

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

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December 9, 2022

Jeff Bond, Director
Community Development Department
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

Dear Jeff Bond,

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

Thank you for submitting the City of Albany's (City) draft housing element update received for review on September 12, 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 Albany Thrives Together and YIMBY Law and Greenbelt Alliance 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 ALBANY

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. *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).)*

Racially Concentrated Areas of Affluence (RCAA): The element briefly mentions the City has not identified a RCAA; however, based on HCD data, the City does have areas of concentrated affluence and the element should include a specific analysis of patterns and trends for RCAs within the City. The analysis should consider data for households by median income and RCAA available on HCD's website at <https://www.hcd.ca.gov/community-development/affh/index.shtml>. The analysis should at least address trends, conditions, comparisons to other neighborhoods, effectiveness or absence of past strategies, local data and knowledge and other relevant factors related to equitable quality of life. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within the City.

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 patterns of need or areas with higher concentrations of persons experiencing homelessness, 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. The analysis could also consider additional data sources related to displacement risk available, including HCD's data and data available through the Urban Displacement Project <https://www.urbandisplacement.org/maps/sf-bay-area-gentrification-and-displacement/>.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess contributing factors and prioritize those factors then formulate appropriate policies and programs.

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).)*

Realistic Capacity: Where zoning allows 100 percent nonresidential uses, the calculation of residential capacity should account for the likelihood of 100 percent nonresidential development. For example, the element could analyze all development activity in nonresidential zones allowing 100 percent nonresidential uses, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly. This analysis may incorporate any proposed policies such as residential performance standards.

Suitability of Nonvacant Sites: The element lists various factors (e.g., age of structure, improvement to land value ratio, floor area ratio (FAR), landowner interest) utilized to indicate the potential for redevelopment in the planning period (pp. 4-19); however, it should support the validity of these factors. To support these factors, the element should evaluate development trends or recent experience in redevelopment relative to the factors. For example, the element could utilize Table 4-1 (Approved Units) and list the values of the factors for prior uses. This analysis should also evaluate development trends to support redevelopment ratios (existing versus allowed units) for underutilized R-3 sites.

In addition, specific analysis and actions are necessary if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the Regional Housing Needs Allocation (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. 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.

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

Small Sites: Sites smaller than a half-acre 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. The element lists small sites and on a site basis concludes there is potential for consolidation but must also evaluate whether those sites are suitable to accommodate housing for lower-income households

and add or modify programs as appropriate. For example, the element could list past consolidations by the number of parcels, number of owners, zone, number of units, affordability and circumstances leading to consolidation and then relate those trends to the identified sites or could explain why there is potential for consolidation on a site-by-site basis.

Environmental Constraints: While the element mentions various environmental conditions do not preclude development (pp. 4-25), it should also discuss whether any other known conditions preclude development on identified sites in the planning period (e.g., shape, easements, contamination, overlays, 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 typical parcel sizes, potential for a shelter including reuse, proximity to transportation and services and any areas unfit for human habitation (discuss other allowed uses).
 - *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.
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... (Gov. Code, § 65583, subd. (a)(5)).*

Processing and Permit Procedures: The element mentions typical single family and multifamily developments are subject to Planning and Zoning Commission review but should also describe and analyze that review. The analysis should address typical processes for a development that complies with zoning, number of hearing and approval findings. The analysis should address impacts on cost, timing, feasibility and approval certainty.

Housing for Persons with Disabilities: The element indicates group homes for seven or more persons are allowed in all residential zones and subject to a conditional use permit (CUP) but should also analyze the CUP process as a potential constraint on housing for persons with disabilities. For example, the analysis should address compatibility findings and impacts on approval certainty. Based on this analysis, the element should add or modify programs with specific commitment to revise or replace procedures to permit these uses with objective standards to facilitate approval certainty similar to other residential uses.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards, and fees for each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

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).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs should be revised to include specific commitments to housing outcomes (beyond “explore”, “evaluate”, “report”, etc.) and discrete timelines (e.g., at least annually, by January 2025). Examples of programs that should be revised with specific commitment include Programs 1.J (Accessory Dwelling Unit (ADU) Incentives, 3.D (Developmental Disabilities), 5.C (Rent Review), 5.D (Tenant Protection) and 6.F (Additional Funding Sources). Examples of program that should be revised with discrete timelines include Programs 3.B (Housing for Persons with Disabilities), 3.D (Developmental Disabilities) and 3.H (Home Together 2026).

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... (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. In addition, the element should be revised, as follows:

- *Prior Identified Sites*: As noted in the element (Appendix B), the element should

include a program to permit residential uses with 20 percent affordability by right pursuant to Government Code sections 65583.2 (c) and 65583.2, subdivision (i) at appropriate densities (e.g., at least up to 30 units per acre or consistent with assumptions in the inventory).

- *Replacement Housing Requirements:* The housing element must include a program to provide replacement housing. (Gov. Code, § 65583.2, subd. (g)(3).) The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).
- *Water/Sewer Priority:* As noted in the element (p. 4-27), the element should include a program to establish written procedures to grant priority sewer service to development with units affordable to lower-income households pursuant to Government Code section 65589.7.

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... (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings A3, 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.

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 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.

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 1-I (ADU Rent and Use Surveys): The Program should commit to monitor the production and affordability of ADUs every two to three years (e.g., three times in the planning period) and take action if assumptions in the sites inventory are not met (e.g., additional incentives, rezoning) within a specified time (e.g., six months).

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. 6-53), it could consider increasing conservation objectives for all income groups. For your information, conservation objectives are not limited to at-risk preservation and may include a variety of activities that promote stability in housing. Examples of programs that may be used for conservation objectives include Programs 1.C (Code Enforcement), 1.F (Energy Assistance for Lower-income Households), 1.H (Short Term Rentals), 3.F (Housing Choice Vouchers), 5.C (Rent Review), 5.D (Tenant Protection) and 5.E (Tenant Opportunity to Purchase Act).

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 City made considerable effort to include the public through workshops, moving forward, the City should employ additional methods for public outreach efforts in the future, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income households in future public outreach efforts.