



March 24, 2022

Susan Kim
City of La Habra
Email: SKim@lahabracaca.gov

RE: La Habra's failure to timely adopt a Sixth Cycle Housing Element.

Dear Susan Kim:

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. Our understanding is that the City has not adopted a sixth cycle housing element, which it was required to do by October 15, 2021.¹ It also missed the second compliance deadline of February 12, 2022, subjecting it to additional penalties.² We are currently preparing for litigation against cities that have not timely adopted housing elements, like yours.

In light of the City's failure to timely adopt its housing element, our organization could immediately sue the City under Code of Civil Procedure Section 1085 to compel it to adopt a compliant housing element.³ As a result of this litigation, in addition to being ordered to adopt a housing element on a short timeline,⁴ the City could also face a number of serious penalties. For example, the court could suspend all non-residential permitting,⁵ or could judicially approve housing development projects within the City.⁶ And the court could impose these penalties while the litigation is pending, even before reaching a final decision.⁷ Housing element litigation is given priority in the court system,⁸ 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.⁹

The purpose of this letter is to offer the City a pathway to avoid immediate litigation by our organization. Enclosed is an Acknowledgment that sets forth some of the penalties to which the City is currently subject in light of the City's failure to adopt a housing element. If the City signs and returns the Acknowledgment, we will not initiate litigation against the City at this time.

¹ Gov. Code § 65588(e)(3).

² Gov. Code §§ 65583(c)(1)(A), 65583.2(c), and 65588(e)(4)(C).

³ Gov. Code §§ 65587, 65751.

⁴ Gov. Code § 65754.

⁵ Gov. Code § 65755(a)(1).

⁶ Gov. Code § 65755(a)(4).

⁷ Gov. Code § 65757.

⁸ Gov. Code § 65752.

⁹ <https://www.communitylegalsocal.org/kennedy-commission-awarded-3-5-million-in-attorneys-fees-for-advocacy-in-huntington-beach-low-income-housing-case/>



March 24, 2022

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We ask that you return the Acknowledgement by April 1, 2022. If you decline to do so, understand that we may initiate litigation against the City, using the City's refusal to acknowledge these basic requirements of state housing law to demonstrate the existence of a dispute necessitating judicial intervention. As part of the litigation, we would likely seek a judicial declaration that the City is subject to the same penalties described in the Acknowledgment, among other remedies. 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.

Finally, while we acknowledge that it takes a significant dedication of resources to comply with the requirements of state housing element law, it is worth noting that many cities throughout the Southern California (SCAG) region, both big and small, have already adopted their sixth cycle housing elements after fully complying with state law mandates governing consultation with the public and the state Department of Housing and Community Development (HCD). We believe that, with appropriate planning, all of the SCAG cities could have adopted their housing elements by the October 15, 2021 deadline. For this reason, it would not be productive to respond to this letter by listing the steps the City has taken towards adoption, or the obstacles it has faced. Instead, we simply ask that the City sign the Acknowledgment. There are no statutory exceptions to the penalties identified in the Acknowledgment, and HCD does not have the authority to excuse the City from them.

We look forward to receiving the signed Acknowledgment. If you would like to discuss any of this with me, please do not hesitate to give me a call at (213) 739-8206.

Sincerely,



Matthew Gelfand

cc: Richard D. Jones, Esq., City Attorney (by email to rdj@jones-mayer.com)

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.

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]



City of La Habra

COMMUNITY DEVELOPMENT

"A Caring Community"

110 E. La Habra Boulevard
Post Office Box 337
La Habra, CA 90633-0785
Office: (562) 383-4100
Fax: (562) 383-4476

May 2, 2022

Mr. Mathew Gelfand
Californians for Homeownership
525 S. Virgil Avenue
Los Angeles, CA 90020

Re: City of La Habra Sixth Cycle Housing Element Update

Dear Mr. Gelfand:

This letter is in response to your March 24, 2022, letter reminding the City of La Habra that it has not yet adopted its Sixth Cycle Housing Element.

While the City has not adopted its Element, please be assured that the City is doing its best to comply with State Law and obtain certification from the State Department of Housing and Urban Development (HCD) as soon as possible. As you may appreciate, the 6th Cycle has been difficult for a primarily built out City like La Habra given the significant Regional Housing Needs Assessment (RHNA) allocation of 804 units, compared to the 5th Cycle RHNA of 4 units. Despite the significant increase, the City has already accomplished roughly 50% of this goal, and is diligently moving forward with meeting its obligation according to State Law.

