

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

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November 28, 2022

Leigha Schmidt, Principal Planner
Development Services Department
City of Hayward
777 B Street, 1st Floor
Hayward, CA 94541

Dear Leigha Schmidt,

RE: City of Hayward's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Hayward (City) draft housing element update received for review on August 30, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from YIMBY Law and Greenbelt Alliance, East Bay for Everyone, TransForm and Campaign for Fair Housing Elements and YIMBY Law, pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory

deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones pursuant to Government Code section 65583, subdivision (c)(1)(A) or Government Code section 65583.2, subdivision (c) are completed.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Claire Sullivan-Halpern, of our staff, at Claire.Sullivan-Halpern@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF HAYWARD

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <https://www.hcd.ca.gov/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs Resources and Constraints

1. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Extremely Low-Income Households (ELI): The element includes some basic information regarding ELI households such as the number of households. However, given the unique and disproportionate needs of ELI households, the element must include analysis to better formulate policies and programs. For example, the element should analyze tenure, cost burden and other household characteristics, compare those characteristics to other income and special needs groups then examine the availability of resources to determine gaps in housing needs. Finally, the element should examine the success of past efforts and formulate an appropriate programmatic response given the magnitude of the need. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>.

2. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Fair Housing Enforcement and Capacity: The element should discuss how the City complies with existing fair housing laws and regulations, any past fair housing lawsuits, consent decrees or other related legal matters.

Disproportionate Housing Needs: The element includes some general information on persons experiencing homelessness and housing conditions but should also evaluate those needs, impacts and patterns within the City, such as areas of higher need. For homelessness, the element should examine disproportionate impacts on protected characteristics (e.g., race, disability) and patterns of need, including access to transportation and services. For housing conditions, the element should discuss any areas of potentially higher needs of rehabilitation and replacement. The element may

utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

Affirmatively Furthering Fair Housing (AFFH) and Sites Inventory: The element includes some data regarding the regional housing need allocation (RHNA) by income group and areas of the City. However, the element should analyze that data, including relationships with other components of the assessment of fair housing (e.g., segregation and integration, disproportionate housing needs) to support conclusions and guide an appropriate programmatic response. Specifically, utilizing Table F-2, the element should analyze how the RHNA by income group impacts the number of existing households and socio-economic characteristics. For example, the element could examine the absence of the lower-income RHNA in some areas of the City and concentration in other areas such as the Mission Boulevard Area relative to higher concentrations of lower-income households. Then, the element could formulate appropriate response such as place-based strategies toward community revitalization and improvement of housing mobility.

Other Relevant Factors: The element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element can analyze historical land use and investment practices or other information and demographic trends. Other relevant factors should complement the state and federal data and complete an analysis.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element must list and prioritize contributing factors to fair housing issues. Contributing factors should result in strategic approaches to inform and connect analysis, goals and actions to address and mitigate fair housing issues. For more information, please see HCD's Guidance Memo at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress in Meeting the RHNA: The City's RHNA may be reduced by the number of new units built, approved, or pending since June 30, 2022; however, the element must demonstrate their availability in the planning period. Availability should address the status, anticipated completion, any barriers to development and other relevant factors such as build out horizons, phasing, and dropout rates to demonstrate the availability or likelihood of development in the planning period.

Suitability of Nonvacant Sites: The element must include a description of identified sites and their existing uses and include an analysis demonstrating the potential for additional development on nonvacant sites. The element should analyze the extent that existing uses may impede additional residential development. The element explains that various factors were utilized to identify sites with potential for redevelopment such as improvement to land value ratio and also discusses some recent trends. However, the

element should relate recent trends to the various factors to better support their validity. For example, the element could list the prior improvement to land value and other factors for pending and approved projects. In addition, the element mentions the factors but does not explain the threshold or reflect the value of the factor on identified sites. For example, the element mentions the improvement to land value, but not which ratio was utilized and does not list the value for each of the sites.

Publicly-Owned Sites: The element must include additional discussion on each of the publicly-owned sites identified to accommodate the RHNA, including the BART sites. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses, any known conditions that preclude or could promote development in the planning period, status, and potential schedule for development. Based on this analysis, the element should add or modify programs. Programs should include a schedule of actions to facilitate development in the planning period in stride with assumptions in the inventory such as numerical objectives, compliance with the Surplus Land Act, outreach with developers or property owners, removing barriers to development, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.

Small and Large Sites: Sites smaller than a half-acre and larger than ten acres in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing. If the City is utilizing small or large sites, the element must include analysis and programs as appropriate to demonstrate the suitability of these sites.

Infrastructure: The element should clarify that the City has sufficient existing and planned total water and sewer capacity to accommodate the RHNA.

In addition, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. While the element explains the City will deliver the element to water and sewer providers, it should also describe whether the City has specific procedures to grant priority or add or modify programs to establish a written procedure by a date early in the planning period.

Environmental Constraints: While the element mentions various environmental conditions, it should also discuss whether those conditions impact or preclude development on identified sites. This discussion should address any other known conditions and impacts on identified sites (e.g., shape, easements, conditions, airport and other compatibility).

