

**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](http://www.hcd.ca.gov)



August 3, 2023

Jonathon Lait, Planning Director  
Department of Planning and Development  
City of Palo Alto  
250 Hamilton Avenue, Fifth Floor  
City of Palo Alto, CA 94301

Dear Jonathon Lait:

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

Thank you for submitting the City of Palo Alto's (City) housing element, which was adopted May 8, 2023 and received for review on June 7, 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. HCD considered comments from Palo Alto Moving Forward and the League of Women Voters; pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many statutory requirements described in HCD's March 23, 2023 review; however, additional revisions will be necessary to 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), Program 1 (Maintain Sites) to rezone 4,511 units to accommodate the regional housing needs allocation (RHNA) and Program 1.3 (Sites Used in Previous Housing Cycle) 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.

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.

HCD appreciates the commitment and cooperation the housing element update team provided during the update and our 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 Irvin Saldana, of our staff, at [Irvin.Saldana@hcd.ca.gov](mailto:Irvin.Saldana@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 PALO ALTO

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).)*

Racially Concentrated Areas of Affluence (RCAA): As mentioned in HCD's previous letter, the element provided a limited analysis of factors contributing to RCAA's. While the element was revised to include a few general statements, the analysis should be revised to include local data and knowledge, and other relevant factors. For example, the element could examine past land use practices, investments, and quality of life relative to the rest of the City and region and then formulate appropriate programs to promote more inclusive communities and equitable quality of life. For example, the City should consider additional actions (not limited to the Regional Housing Needs Allocation (RHNA)) to promote housing mobility and improve new housing opportunities throughout the City.

Disparities in Access to Opportunity: While the element was revised to include Table (C-6) on (P.C-48) the element must analyze these data points for trends and patterns throughout the City, and any concentrations or coincidences with other components of the fair housing analysis. A complete analysis should revise and or provide additional policies and programs that meet the need of each of the components mentioned above.

Disproportionate Housing Needs Including Displacement: While the element was revised to include additional analysis on displacement risk for areas defined as sensitive communities, the element must provide additional analysis on local and regional patterns for overcrowding, overpayment, and substandard housing including any identified trends and coincidence with other components of the fair housing assessment. In addition, the element briefly mentions persons experiencing homelessness, but should provide additional information on the need, including, impacts and patterns within the City. For instance, the element should examine disproportionate impacts on protected characteristics (e.g., race, disability) and patterns of need,

including access to transportation and services. HCD will provide additional guidance under a separate cover.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element was revised to include an analysis on site location and isolation by income group, the element must still relate site selection to all components of the fair housing assessment. In addition, the element should include additional information on how sites will improve fair housing conditions. For example, the element mentions the isolation of lower-income units in the Research; Office and Limited Manufacturing (ROLM) zone; however, the element provides minimal information on how this zone improves fair housing.

Local Data and Knowledge and Other Relevant Factors: As noted in the prior findings, the element must supplement the analysis and complement state and federal data with local data and knowledge to capture emerging trends and issues, including utilizing knowledge from local and regional advocates, public comments, and service providers.

Contributing Factors: The element identifies many contributing factors to fair housing issues but must prioritize these factors to better formulate policies and programs and carry out meaningful actions to AFFH.

- 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 Towards the RHNA: As you know, the City's RHNA may be reduced by the number of new units built since June 30, 2022; however, the element must demonstrate the affordability of units in the planning period is based on actual sales price, rent level, or other mechanisms ensuring affordability (e.g., deed restrictions). Table 3-2 on (P.3-5) was revised to include the anticipated affordability of entitled and proposed developments and the element provides some information about past trends to demonstrate the likelihood these units will move from entitlement to building permits. In order to demonstrate the likelihood that the units will be built in the planning period the analysis must consider any barriers to development, phasing, anticipated build-out horizons, market conditions, and other relevant factors to demonstrate their availability in the planning period. For example, the element could apply past success rates to the projects listed on Table 3-2.

Realistic Capacity: As mentioned in HCDs previous letter, realistic capacity assumptions are generally conservative and based on existing or recently approved residential development within the City and the surrounding region. While development trends can be used to support realistic capacity assumptions, the element must still include an analysis that accounts for existing land use and site improvements. Based on a complete analysis, the element may need to revise current realistic capacity assumptions. In addition, while the element provides some analysis on the likelihood of residential development in zones where 100 percent nonresidential uses are allowed (P. 3-25), the analysis is unclear as to how and if existing policies incentivize residential development

in nonresidential zones. Finally, the element should commit to a mid-cycle assessment of residential development in zones that allow 100 percent nonresidential uses. Based on the results of this assessment, the City may need to identify additional sites to meet the RHNA.

Nonvacant Sites: As mentioned in HCDs previous letter, the element provides several factors that demonstrate the redevelopment potential of nonvacant sites, including, current and past development trends, improvement to land value ratios, existing use vs zone use, age of structure, floor area ratio (FAR), proximity to transit, TCAC/HCD designations, and community interest. While the element now includes some information on current market demand, the element must still include an analysis addressing HCDs previous finding on the suitability of nonvacant sites. The analysis must address nonvacant sites related to existing uses that may constitute an impediment to additional residential development, past experiences converting existing uses to higher-density residential development, existing leases or contracts that would perpetuate the existing use or prevent additional residential development or other relevant information to demonstrate the potential for redevelopment such as expressed owner and developer interest. Based on a complete analysis, the element may need to add or revise programs to facilitate redevelopment. In addition, please refer to Palo Alto Moving Forward's July 14, 2023, (P.12) letter for additional information on several data errors identified in the element related to nonvacant sites.