Specifically, on July 26, 2021, the La Habra Planning Commission held a public hearing on the 2021-2029 draft Housing Element ("Element"), which had been posted on the City's website for more than 30 days prior to the Planning Commission hearing. At that time, no one addressed the Commission either for or against the proposed Element's contents; however, a letter was sent to the City by the Kennedy Commission commenting on the draft Element. City Staff noted that they had reviewed the comments in the letter and that the issues raised were already addressed in the draft Element. The Commission also reviewed the letter and did not have any questions or suggested modifications to the Element.

At the conclusion of the July 26, 2021 hearing, the Planning Commission passed a resolution recommending that the City Council approve the draft Element and forward it to HCD for review and comment. The City Council held a duly noticed public hearing on August 16, 2021, to review the draft Element and take public comments. The City Council was also in receipt of the Kennedy Commission letter and had an opportunity to review it before the public hearing and had no comments or questions.

Subsequently, the City Council authorized staff to forward the draft Element to HCD, which staff did on September 2, 2021. A comment letter from HCD was received by staff on November 1, 2021, and City staff addressed the comments from HCD and presented a 2nd draft to the city council on March 21, 2022. The revised draft was sent to HCD on March 23, 2022. If HCD provides tentative approval, then after a public comment period, Planning Commission review and City Council review/adoption, staff is planning to have its Housing Element process completed and certified by HCD this summer.

As you can see, since early last year, the City has been and is moving forward with its intention to obtain HCD's certification of its Housing Element. Importantly, while the City continues its efforts to complete the Housing Element update, it should be noted that the City continues to be an advocate for housing development and assistance, and to take all actions necessary to comply with all applicable laws, including the laws mentioned in your letter. This is evident by the City's recent adoption of an inclusionary housing ordinance and through the following actions over the past year:

- 104-118 E. Electric Ave. - 58 Condo Units, paid an in lieu affordable housing fee of \$580,000
- 331 S. Cypress St. – 16 Condo Units
- 318 S. Cypress St. – 10 Condo Units
- 508 S. Walnut St. – 3 Condo Units
- 1101 N. Harbor Blvd. – 7 Single-Family Dwellings
- 431 W. Lambert Rd. – 5 Apartment Units
- 251-351 W. Imperial Hwy - 117 Condo Units (12 at the moderate range)

And approximately 6 more projects with pending applications, all of which will be subject to the inclusionary housing ordinance.

I hope this letter has served to not only provide you with a status of the City's ongoing efforts in completing its Housing Element update, but also as a clear indication that the City is an advocate for housing and housing assistance to its residents. If you have specific input regarding the Draft Housing Element that you would like to discuss further, or if you have any additional recommendations to help La Habra meet its current and future housing needs, please let me know.

Sincerely,



Susan Kim,
Director of Community and Economic Development



July 19, 2022

City Council
City of La Habra

Email: jmedrano@lahabracaca.gov; jgomez@lahabracaca.gov; ssimonian@lahabracaca.gov;
respinoza@lahabracaca.gov; dnigsarian@lahabracaca.gov; cc@lahabracaca.gov

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, 2021.¹ Accordingly, we are entitled sue the City under Code of Civil Procedure Section 1085 to compel it to adopt a compliant housing element.² 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,³ 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,⁴ the City could also face a number of serious penalties. For example, the court could suspend permitting in the City,⁵ and it could judicially approve housing development

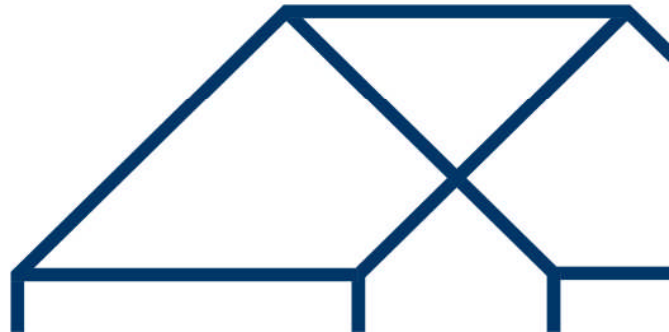
¹ Gov. Code § 65588(e)(3).

