



December 16, 2022

Sheryl Bratton  
County Administrator, County of Sonoma  
Via Email: sheryl.bratton@sonoma-county.org

RE: Failure to Timely Engage in the Sixth Cycle Housing Element Process

Dear Ms. Bratton:

YIMBY Law, Californians for Homeownership, and California Renters Legal Advocacy & Education Fund are 501(c)(3) organizations devoted to using impact litigation and other legal tools to address California's housing crisis. We are writing to express serious concerns about the County's failure to timely engage in the process of developing its revised housing element. Because the County cannot legally meet the deadline for adopting its sixth cycle housing element update, we may initiate litigation against the County on or shortly after February 1, 2023 to compel the County to comply with housing element law.

Because there has been some misinformation spread among local agencies in the Bay Area about the deadlines for housing element adoption, we want to ensure that the County understands its obligations under state law. The County is required to adopt its sixth cycle housing element update by January 31, 2023.<sup>1</sup> There is no extension or "grace period" that modifies this deadline.<sup>2</sup> Indeed, the state government official ordinarily empowered to provide extensions for general plan adoption deadlines is statutorily prohibited from providing extensions of the housing element adoption deadline.<sup>3</sup> And the County is not legally permitted to adopt a housing element update until 90 days have passed from the submission of an initial draft to the Department of Housing and Community Development (HCD).<sup>4</sup> Thus, in order to timely adopt a sixth cycle housing element, the County was required to submit a draft housing element to HCD by November 2, 2022. It did not do so.

Because the County will not be able to lawfully adopt a sixth cycle housing element update by January 31, 2023, it will be immediately subject to litigation under Government Code Section

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

<sup>2</sup> We do not believe that there has been any good-faith confusion among Bay Area jurisdictions about this deadline. But there has been a concerted effort by some to spread misinformation about the effect of Government Code Section 65588(e)(4)(C). Section 65588(e)(4)(C) does not create a grace period. Instead, it merely sets out a deadline for one specific penalty associated with non-compliance—the penalty modifying the rezoning time limit. There is no ambiguity in the text of the statute as to the remaining penalties for housing element non-compliance; they apply after failure to adopt by the January 31, 2023 deadline. But even if idea of a "grace period" was the result of genuine confusion, that confusion was long ago put to bed in Southern California, whose cities and counties confronted these deadlines a year ago and learned (quite publicly) that no grace period applied.

<sup>3</sup> Gov. Code § 65587(a).

<sup>4</sup> Gov. Code § 65585(b)(1).

65750 *et seq.* Housing element litigation is given near-complete priority in the court system.<sup>5</sup> If we are forced to litigate, in addition to being ordered to adopt a housing element on a short timeline,<sup>6</sup> the County could also face a number of serious penalties. For example, the court could suspend permitting in the County,<sup>7</sup> and it could judicially approve housing development projects within the County.<sup>8</sup> The court could impose these penalties while the litigation is pending, even before reaching a final decision.<sup>9</sup> And a successful plaintiff can obtain attorneys' fees under Code of Civil Procedure Section 1021.5.

Each of our organizations has a long track record of successful litigation against local agencies that violate state housing laws. Californians for Homeownership, in particular, has filed ten lawsuits in Southern California this year over violations of housing element law, including lawsuits against eight cities for failing to timely adopt housing elements. And all three organizations intend to seek strict enforcement of the deadlines for housing element adoption in the Bay Area, including through litigation if necessary. We assure you: this is not an empty threat.

But we are writing to offer the County an alternative to litigation. Our organizations will forego immediate litigation against the County if the County signs the acknowledgement provided below, without modification. If the County would like to take advantage of this compromise offer, please send the signed acknowledgement to [housingelements@yimbylaw.org](mailto:housingelements@yimbylaw.org) by December 31, 2022. Please do not respond with a summary of the reasons the County's housing element will be tardy; we are familiar with the full range of explanations, having engaged in this process for over a year in Southern California. If the County would like to avoid litigation, it can do so by providing a signed acknowledgement, not a letter explaining why its process has taken so long.

If you have any questions, please do not hesitate to reach out to us by sending an email to [keith@yimbylaw.org](mailto:keith@yimbylaw.org), [matt@caforhomes.org](mailto:matt@caforhomes.org), and [dylan@carlaef.org](mailto:dylan@carlaef.org).

Sincerely,



Keith Diggs  
*YIMBY Law*



Matthew Gelfand  
*Californians for  
Homeownership*



Dylan Casey  
*California Renters Legal  
Advocacy & Educ. Fund*

cc: Planning Div. (by email to [Planner@sonoma-county.org](mailto:Planner@sonoma-county.org))  
Robert Pittman, Esq., County Counsel (by email to [robert.pittman@sonoma-county.org](mailto:robert.pittman@sonoma-county.org))  
County Board of Supervisors (by email to [bos@sonoma-county.org](mailto:bos@sonoma-county.org))

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<sup>5</sup> Gov. Code § 65752.

<sup>6</sup> Gov. Code § 65754.

<sup>7</sup> Gov. Code § 65755(a)(1).

<sup>8</sup> Gov. Code § 65755(a)(4).

<sup>9</sup> Gov. Code § 65757.

## **ACKNOWLEDGMENT**

The County of Sonoma hereby acknowledges that it cannot timely adopt 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 will therefore not be in substantial compliance with Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code, starting on February 1, 2023.

As a result, the County acknowledges that, starting February 1, 2023 and until such time as the County adopts a housing element that is substantially compliant with Article 10.6, it will be prohibited from rejecting any housing development project based on subdivision (d)(1) or (d)(5) of the Housing Accountability Act (HAA), Government Code Section 65589.5. The County acknowledges that this means that, unless another exception within subdivision (d) applies, the County is prohibited from using its general plan and zoning standards to reject an application 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 County's binding commitment to comply with the provisions of state law described above. The County agrees that, should litigation arise regarding the County's decision on any such project that is the subject of an application or preliminary application submitted between February 1, 2023 and the County's adoption of a substantially compliant housing element, the County will be estopped from relying on subdivision (d)(1) or (d)(5) of the HAA.

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

COUNTY OF SONOMA

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

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

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