



July 19, 2022

City Council  
City of La Habra

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RE: Failure to timely adopt a Sixth Cycle Housing Element.

To the City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization that uses impact litigation to address California's housing crisis. We are monitoring local compliance with the law governing housing elements. The City has not adopted a sixth cycle housing element, which it was required to do by October 15, 2021.<sup>1</sup> Accordingly, we are entitled sue the City under Code of Civil Procedure Section 1085 to compel it to adopt a compliant housing element.<sup>2</sup> Indeed, in April, we filed lawsuits against five Southern California cities on that basis. Housing element litigation is given near-complete priority in the court system,<sup>3</sup> and all five cases have either settled with a stipulated judgment or been set for trial within seven months of filing, with the first trial scheduled for August.

As these cases approach resolution, we are preparing for our second round of lawsuits against cities that, at this point, are over nine months late in adopting their housing elements. And your city is near the top of our priority list because, in addition to being tardy, the draft housing element prepared by the City requires substantial revisions before it can be adopted, and the City is not making significant progress toward that goal. Indeed, between the City's initial and subsequent drafts provided to HCD for review, the City essentially ignored most of HCD's comments on its first draft, resulting in HCD referring the City to its prior review over 20 times in its comments on the subsequent draft. And the City continues to take absurd positions that have no basis in law or reality, such as its assumption that 100% of ADUs will be rented at levels affordable to low-income households. Increasingly, litigation appears to be the best solution to compel the City to put pen to paper and finish its housing element.

If we are forced to litigate, in addition to being ordered to adopt a housing element on a short timeline,<sup>4</sup> the City could also face a number of serious penalties. For example, the court could suspend permitting in the City,<sup>5</sup> and it could judicially approve housing development

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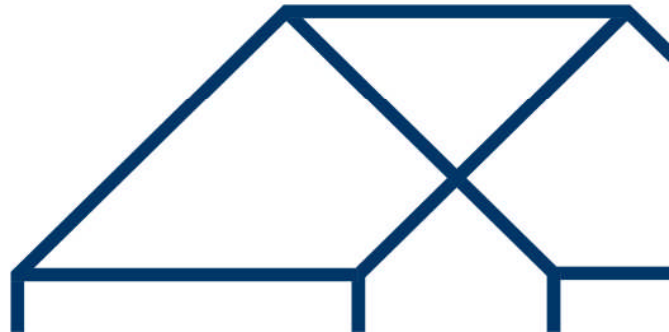
<sup>1</sup> Gov. Code § 65588(e)(3).

<sup>2</sup> Gov. Code §§ 65587, 65751.

<sup>3</sup> Gov. Code § 65752.

<sup>4</sup> Gov. Code § 65754.

<sup>5</sup> Gov. Code § 65755(a)(1).



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projects within the City.<sup>6</sup> The court could impose these penalties while the litigation is pending, even before reaching a final decision.<sup>7</sup> And a successful plaintiff can obtain attorneys' fees under Code of Civil Procedure Section 1021.5. Indeed, in a recent case involving the City of Huntington Beach's housing element, a court awarded another non-profit organization over \$3.5 million in fees.<sup>8</sup>

But we are writing to offer the City a pathway to avoid litigation, by signing the straightforward Acknowledgment attached to this letter. We previously wrote to City staff to offer this alternative, but they did not accept it. If the City agrees to sign the Acknowledgment, we will delay initiating litigation against the City to allow the City additional time to work toward adopting a compliant housing element.

If the City would like to avoid the risk of litigation by our organization, please return the attached Acknowledgment by July 27, 2022. If you do not, we may initiate litigation against the City without further communication. As part of the litigation, we would seek a judicial declaration that the City is subject to the same penalties described in the Acknowledgment, among other remedies. There are no statutory exceptions to these penalties, and no agency has the authority to excuse the City from them. We have dedicated in-house resources sufficient to maintain at least 10 simultaneous housing element lawsuits as part of our commitment to enforcing this important aspect of state housing law.

Sincerely,



Matthew Gelfand

cc: City of La Habra  
Susan Kim, Comm. Dev. Director (by email to skim@lahabraca.gov)  
Richard D. Jones, Esq., City Attorney (by email to rdj@jones-mayer.com)

California Department of Housing and Community Development  
Mashal Ayobi (by email to mashal.ayobi@hcd.ca.gov)

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<sup>6</sup> Gov. Code § 65755(a)(4).

<sup>7</sup> Gov. Code § 65757.

<sup>8</sup> <https://www.communitylegalsocal.org/kennedy-commission-awarded-3-5-million-in-attorneys-fees-for-advocacy-in-huntington-beach-low-income-housing-case/>

**ACKNOWLEDGMENT**

The City of La Habra hereby acknowledges that it has not timely adopted a sixth cycle revised housing element of its general plan within the deadline set forth in Government Code Section 65588, and that its housing element is therefore not in substantial compliance with Article 10.6 of the Government Code. As a result, the City is subject to the following:

1. Pursuant to Government Code Sections 65583(c)(1)(A), 65583.2(c), and 65588(e)(4)(C), the City will be required to complete any rezoning required under housing element law in connection with the City’s sixth cycle housing element by October 15, 2022, unless and only to the extent that the City qualifies for an alternative deadline under Government Code Section 65583.4.

2. The City is currently prohibited from rejecting housing development projects based on subdivisions (d)(1) and (d)(5) of the Housing Accountability Act (HAA), Government Code Section 65589.5. The City acknowledges that this means that, unless another exception within subdivision (d) applies, the City is prohibited from using its general plan and zoning standards to reject a proposal that meets the affordability requirements described in subdivision (h)(3) of the HAA.

The public, including without limitation any applicant to develop any project involving residential units, may rely on this Acknowledgment as the City’s binding commitment to comply with the provisions of state law described above.

DATED: \_\_\_\_\_, 2022

CITY OF LA HABRA

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name]

Its: \_\_\_\_\_  
[Title]