

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

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April 30, 2025

William R. Smith, City Manager
City of Colton
650 N. La Cadena Drive
Colton, CA 92324

Dear City Manager William R. Smith:

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

The purpose of this letter is to inquire about the status of the City of Colton's (City) 6th cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). The 6th cycle planning period for the City is October 15, 2021, to October 15, 2029¹. The City failed to adopt a compliant housing element by its 6th cycle due date of October 15, 2021. Therefore, the City is out of compliance with Housing Element Law.²

The California Department of Housing and Community Development (HCD) issued a letter to the City on December 11, 2023, finding the City's draft housing element had met the statutory requirements of Housing Element Law. However, the housing element cannot be found in substantial compliance until the City has completed its necessary rezones; specifically, the City's commitment to complete Program 10 (Mixed-Use Development, Program 11 (Rezoning Sites), and Program 18 (By-Right Approval of Projects with 20 Percent Affordable Units on "Reused" regional housing needs allocation (RHNA) Sites) to rezone adequate sites to satisfy its lower-income RHNA shortfall and to allow by-right processing of sites identified in previous housing elements.

HCD is requesting the City provide a revised and specific timeline for (1) completing necessary rezones, (2) submitting an updated draft housing element, and (3) obtaining compliance with Housing Element Law no later than May 30, 2025.

6th Cycle Housing Element Submission and Review History

HCD records are as follows:

- On August 5, 2021, the City submitted a draft housing element to HCD for review.

¹ Gov. Code, § 65588, subd. (e)(3).

² Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code.

- On October 4, 2021, HCD issued a findings letter to the City noting multiple revisions necessary for the housing element to be compliant with Housing Element Law.
- On January 19, 2022, the City submitted an element which was adopted on January 4, 2022, to HCD for review.
- On March 18, 2022, HCD issued a second findings letter to the City noting revisions were still necessary for the housing element to be compliant with Housing Element Law.
- On March 8, 2023, the City submitted an element adopted on January 4, 2022, revised February 17, 2023, to HCD for review.
- On May 5, 2023, HCD issued a third findings letter to the City noting additional revisions were still necessary for the housing element to be compliant with Housing Element Law.
- On October 12, 2023, the City submitted a subsequent draft housing element to HCD for review.
- On December 11, 2023, HCD issued a fourth findings letter to the City noting that the housing element meets most of the statutory requirements of Housing Element Law but cannot be found in substantial compliance until the City has completed necessary rezones to address the shortfall of sites to accommodate RHNA.
- As of the date of this letter, the City has not submitted rezone documentation since receiving HCD's fourth findings letter.

AB 1398, Statutes of 2021

Please note, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a jurisdiction fails to adopt a compliant housing element within one year from the statutory deadline, its housing element cannot be found in compliance until any rezones necessary to accommodate the jurisdiction's RHNA are completed. Once the City completes the rezone, a copy of the resolution or ordinance should be transmitted to HCD. HCD will review the documentation and issue correspondence identifying the updated status of the City's housing element compliance.

Consequences of Noncompliance

Various consequences may apply if the City does not have a housing element in compliance with 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
- Senate Bill 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 Housing Element Law.³ 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.

Moreover, in any action brought by the Attorney General or HCD to enforce the adoption of housing element revisions, jurisdictions are subject to additional fines of between \$10,000 and \$50,000 per month for each failure to adopt court-ordered housing element revisions assessed from the date of initial violation until the date the violation is cured, including all investigation and prosecution costs in a successful lawsuit.⁴ Other potential ramifications could include the loss of local land use authority to a court-appointed agent.⁵

In addition to these legal remedies available in the courts, under the Housing Accountability Act, jurisdictions that do not maintain a compliant housing element may lose control over where and when very low-, low-, or moderate-income housing and emergency shelters are built, in what is commonly known as the 'Builder's Remedy'.⁶

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. HCD also acknowledges the City's measurable effort towards achieving compliance in cooperation with HCD. However, housing elements, and the timely implementation; thereof, 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 Housing Element Law. To meet the 6th cycle update requirements for a substantially compliant housing element, the City must make a draft housing element available for public comment, submit the 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.⁷

³ Gov. Code, § 65585, subd. (j).

⁴ Gov. Code, § 65009.1, subd. (a)(1).

⁵ Gov. Code, § 65585, subd. (l).

⁶ Gov. Code, § 65589.5, subd. (d)(6).

⁷ Gov. Code, § 65585, subs. (b)-(h).

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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 Leslie Woodman of our staff at Leslie.Woodman@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Fidel Herrera". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fidel Herrera
Proactive Housing Accountability Senior Manager
Housing Accountability Unit