

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

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April 25, 2023

Amy Chen, Director  
Community and Economic Development Department  
City of East Palo Alto  
1960 Tate Street  
East Palo Alto, CA 94303

Dear Amy Chen:

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

Thank you for submitting the City of East Palo Alto's (City) housing element adopted February 21, 2023 and received for review on February 24, 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 Opterra Law, Envision Transform Build – East Palo Alto, Lighthouse Public Affairs, Community Legal Services in East Palo Alto and EPACANDO as well as the City's March 10, 2023 correspondence pursuant 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.

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.

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>.

HCD appreciates the dedication of the housing element team during the housing element update. 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 Anthony Errichetto, of our staff, at [Anthony.Errichetto@hcd.ca.gov](mailto:Anthony.Errichetto@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF EAST 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. 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 element includes a few brief statements regarding past programs but generally was not revised to address this statutory requirement. The element still must analyze the cumulative impact and effectiveness of the previous housing element's programs to address the housing needs of all special need populations (i.e., elderly, persons with disabilities, large households, female headed households, farmworkers, and persons experiencing homelessness). 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).)*

Affirmatively Furthering Fair Housing (AFFH) and Identified Sites: While the element analyzes the identified sites for each fair housing factor, the maps indicate that sites are concentrated by income level. The element should specifically quantify and analyze the identified sites by income group and location (e.g., neighborhood, planning area, census tract) then formulate appropriate policies and programs to promote more inclusive communities and neighborhoods.

Contributing Factors to Fair Housing Issues: The element includes some broad discussion of contributing factors to fair housing issues but should also prioritize those factors to better identify appropriate policies and programs.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Housing Stock Condition: The element now describes and maps various code enforcement activities but still should estimate the number of units in need of rehabilitation and replacement. 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): HCD's prior review found the element must demonstrate the affordability and availability of units under construction or pending development. While the element demonstrates affordability, it still must demonstrate the availability of projects or likelihood of construction during the planning period. The availability or likelihood the units will be built in the planning period should account for any barriers to development, phasing, anticipated build out horizons, market conditions and other relevant factors.

Realistic Capacity: The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.

SB 9 Sites: The element now describes various trends and eligible lots and then concludes 25 percent of eligible lots will be developed utilizing SB 9 provisions in the planning period. However, the element should either support the use of the 25 percent assumption or rescale assumptions based on those recent trends.

Environmental Constraints: The element expands the discussion of potential environmental conditions that may impact development. However, as noted in the prior review, the element should relate this analysis and, further, discuss any other known constraints that impact development in the planning period. Please see HCD's prior review for additional information.

Electronic Sites Inventory: Although the City has submitted electronic sites inventory as described in the prior review, if any changes occur, the City should submit revisions as part of any future re-adoption or submittal. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for additional information.

Zoning for a Variety of Housing Types:

- *Emergency Shelters*: The element now generally states the City will comply with objective standards and includes Program 10.2 to comply with statutory requirements. However, the element still must identify and evaluate development

standards to better formulate appropriate programs. In addition, the element still must evaluate capacity to accommodate the need for emergency shelters, Please see HCD's prior review for additional information.

In addition, 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>.

- *Single Room Occupancy (SRO) Units*: The element now describes zones that allow SROs but should also evaluate whether procedures encourage and facilitate SRO development. Programs should be added or modified as necessary.
  - *Manufactured and Mobile Housing*: The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.
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 now lists parking requirements by various zoning districts but otherwise was not revised to identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. Please see HCD's prior review for additional information.

Local Processing and Permit Procedures: The element discusses approval times by various entitlements and processes for minor development proposals but should specifically evaluate the typical process for multifamily development. The analysis should address the approval body, the number of public hearing if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing and approval certainty.

Design Review: The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.

Building Codes and Enforcement: The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.

Other Local Ordinances: While the element now lists several compliance options to meet the City's inclusionary requirements and briefly states several development projects have recently been entitled, it should still analyze the cost impacts of the requirement and add or modify programs as appropriate.

Constraints on Housing for Persons with Disabilities: The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

Approval Times: The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.

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

Shortfall of Sites: The element now includes Policy 1.5 to rezone sites to permit development with 20 percent affordability by right but should still commit to meeting all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). For example, the program should commit to permitting multifamily development without discretionary action, minimum densities and residential performance standards. In addition, Policy 1.5 should specifically commit to acreage, allowable densities, appropriate development standards and anticipated units.

Publicly-owned Lands: The element identifies two publicly owned sites and indicates interest in development as well as the status. However, Programs 1.23 and 1.24 should commit to numerical objectives consistent with assumptions in the sites inventory, compliance with the surplus land act and a schedule of actions to facilitate development in the planning period, including coordination, final entitlement and issuing building permits. The program should also commit to alternative actions if the development do not proceed as anticipated.

Sites Identified in Prior Planning Periods: Sites identified in prior planning periods shall not be deemed adequate to accommodate the housing needs for lower-income households unless a program, meeting statutory requirements, requires rezoning within three years. The element identifies a site identified in prior planning periods toward the lower-income RHNA and as a result, should include a program to rezone the sites and permit developments with 20 percent affordability by-right at appropriate densities.

Accessory Dwelling Units (ADU): As noted in the prior review, the element should include a program that commits to frequent monitoring (every other year) for production and affordability, and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) as needed.

2. *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 Findings B4 and B5, 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.

3. *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 requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. 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, milestones, geographic targeting and metrics or numerical targets and, as appropriate, address housing mobility enhancement, new housing choices and affordability in higher opportunity or higher income areas, place-based strategies for community preservation and revitalization and displacement protection.

**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 now includes quantified objectives for new construction and rehabilitation by income group but should also include conservation objectives. Please note, conservation objectives are not limited to at-risk preservation and may include a variety of activities that promote safe and stable housing such as code enforcement and tenant protections.

**E. Consistency with General Plan**

*The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)*

The element generally was not revised to address this requirement. Please see HCD's prior review for additional information.