

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

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May 30, 2023

Joel Paulson, Director  
Community Development Department  
Town of Los Gatos  
110 E Main Street  
Los Gatos, CA 95030

Dear Joel Paulson:

**RE: Town of Los Gatos' 6<sup>th</sup> Cycle (2023-2031) Revised Draft Housing Element**

Thank you for submitting the Town of Los Gatos' revised draft housing element update received for review on March 31, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on May 10, 2023 with yourself, Jennifer Armer, Planning Manager, Jocelyn Shoopman and Erin Walter, associate planners. In addition, HCD considered comments from Phil Koen pursuant to Government Code section 65585, subdivision (c).

The revised draft housing element addresses many statutory requirements described in HCD's January 12, 2023 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). 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), including for lower-income households, shall be completed no later than one year from the statutory deadline. Please be aware, if the Town fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until all necessary rezones pursuant to Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivision (c) are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while 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.

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>.

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 Town 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 Town 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 Town 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,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX TOWN OF LOS GATOS

The following changes are necessary to bring the Town'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).)*

Regional Level Patterns and Trends: The element includes some data and analysis regarding different patterns for various socio-economic characteristics (race and income). However, a complete analysis should analyze this data for patterns and trends at the regional level, comparing the locality to the broader region, including integration and segregation (race, income, disability, and familial status), disparities in access to opportunity (education, environmental, transportation, economic), and disproportionate housing needs (cost burdened, overcrowded, substandard housing conditions, homelessness, and displacement risks). Please see HCD's January 12, 2023 review for additional information.

Income and Racial Concentration of Affluence (RCAA): The element states that a RCAA does not exist; however, the Town is predominantly a high resource category according to TCAC/HCD Opportunity Maps and is predominantly higher income. These patterns differ from the surrounding region and the element should include specific analysis of the Town compared to the region and should formulate policies and programs to promote an inclusive community. For example, the Town should consider additional actions (not limited to the Regional Housing Needs Allocation (RHNA)) to promote housing mobility and improve new housing opportunities throughout the Town.

Disparities in Access to Opportunity: While the element was revised to include the distances between public schools for each site to a public transit line, it must also evaluate and compare concentrations of protected groups with access to transportation options. In addition, it must also analyze any disproportionate transportation needs for members of protected classes.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element was revised with brief conclusions that identified sites do not exacerbate fair housing conditions, it must also quantify the number of units by income group and location then evaluate the impact on socio-economic concentrations. Please see HCD's January 12, 2023 review for additional information.

Local Data, Knowledge and Other Relevant Factors: The element included some information about regional history, referenced stakeholder comments and discussed the location of assisted projects and housing choice vouchers. However, the element needs to provide information and analysis that relates, supports, or supplements the existing analysis, fair housing conclusions, or contributing factors. The element must consider other relevant factors that have contributed to certain fair housing conditions. This analysis must consider information that is unique to the Town or region; such as governmental and nongovernmental actions; historical land use and zoning practices (e.g., past redlining/Greenlining, restrictive covenants, planning documents, etc.); disparities in investment to specific communities including transportation investments; seeking investment or lack thereof to promote affordability and inclusion; local initiatives, or other information that may have impeded housing choices and mobility.

Contributing Factors to Fair Housing Issues: The element identifies contributing factors to fair housing issues. However, these issues and goals do not appear adequate to facilitate the formulation of meaningful actions to AFFH. The element should re-assess contributing factors upon completion of analysis and make revisions as appropriate. In addition, the element must prioritize these factors to better formulate policies and programs and carry out meaningful actions to AFFH.

2. *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).)*

Housing Conditions: The element discusses code enforcement violations; however, it must also provide a Town-wide estimate of the number of units in need of rehabilitation and replacement.

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).)*

Realistic Capacity: While the element now clarifies that minimum densities are utilized toward the calculation of realistic capacity; it must still address HCD's prior finding regarding the likelihood for 100 percent nonresidential development in zones allowing 100 percent nonresidential uses. Please see HCD's prior review for additional information.

Nonvacant Sites: The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

In addition, specific analysis and actions are necessary if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue 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.

Small Sites: The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

SB 9 Sites: The element is projecting 96 units that will be developed based on the passage of SB 9 (Statutes of 2021) to accommodate a portion of its above moderate-income RHNA. To utilize projections based on SB 9 legislation, the element must; 1) include a site-specific inventory of sites where SB 9 projections are being applied; 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute as an impediment for additional residential use. The element should list the four two-unit housing development applications and the seven urban lot splits, and the two development requests on single-family residential zoned parcels; and Program BL should be revised to implement significant incentives to encourage and facilitate development. Please see HCD's January 12, 2023 review for additional information.

Zoning for a Variety of Housing Types (Manufactured Housing): The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town must utilize standards, forms, and definitions adopted by HCD. While the Town has submitted an electronic sites inventory, if any changes occur, the Town should submit the revised inventory to HCD as part of any future re-adoption submittal.

