

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

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March 28, 2023

Andrew Crabtree, Director  
Community Development Department  
City of Santa Clara  
1500 Warburton Clara  
Santa Clara, CA 95050

Dear Andrew Crabtree:

**RE: City of Santa Clara's 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the City of Santa Clara's (City) housing element that was adopted on January 31, 2023 and received for review on February 1, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Housing Action Coalition pursuant to Government Code section 65585, subdivision (c).

The adopted element addresses some statutory requirements; however, revisions will be necessary to substantially 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.

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) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). 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 these rezones 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 Jose Armando Jauregui, of our staff, at [jose.jauregui@hcd.ca.gov](mailto:jose.jauregui@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF SANTA CLARA

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/planning-and-community-development/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/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Housing Needs, Resources, and Constraints**

1. *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).)*

Local Data and Knowledge and Other Relevant Factors: The element generally was not revised to address this requirement. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. Please see HCD's prior review for additional information.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element generally identifies the number of units in the northeast region, it generally does not address this requirement. A full analysis should address the identified sites, including pipeline project, to accommodate the regional housing need allocation (RHNA) with respect to location (e.g., neighborhoods, planning areas, census tracts), the number of sites and units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). The element should also discuss whether the distribution of sites improves or exacerbates conditions such as isolating the RHNA by income group or not dispersing the RHNA by income throughout the City. If sites exacerbate conditions, the element should identify further program actions that will be taken to promote equitable quality of life throughout the community (e.g., housing mobility, new opportunities in higher resource or income areas, anti-displacement, and place-based community revitalization strategies).

Contributing Factors to Fair Housing Issues: Based on a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues.

2. *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).)*

*Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

*Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Extremely Low-Income (ELI) Households: The element now generally describes the effectiveness of strategies, and the magnitude of the housing need for ELI housing needs, However, as noted in the prior review, the element should analyze the housing needs of ELI households, including tenure and overpayment, and add or modify programs as appropriate. This is particularly important given the disproportionate housing needs of ELI households.

Special Housing Needs: The element was revised with minimal analysis on special housing needs, it must include additional analysis to address the finding. For a complete analysis of each population group, the element should discuss challenges faced by the population, the existing resources to meet those needs (availability senior housing units, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

In addition, while the element now quantifies persons with disability by type, it still must quantify elderly households by tenure and permanent and seasonal farmworkers using USDA agricultural census data.

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 element now demonstrates the anticipated affordability of approved, under construction and proposed developments through mechanisms such as affordable housing agreements and mentions approved projects are anticipated to be completed on or after June 30, 2022. However, the element must still address the availability of approved and proposed projects in the planning period and should include a program to monitor availability and take alternative action, if necessary, especially given the noted uncertainty associated with proposed projects (p. 13.6-5). Please see HCDs prior review for additional information.

In addition, the element was not revised to address the realistic capacity of the large several specific plans that were identified. As noted in HCDs prior review, the element

should discuss planned built out horizons, necessary steps to make sites available and any impediments to the availability of sites for development in the planning period.

Parcel Inventory: The element was revised to add the general plan designation of identified sites but should still describe existing uses as noted in the prior review. Specifically, the description of existing use is generic and must include sufficient detail to facilitate an analysis of the potential for addition development on nonvacant sites. For example, many sites describe existing uses as commercial or industrial. Instead, the inventory could describe the existing use through factors such as age and condition of the existing structure expressed developer interest, low improvement to land value ratio, and other relevant factors.

Suitability of Nonvacant Sites: The element generally was not revised to address this requirement and demonstrate the potential for redevelopment of nonvacant sites. Further, the element should respond to the various site suitability issues described by comments received as part of this review. Please see HCD's prior review for additional information.

In addition, as noted in the prior review, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the housing element must demonstrate that the existing use is not an impediment to additional residential development in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA. Based on a cursory review, the City's current Resolution Number 23-9189 does not appear to make the appropriate findings to demonstrate uses will likely discontinue in the planning period and any future re-adoption must address this requirement, if necessary.

Availability of Infrastructure: The element discusses infrastructure management plans and indicates infrastructure capacity is not a constraint on development but should also clearly state whether there is sufficient existing or planned total capacity to accommodate the RHNA. In addition, the element states the City has specific procedures to grant priority for water and sewer service to developments with units affordable to lower-income households, but then explains if a provision is not part of the regulatory framework the City will commit to adopting a procedure within the next year with no program provided. The element should clearly state whether a written procedure is available and, if not, add a program to establish a procedure by a specified date.

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. While the City has submitted an electronic sites inventory, if any changes occur, the City should submit the revised inventory to HCD as part of any future re-adoption submittal.

Zoning for a Variety of Housing Types (Emergency Shelters): The element now clarifies emergency shelters are currently permitted in the ML (Light Industrial) zone and are proposed to be permitted in several zones. However, the element was not revised to address HCD's prior finding regarding various requirements such as non-discretionary

review, suitability of sites, development standards and constraints. Please see HCD's prior review for additional information.

In addition, please be aware Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

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 was generally not revised to address HCDs prior findings regarding heights and lot coverages as constraints. Please see HCD's prior review for additional information.

In addition, Action 3 (Affordable Housing Incentives and Facilitation) and Action 9 (Zoning Ordinance) should go beyond reviewing parking standards and make specific commitment to reduce or revise parking requirements and ensure parking requirements do not constrain development.

Fees and Exaction: While the element now quantifies the fees for a large multifamily development, it was not revised to address this finding of listing all pertinent fees as part of the cumulative fees analysis. Please see HCD's prior review for additional information.

