

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton
Rosalynn Hughey

**SUBJECT: UPDATE ON THE 2023-2031
HOUSING ELEMENT**

DATE: September 25, 2023

Approved



Date

9/25/23

INFORMATION

SUBJECT: UPDATE ON THE 2023-2031 HOUSING ELEMENT

The purpose of this memorandum is to provide an update on the preparation of the 2023-2031 Housing Element and the California Department of Housing and Community Development's second review of the document.

BACKGROUND

On June 20, 2023¹, the City Council (i) certified the City of San José 2023-2031 Housing Element Update Supplemental Environmental Impact Report; (ii) adopted the [2023-2031 Housing Element](#) (Housing Element) finding it in substantial compliance with the State Housing Element Law; (iii) directed the Director of Planning, Building and Code Enforcement or designee (Director) to submit a certified copy of the Housing Element to the California Department of Housing and Community Development (HCD); and (iv) delegated the authority to the Director to make all non-substantive changes to the Housing Element to make it internally consistent or to address any non-substantive changes or amendments requested by HCD to achieve certification. The approved Housing Element will affirmatively further fair housing and accommodate the City's 62,200-unit Regional Housing Needs Allocation for the 2023-2031 Housing Element cycle. On June 29, 2023, City staff submitted the adopted Housing Element to HCD for formal certification.

On August 28, 2023, the City received HCD's review letter (Attachment). The HCD review letter identifies four sections for further clarification: *Review and Revision, Housing Needs, Resources, and Constraints, Housing Programs, and Quantified Objectives*. City staff believe these comments are technical in nature and can be addressed through further clarification and detail.

¹ See [City Council Memorandum dated 6/20/23](#) for additional information on the adopted housing element

This information memorandum provides a status report on the Housing Element after receipt of HCD's review letter. This is in response to City Council direction at the June 20, 2023 hearing on the Sixth Cycle Housing Element delegating authority to City staff to work with HCD on certification of the Housing Element and requesting an information memorandum after the receipt of HCD comment letters.

ANALYSIS

In its review letter, HCD requested additional revisions be made to the adopted Housing Element to further describe how it fully complies with the State Housing Element Law.

The review letter identifies the following items that require further revision:

- Strengthening commitments, objectives, and metrics to prevent displacement, in the absence of the Community Opportunity to Purchase Act program.
- Strengthening the site's inventory to show how the selected sites will affirmatively further fair housing, provide modeling details and assumptions behind the Tolemi Building Blocks platform that was used to estimate the capacity of sites, provide more detailed analysis on the selection of non-vacant sites and revise programs to address any shortfall of sites or zoning as needed.

City staff believes these comments are non-substantive and can be addressed by providing additional clarifications and details. City staff is working diligently to respond to the comments in the letter while coordinating closely with HCD staff. City staff had one meeting with HCD staff on September 22, 2023 and begun work on the revisions that need to be made to address the comments in the review letter. As the responses are technical in nature and will not require substantive changes, such as removing or incorporating policies and programs identified in the current draft of the Housing Element, the item will not return to the Planning Commission or City Council for approval. City staff also anticipates that the response to HCD comments will require a considerable amount of staff time to complete.

As part of the submittal process, HCD also received multiple letters commenting on the document from stakeholders and advocacy groups. In addition to the areas identified above, the commenters also noted a concern with a lack of transparency following the submittal of the initial draft of the Housing Element to HCD and highlighted the need for more engagement with Black, Indigenous, and people of color and special needs communities. HCD reflected these comments by noting that the City 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. In addition, HCD has specifically requested that the City consider adopting strategies suggested through the public stakeholder process and referenced third-party comment letters. City staff is diligently working to engage the individuals who provided comment letters to HCD through multiple meetings as revisions are made to the Housing Element.

The delay in certification of the Housing Element has created the potential for significant impacts to the City. San José currently has \$59 million in One Bay Area Grant funding recommended for approval. These projects include Vision Zero capital improvement projects, with many of them in East San José. The City will be ineligible for this funding if the Housing Element is not certified by HCD by December 31, 2023. City staff is also analyzing any other potential impacts to other grant opportunities. In addition to grant ineligibility, the delay in certification has raised questions as to whether Builder’s Remedy projects may be able to be submitted. Staff considers the Housing Element approved by City Council on June 20, 2023, as is in substantial compliance with state law but understands the need for further clarification in completing the certification process. Based on City staff’s assessment, projects submitted to the City that are inconsistent with the General Plan and Zoning Ordinance do not have a pathway to approval. Criteria on what is considered “substantial” compliance and objective standards for when HCD will certify a Housing Element remain unclear. In assessing various other housing elements throughout the state, there is no clear, consistent, or apparent pattern or criteria. Staff will continue to work closely with HCD to address any remaining concerns.

