

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

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December 15, 2023

Benjamin Fu, Director
Department of Community Development
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Dear Benjamin Fu:

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

Thank you for submitting the City of Cupertino's (City) revised draft housing element update received for review on October 7, 2023, along with revisions received on November 30, 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 November 7, 2023 with you, Piu Gosh, and Cynthia Walsh, the City's consultant.

The revised draft element addresses many statutory requirements described in HCD's May 4, 2023 letter; 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), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), programs to rezone and make prior identified sites available or address a shortfall of capacity to accommodate the regional housing need allocation (RHNA) (e.g., Program 1.3.2 Rezoning to Achieve) must 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). For your information, jurisdictions that do not have an adopted element that was found in substantial compliance by HCD by January 31, 2024, will be ineligible for housing element compliance until the necessary 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 program, 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 meets 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>.

HCD appreciates the commitment and cooperation provided by the housing element update team during the update and review. HCD is 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX CITY OF CUPERTINO

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.

Contributing Factors to Fair Housing Issues: Based on a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues. For example, the City is highest resource and highest median incomes in contrast to the rest of the region. As a result, fair housing issues such as the lack of affordable housing should be a high priority.

2. *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).)*

Parcel Suitability of Nonvacant Sites: The element now generally concludes identified sites have similar characteristics to past redevelopment projects and have potential for redevelopment in the planning period but should still include analysis to support this conclusion, as follows:

- *Indicators of Redevelopment Potential:* The element lists sites by indicators of redevelopment potential, including Improvement land ratio, ratio, owner interest,

and the age of existing structures. However, the element must provide an explanation of these indicators and information to support the validity of these indicators, including the threshold value. For example, the element should explain the age of structure (e.g., 50 years or older) used to demonstrate redevelopment potential. This is particularly important since some existing uses appear less than 30 years old which typically indicates a structure in good condition.

- *Trends and Indicators of Redevelopment Potential:* The element states recent developments are similar to identified sites but provides no analysis to support this conclusion. For example, Table 4-4 lists recent developments but does not describe the Improvement to Land to Land to Ratio, or age of existing structure or other factors that would relate to the characteristics of the sites identified in the inventory.
- *Existing Uses that Impede Additional Development:* As noted in the prior review, the element must still evaluate the extent existing uses impede additional development. In response, the element evaluates existing leases, and expressed interest in redevelopment from owners or developers. For projects that do not include owner interest or existing lease information; the element should evaluate additional indicators of turnover such as properties for sale; vacant, abandoned, lacking recent investment or frequent turnover in occupancy; market conditions and trends; and other factors that demonstrate the uses are likely to discontinue in the planning period.

As the housing element appears to rely 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.

Zoning for a Variety of Housing Types (Emergency Shelters): The element includes Program 5.1.1 (Emergency Shelters) to amend the code to allow emergency shelters without a discretionary review in the new R4 zoning; however, it must also include a commitment to comply with AB 2339.

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/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

3. *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. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). (Gov. Code, § 65583, subd. (a)(5).)

Local Processing and Permit Procedures: The element was revised to discuss the decision-making bodies and lists approval findings for the Design Review and single-family developments. However, the element must also analyze these processes for multifamily developments to better inform programs to address identified constraint. For example, the element should describe and analyze the types of multifamily projects that require discretionary decision making, approval findings, and approval timeframes and include programs to remove or mitigate constraints as necessary. In addition, the element should also analyze its post entitlement phase procedures and timing provisions are in accordance with Government Code section 65913.3.

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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (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. Examples of programs that should be revised with specific commitment include but not limited to:

- *Program 2.3.5 Housing Resources:* The program should commit to pursuing identified housing resource funds at least annually.
 - *Program 2.3.12 Live/Work Units:* The program was revised to list actions to encourage disability providers to pursue housing opportunities; however, the City should make specific commitment to actual housing outcomes.
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 A2, 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.

3. *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).)*

The element was revised to include (Programs 2.3.10 (Extremely Low-Income housing) and Program 2.3.11 (Assistance for Persons with Development Disabilities) to assist in the development of housing for extremely low-income (ELI) households, and households with special needs. However, the element must include program (s) with specific actions and timelines to assist in the development of housing for extremely low-income households and households with special needs. For example, Program 1.3.10 should include a specific commitment to adopt amendments after outreach has been conducted (e.g., one year). In addition, Program 1.3.11 should also be revised with specific actions the City will consider such as establishing priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives to facilitate development for persons with disabilities.

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 Finding A3, 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.

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 protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

Goals and Actions: As noted in Finding A1, the element must include a complete analysis of affirmatively furthering fair housing (AFFH). The element must be revised to add goals and actions based on the outcomes of a complete analysis.

In addition, while the element includes some actions toward AFFH and enhancing housing mobility (e.g., choices and affordability), actions should be added, and geographic targeting should be modified to better promote inclusive neighborhoods throughout the City. As noted in HCD's prior review and the assessment of fair housing, the City is highest resource and highest median incomes.

These conditions and circumstances warrant significant and robust actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability throughout the City, including lower-density neighborhoods. Actions should be added and revised with aggressive numeric targets and geographic targets throughout the City, including lower-density neighborhoods. Examples include creating more housing choices and affordability in single-family neighborhoods beyond complying with law (e.g., SB 9, ADUs) such as missing middle housing types, targeting affordable housing funding, homesharing, more than one unit of converted space within a single-family structure, increased multifamily capacity, enhanced efforts on religious institutional sites or city owned sites and other alternative land use and financing strategies.

6. *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).)*

Program 1.3.8 Accessory Dwelling Units (ADU): While the Program now commits to identify additional incentives to promote ADUs as well as monitoring the production and affordability of ADUs. It should clarify when additional incentives will be implemented. In addition, the program should include clarify that rezoning may be necessary as part of alternative actions.

C. 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).)

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. HCD particularly encourages the City to continue engaging commenters on this review. Public comments previously

submitted contain valuable insights that can result in a more effective housing elements, especially related to programs and specific commitment. HCD's future reviews will continue to consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter. 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.