Finally, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the housing element must demonstrate that the existing use is not an impediment to additional residential development in the planning period (Gov. Code, § 65583.2, subd. (g)(2).). This can be demonstrated by providing substantial evidence that the existing use is likely to be discontinued during the planning period (Gov. Code, § 65583.2, subd. (g)(2).

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the County must submit an electronic sites inventory with its adopted housing element. The County 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 County can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element was revised to include an analysis on the suitability of the City's ROLM(E) zone to meet the City's unsheltered need, the element must be revised to include an analysis of potential reuse and redevelopment opportunities in this zone.

- 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).)*

Land Use Controls: As mentioned in HCDs prior review, the element must identify and analyze the impact of all relevant land use controls as potential constraints on a variety of housing types in all zones that allow residential uses. While the element now analyzes most zones, the City's CC, CS, and CD-N zones must still be analyzed. In addition, the element must also provide an analysis that addresses any impacts on cost, supply, housing choice, feasibility, timing, approval certainty, and ability to achieve maximum densities and includes programs to address any identified constraints. Currently, the element seems to rely on several factors such as the City's Housing Incentive Program (HIP) and Senate Bill 478 to reach maximum densities. While the HIP can be a great tool for development, the City must demonstrate that current land-use controls facilitate housing without the use of this tool. Finally, the element should link development standards used in recent projects (P.3-13-19) to current land-use controls.

Local Processing and Permit Procedures: The element was revised to include a discussion on the City's processing and permit procedures for potential constraints on approval certainty and timing. However, as mentioned in HCDs prior review, an analysis of cost and financial feasibility is required. Finally, the City relies on processes such as the City's expedited review process to mitigate timing constraints on approval certainty. While this process can be useful, only projects that adhere to base development standards qualify. As mentioned above, the City should analyze development standards used in recent projects to better understand the effectiveness of the City's expedited review process. Based on a complete analysis, the City may need to add or revise programs to address constraints on local processing and permit procedures.

On/Off-Site Improvements: As mentioned in HCDs previous letter, the element must identify subdivision-level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width) and analyze their impact as potential constraints on housing supply and affordability.

Local Ordinances: The element now analyzes the City's Inclusionary Housing ordinance, Tree ordinance, Short Term Rental ordinance, and Retail Perseveration ordinance (RPO). However, the element must provide additional analysis on the City's RPO and Tree ordinance. Specifically, how units that are not exempt from the RPO (along California Avenue) will develop. In addition, the element mentions the Tree ordinance has been identified as a potential constraint on Accessory Dwelling Units (ADUs). Given this finding, the element must analyze this ordinance as a potential constraint on a variety of housing types. Finally, the element mentions the City's Tree ordinance will not apply to state mandated ADUs. The element should be revised to include this language in a program with a specific date of completion early in the planning period.

## **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).)*

As mentioned in HCDs previous letter, programs must have a specific commitment to housing outcomes and deliverables. While the element revised several programs, many programs include conducting a “study” prior to additional program commitment. HCD recognizes that program implementation may require a study; however, the element must make firm commitment to program outcomes upon the completion of the study or identify additional programmatic goals or actions that lead to housing outcomes. Programs to revise may include but are not limited to the following: Program 1.6 (Lot Consolidation) Program 2.1 (Affordable Housing Development) Program 3.1 (Fee Waivers and Adjustments) Program 3.4 (Housing Incentive Program (HIP)) Program 3.5 (Accessory Dwelling Unit (ADU) Facilitation) Program 3.6 (Expedited Project Review) 4.2 (Housing and Neighborhood Preservations) Program 6.2 (Family Housing and Large Units) Program 6.5 (Alternative Housing) Program 6.6 (Fair Housing)

Finally, Programs (1.3), (1.5), (1.6), (2.1), (3.3), (3.4), (3.5), (3.6), (6.3), (6.5) and (6.6) will need to be revised with either refined commitment or timing. HCD will provide additional guidance under a separate cover.

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.

In addition, Program 1.4: (City-Owned Land Lots) should clarify that all City-Owned sites will comply with Surplus Land Act (SLA). In addition, and as mentioned in HCDs previous letter, the element will need to commit to numerical objectives, including affordability, aligned with assumptions in the inventory, and a schedule of actions to facilitate development. A schedule of actions may include coordination with appropriate entities, including potential developers, disposition of the land, zoning, funding, facilitating other entitlements, and issuing permits. Finally, this program should identify

and make alternative sites with zoning of equivalent capacity and density by a specified date if sites are not made available by a date early in the planning period.

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

- Program 3.4 (Program 3.1 Fee Waivers and Adjustments): The Program should specifically commit to reducing impact fees comprehensively and not limit the scope of the program to park fees.
  - Program 6.5 (Alternative housing): The Program should commit to actively mitigating costs related to impact fees on alternative housing.
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 analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis. Actions must have specific commitment, milestones, geographic targeting and metrics or numeric objectives and, as appropriate; must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization, and displacement protection.

Programs requiring revisions include but are not limited to the following, Program 1.4 (City-Owned Land Lots) Program 1.6 (Lot Consolidation) Program 2.1 (Affordable Housing Development) Program 3.5 (Accessory Dwelling Unit Facilitation) Program 3.7 (Conversion of Commercial Uses to Mixed Use Development) Program 4.1 (Replacement Housing) Program 4.2 (Housing and Neighborhood Preservation) Program 5.1 (Preservation of At-Risk Housing) Program 5.2 (Funding Opportunities) Program 6.1 (Housing for Person with Special Needs) Program 6.2 (Family Housing and Large Units) Program 6.3 (Missing Middle) Program 6.4 (Homeless Program) Program 6.5 (Alternative Housing) and Program 6.6 (Fair Housing). Finally, based on a complete analysis, additional program and policy action may need to be included.