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 now lists development standards by zoning district. However, it must also list and evaluate development standards for the North Forty Specific Plan, Mixed-Use Commercial, and the High-Density Residential zones. Please see HCD's January 12, 2023 review for additional information.

Fees and Exaction: The element now compares total fees as a proportion of the total development costs but still must list the fees that comprise that total and particularly impact fees then evaluate those total fees for impacts on development costs.

Local Processing and Permit Procedures: While the element provides additional information on the processing of a typical market rate single or multi-family housing application, it mentions approval is required by the Development Review Committee (DRC) (p. C-29). The element must describe and analyze the DRC process, identify and evaluate approval findings for impacts on housing cost and approval certainty.

Housing for Persons with Disabilities: The prior review found the Town's reasonable accommodation procedure contains constraints. For example, subjective language in approval findings such as "no impact on surrounding uses" can lead to uncertainty of project approval through a discretionary process. In response, the Town commits Program BC to revise subjective language criteria to "minimal impact on surround uses" (p. C-38). However, reasonable accommodation is a unique exception process that should not contain findings similar to a conditional use permit. Program BC should be revised to specifically remove the surrounding uses finding.

Inclusionary Zoning Ordinance: While the element now discusses alternatives for meeting the Town's inclusionary requirements, it should still describe incentives, including relationships with state density bonus law and how the level of affordability is determined.

5. *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).)*

Special Housing Needs: The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

## **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. The following programs still must be revised to include specific commitments and definitive timelines as follows:

- *Program M (Lot Consolidation)*: While the program was revised to facilitate four units through the lot consolidation process, it should increase the numerical objective in stride with the need. Specially as the Town is relying on several small sites to accommodate a portion of lower income RHNA.
- *Program S (Affordable Housing Development)*: The program should increase the numerical objective to target meaningful outcomes during the planning period.
- *Program T (Purchase Affordability Covenants in Existing Apartments)*: The element should revise the timeline earlier in the planning period to target a beneficial impact (e.g., by 2026).
- *Program BM (Story Poles and Netting Policy)*: The program now commits to review the story pole and netting policy and explore options to reduce costs affordable housing. However, the program still must commit to an actual outcome, beyond exploring options. In addition, the program should also establish alternatives or modifications that promote approval certainty. For example, the program could remove the requirements or create alternative for meeting the requirement such as visual renderings.

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 Town may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

As noted in the prior review, if necessary to make appropriate zoning available to accommodate the lower-income RHNA, Program D (Additional Housing Capacity) must be revised to meet all requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). For example, the Program must commit to permit owner-occupied and rental multifamily uses by-right (without discretionary action) for developments in which 20 percent or more of the units are affordable to lower-income households.

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 Town may need to revise or add programs and address and remove or mitigate any identified constraints.

- 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 requires a complete AFFH analysis. Depending upon the results of that analysis, the Town may need to revise or add programs. Actions listed to address AFFH analysis must have specific commitments, milestones, geographic targeting and metrics or numerical targets and, as appropriate; address housing mobility enhancement; new housing choices and affordability in higher opportunity or higher income areas; place-based strategies for community revitalization and displacement protection. For example, the element must add significant and meaningful housing mobility actions to overcome the existing patterns in the Town related to the broader region. Given, among other things, the Town is entirely in the highest category of disparities in access to opportunity and largely does not reflect the socio-economic characteristics of the broader region. The element must include significant actions to promote housing mobility within the Town and relate to the region to promote an overall inclusive community. The element could consider improving existing programs or including new programs.

- 5. Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

Program U Accessory Dwelling Units (ADU): While the program now commits to annually monitor the production and affordability of ADUs and make adjustments. It should clarify the types of adjustments that will be considered such as rezoning, additional incentives, fee reductions, financing programs.

### **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).)*

The element now includes quantified objectives for new construction and rehabilitation by income group but should also include conservation objectives. Please note, conservation objectives are not limited to at-risk preservation and may include a variety of activities that promote safe and stable housing such as code enforcement and tenant protections. Examples of programs that may be utilized include Programs T (Purchase Affordability



Covenants in Existing Apartments), AE (Rental Dispute Resolution), AF (Rental Assistance), AH (Stabilize Rents) and AQ (Rental Housing Conservation).

**D. 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 element was revised to include the renters survey results and previous outreach conducted, it must also summarize all public comments and describe how they were considered and incorporated into the element. HCD’s future review will consider the extent to which the revised element documents how the Town solicited, considered, and addressed public comments in the element. The Towns consideration of public comments must not be limited by HCD’s findings in this review letter. Please see HCD’s prior review for additional information.

**E. 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 identifies Program BG (General Plan Amendment) to ensure consistency with the General Plan, it should discuss how consistency will be maintained throughout the entire planning period.