

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

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May 18, 2023

Kevin Gardiner, Director
Department of Community Development
City of Burlingame
501 Primrose Road
Burlingame, CA 94010

Dear Kevin Gardiner:

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

Thank you for submitting the City of Burlingame's (City) draft housing element received for review on February 17, 2023. 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 Elana Lieberman, David Kellogg, and YIMBY Law/Greenbelt Alliance 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.

As a reminder, the City's 6th cycle housing element was due January 31, 2023. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

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 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 hard work from yourself and the Burlingame housing element team. 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.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF BURLINGAME

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 review and revise requirement is one of the most important features of the element update as this information and analysis provides the basis for developing a more effective housing program. While the element addresses many of the requirements of this section, a complete analysis should also summarize the cumulative impact and effectiveness of the previous housing element's programs to address the housing needs of all special-need populations.

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))*

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 should 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 analysis of whether identified sites AFFH should account for where the sites are located. The analysis should address the number of units by all income groups, and location (e.g.,

neighborhood, planning area, census tract), discuss any isolation of the regional housing need allocation (RHNA) by income group and evaluate the magnitude of the impact on existing concentrations of socio-economic characteristics by area. The analysis should be supported by local data and knowledge and other relevant factors and address overlapping fair housing issues with other components of the assessment of fair housing (e.g., segregation and integration, concentrated areas of poverty, disparities in access to opportunity).

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues.

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).)

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.

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).)*

Realistic Capacity: While the element provides 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 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.

In addition, 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.

Lastly, the element should consider public comments received on sites in the inventory and make revisions as appropriate.

Zoning for Lower-Income Households: Specific analysis and actions are necessary if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. The current analysis provided is insufficient. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) 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.

Nonvacant Sites: For your information, nonvacant sites that include residential units, either existing or demolished, that are/were occupied by, or subject to affordability agreements for lower-income households within five years preceding the beginning of the planning period are subject to a housing replacement program consistent with the requirements listed in Government Code 65915(c)(3) and Government Code 65583.2(g)(3). The element must clarify compliance with this requirement.

Publicly-Owned Sites: The element identified City-Owned sites to accommodate a portion of the RHNA. As a result, the element should demonstrate the suitability and availability of these sites for development in the planning period, including status, schedule, existing uses and potential impediments, relocation of existing uses if applicable and any known barriers to development in the planning period.

Sites Identified in Prior Planning Periods: The element must include a program for vacant sites identified in two of more consecutive planning periods' housing elements or non-vacant sites identified in a prior housing element, that are currently identified to accommodate housing for lower-income households. The program must be implemented within the first three years of the planning period and commit to zoning that will meet the density requirements for housing for lower-income households and allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower-income households (Gov. Code, § 65583.2, subd. (c).).

Availability of Infrastructure: While the element states there is sufficient water and sewer capacity to accommodate the RHNA, the element must also clarify whether sites have sufficient existing or planned dry utility infrastructure available and accessible to support housing development or add a program to increase such capacity.

Small Sites: The element must provide sufficient analysis to demonstrate small sites are adequate to accommodate housing for lower-income households (e.g., providing similarly sized sites that were or are being developed with an equivalent number of units in the same income category) or add a program to encourage lot consolidation of small sites (i.e., 1818 El Camino Real, 1825 California Drive, 1811 El Camino Real, and 1819 El Camino Real).

Environmental Constraints: The element describes known environmental constraint to the development of housing within the jurisdiction such as steep slopes, sensitive habitats, and endangered species, and noise, but should also explain which areas of the City are impacted by these potential constraints and discuss any other known

conditions that preclude development in the planning period (e.g., parcel shape, contamination, easements, property conditions).

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element identifies the zoning districts for emergency shelters as well as their suitability and proximity to transportation; however, it must also identify and analyze any development standards (e.g., spacing, parking, concentration requirements) and other requirements imposed on emergency shelters. The element should also clarify whether emergency shelters are permitted without discretionary action, analyze whether sites in the RRMU and I-I districts are fit for human habitation and free of hazards, and discuss the total capacity of the applicable zoning districts. Lastly, the element must describe compliance with Government Code section 65583, subdivision a)(4)(A) or include a program to comply with this requirement. For your information, pursuant to Government Code section 65583, subdivision a)(4)(A), parking requirements should be limited to allowing sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
 - *Employee Housing:* 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>.
 - *Supportive Housing:* The element should specifically clarify whether the City permits permanent supportive housing by-right as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone pursuant to Government Code section 65583 (a)(5) and describe applicable policies and procedures.
 - *Manufactured Housing:* Manufactured housing that is built on a permanent foundation, generally, should be allowed in the same manner and in the same zones as conventional or stick-built structures pursuant to Government Code section 65852.3. The element must demonstrate consistency with this requirement or add or modify programs as appropriate.
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 impact as potential constraints on a variety of housing types. For example, 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. Specifically, the element should analyze parking (clarifying any garage requirements) lot coverages, setbacks, minimum unit size requirements, and open space requirements as potential constraints. In addition, while the element sufficiently describes floor area ratios and height limitations, the analysis should also analyze land use controls cumulatively with other land use controls. Lastly, the element should clarify whether projects at current zoning are feasible; This could be shown in the form of projects developed in the North Rollins Road Specific Plan area, Downtown Specific Plan area, as well as other projects in the City. The element must add or modify programs to address identified constraints.

