



Re: XXXXXX Sixth Cycle Housing Element (2023- 2031)

XXXXXX  
XXXXXX  
XXXXXX  
XXXXXX

Mar 20, 2024

Dear XXXXXX,

Public Advocates and the Public Interest Law Project write to inquire into your current compliance with Housing Element Law for the sixth cycle. Based on information from the state Department of Housing and Community Development, it appears that XXXXXX has not yet adopted a legally compliant Housing Element update more than a year past the legally required deadline for doing so.

The housing element is an essential tool to ensure that communities are addressing the housing needs of all people, especially our most vulnerable neighbors. In order to plan for the production and preservation of affordable housing, communities must take deliberate steps to ensure there is adequate zoning, removing of regulatory barriers and targeting of resources. State law requires compliance with Housing Element requirements.

Public Advocates is a civil rights and economic justice law and advocacy organization. Similarly, the Public Interest Law Project is a nonprofit California legal support center for public interest law programs advancing justice for low income communities and communities of color. Our organizations have decades of experience litigating to enforce Housing Element Law to increase access to affordable and fair housing. We are committed in 2024 to ensuring jurisdictions come into compliance with Housing Element law. We request that you share a list of steps you intend to take to complete an adequate draft ready for adoption or update the existing plan so that it is in compliance with the law.

**I. XXXXXX has failed to timely adopt a legally compliant Sixth Cycle Housing Element**

Housing Element Law requires local governments in the Bay Area to adopt a legally compliant housing element to the City’s General Plan for the 2023-2031 Planning Period (Sixth Cycle) no later than January 31, 2023. (Gov. Code § § 65302, 65580 et seq.) As of Mar 20, 2024 the HCD Housing Element Compliance Dashboard indicates that the [jurisdiction] has failed to adopt a legally compliant Housing Element.

There are many consequences of this failure to adopt a timely and compliant housing element update, including an obligation to complete any rezoning required to make sites available to satisfy their Regional Housing Needs Allocation by January 31, 2024. (Gov. Code § 65588(e)(4)(C)(i).)

Failure to adopt a legally compliant Housing Element by the statutory deadline may also result in private or public enforcement in the Courts, and/or can result in so-called “builder’s remedy” projects under the Housing Accountability Act. (Gov. Code § 65589.5.) Further consequences of delaying the adoption of a housing element, may include court oversight.

## **II. XXXXXX’s failure to timely adopt a housing element harms individuals and groups considered to be protected classes and/or with special needs**

State Housing Element Law requires every jurisdiction to adopt a plan that will Affirmatively Further Fair Housing (AFFH). (Gov. Code sec. 8899.50; sec 65583(c)(10)). More than a rote administrative task, this requirement is designed to ensure that members of communities who have been historically prevented from accessing affordable, secure, healthy homes are given the opportunity to live in homes in the locations they want, surrounded by the communities they want. In order to accomplish this, each jurisdiction must analyze the factors and issues specific to that jurisdiction that have led to discrimination and inequitable housing access based on protected class. (See HCD’s AFFH Guidance Memo, pg. 9-10.)<sup>1</sup>

In the context of Housing Element Law, local governments must adopt policies and programs designed to mitigate and undo the harms caused by housing discrimination and segregation based on race, disability, and other protected classes. These policies and programs must be designed to have an actual beneficial impact on the actual community members, and must include plans to expand housing opportunities for community members in protected classes and community members who have special housing needs. (*Id.* at pg 12-13.) Protected classes include race, immigration status, and disability status. Community members with special housing needs include, but are not limited to, the senior population, households with a single parent, community members who are currently or formerly unhoused, large families, and agricultural workers.

The nature and extent of the housing affordability crisis in California demands that each jurisdiction plan carefully to ensure that local housing policies are sufficient and appropriate for

---

<sup>1</sup> [Affirmatively Furthering Fair Housing](#)

low income communities, disinvested communities, communities that have been historically discriminated against, and communities with special needs. This includes production of affordable housing, preservation of housing already occupied by these communities, protection of renters, and addressing the needs of those who are unsheltered. Without careful planning, housing projects throughout the Bay Area tend towards developments that are unaffordable and inaccessible to these communities. (See HCD Housing Element Implementation APR Dashboard.)<sup>2</sup> The law requires jurisdictions to update Housing Elements every eight years for this reason—i.e., to ensure that every jurisdiction is putting careful thought into housing development, and guaranteeing that these communities will be welcomed, safe, comfortable, and stable in their homes. Without a properly updated, legally compliant housing element, the members of your community are at risk of displacement and discrimination. It is imperative that you adopt a legally compliant Housing Element as soon as possible.

### III. Conclusion

We are confident that XXXXXX understands the importance of adopting a legally compliant housing element as quickly as possible to meet the needs of all people for a safe and stable home and to come into compliance with the law. Given that the January 31, 2023 deadline passed more than a year ago, however, we are concerned about XXXXXX's progress.

We request that you share a list of steps you intend to take to complete an adequate draft ready for adoption. To assist with your response, we provide this [Google Form](#). Your response may include information about steps you have taken in recent history towards Housing Element compliance—e.g. meetings with HCD regarding proposed updates, holding a planning commission study session, making edits in collaboration with community partners—or an outline of steps you plan to take and/or public meetings you plan to hold in the future. If you have any follow up questions or would prefer to respond over email, please direct them to: [sspear@publicadvocates.org](mailto:sspear@publicadvocates.org) and [tdean@publicadvocates.org](mailto:tdean@publicadvocates.org).

Thank you for your time and consideration.

Sincerely,



Skylar Spear, esq.  
Legal Fellow, Public Advocates

---

<sup>2</sup> [Annual Progress Reports - Data Dashboard and Downloads | California Department of Housing and Community Development](#) (See Housing Needs → Progress → 5th Cycle, showing that nearly 150% of the RHNA was met for housing affordable to those with above moderate incomes in the fifth cycle, as compared with 21%, 31%, and 56% for housing affordable to those with very low, low, and moderate incomes, respectively).

*Tahirah Dean*

Tahirah Dean, esq.  
Staff Attorney, Public Advocates

*Craig Castellano*

Craig Castellano, esq.  
Staff Attorney, Public Interest Law Project