² Gov. Code §§ 65587, 65751.

³ Gov. Code § 65752.

⁴ Gov. Code § 65754.

⁵ Gov. Code § 65755(a)(1).



July 19, 2022

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projects within the City.⁶ The court could impose these penalties while the litigation is pending, even before reaching a final decision.⁷ 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.⁸

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)

⁶ Gov. Code § 65755(a)(4).

⁷ Gov. Code § 65757.

⁸ <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]



City of La Habra **COMMUNITY & ECONOMIC DEVELOPMENT**

"A Caring Community"

110 E. La Habra Boulevard
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August 2, 2022

Mr. Matthew Gelfand
Californians for Homeownership
525 S. Virgil Avenue
Los Angeles, CA 90020

By e-mail to: matt@caforhomes.org

Re: City of La Habra Sixth Cycle Housing Element Update

Dear Mr. Gelfand:

This letter is in response to your July 19, 2022 letter reminding the City of La Habra that it has not yet adopted its Sixth Cycle Housing Element. While the City has not adopted its Element, please be assured that the City is doing its best to comply with State Law and obtain certification from HCD as soon as possible. Our previous correspondence detailed all the steps the City has taken to obtain HCD certification, so I will not reiterate those here. However, please note that no rezoning will be necessary in order to adopt our housing element, which will be publicly available on or before August 19, 2022. It will be considered by the Planning Commission on August 22, 2022 and the City Council on September 19, 2022.

I hope this letter has served to provide you with a status of the City's ongoing efforts in completing its Housing Element update and dissuades you from bringing unnecessary litigation. The City of La Habra is an advocate for housing and housing assistance to its residents and will have our housing element update adopted in very short order. Please feel free to reach out to me if you have any questions or concerns.

Sincerely,

Susan Kim,
Director of Community & Economic Development

Cc:

1. City Council (by email to jmedrano@lahabraca.gov; jgomez@lahabraca.gov; ssimonian@lahabraca.gov; respinoza@lahabraca.gov; dnigsarian@lahabraca.gov; cc@lahabraca.gov)
2. Jim Sadro, City Manager (by email to jsadro@lahabraca.gov)
3. Richard D. Jones, Esq., City Attorney (by email to rdj@jones-mayer.com)
4. Mashal Ayobi, Housing Policy Analyst (by email to mashal.ayobi@hcd.ca.gov)

Matthew Gelfand

August 4, 2022

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Attachments:

1. March 24, 2022 Letter from Californians for Homeownership
2. May 2, 2022 City Response
3. July 19, 2022 Letter from Californians for Homeownership



August 5, 2022

Susan Kim
Director of Community and Economic Development, City of La Habra
110 E. La Habra Blvd.
La Habra, CA 90631
Email: skim@lahabracaca.gov

Dear Ms. Kim:

I am writing in response to your August 4, 2022 letter regarding the status of the City's preparation of its housing element. As you know, we have threatened litigation against the City for failing to timely adopt its housing element. Indeed, we have been threatening litigation since March, but we opted to sue six other cities instead, based on our review of the City's progress toward adopting its housing element.

Unfortunately, in the time since, the City has made little progress. The draft housing element submitted to HCD was far off the mark, as reflected in HCD's relatively unusual finding that the draft met only "some" of the requirements in state law. At this point, most Southern California cities have either had their housing elements certified or received findings that their drafts meet "many" or "most" of the legal requirements. As of late May, the City still had an enormous amount of work to do to develop a compliant housing element, and we have not seen any evidence that the City has done that work. Indeed, the City's continued insistence that it does not need to engage in rezoning is quite concerning.

In any event, we have (twice) offered the City a simple pathway to avoid a lawsuit, and the City's responses have conspicuously ignored it. Litigation is our likely next step.

Sincerely,

Matthew Gelfand

cc: City of La Habra
Jim Sadro, City Manager (by email to jsadro@lahabracaca.gov)
Richard D. Jones, Esq., City Attorney (by email to rdj@jones-mayer.com)
City Council (by email to jmedrano@lahabracaca.gov; jgomez@lahabracaca.gov;
ssimonian@lahabracaca.gov; respinoza@lahabracaca.gov;
dnigsarian@lahabracaca.gov; and cc@lahabracaca.gov)

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