Fees and Exaction: The element indicates that fees for multifamily projects are significantly greater than those for single-family projects, an uncommon observation not found in other comparable jurisdictions. Excessive fees for multifamily projects have significant impacts on housing affordability and production. The element should include an evaluation of these fees, including parking in lieu fees downtown, development impact fees for public facilities, and the recycling fee requirement for construction and demolition. The element must add programs to address identified constraints.

Local Processing and Permit Procedures: While the element includes information about processing times for different types of development, additional analysis will be required to satisfy this requirement and must address potential impacts on housing cost, supply, timing, and approval certainty. The element should start by clarifying the type of approval process for the development types identified (e.g., principally, conditionally permitted, etc.) by zone. The element must analyze the processes and standards including discretionary and nondiscretionary review findings and procedures, including public noticing requirements. In addition, the element must clarify and analyze the approval body required for certain types of entitlements and permits for potential constraints, including planning commission application requirements and potential appeals to City Council.

Further, the element should address public comments on this revised draft submittal and discuss compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

Design Review: The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply and affordability. For example, the analysis could describe required findings and discuss whether objective standards and guidelines improve development certainty and mitigate cost impacts. The element must demonstrate this process is not a constraint or it must include a program to address this permitting requirement, as appropriate. Programs must also be added or modified to address all other identified constraints.

Building Codes and Enforcement: While the element clarifies the current building code utilized, it must also analyze local amendments to building codes as potential constraints, including the requirement to install automated water sprinkler systems as well as seismic standards and engineering requirements.

Constraints on Housing for Persons with Disabilities: While the element mentions that accessible accommodation procedures are in place (p. HE-34), it should also describe the applicable approval findings and processes for providing reasonable accommodations exceptions in zoning and land use, including what fees are charges, who is the approval body, and what time parameters are in place. In addition, the element should provide the City's definition of family and analyze it to determine whether it presents a potential constraint on housing for persons with disabilities and add or modify programs as appropriate.

Group Homes: The element must clarify how the City allows for group homes of seven or more persons in the jurisdiction, including what zones allow the use and what is the procedure for these types of development. For your information, 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. These housing types should not be excluded from residential zones, most notably low-density zones, which can constrain the availability of housing choices for persons with disabilities. Requiring these housing types to obtain a special use or Conditional Use Permit could potentially subject housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses.

Zoning, Development Standards and Fees: 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 availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and 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).)*

Availability of Financing: While the element provides data on average costs, more information should be provided regarding the availability of financing for the maintenance, improvement, and development of housing for all income levels.

Approval Times: The element must identify and analyze the actual length of time between receiving approval for housing development and submittal of application for building permits and discuss any hindrances on construction.

Developed Densities: The element must analyze requests to develop housing at densities below those anticipated in the sites inventory, including hinderance on the construction of a locality's share of the regional housing need.

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).)*

Special Housing Needs: The element reports data on households and persons with special housing needs. However, 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.

C. 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 achieve the goals and objectives of the housing element, programs should have specific commitment and discrete timing (e.g., at least annually, by 2025), as follows:

- *Program H(A-2) (City-Owned Sites)*: The Program should commit to comply with the Surplus Land Act and a schedule of actions to facilitate development (e.g., coordination with potential developers, relocation of existing uses, assistance with funding and site preparation, final entitlements, building permits and alternative measure such as rezoning if development does not progress as anticipated).
- *Program H(A-3) (First-Time Homebuyer Funding)*: The Program should go beyond considering linkage fees and should commit to subsequent steps and how often (e.g., at least annually) those steps will be taken
- *Program H(B-1) (Persons with Disability Outreach)*: Program outreach should include proactive methods and timing for how often outreach will occur as well as additional steps to facilitate development in the planning period. In addition, the Program must include quantifiable metrics or objectives and geographic targeting.
- *Program H(B-4) (Residential Development Streamline)*: The Program should go beyond reviewing zoning and development standards and commit to revise zoning and development standards.

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 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.

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 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 revitalization and displacement protection. Particularly, the element must include significant and meaningful action to enhance housing mobility. HCD will send examples under separate cover.

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).)

Include quantified objectives estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period. This requirement could be addressed by utilizing a matrix like the one illustrated below:

Income	New Construction	Rehabilitation	Conservation/ Preservation
Extremely Low-			
Very Low-			
Low-			
Moderate-			
Above Moderate-			
TOTAL			

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 element provides some discussion on how public comments were considered, a complete analysis of public participation should include a summary of how public input was or will be considered and incorporated in the element. For example, the element should describe policies and programs in element that resulted from public participation.