Local Processing and Permit Procedures: The element now explains objective standards are used to demonstrate compliance with approval findings for architectural review. However, the element was not revised to address findings regarding the City's planned development (PD) process. While the element now includes Action 9 (Zoning Ordinance) to reduce reliance on the PD process, it should include an analysis as described in HCD's prior review to better formulate the appropriate programmatic response. Please see HCD's prior review for additional information.

Housing for Persons with Disabilities (Reasonable Accommodation): The element now discusses the City's obligation to provide reasonable accommodation in zoning and land use but otherwise, provides no analysis to address HCD's findings. For example, the element does not list or evaluate approval findings. Please see HCD's prior review for additional information.

Inclusionary Housing: While the element describes the broader inclusionary housing policy framework, it must also provide an analysis on the relationship between the inclusionary requirement and State Density Bonus Law (SDBL). For example, the element should

describe how meeting the inclusionary requirement may be used toward eligibility for benefits under SDBL.

In addition, housing element outreach conduct identified that the 100 percent area median income affordability requirement was no longer feasible for residents. In response, the City commits to “assessing the feasibility” in Action 2 (Affordable Housing Ordinance). The City should go above “assessing feasibility” of the current affordable housing ordinance and make specific commitments to also revise the City affordability requirements after the feasibility study has been conducted and include annual outreach as parts of this efforts.

5. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D)).*

HCDs prior review found the element should evaluate the risk of conversion; estimate and compare total costs; identify public and private non-profits. In response, the City adds cost comparison of units at-risk; however, the City still must include analysis on the risk of conversion and identify qualified entities.

In addition, Action 5 (Preservation of Assisted Rental Housing) now includes general commitment to work with property owners “when possible”. However, the Action should make specific commitments to monitor at-risk units annually, coordinate with qualified entities annually, prioritize available funding to assist property owners and tenants at risk of conversion.

## **B. Housing Programs**

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. However, the following programs must be revised to include specific commitments and definitive timeline as follows:

- *Action 1 (Provision of a Variety of Housing Types):* The City should commit to identifying housing opportunities and pursuing funds at least annually to support ELI households and persons with disabilities.

- *Action 3 (Affordable Housing Incentives and Facilitation)*: The Program was revised to include timing; however, language such as “explore “should be removed or modified with commitment to actual housing outcomes.
  - *Action 4 (Maintenance of Housing Stock)*: The Program now commits to conducting outreach to determine interest and feasibility but should include subsequent actions toward actual housing outcomes such as funding activities.
  - *Action 11 (Impact Fees)*: Timelines identified should be revised to reflect implementation during the eight-year planning period.
  - *Action 15 (Homeownership for First-Time Buyers)*: The Program should add discrete timing for action implementation for outcomes (e.g., 2025).
  - *Action 16 (Fair Housing programs)*: Action items identified should be revised to include timelines.
2. *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 completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (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 includes Actions 1 (Variety of Housing Types) and 9 (Zoning Ordinance) to amend zoning to allow a variety of housing types, including SROs, employee housing, emergency shelters, low barrier navigation centers and by-right permanent supportive housing. However, the element should be revised to include at least parameters or certainty for the outcome of these commitments such as comply with state law citing government code or describing requirements (e.g., permit without discretionary action). In addition, the actions should commit to amending zoning for emergency shelters as described on page 13.5-10 and remove ambiguous and non-committal language such as “as necessary”.

3. *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 Finding A4, the element requires a complete analysis of potential governmental 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.

In addition, Action 9 (Zoning Ordinance) was not revised to address all HCDs prior findings. Specifically, the City now acknowledges group homes of seven or more; however, it must commit to amend zoning for a variety of housing types in Action 1 by a specific date and clarify that zoning and permit procedures will be amended to permit these housing types in all zones allowing residential use with objective standards to facilitate approval certainty similar to other residential uses.

4. *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 A1, the element must include a complete analysis of AFFH. Based on the outcomes of that analysis, the element must add or modify programs. Additionally, the element included Table 13.3-20 (p. 13.3-72) identifying AFFH actions the City could take to address fair housing issues. For example, the Table notes the City could increase housing choice voucher (HCV) mobility and acquire properties for affordable housing. However, beyond promoting HCVs and exploring property acquisitions, the actions do not include specific commitments to addressing fair housing issues. 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, new housing choices and affordability in higher opportunity and income areas, concentrated areas of affluence and place-based strategies toward community revitalization and displacement protection.

5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

Action 1 (Provision of a Variety of Housing Types) now commits to establish incentives to promote accessory dwelling units (ADU) as well as monitoring the production of ADUs. However, the Action should also monitor affordability, specify when a plan will be presented to the City Council and specify when an alternative strategy will be implemented (e.g., within six months). In addition, the Action should clarify that rezoning may be necessary as part of alternative actions.

#### **D. 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).)*

The element was revised to include minimal ELI objectives added for rehabilitation and conservation while also reducing overall conservation and rehabilitation objectives. The City must revise overall conservation and rehabilitation objectives to target meaningful outcomes in the planning period. As noted in HCD's previous review, conservation units should not be limited to only units at-risk and should include other activities the City has undertaken to rehabilitate and conserve housing. Please see HCD's prior review for additional information.

#### **E. Public Participation**

*Local governments 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 element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)*

While the City made effort to include the public through workshops and surveys, and summarized public comments received and identified how public concerns were addressed. However, HCD received comments on this review that should be addressed, including considering and incorporating comments as appropriate. Example of issues include errantly listing small sites as aggregated sites, calculations of residential capacity and existing uses that impeded additional development in the planning period.

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.

#### **F. Consistency with General Plan**

*The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)*

While the element states it has been prepared to maintain internal consistency, it still should discuss how consistency will be maintained throughout the entire planning period. For example, the element could describe internal consistency will be maintained as part of the annual progress report pursuant to Government Code section 65400 or as general plan amendments occur.