EVALUATION AND FOLLOW-UP

Staff will continue to work towards a compliant Housing Element during fall 2023. Additional information can be found on the project website at www.sanjoseca.gov/housingelementupdate.

/s/
CHRIS BURTON
Director, Planning, Building and Code Enforcement

/s/
ROSALYNN HUGHEY
Deputy City Manager and Acting
Housing Director

For questions, please contact Michael Brilliot, Deputy Director, Planning, Building and Code Enforcement, at michael.brilliot@sanjoseca.gov and/or Kristen Clements, Interim Deputy Director, Housing Department, at kristen.clements@sanjoseca.gov.

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 28, 2023

Jennifer Maguire, City Manager
City of San José
200 East Santa Clara Street
San Jose, CA 95113

Dear Jennifer Maguire:

RE: City of San José 6th Cycle (2023-2031) Adopted Housing Element

Thank you for submitting the City of San José's (City) housing element, which was adopted June 20, 2023 and received for review on June 29, 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. Our review was facilitated by a telephone conversation with Michael Brilliot, Kristen Clements, Ruth Cueto, Joshua Ishimatsu, and David Ying. In addition, HCD considered comments from Anthony Tordillos, SJSU Human Rights Institute California Faculty Association San Jose State Chapter, ¡Sí Se Puede!, Racial Equity Action Leadership Coalition and Silicon Valley Council of Non Profits, Maggie So, Pamela Campos, Alex Shoor, Matt Savage, Shiloh Ballard, Tom Skinner, Silicon Valley Young Democrats, Housing Action Coalition and Greenbelt Alliance, Human Agenda, Alli Rico, Law Foundation of Silicon Valley, and South Bay Yimby pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many of statutory requirements described in HCD's December 15, 2022 letter; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), see enclosed Appendix.

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 P-3 (North San José Affordable Housing Overlay Zones) to rezone 12,555 units to accommodate the regional housing needs allocation (RHNA) and P-38 (Adequate sites for lower-income households on nonvacant and vacant sites identified in previous housing element cycles) 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). 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 to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) are completed.

Public participation in the development, adoption and implementation of the housing element continues to be essential to effective housing planning. During the housing element revision process, the City 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. HCD received several third-party comments expressing concerns that the draft revisions for the housing element did not include adequate time or opportunity to provide public input and comment. As part of the next revision to the housing element, the City should consider comments received including programmatic and policy suggestions. HCD will provide copies of third-party comments received under a separate cover.

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, 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>.

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 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.

Jennifer Maguire, City Manager
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HCD appreciates the cooperation and dedication provided by City Staff throughout the course of the housing element review. 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 me at Melinda.Coy@hcd.ca.gov.

Sincerely,

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

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX A CITY OF SAN JOSÉ

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. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

The housing element did not address this finding. As part of the evaluation of programs in the past cycle, the element must provide an explanation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness).

B. 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))*

Contributing Factors to Fair Housing Issues: While Chapter Two of the element now includes a list of contributing factors, the element should prioritize these factors to better formulate policies and programs and carry out meaningful actions to Affirmatively Furthering Fair Housing (AFFH).

Regional Analysis: While element now describes regional trends for most areas, it must still analyze San José relative to the rest of the region for disability, familial status, and education.

Sites Inventory: While the sites inventory was updated to include data relative number of units per site by income group for each of the AFFH categories relative to the existing patterns, it did not analyze this data to determine how the sites AFFH. For example, the

element should utilize this data to analyze whether the distribution of sites improves or exacerbates conditions. 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., anti-displacement and place-based community revitalization strategies).

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).)*

Progress in Meeting the Regional Housing Needs Allocation (RHNA): Pursuant to third-party comments, it appears that some of the projects identified in the pipeline are no longer active projects or are planned at different units counts than identified in Appendix G. The element should verify the pipeline to ensure accuracy.

Realistic Capacity: While the element now includes additional information on the methodology to support the capacity assumptions in the housing element, the methodology still does not provide sufficient detail to demonstrate how the Tolemi Building Blocks platform, a data analysis and modeling tool that was used to calculate residential capacity. For example, it is unclear what comparable properties were utilized to calculate the densities, and how those projects represent typical densities of existing or approved residential developments at similar affordability levels to the assumptions in the element. In addition, for sites that assume 100 percent or above capacity, the element does not identify what assumptions led to the higher capacity estimates such as the presence of exceptions such as a density bonus.

