

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

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March 29, 2023

Niroop Srivatsa, City Manager  
City of Lafayette  
3675 Mount Diablo Boulevard, Room Number 210  
Lafayette, CA 94549

Dear Niroop Srivatsa:

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

Thank you for submitting the City of Lafayette's (City) housing element update that was adopted on January 24, 2023 and received for review on January 31, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from East Bay for Everyone, Housing Action Council, Housing Leadership Council, and Inclusive Lafayette to Government Code section 65585, subdivision (c).

The adopted 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.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent

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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.

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 Connor Finney, of our staff, at [Connor.Finney@hcd.ca.gov](mailto:Connor.Finney@hcd.ca.gov).

Sincerely,

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

Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF LAFAYETTE

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 Revise**

*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).)*

HCD's prior review found the element should include an evaluation of the effectiveness of programs in meeting special housing needs (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness). In response, the element indicates the City does not track services to special needs households and the City lost its local funding to assist special needs households. The element then repeats the same statement for each program that there is no information to report on special needs populations regardless of relevance to the program. However, the element contains several actions that are not dependent on local funding where the City should be fully capable of tracking progress in implementation, including evaluation of program effectiveness in meeting goals and objectives. For example, the element includes Programs 3.1.4 (Available Funding), 3.2.1 (Senior Housing), 3.3.1 (Developmental Disabilities), 3.5.1 (large units), 3.6.2 (Emergency Shelter Capacity) and 5.1.5 (Special Needs Zoning Amendments). Yet, the element does not discuss progress in implementation or evaluate cumulative effectiveness despite the disproportionate housing needs of special needs populations. The element must still evaluate the appropriate actions and discuss the cumulative effectiveness of programs and based on the outcomes of the evaluation, make appropriate revisions in programs. Please see HCD's prior review for additional information.

### **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).)*

Local Data and Knowledge: The element still needs to 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, City staff and related local and county planning documents. The element should include a history of land use in the City, origins of exclusionary zoning practices, as well as a programmatic response to address findings.

Other Relevant Factors: As stated in our previous letter, the element must include other relevant factors that contribute to fair housing issues in the City. For instance, the element can analyze historical land use, zoning and barriers to housing choices, investment practices, seeking investment or lack of seeking investment to promote affordability and inclusion, information about redlining/greenlining, restrictive covenants and other discriminatory practices, land use related lawsuits, local initiatives, demographic trends, or other information that complements the state and federal data.

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

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

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

Extremely Low-Income (ELI) Households: The element reports some data on the number of existing and projected ELI households, but the element still must analyze their housing needs. The analysis should evaluate tenure, overpayment, resources, and strategies available and the gap and magnitude of housing needs to better formulate policies and programs.

Special Needs Populations: The element generally was not revised to address this finding. Please see HCD's prior review for additional information.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress in Meeting the Regional Housing Need Allocation (RHNA): Although the element now demonstrates the affordability of pipeline projects, it must still demonstrate

their availability in the planning period. As noted in the prior review, the element should discuss the status, anticipated completion, any barriers to development in the planning period, drop-out rates, potential reductions in the number of units and other relevant factors to demonstrate their availability in the planning period.

Realistic Capacity: HCD's prior review found the element should support assumptions regarding the calculations of residential capacity and account for the likelihood of 100 percent nonresidential development. While the element now clarifies that all recent projects were listed to support capacity assumption, it (Table 2) still must list sites by zone and year built. In addition, the element should evaluate the listing. For example, the element notes an average yield of 111 percent of maximum allowable density. However, this figure is skewed by projects receiving a density bonus and a density bonus appears to only be used approximately half of the time. Further, the element does not discuss how the recent projects are similar to identified sites as noted in the prior review. Finally, some calculations of residential capacity do not appear to match assumptions and in some cases, the calculations of residential capacity in the parcel inventory (Table A) do not match calculations in the sites inventory parcel analysis (Appendix C, Attachment B). The element should correct calculations where necessary. Based on a complete evaluation, the element should adjust assumptions as appropriate.

In addition, while accompanying documents (comment response matrix) mention the likelihood of 100 percent non-residential development, the element does not appear to be revised to address HCD's prior finding. Please see HCD's prior review for additional information.

Small Sites: Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites are suitable to accommodate housing for lower-income households. While the element included a few examples about developments with lot consolidation (p. C-18), it should also discuss circumstances leading to consolidation (e.g., shared access, parcel situation and necessity for feasibility) and relate these examples to identified sites. Based on a complete analysis, the City should modify programs to include additional incentives for facilitating development on small sites.

Suitability of Nonvacant Sites: While the element lists a few examples of redevelopment trends, additional analysis is needed. Public commenters have pointed to numerous sites where owners stated lack of interest or an interest in 100 percent commercial redevelopment. In addition, other public comments point to issues regarding site feasibility such as lease terms of office spaces (some potentially erroneously listed as ending earlier in the planning period), City office redevelopment feasibility, environmental constraints on sites, as well as existing multifamily housing on that could pose a barrier to redevelopment. Examples include but are not limited to Sites 1, 5, 30, 32, 41, 42. These comments should be addressed, and programs (e.g., increasing allowable densities) should be added or modified as appropriate.

