

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

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November 22, 2022

Dan Schoenholz, Director
Community Development Department
City of Fremont
39550 Liberty Street
Fremont, CA 94538

Dear Dan Schoenholz:

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

Thank you for submitting the City of Fremont's (City) draft housing element received for review on August 25, 2022, along with revisions received on November 16, 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 YIMBY Law and Greenbelt Alliance, South Bay YIMBY, TransForm and Campaign for Fair Housing Elements and YIMBY Law pursuant to Government Code section 65585, subdivision (c).

The draft element addresses most statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

1. *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).)*

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... (Gov. Code, § 65583, subd. (c)(1).)

Nonvacant Sites: For your information, since nonvacant sites accommodate 50 percent or more of the lower-income need, the housing element must

describe “substantial evidence” that the existing use does not constitute an impediment for additional residential use on the site. Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Program 63 (Prioritize Affordable Housing on Public Property): While the program commits to promote surplus properties, it should also commit to a specific schedule of actions with discrete timing to facilitate development on public lands. Examples of actions include coordination with property owners, disposing of land or leasing land, removing barriers, assisting in site preparation, facilitating entitlements, assisting with funding, issuing permits and alternative actions if lands do not move forward with development by a specified date. HCD will send sample language under separate cover.

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. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

2. *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... (Gov. Code, § 65583, subd. (a)(5).)*

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... (Gov. Code, § 65583, subd. (c)(3).)

Constraints on Housing for Persons with Disabilities: The element must include an analysis of potential constraints on housing for persons with disabilities, as follows:

- *Reasonable Accommodation*: The element describes the City’s reasonable accommodation procedure, including listing approval findings. However, the element must analyze the approval findings. Specifically, the procedure requires a finding that the accommodation does not result in “substantial detriment of the residential character of that neighborhood”. The element should evaluate whether this finding acts as a constraint and add a program to address identified constraints.

- *Definition of Family*: The element describes the City's definition of family and concludes the definition is not a constraint on housing for persons with disabilities. However, the element must include analysis to support this conclusion. For example, the City's definition requires persons to have made a social, economic and psychological commitment to each other. The element should evaluate potential impacts of this provision on housing for persons with disabilities and add or modify programs to address identified constraints.
 - *Program 69 (Barriers for Large Residential Care Facilities)*: The program commits to amend zoning to permit group homes for seven or more persons by-right in multifamily and mixed-use zones. However, the program should also commit to allow these uses in lesser intensity residential zones (e.g., single-family) and should clarify these uses will only be subject to objective standards to facilitate approval certainty similar to other residential uses of the same type.
3. *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).)*

Programs: The element includes many meaningful actions to affirmatively further fair housing (AFFH). However, in most cases, these actions should also include geographic targeting and metrics or numerical outcomes. For example, Program 3 (Minor Home Repair) could geographically target areas of higher need or relatively lower-incomes and include a numerical outcome (e.g., number of units). HCD will send sample program approaches under separate cover.

4. *The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)*

While the element discusses how internal consistency will be achieved with other elements of the general plan as part of the housing element update (p. 1-1), it should also discuss how internal consistency within the general plan will be maintained throughout the planning period. For example, the element could discuss how internal consistency is evaluated as part of general plan updates or amendments or as part of the annual progress report pursuant to Government Code section 65400.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and adopted to comply with the above requirements.

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

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones 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.

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 Shawn Danino, of our staff, at Shawn.Danino@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