

**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



December 5, 2022

Erika Vandenbrande, Director
Community Development Department
City of Walnut Creek
1666 North Main Street, 2nd Floor
Walnut Creek, CA 94596

Dear Erika Vandenbrande,

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

Thank you for submitting the City of Walnut Creek (City) draft housing element update received for review on September 2, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from East Bay for Everyone, Diablo Valley for Everyone, David Kellog, Jan Warren, Aryind Ramesh, Caitlin Bracken, TransForm, and Campaign for Fair Housing Elements and YIMBY Law pursuant to Government Code section 65585, subdivision (c). HCD has also considered the City's response to East Bay for Everyone in its correspondence dated September 7, 2022.

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA), including for

lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones pursuant to Government Code section 65583, subdivision (c) (1) (A) 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 Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Connor Finney, of our staff, at Connor.Finney@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF WALNUT CREEK

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <https://www.hcd.ca.gov/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs Resources and Constraints

1. *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).)*

Housing Costs: While the element includes American Community Survey (ACS) data regarding rents, it should include additional data sources to better reflect and evaluate current market conditions.

2. *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).)*

Fair Housing Enforcement and Capacity: While the housing element includes a summary of fair housing enforcement and outreach capacity at the county level, it must also quantify and evaluate complaints at the City level. In addition, the element should discuss how the City complies with existing fair housing laws and regulations, any past fair housing lawsuits, consent decrees or other related legal matters.

Local to Regional Patterns of Income and Concentrated Areas of Affluence (RCAA):

The element briefly mentions concentrated areas of affluence (p. B-24) but should include a specific analysis of patterns and trends for income and RCAA at a local level (patterns within the City) and regional level (City compared to the broader region). The analysis should consider data for households by median income and RCAA available on HCD's website at <https://www.hcd.ca.gov/community-development/affh/index.shtml>. The analysis should at least address trends, conditions, comparisons to other neighborhoods and cities beyond the I-680 corridor, effectiveness or absence of past strategies, local data and knowledge and other relevant factors related to equitable quality of life. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within and beyond City boundaries.

Disproportionate Housing Needs: The element includes some general information on persons experiencing homelessness and housing conditions but should also evaluate those needs, impacts and patterns within the City, such as areas of higher need. For homelessness, the element should examine disproportionate impacts on protected characteristics (e.g., race, disability) and patterns of need, including access to transportation and services. For housing conditions, the element should discuss any areas of potentially higher needs of rehabilitation and replacement. The element may utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

Local Data and Knowledge: The element must include local data and knowledge 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.

Other Relevant Factors: 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, lack of zoning for a variety of housing types 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 (e.g., heights, moratoriums, limits on density), demographic trends, or other information that complements the state and federal data.

Affirmatively Furthering Fair Housing (AFFH) and Sites Inventory: The element must analyze how the identified sites contribute to or mitigate fair housing issues. An analysis should address all of the income categories of identified sites with respect to location (e.g., neighborhoods, census tracts, planning areas) and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). If sites exacerbate conditions or isolates the RHNA by income group, the element should identify further program actions (not limited to the RHNA) that will be taken to promote inclusion in housing choices and affordability throughout the community (e.g., housing mobility, the creation of missing middle housing types and new opportunities in higher resource or income areas).

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

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 toward the Regional Housing Need Allocation (RHNA): While the housing element includes the number of units for each project by income group, it does not provide an analysis demonstrating the affordability and availability in the planning period. For availability, the element should describe the status of the project, including any necessary approvals or steps prior to development, development agreements, conditions, or requirements such as phasing or timing requirements that impact development in the planning period. For affordability, the element should describe actual or anticipated sales price or rent or other mechanism (e.g., financing, affordability restrictions) ensuring their affordability.

Realistic Capacity: The element must include an estimate of the number of units that can be accommodated on each site in the inventory. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction. While the element lists proposed and recently build projects, it should clarify if this list includes all recent developments and if not, make adjustments as appropriate.

Suitability of Nonvacant Sites: The element should include additional analysis on the extent that existing uses may impede additional residential development. It can 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. While the element indicates the potential for additional development based on improvement to land value ratio, it should include additional factors. For example, the element could also consider factors such as age and condition of the existing structure expressed developer or property owner interest, existing versus allowable floor area and other factors.

In addition, since nonvacant sites accommodate 50 percent or more of the lower-income need, the housing element must describe “substantial evidence” that the existing use does not constitute an impediment for additional residential use on the site. 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.

