

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

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November 22, 2022

Suzanne Thorsen, Director
Community Development Department
City of Benicia
250 East L Street,
Benicia, CA 94510

RE: City of Benicia's 6th Cycle (2021-2029) Draft Housing Element Update

Dear Suzanne Thorsen:

Thank you for submitting the City of Benicia's draft housing element that was received for review on August 25, 2022, along with additional revisions received on November 18, 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. Our review was facilitated by a conversation on November 3, 2022. Participants on the call included you, Jason Hade, Planning Manager; Danielle Crider, Senior Planner; and City consultants Jenny Gastelum, and Amy Sinsheimer. In addition, HCD considered comments from both residents and advocates including, Steven Goetz, Natalie Macris, Aaron Barbell, and Maxwell Davis on behalf of East Bay for Everyone, 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. 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 to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c) (1) (A) and Government Code section 65583.2, subdivision (c) 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 responsiveness, dedication, and collaboration the City's housing element team provided during the 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 Irvin Saldana, of our staff, at Irvin.Saldana@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager,

Enclosure.

APPENDIX CITY OF BENICIA

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).)*

Racial/Ethnic Concentrated Areas of Affluence (RCAA): The element briefly mentions data related to RCAAs within the City, but generally should also evaluate the conditions and circumstances of these areas relative to the rest of the City, including incorporating local data and knowledge and other relevant factors.

Disproportionate Housing Needs, Including Displacement: The element provides some discussion on cost-burdened households and overcrowding. However, the element must evaluate trends and patterns within the City for substandard housing and persons experiencing homelessness. This analysis should utilize local data and knowledge and other relevant factors. For substandard housing, the element should discuss areas of the City where proportions of housing units needing rehabilitation may be higher than other areas and may utilize local knowledge such as qualitative information for code enforcement staff. For homelessness, the element should discuss protected characteristics (e.g., race, disability) and disproportionate impacts as well as areas of the City with higher need, including proximity to transportation and services.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element must include data on the location of regional housing need allocation (RHNA) sites by income group relative to all fair housing components. The analysis should address the number of units by income group and location, any isolation of the RHNA by income group, magnitude of the impact on existing concentrations of socio-economic characteristics and discuss how the sites improve fair housing conditions. The analysis should be supported by local data and knowledge and other relevant factors and programs should be added or modified as appropriate to promote inclusive and equitable communities.

Contributing Factors to Fair Housing Issues: The element should re-assess and prioritize contributing factors based on a complete analysis.

2. *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 realistic capacity assumptions are generally conservative and based on existing or approved residential developments, the elements realistic capacity assumptions must still account for land use controls and site improvements. In addition, residential capacity calculations should account for the likelihood of residential development in zones where 100 percent nonresidential uses are allowed. These assumptions should also go beyond recent approved development and consider additional factors such as, nonresidential performance standards that require residential use, incentives for residential use, market demand, efforts to attract and assist developers, the allowance of 100 percent residential development, and local or regional residential development trends in the same nonresidential zoning districts. The element should enhance existing policies and programs based on the analysis.

Nonvacant Site Analysis: The element must include an analysis demonstrating the potential for redevelopment of nonvacant sites. To address this requirement, the element provides a brief overview of each site, and provides the current use and zoning. To demonstrate the potential for redevelopment in the planning period the description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. In addition, the element should analyze the extent that existing uses may impede additional residential development. For example, site 27 (Southampton Shopping Center) and site 28, (Solano Square) are currently occupied by a Raley's and Safeway, the only two existing grocery stores in the city. The analysis must provide additional information that demonstrates whether these existing uses would impede development of these sites within the planning period. The element 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. The element could also consider indicators such as age and condition of the existing structure, expressed developer interest, low improvement to land value ratio, and other factors. Based on a complete analysis the element may need to add or revise programs to facilitate redevelopment.

Environmental Constraints: The element must describe environmental conditions within the city, relate those conditions to identified sites, and describe any other known environmental or other constraints, that could impact housing development on identified sites in the planning period. This is particularly significant as it appears that 10 sites are impacted by fire hazards, 14 sites are impacted by inland flooding, and 25 sites are affected by shoreline flooding or sea level rise (p. 103).

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.

