

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

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December 20, 2023

Brian Foucht, Assistant City Manager
City of San Juan Bautista
PO Box 1420
San Juan Bautista, CA 95045

Dear Brian Foucht:

RE: City of San Juan Bautista's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of San Juan Bautista's (City) draft housing element received for review on September 25, 2023. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on November 17, 2023, with you and Issac George, consultant. In addition, HCD considered comments from David Kellogg pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to substantially 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.

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 does not adopt a compliant housing element within 120 days of the statutory deadline (December 15, 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 does not adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the 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 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 commitment the City's housing element team provided during the review and update of the housing element. 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 Jose Ayala, of our staff, at Jose.Ayala@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 SAN JUAN BAUTISTA

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).)

General: While the element includes some information on the progress in implementation from the previous element, it must evaluate the effectiveness of programs and reflect the results in the current element. For example, the element should add the accomplishments in terms of outcomes for housing and people, then evaluate effectiveness. Examples include programs for inclusionary housing, accessory dwelling units (ADU), code enforcement, grants programs, reducing or removing fees, rehabilitation, fair housing services, and housing for persons with extremely-low income. Based on the outcomes of this evaluation, programs should be revised as appropriate.

Effectiveness for Special Needs Households: As part of the evaluation of programs in the past cycle, the element must also explain the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness). Programs should be revised as appropriate to reflect the results of this evaluation.

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).)*

Enforcement and Outreach: The element generically describes past outreach efforts but must also describe any fair housing complaint cases and provide those characteristics. Enforcement should include data and evaluation (e.g., characteristics of complaints) of any

past or current fair housing lawsuits, findings, settlements, judgments, and complaints. The analysis could also evaluate data and the results from any fair housing testing.

Disproportionate Housing Needs, Including Displacement Risk: While the element provides regional/county-level data on disproportionate housing needs, the analysis must also describe local conditions relative to these factors. For instance, the element should evaluate trends and patterns within the City, such as any concentration of housing units with higher need of rehabilitation; concentrations of cost-burdened households; and areas that might have more homeless encampments than others.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element does not address this requirement. The analysis must identify whether sites improve or exacerbate conditions and whether sites are isolated by income group. A full analysis should address the income categories of identified sites by location (e.g., census tract, planning area, neighborhood), 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). The element should also discuss whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program actions that will be taken to promote equitable quality of life throughout the community (e.g., anti-displacement and place-based community revitalization strategies).

Local Data and Knowledge, and Other Relevant Factors: The element does not address this requirement. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes of 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. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element can analyze historical land use and investment practices, annexations, waves of development, or other information and demographic trends.

Contributing Factors: Upon a complete analysis, the element may need to re-assess and re-prioritize contributing factors.

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).)*

Extremely Low-Income (ELI) Households: While the element identifies the projected number of ELI households, it must still analyze their existing housing needs. This is particularly important given the unique and disproportionate needs of ELI households. For example, the element could analyze tenure, cost burden, overcrowding and other household characteristics then examine trends and the availability of resources to determine the magnitude of gaps in housing needs.

For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/extremely-low-income-housing-needs>.

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): The element indicates (p. 4-1) that jurisdiction may count the number of new units built and occupied from 2019 toward their 2023-2031 RHNA requirements. Please note this information is not accurate and HCD did not consider any current projects to meet the City's RHNA numbers. The City may utilize projects completed, permitted, approved, or pending approval since the beginning of the projection period (June 30, 2023). If utilizing projects since with beginning of the projection period, the element must describe the City's methodology for assigning these units to the various income groups based on the actual or anticipated sales price or rent level of the units or other mechanisms ensuring affordability (e.g., deed restrictions) and demonstrate their availability in the planning period.

Realistic Capacity: While the element provides (p. 4-8) assumptions of buildout for sites included in the inventory, it must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The City lists the maximum density allowed in a zone multiplied by the size of the parcel. 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, and the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

In addition, the element appears to assume residential development on sites with zoning that allows 100 percent nonresidential uses; but to support this assumption the element must analyze the likelihood of residential development in zoning where 100 percent nonresidential uses are allowed. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses, or other relevant factors such as enhanced policies and programs.

Zoning for Lower-Income Households: The element must demonstrate densities appropriate to accommodate housing for lower-income households. For communities with densities that meet specific standards (at least 20 units per acre for San Juan Bautista), no analysis is required. (Gov. Code, § 65583.2, subd. (c)(3).) Otherwise, an analysis must demonstrate appropriate densities based on factors such as market demand, financial feasibility, and development experience within identified zones. The element (Table 3-4) indicates the Mixed-Use zone (MU zone) allows residential

development at a maximum of 15 units per acre, under the default density of 20 units per acre. Absent additional analysis, it is presumed that the sites within the Mixed-Use zone are not suitable to meet the lower income RHNA, and the City must find additional sites or rezone sites to demonstrate adequate sites for the planning period.

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 should clarify if sites were identified in prior planning periods and if so, which sites and include a program if utilizing previously identified sites in the current planning period. For more information on program requirements, please see the Department's Housing Element Sites Inventory Guidebook at https://www.hcd.ca.gov/community-development/housing-element/memos/docs/sites_inventory_memo_final06102020.pdf.

Infrastructure: While the element provides an overview of water and sewer infrastructure, the element must clarify there is sufficient water and sewer capacity to meet the RHNA needs. In addition, the element must clarify whether there is sufficient dry utility infrastructure and capacity to meet the RHNA.

Environmental Constraints: While the element provides an overview of general environmental constraints, the element should relate this information to identified sites and evaluate whether constraints preclude development in the planning period. In addition, the element should evaluate whether other constraints preclude development in the planning period, such as shape, access, easements, contamination, overlay zones and other factors that could preclude residential development.