Environmental Constraints: While the element generally described some environmental conditions within the city, it must also analyze whether environmental constraints preclude the development of identified sites, discuss any other conditions (e.g., shape, easements, contamination, shape) and address public comment on their feasibility.

Infrastructure: The element should clarify existing or planned total water and sewer capacity sufficient to accommodate the City’s regional housing need for the planning period.

For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. HCD recommends including a cover memo describing the City's housing element, including the City's housing needs and regional housing need.

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov. Please note, the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters*: The element should clarify whether emergency shelters are permitted without discretionary action, discuss parcel sizes and reuse or redevelopment opportunities and list and evaluate development standards as potential constraints.
 - *Manufactured Housing*: The element should clarify that manufactured housing on a foundation are treated similar to single family uses pursuant to Government Code section 65852.3.
 - *Employee Housing*: The element must demonstrate the zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6 and, if necessary, add or modify programs to establish appropriate zoning. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone.
 - *Accessory Dwelling Units (ADUs)*: After a review of the City's ADU ordinance, HCD discovered several areas which are not consistent with State ADU Law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should add or modify programs to update the City's ADU ordinance to comply with state law.
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 should include a cumulative analysis of all development standards for impacts on housing cost, feasibility and ability to achieve maximum densities. This analysis should specifically address heights and parking requirements and add or modify programs to address identified constraints.

Processing and Permit Procedures: The element indicates all proposals for subdivisions or developments requires a Planned Development Plan (PDP). However, it must describe and analyze the permit processing procedures impacts as potential constraints on housing supply and affordability, particularly for residential development affordable to lower-income households. The element also described the design review process but should also evaluate impacts on approval certainty, cost, supply (number of units and feasibility, including considering public comments regarding whether the process is non-discretionary and does not trigger CEQA and add or modify programs as appropriate. Finally, the element should discuss compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements and add or modify programs as appropriate.

Housing for Persons with Disabilities: The element describes the City currently has a procedure for requesting and granting a reasonable accommodation for persons with disabilities; however, the element should also describe approval findings and the process for providing reasonable accommodations. In addition, the element states the definition of family is not a constraint but should also evaluate the definition, including provisions such as shared household expenses and add or modify programs as appropriate. Finally, the element should describe and should clarify where and how group homes of seven or more people are permitted and modify programs for zones and procedures to permit with objective design standards. The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty similar to other residential uses in all residential zones.

On/Off Site Improvements: The element notes on-site improvements can include landscaping requirements but should include a discussion of all on- and off-site improvements (beyond landscape requirements: streets, curb, etc.) for a typical development and evaluate impacts on housing costs.

B. 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 A3, 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 includes Program H-4.C to update zoning “if needed” for emergency shelters, low barrier navigation centers, transitional and supportive housing and group homes. However, based on the analysis, zoning must be amended, and the element should delete the “if needed” provision.

2. *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).)*

Program H-2.A (Pursue State and Federal Funding): The Program should include specific commitment to at least annually pursue grant opportunities.

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 A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City will likely need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A2, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics, milestones, and geographic targeting and, as appropriate, must address housing mobility enhancement, new housing choices and affordability in higher opportunity and income areas, place-based strategies for community preservation and revitalization and displacement protection.

5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

Program H-1.B (Encourage and Incentivize ADUs): The Program should include specific commitment to establish incentives, beyond researching the feasibility of waiving permit fees. In addition, the program should commit to monitor the production and affordability of ADUs every two to three years (e.g., three times in the planning period) and take action if assumptions in the sites inventory are not met (e.g., additional incentives, rezoning) within a specified time (e.g., six months).

C. General Plan Consistency

Government Code Section 65583 (c)(7) requires the identification of “means by which consistency will be achieved with other general plan elements and community goals.”

While the element demonstrates how internal consistency was achieved as part of the housing element update, it should also discuss how internal consistency will be maintained throughout the planning period. For example, the element could explain how internal consistency is evaluate annually as part of the annual progress report pursuant to Government Code section 65400 or how internal consistency is evaluated and maintained as general plan amendments occur.

D. Public Participation:

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

While the element includes a general summary of the public participation process, it should also summarize the public comments and describe how they were considered and incorporated into the element. The element should also consider public comments received as part of HCD’s review and incorporate comments as appropriate. Examples of topics to consider include the feasibility of individual sites, constraints such heights, as well as comments regarding AFFH and missing middle housing in single-family neighborhoods.