

**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 12, 2022

Sean Moss, Planning Manager
Planning Division
Community Development Department
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Sean Moss:

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

Thank you for submitting the City of El Cerrito's (City) draft housing element received for review on September 19, 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. In addition, HCD considered comments from Rachel Rosekind, East Bay Housing Organizations, East Bay for Everyone and Greenbelt Alliance and YIMBY Law pursuant to Government Code section 65585, subdivision (c).

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.

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. 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 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 cooperation the City's housing element team provided during the course of 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 me at paul.mcdougall@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 EL CERRITO

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. *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: 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.

Racially Concentrated Areas of Affluence (RCAA): The element briefly mentions median household income by block group and notes some eastern areas with higher incomes but then concludes the City does not have RCAAs. However, based on HCD data, the City does have areas of concentrated affluence and the element should include a specific analysis of patterns and trends for RCAAs within the City. The analysis should consider data for RCAAs 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, 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 the City.

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 patterns of need or areas with higher concentrations of persons experiencing homelessness, 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.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element includes some discussion regarding identified sites and AFFH. However, this approach to

whether identified sites AFFH must also account for the location of identified sites by income group. A full analysis should address the income categories of identified sites with respect to location, the number of sites and units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). In addition, the analysis should be supported by local data and knowledge and other relevant factors. The element should also discuss whether the distribution of sites improves or exacerbates conditions, including any isolation of the regional housing need allocation (RHNA). If sites exacerbate conditions or isolate the RHNA, the element should identify further program actions that will be taken to promote inclusive communities and equitable quality of life throughout the community (e.g., housing mobility and new housing choices and affordability in higher resource, higher income or racially concentrated areas of affluence).

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.

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.

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).)*

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).)

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: While the element quantifies existing and projected ELI households, it must also analyze their housing needs. The analysis of ELI housing needs could consider tenure, overpayment, overcrowding, resources and the effectiveness of strategies and the magnitude of housing need.

Overpayment: While the element identifies the total number of households overpaying for housing (p. 2-20), it must quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner) and add or modify policies and programs as appropriate.

Special Housing Needs: The element reports data on households and persons with special housing needs. However, for persons with disabilities, female-headed households and large households, it must also describe the resources available and effectiveness of strategies to these special housing needs groups, then determine the magnitude of housing needs to better formulate 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 RHNA: The City's RHNA may be reduced by the number of new units built, approved, or pending since June 30, 2022; however, the element must demonstrate their availability in the planning period. Availability should address the status, anticipated completion, any barriers to development and other relevant factors such as build out horizons, phasing, and dropout rates to demonstrate the availability or likelihood of development in the planning period.

Publicly-Owned Sites: The element must include additional discussion on publicly-owned sites identified to accommodate the RHNA, particularly the Del Norte BART Station site. Specifically, the analysis should address existing uses, any known conditions that preclude or could promote development in the planning period, status, and potential schedule for development. Based on this analysis, the element should add or modify programs. Programs should include a schedule of actions to facilitate development in the planning period in stride with assumptions in the inventory such as numerical objectives, outreach, and coordination property owners, removing barriers to development, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.

Environmental Constraints: While the element provides general information on environmental constraints (p. 5-30), it should also relate those constraints to identified sites, including a discussion of any other known conditions (e.g., shape, easements, contamination) that impact or preclude development in the planning period.

Accessory Dwelling Units (ADUs): HCD records indicate the City permitted 16, 24, 13 and 25 ADUs in 2018, 2019, 2020 and 2021, respectively. The records differ from trends reported in the element (p. 4-16) and should be reconciled with HCD records.

ADU records may be reconciled by correcting figures in the element and adjusting assumptions or correcting annual progress reports pursuant to Government Code section 65400.

AB 725: For jurisdictions that are considered Metropolitan, the element must identify at least 25 percent of the remaining moderate and above-moderate RHNA on sites that allow at least four units of housing (e.g., four plex or greater) (Gov. Code, § 65583.2, subd. (c)(4)).

Water Sewer Priority: 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. The element should discuss compliance with these requirements and if necessary, add or modify programs to establish a written procedure by a date early in the planning period.

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. 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): While the element states emergency shelters are permitted by-right, it should clarify which zones permit emergency shelters without discretionary action.

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: While the element describes development standards and some land use controls, it must also analyze those land use controls for impacts on housing supply (number of units), costs, financial feasibility, timing, approval certainty and ability to achieve maximum densities without exceptions (e.g., conditional use permits (CUP), variance, planned development). For example, the analysis should address multifamily development standards, including heights, floor area ratios, parking and day planes. The City may engage the development community to assist with this analysis. Based on the outcomes of this analysis, the element should add or modify programs to address identified constraints.

Local Processing and Permit Procedures: The element generally describes that typical multifamily development are subject to a Design Review Board and in some zones, a CUP when projects are twenty-five units or more. The element also describes project meeting development parameters in the San Pablo Avenue Specific Plan Area are also subject to the Design Review Board and a Tier II design review. The element should analyze these processes for impacts on housing supply (number of units), cost, feasibility and approval certainty. For example, the analysis should address CUP thresholds, parameters of the various design review tiers, typical number of hearings, frequency of re-designs and any related approval findings.