In addition, for your information, the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, which triggers requirements to make findings based on substantial evidence that the existing use is not

an impediment and will likely discontinue in the planning period. While the resolution of adoption includes the findings, any changes to the analysis should be reflected in future re-adoption of the element.

Publicly-Owned Sites: As noted in the prior review, the element must demonstrate the availability of each of the publicly-owned sites for development in the planning period, but there was minimal discussion of existing uses, conditions, barriers (including local opposition) status, and the anticipated schedule. In addition, Program 6.1g should include milestones for issuing permits and alternative actions if sites will not be developed during the planning period.

Environmental Constraints: The element must still relate environmental conditions to identified sites and describe any other known environmental or other constraints that could impact housing development on identified sites in the planning period. In addition, the element should address public comments related to AT&T switch issues.

Accessory Dwelling Units (ADU): HCD's prior review found the element should either include additional analysis such as the number of permitted ADUs in 2022 or rescale assumptions closer to recent trends (e.g., 20 to 25 ADUs per year). In response, the element notes 37 permitted ADUs in 2022 (an average of 17 ADUs per year since 2018) and assumes approximately 35 ADUs per year throughout the planning period. These assumptions still appear well above the recent uptick in permitted ADUs and the element should rescale assumptions closer to recent trends (e.g., 20 to 25 ADUs per year).

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

Zoning for a Variety of Housing Types (Emergency Shelters): The element mentions emergency shelters are permitted in in the C-1 zone. However, the element should also clarify shelters are permitted without discretionary action and discuss available acreage, including typical parcel sizes and the presence of reuse opportunities, proximity to transportation and services and any conditions inappropriate for human habitability. The analysis should also list and evaluate development standards, including parking requirements for compliance with Government Code section 65583, subdivision (a)(4)(A) and add or modify programs if necessary.

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

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of*

*housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: The element still should include a cumulative analysis of development standards as constraints. The element should also address public comments citing heights, setbacks, density caps, and parking requirements as significant constraints. In addition, the element should include programs with specific commitments to address constraints.

Local Processing and Permit Procedures: While the element now discusses permit types and approval bodies and includes Program 10.3.A to establish clear standards, it must still complete an analysis to better formulate an appropriate programmatic response. Specifically, as noted in the prior review, the element must still evaluate approval findings for impacts on approval certainty, as well as the objectivity of any triggers for discretionary review. Based on the outcomes of a complete analysis, the element should add or modify programs. Please see HCD's prior review for additional information.

Constraints on Housing for Persons with Disabilities: HCD's prior review found the element should evaluate potential constraints on housing for persons with disabilities and add or modify programs as appropriate. For reasonable accommodation, the element now lists approval findings but should also evaluate those findings as potential constraints and add or modify programs as appropriate. For example, the element should specifically evaluate compatibility findings that essentially require a conditional use permit like finding to provide reasonable accommodation. For group homes for seven or more persons, the element now includes Program 7.1.e to allow these uses in all residential zones. However, the program should also commit to permit group homes for seven or more persons with objectivity and similar to other residential uses of the same form.

## **C. Housing Programs**

- 1. 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 B3, 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 generally was not revised to address this finding. Please see HCD's prior review for additional information.

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 B4, the element requires a complete analysis of potential governmental and non-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... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, 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. Goals and actions must specifically respond to the analysis and 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, discrete timing or milestones, geographic targeting and metrics or numerical targets. As appropriate, actions must address housing mobility, new housing choices, density and affordability in higher resource or higher income areas, place-based strategies for community preservation and revitalization and displacement protection.

In addition, promoting housing mobility removes barriers to higher opportunity areas and strategically enhances access to housing choices and affordability. Among other factors, the City is entirely the highest resource category in access opportunity, wholly a concentrated area of affluence and predominantly consists of households with the highest median income, a stark contrast to the rest of the region. As a result, the element should include a significant and robust suite of actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability



throughout the City but especially in lower-density neighborhoods (e.g. through a program to allow missing middle housing types).

#### **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).)*

HCD's prior review found the element must include quantified objectives by income group for rehabilitation and conservation, including not limiting conservation objectives to at-risk properties. In response, the element now includes rehabilitation objectives and zero objectives for conservation due to no units being at-risk of conversion to market rate uses in the planning period. Please note, conservation of the existing affordable housing stock is equally important as new construction and rehabilitation, and conservation may include a variety of activities. For example, conservation could include objectives related to Programs 4.1.c (Fair Housing Resources), 6.2.b (Retention of Affordable Rental Units), 6.2.c (Condominium Conversion) and 10.1.a (Code Enforcement).

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

*Local governments shall make a diligent effort to achieve public participation oof all 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 includes a summary of public participation including outreach to the community, it must also summarize how outreach was incorporated into the housing element. In addition, the element should address comments from public commenters on this review and incorporate input as appropriate.

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.