an application under the SB 2 Planning Grant Program, making it ineligible for a funding award.

### **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 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
- 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.<sup>1</sup>

Finally, please note that pursuant to Government Code section 65588, subdivision (e)(4)(C)(iii), 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 pursuant to Government Code sections 65583, subdivision (c)(1)(A), and 65583.2, subdivision (c), are completed.

### **Findings and Conclusion**

HCD finds that the City has failed to adopt a housing element that meets the requirements of State Housing Element Law and is therefore in violation of those statutes. Under Government Code section 65585, subdivision (i), HCD must give the City a reasonable time, no longer than 30 days, to respond to these findings. Therefore, the City has until August 18, 2023, to provide a written response to this notice before HCD may take any of the actions authorized by section 65585, including, but not limited to, referral to the California Office of the Attorney General. In addition, pursuant to Government Code Section 65585, subdivision (k), HCD would like to schedule two meetings in person or via telephone within the next 30 days to discuss the City's failure to adopt a compliant housing element.

Ultimately, state housing laws are effective only with the cooperation of local governments. HCD understands that local governments may encounter staffing and resource constraints in their 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 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.)

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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).)

HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j). If you have any questions or would like to discuss the contents of this letter, please contact Kevin Hefner of our staff at [Kevin.Hefner@hcd.ca.gov](mailto:Kevin.Hefner@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability

cc: Attorney General of California