In addition, the element should list and evaluate processing times for various permit types and clarify whether the City has a written procedure to implement streamlining provisions pursuant to Government Code section 65913.4 (SB 35) and add or modify programs if necessary.

On/Off-Site Improvements: The element generally describes typical on- and off-site improvements such as parking, sidewalks, street reconstruction, traffic signals and park improvements. However, the element should analyze the cost impacts on a typical development and add or modify programs if necessary.

Constraints on Housing for Persons with Disabilities: The element must evaluate constraints on housing for persons with disabilities, as follows:

- *Reasonable Accommodation:* The element indicates the City has a reasonable accommodate procedure but also mentions provisions that may be constraints. For example, the procedure appears limited to dimensional requirements. However, this reasonable accommodation procedure should be construed broadly in zoning and land use. In addition, the City appears to apply decision-making parameters similar to a variance (e.g., hardship test) but a reasonable accommodation procedure should be a unique exception process. Based on the outcomes of this analysis, the element should modify Program H-4.B (Reasonable Accommodation) with specific commitment to address constraints.
- *Definition of Family:* The element explains the definition of family does not differentiate between related and unrelated persons occupying the same unit. However, the definition includes ambiguous provisions such as single non-profit housekeeping unit or sharing sleeping facilities that should be evaluated as potential constraints.
- *Group Homes for Seven or More Persons:* The element describes that residential care facilities licensed by the state are allowed in residential zones subject to a CUP requirement. However, the element should analyze these requirements to better formulate policies and programs. For example, the element should discuss the licensing, CUP and parking requirements as potential constraints and modify Program H-2.H (Zoning Amendments for Special Needs) with specific commitment to address those constraints.

Other Ordinances: The element (p. 5-12) the City adopted an inclusionary requirements but should also analyze that requirement as a potential constraint. The analysis must evaluate the inclusionary policy's implementation framework, including levels of

mandated affordability and the types of options and incentives offered to encourage and facilitate compliance with the inclusionary requirements. The City could engage the development community to facilitate this analysis.

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).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with specific commitment (e.g., beyond explore, evaluate, review) to housing outcomes and discrete timelines (e.g., at least annually or by January 2025). Examples of programs that should be revised with discrete timelines include Programs H-2.B (Housing Trust Fund Priorities) and H-2.G (Shelter and Housing Solutions for Persons Experiencing Homelessness). Examples of programs that should be revised with specific commitment include Programs H-1.C (Accessory Dwelling Unit Tools), H-1.E (Zoning for Innovative Housing Types), H-2.D (Assist in Affordable Housing Development), H-2.F (Coordinate Transportation Projects), H-2.G (Shelter and Housing Solutions for Persons Experiencing Homelessness) and H-2.J (Affordable Housing and Places of Assembly).

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 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 should be revised, as follows:

- **BART Sites:** In addition, the element includes Program H-2.E (Develop on BART Lands) to facilitate development on BART owned lands. However, the program should include additional commitment for both identified BART owned sites. Examples of steps include completing on- and off-site improvements and parking

strategies, completion of requests for proposals or qualifications, facilitating entitlement and issuing permits and alternative actions with timing if steps are not completed as anticipated to facilitate development in the planning period. In addition, numerical objectives should reflect both identified BART sites.

- *San Pablo Avenue Specific Plan (SPASP)*: The element notes several changes pending to the SPASP that are essential to addressing housing needs in the planning period and as a result, the element should include a program with specific commitment and discrete timelines.

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 Findings A4, 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.

In addition, as noted in Finding A4, the element should modify Programs H-2.H (Zoning Amendments for Special Needs Housing) and H-4.B (Reasonable Accommodation) with specific commitment to address identified constraints based on the outcomes of a complete analysis.

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 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 commitments, milestones, geographic targeting, and metrics or numerical targets and, as appropriate, must address housing mobility enhancement (more choices and affordability across geographies), new housing choices and affordability in higher opportunity and income areas (e.g., missing middle housing types), place-based strategies for community preservation and revitalization and displacement protection.

C. 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).)

While the element includes quantified objectives for new construction, rehabilitation, and conservation (p. 7-14), it could consider increasing conservation objectives for all income groups. For your information, conservation objectives are not limited to at-risk preservation and may include a variety of activities that promote stability in housing. Examples of programs that may be used for conservation objectives include Programs H-3.A (Residential Rental Inspection Program), H-3.C (Tenant Protections), H-4.C (Housing Choice Vouchers).

D. Public Participation

The local government 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 program shall describe this effort. (Government Code 65583(c)(7))

While the City made considerable effort to include the public through a survey and workshops, moving forward, the City should employ additional methods for public outreach efforts in the future, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income households in future public outreach efforts.

In addition, the element includes a general statement that comments were incorporated but should better explain how the comments were incorporated into the element.