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/planning-and-community-development/housing-elements> 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 City allows emergency shelters by-right in the I district, the element must comply with the requirements of Chapter 654, Statutes of 2022 (AB 2339). Please note, these requirements became effective on January 1, 2023. Among other changes, these amendments to Government Code section 65583, subdivision (a)(4) expands the definition of "emergency shelters", specifies the type of zoning designations that must be identified to allow emergency shelters as a permitted use without a conditional use or other discretionary permit, and demonstrate the appropriateness of sites and development standards to accommodate emergency shelters. For more information and applicable timing, see HCD's AB 2339 memorandum at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

- *Permanent Supportive Housing*: Permanent supportive housing shall be a use by-right (non-discretionary) in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement or include programs as appropriate.
 - *Housing for Employees*: The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. 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. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/farmworkers>.
 - *Accessory Dwelling Units*: While the element provides a general overview of how the City permits ADUs, the element should also clarify consistency with State ADU Law. For example, the element should describe whether the site plan review requirement is a non-discretionary action and whether ADUs are permitted in all zones that allow for residential uses, such as the Commercial and Agricultural zones.
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 must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to parking, including covered parking and guest parking requirements, heights, and limits on allowable densities. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Local Processing and Permit Procedures: Local Processing and Permit Procedures: The element describes the Site Plan, Design Review, and Historic Review processes for most developments including intent related to compatibility and findings of approval for impacts on surrounding property. However, the element should analyze these standards for impacts on timing, cost, supply, and approval certainty and include programs to address identified constraints.

In addition, the element must describe how the City complies with the Permit Streamlining Act, including intersections with the California Environmental Quality Act and timing requirements, including streamlining determinations, and add or modify programs as appropriate.

On/Off-Site Improvements: The element must identify and list 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. In addition, the element should discuss the required improvements for a typical project. For additional information and a sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/codes-and-enforcement-and-onsite-offsite-improvement-standards>.

Constraints on Housing for Persons with Disabilities: While the element provides a general overview of housing for persons with disabilities, it generally does not meet the requirement. First, the element must describe the City's reasonable accommodation procedure, including application requirements, fees, decision-making body, approval findings, and applicable appeals process. Next, the City must describe the City's definition of family and evaluate for impacts on persons with disabilities, including the number of people and relationship. Last, the element should identify which zones allow group homes for seven or more persons and what process is used to permit the use.

For your information, the City's zoning code appears to isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors. Examples include residential care facilities, group homes, and sober living homes for six or fewer persons or seven or more persons. First, zoning should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations such as the number of persons, population types and licenses. Second, these housing types are excluded from some residential zones, most notably low-density zones, which can constrain the availability of housing choices for persons with disabilities. Finally, these housing types in many cases are subject to a special use or conditional use permit, potentially subjecting housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. The element should include specific analysis of these and any other constraints, including their enforcement and considering public comments, for impacts on housing for persons with disabilities and add or modify programs as appropriate.

Zoning, Development Standards, and Fees Transparency: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City's website and add a program to address these requirements, if necessary.

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 mentions requirements to analyze the length of time between application approval and building permits and then concludes projects are constructed in a reasonable time. However, to better inform the analysis and policies and programs, the element must identify the actual length of time between receiving approval for housing development and submittal of an application for building permits and discuss any hindrances on construction.

6. *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).)*

The element includes some general quantification; however, the element should include an analysis of households with special housing needs. The analysis should include, but is not limited to, factors such as trends and comparisons to other households, household income, tenure, housing types, zoning, disproportionate needs, and available resources. Specifically, the element should address the total number of persons with disabilities including developmental disabilities, female-headed households quantified by poverty, and permanent, seasonal farmworkers (e.g., USDA county-level data) and the characteristics and trends of persons experiencing homelessness. For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/large-families-and-female-headed-households>.

7. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element does not address this requirement. The element must provide a full analysis of existing assisted housing development at risk of converting to non-low income uses in the next ten years. The analysis must provide the full inventory of at-risk units, an assessment of risk, an estimate of replacement versus preservation costs, and an identification of qualified entities and potential funding. Upon a full analysis, the element may need to add or modify programs, as appropriate.

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.

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).)*

The element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-income households. The program(s) could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to ELI households; assisting, supporting, or pursuing funding applications; and outreach and coordination with affordable housing developers. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/assist-development-housing>.

In addition, the element must also include a program(s) to assist in the development of housing for all special needs households (e.g., elderly, homeless, farmworkers, persons with disabilities, female-headed households). Program actions could include proactive outreach and assistance to non-profit service providers and developers, prioritizing some funding for housing developments affordable to special needs households, and offering financial incentives or regulatory concessions to encourage a variety of housing types.

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 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.

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 B1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. Goals and actions must specifically respond to the analysis and 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, and milestones as appropriate and 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.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance. (Gov. Code, § 65583, subd. (c)(6).)*

As noted in Finding B7, upon a full analysis of at-risk units, the City may need to revise or add programs.

6. *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).)*

Programs must be expanded to include incentives to promote the creation and affordability of ADUs. Examples include exploring and pursuing funding, modifying development standards, and reducing fees beyond state law, increasing awareness, pre-approved plans, and homeowner/applicant assistance tools.

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).)

While the element includes quantified objectives for new construction and rehabilitation by income group for extremely low-, very low-, low-, moderate- and above-moderate income, it must also include quantified objectives for conservation. Examples of programs that could

be utilized include code enforcement programs, vouchers, mobile home park preservation, and housing unit stabilization through zoning.

E. 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 City invited stakeholders to workshops and sent surveys, 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. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/public-participation>.

In addition, the element should summarize any public comments received regarding the draft housing element and future iterations of the housing element and describe how they were incorporated into the housing element.