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element should clarify if by right is without discretionary action, discuss acreage such as typical parcel sizes, potential for a shelter including reuse, proximity to transportation and services and areas/sites are not in areas unfit for human habitation (discuss other allowed uses). Also, the element should list and analyze development standards and analyze whether parking requirements comply with AB139/Government Code section 65583, subdivision (a)(4)(A) or include a program to comply with this requirement.
 - *Low Barrier Navigation Centers:* The element should clarify that by right or permitted uses are permitted without discretionary action and which zones allow the uses in compliance with Government Code section 65661 or add or modify programs.
 - *Employee Housing Act:* The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 which requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Based on the outcomes of this analysis, the element should add or modify programs.
 - *Permanent Supportive Housing:* Supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs as appropriate.
4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5)).*

Land Use Controls: The element must identify and analyze all relevant land use controls impacts independently and cumulatively for impacts on housing supply (number of units), costs, feasibility and ability to achieve maximum densities. For example, the analysis should address heights, setbacks, floor area ratios, lot coverages and parking and add specific commitment to address constraints.

Fees and Exaction: While the element includes some general discussion of fees, it should list and analyze all planning fees (e.g., general plan amendments, subdivisions, rezones, planned developments, variances, and conditional use permits (CUPs). In addition, the element should list and analyze all impact fees for cumulative impacts (e.g., fees per unit) on typical single family, multifamily and other housing development as appropriate.

Processing and Permit Procedures: The element should describe and analyze the total permit and entitlement process for a typical single-family unit and multifamily

development. The analysis should address typical processes for a development that complies with zoning, time to complete entitlements, decision-making body, number of hearing and approval findings. The analysis should address impacts on cost, timing, feasibility and approval certainty. The analysis should also specifically address the site plan review and major site plan review and list and evaluate approval findings for impacts on housing costs, supply and approval certainty.

In addition, the Planned Development process should be evaluated as a potential constraint, including whether the process is required, presence or lack of fixed development standards and any other relevant factors for impacts on housing cost, timing, feasibility and approval certainty.

Housing for Persons with Disabilities: The element describes the City currently has a procedure for requesting and granting a reasonable accommodation for persons with disabilities; however, the element should also describe and evaluate approval findings and the process for providing reasonable accommodations. The analysis should specifically address findings that resemble CUP findings (e.g., impacts on surrounding uses). The element should also include an evaluate the definition of family used in zoning and land use. In addition, the City should clarify where and how group homes of seven or more persons are permitted and, based on this analysis, add or modify programs with specific commitment to revise zoning and procedures to permit with objective standards to facilitate approval certainty similar to other residential uses.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

Identified Densities and Approval Times: The element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The analysis must address any hinderances on housing development and programs should be added as appropriate.

6. An analysis of opportunities for energy conservation with respect to residential development. *(Gov. Code, § 65583, subd. (a)(6).)*

The element must include a description of opportunities for energy conservation, including past efforts to better formulate appropriate policies and programs. Cities and counties are encouraged to include weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects. This may include energy efficiency measures that encompass the building envelope, its heating and cooling systems, and its electrical system. For more information, see the Building Blocks.

B. Housing Programs

1. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory... (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised, as follows:

Publicly-Owned Sites: The element identifies City-Owned and BART owned sites to accommodate the RHNA and includes minimal commitment to market and coordinate on sites. However, the element should commit to a specific schedule of actions with discrete timing to facilitate development on these public lands. Examples of actions include coordination with property owners, disposing of land or leasing land, removing barriers, assisting in site preparation, facilitating entitlements, assisting with funding, issuing permits and alternative actions if lands do not move forward with development by a specified date. HCD will send sample language under separate cover.

Program 11.1 (By-right for Prior Housing Sites): The program should commit to permit residential uses by right pursuant to Government Code section 65583.2, subdivision (i) at appropriate densities (e.g., at least up to 30 units per acre or consistent with assumptions in the inventory).

Program 24 (Tenant Relocation): As noted in the element (pp. D24 to D26), this program or another program should commit to promote various housing types, namely, group homes, single room occupancy and by right permanent supportive housing.

2. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

Programs 4.1 and 4.4 (Local, State and Federal Funds): The program should commit to how often (e.g., at least annually) funds will be used or applied for and should also commit to identify development opportunities on at least an annual basis.

4. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings A4 and A5, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or

mitigate any identified constraints.

5. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A2, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics, milestones, and geographic targeting, and, as appropriate, must address housing mobility enhancement (more choices and affordability across geographies), new housing choices and affordability in higher opportunity and income areas (e.g., missing middle housing types), place-based strategies for community preservation and revitalization and displacement protection.

C. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element includes quantified objectives for new construction, rehabilitation, and conservation (p. H-33), it could consider increasing objectives for all income groups given the severity of existing and projected housing needs.

D. Public Participation

The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Government Code 65583(c)(7))

While the element includes a summary of the public participation process, it should describe how comments were considered and incorporated into the element. For example, the element generally lists and responds to comments (Appendix A) but not how those comments were incorporated into the element.