Suitability of Nonvacant Sites: The element was revised to include some additional of projects listed in Appendix K, it is still unclear how the factors in the sites inventory methodology and these projects listed in Appendix K relate to the potential for residential development on nonvacant sites. For example, the element stated that a list of objective factors was used in choosing sites including existing land use, age of existing structure, land to improvement value, and ownership patterns, among others that was similar to comparable properties. However, it is unclear if the comparable properties were also nonvacant. In addition, the element must still analysis was provided to demonstrate whether these existing uses would impede development of these sites within the planning period. As stated in the previous letter, the element should summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. For example, the element includes existing uses such as offices, churches, gas stations, restaurants, preschools, grocery stores, hotels, banks, among others, but does not demonstrate how the selection criteria, nor the example projects listed in Appendix K relate to the selection of these sites and how these sites are likely to discontinue in the planning period.

In addition, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. The element must demonstrate existing uses are not an impediment to additional residential development (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.

Suitability and Availability of Infrastructure: While the element includes a general discussion concluding there should be no unexpected constraints to public utilities and services, it does not specifically address available capacity and access of existing or planned water, sewer, and other dry utilities. (Gov. Code, § 65583.2, subd. (b).)

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: While the element was revised to describe several permit processing procedures, it does not analyze those procedures for potential constraints on housing supply, cost, timing, financial feasibility, approval certainty, and ability to achieve maximum densities. The element should analyze decision-making standards for their impact as potential constraints on housing supply and affordability. Based on the outcomes of a complete analysis, the element must add or modify programs as appropriate.

4. *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)).*

While the element was revised to include additional detail about at-risk properties, the element must still identify qualified entities that could assist with maintaining affordability.

C. 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).)*

As stated in the previous review, the element must provide quantified objectives where appropriate, and ensure provision of discrete timing (e.g., month and year) to account for how the action will occur as well as to ensure a beneficial impact throughout the planning period. While the element may include aspirational and complex programs with actions and timelines beyond the planning period (“ongoing,” “research” “create a study...”). However, these programs should be ancillary and denoted in some manner. Programs to be revised include, but are not limited to the following:

Program P-4 (Affordable housing tools for North San José) should be revised to include specificity on the types of tools that will be evaluated.

Program P-10 (Standardize and streamline permitting, fees, applications) should be revised to include specific timing on deliverables.

Program P-11 (Explore Allowing “SB 9” Type Housing on Additional Properties) should indicate if this is an aspirational program or include a specific commitment. “

Program P-17/N-5 (Affordable Housing Siting Policy) should describe the affordable housing siting policy.

Program P-20 (Mixed-income housing) the program should describe how will the City facilitate Mix-income housing and foster mixed income housing that 100% restricted to affordable.

Programs P-21 (Special needs housing NOFA), P-31 (Land acquisition for affordable housing in target locations), S-1 (Tenant Resource Centers and violations reporting), and S-13 (Affordable housing renter portal language access) should be revised to include metrics.

- 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 B2, 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.

Program P-48 (Implement Surplus Land Act (SLA) – The program should clarify if the SLA activities referenced to be completed in January 2024 include issuance of notice of availability or requests for proposals for the city owned sites identified in the element.

Large Sites: As indicated in the housing element and pursuant to discussions with staff, sites larger than 10 acres that are identified in the housing element to accommodate a portion of the lower-income RHNA will include an overlay that requires at least 25 percent of the units to be affordable to lower-income commiserate with the capacity assumptions in the sites inventory. However, it is unclear if Program P-3 is intended to implement this requirement or if a new program should be added to ensure capacity estimates are realized.

H-14 (Emergency Shelters) – The element should specify the remaining capacity that will be zoned, identify the proposed zones that will allow for emergency shelters by-right, and specify any standards that will apply (e.g., number of beds, length of stay requirement, etc.).

- 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(s) B3, 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. *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))*

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).)

As noted in the element Program R-4 to implement the Community Opportunity to Purchase Program (COPA) was struck from the adopted housing element, as a result the element must include specific commitments to prevent displacement including provision of tenant protections in order to address AFFH requirements. For example, the City could strengthen programs S-12 (Eviction Prevention and Housing Collaborative), S-29 (Rent Stabilization Program Strategic Plan and program assessment), S-30 (Just cause eviction protection amendment for affordable apartments), and S-31 (Tenant Protection Ordinance) to provide specific commitments, objectives, and metrics. The City could also consider strategies suggested through the public stakeholder process and referenced third party comment letters.

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 must include quantified objectives estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.