3. *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 address impacts on housing supply (e.g., number of units), costs, timing and ability to achieve maximum densities. In addition, analysis should address several development standards, such as, landscaping requirements, heights, and minimum site area particularly for zones allowing multifamily uses. Based on the outcomes of a complete analysis, the element should include programs to address or remove the identified constraints. Finally, the element should evaluate the City's historic conservation plans including design guidelines as potential constraints on a variety of housing types.

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 element should analyze required findings and discuss whether these 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.

Processing and Permit Procedures: While the element provides general information on timeframes for approval of residential projects (p. 149), it should list typically required processing procedures by project type (e.g., single family and multifamily) and estimated processing times. For example, the analysis should address the typical number of hearings and list and evaluate approval findings for typical developments meeting zoning and general plan requirements. In addition, element will have to evaluate the Historic Preservation Review Commission (HPRC) and Planned Development (PD) process for impacts as a potential constraint on housing supply, cost, timing, and approval certainty.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards, and fees for

each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

4. *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).)*

Timing of Approval: While the element provides the length of time between receiving approval and the submittal of an application for building permits for single-family projects, the element must provide the typical length of time between receiving approval and the submittal of building permits for multifamily projects.

5. *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).)*

Farmworkers: While the element presents data on farmworkers within the County using USDA and ACS data, additional analysis must be included for farmworkers within the City. Seasonal and permanent farmworkers often have unique living situations, as a result, the element should acknowledge the housing needs of permanent and seasonal farmworkers at a City-level and should enhance existing policies and programs based on the analysis. For example, the analysis could describe zoning available to accommodate various housing types, such as manufactured homes, apartments, boarding houses, or single-room occupancy units, to address the needs of farmworkers. In addition, element should clarify compliance with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) specifically, 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.

Homelessness: While the City's police department estimates there are 100 persons experiencing homelessness within the City, the element should provide point in time data specific to the City. Point in time data can be acquired by contacting the local continuum of care such as the Community Action Partnership of Solano.

B. Housing Program

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 should be revised to include specific commitments and discrete timelines early in the planning period, Examples include:

- *Program 1.06 (Adequate Sites)*: Development standards should be adjusted prior to 2025.
- *Program 2.04 (Monitor Funding)*: The program should go beyond monitoring funding and commit to applying for funding at least bi-annually.
- *Program 2.05 (One Bay Area Grants)*: The element should commit to how often the City will apply for funding (e.g., at least annually).
- *Program 3.05 (Special Needs Housing)*: Program implementation actions should have specific dates; the City's zoning ordinance should be amended to comply with the Employee Housing Act before December 2025.
- *Program 4.05 (Rehabilitation and Preservation)*: The Program generally lacks commitment to any housing outcome in the planning period. Program actions could commit to working with the Housing Authority and other local agencies to develop a program that invests in Benicia's existing multifamily housing stock and creates a path to the permanent affordability of these units.
- *Program 4.07 (Code Enforcement)*: While program objectives commit to completing two windshield surveys during the planning period, program timeframes should provide specific dates for completion.

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 A2, 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:

Program 1.06 (Adequate Sites): HCD understands the City anticipates adopting a Housing Overlay prior to January 31, 2022. For your information, if these sites are not rezoned prior to the beginning of the planning period and if rezoning is necessary to accommodate a shortfall of adequate sites in the planning period, sites must permit housing by right pursuant to Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivisions (h) and (i). In addition, if relying on sites with zoning allowing less

than 20 units per acre to accommodate the housing needs of lower-income households, the element must include an analysis pursuant to Government Code section 65583.2, subdivision (c).

Lastly, the element should provide additional information on the City's housing overlay. For example, the element should analyze affordability requirements, incentives, development standards, and processing and permit procedures. For additional information, please see page 15 of HCD site inventory guidebook. [Housing Element Sites Inventory Guidebook \(ca.gov\)](#).

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 A3 and A4, 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 A1, the element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, milestones, geographic targeting and metrics or numerical outcomes and, as appropriate, must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community revitalization and displacement protection.

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

Program 1.12 (Accessory Dwelling Units(ADUs)) must include incentives such as flexible zoning requirements, modified development standards (reduced parking requirements), or processing and fee incentives that facilitate the creation of ADUs.

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 by income group, the element should expand the income categories to include extremely low-income units that will be constructed, rehabilitated, and conserved/preserved during the current planning period. In addition, conservation objectives should not be limited to at-risk preservation and can include broader efforts to conserve the existing housing stock such as

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 summary of the public participation process, it should summarize and describe how public comments were considered and incorporated throughout the housing element process.