

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



July 12, 2023

Steven Turner, Director
Community Development Department
City of Newark
37101 Newark Blvd
Newark, CA 94560

Dear Steven Turner:

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

Thank you for submitting the City of Newark's (City) draft housing element update received for review on April 13, 2023, along with revisions received on June 30, 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. Our review was facilitated by conversations on May 23 and May 30, 2023 with you and your consultants, Paul Peninger and Clara Cheeves. 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 must continue to engage the community, including organizations that represent lower-income and special needs households; by making information regularly available while 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 hard work and dedication you and your consultants, Clara Cheeves and Paul Peninger, provided in preparation of the City's housing element and looks forward to working with the City toward a compliant housing element. 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

Enclosure

APPENDIX CITY OF NEWARK

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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> 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).)*

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.

Affirmatively Furthering Fair Housing (AFFH) and Identified Sites: The element provides some analysis of the identified sites and grouping of socio-economic concentrations. However, the element should quantify the regional housing need allocation (RHNA) by location or area and evaluate the impacts on the existing patterns of socio-economic characteristics. For example, the element should discuss the impacts of isolating a large portion of the RHNA by income group or lack of RHNA by income group in other planning areas. A complete analysis should fully assess how the site inventory is expected to improve and/or exacerbate fair housing conditions. This analysis should address the location, number of units by income group, magnitude of the impact and any isolation of the RHNA and add or modify programs as appropriate to improve fair housing conditions and promote more inclusive and equitable neighborhoods.

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).)

Overpayment: The element must quantify and analyze the number of lower-income households overpaying by tenure (i.e., renter and owner).

Age and Condition of the Housing Stock: The element analyzes the age of the housing stock as well as units lacking plumbing and kitchen facilities. However, the element must include an estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>.

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).)*

Parcel Listing: While the element lists sites by parcel number and acreage (Table C-2), it must also list sites by general plan designation, zoning, realistic capacity, and the number of units by affordability level.

Progress in Meeting the RHNA: The City's RHNA may be reduced by pending, approved, or completed projects; however, the element must demonstrate their availability in the planning period. The element lists pipeline projects (Site 7 and Sites 12 through 21) "with an active application". The element should generally discuss any remaining steps, barriers to development, phasing, build out or planning horizons and other relevant factors to demonstrate their availability in the planning period. In addition, the element may list the expected completion date for several projects.

Small and Large Sites: Sites larger than ten acres in size or smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites are suitable to accommodate housing for lower-income households. While the element included a few examples about developments with lot consolidation, it must also provide specific examples with the densities, affordability and, if applicable, circumstances leading to consolidation. The element should relate these examples to the sites identified to accommodate the RHNA for lower-income households to demonstrate that these sites can adequately accommodate the City's lower-income housing need. In addition, the element could describe its parceling strategy for the 14.7-acre site in the NewPark Place Specific Plan. Based on a complete analysis, the City should add or revise programs to

include incentives for facilitating development on these sites for housing affordable to lower-income households.

Realistic Capacity: 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.

Suitability of Nonvacant Sites: The element must include analysis demonstrating the potential for additional development on nonvacant sites. While the element mentions underutilized sites were identified based on assessed value (AV) and floor area ratios (FAR), it must support the validity of these assumption in demonstrating the potential for redevelopment and evaluate the extent existing uses impede additional development. For example, the element could utilize recent development activity. In addition, the element should consider additional factors such as building age, structural conditions and expressed interest in residential development. Finally, the element should account for the extent existing uses impede additional residential development including market demand for the existing use and existing leases or contracts that would perpetuate the existing use or prevent additional residential development.

In addition, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, 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.

Environmental Constraints: While the element generally describes environmental constraints were considered (p. C-68), it must also describe any other known environmental or other conditions (e.g., shape, easements, property conditions, contamination) that could impact housing development on identified sites in the planning period. The City, may, for example, discuss individual sites' outstanding environmental constraints and describe its strategy and timeline to mitigate these risks.

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:* The City must demonstrate compliance with laws governing emergency shelters including, but not limited to AB 139 related to parking requirements. In addition, Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element must address these statutory requirements. For example, the element should also clarify shelters are permitted without discretionary action and discuss available acreage in the zones allowed, including typical parcel sizes and the presence of reuse opportunities. In addition, the analysis should address proximity to transportation and services and any conditions inappropriate for human habitability. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.
 - *Low Barrier Navigation Centers:* Low Barrier Navigation Centers shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65661. The element must demonstrate compliance with this requirement and include programs as appropriate.
 - *Permanent Supportive Housing:* Supportive housing shall be a use by-right 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 and include programs as appropriate.
 - *Accessory Dwelling Units (ADUs):* The element should provide a date by which it expects to revise its ordinance to comply with state law.
 - *Single-Room Occupancies (SRO):* The element describes the zones in which SROs are currently permitted. However, given the success of SROs in providing housing for extremely low-income (ELI) households, the element should also describe how zoning will encourage and facilitate SRO development and what development standards SROs will be subject to.
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 identifies many land use controls as potential constraints on a variety of housing types. However, the analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to maximum units per building, maximum building coverage, FAR, required open space per unit, minimum lot area,

setbacks, height limits, parking 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.

Fees and Exactions: The element provides information on some fees but must describe all required fees for single family and multifamily housing development and analyze their impact as potential constraints on housing supply and affordability. The element should also describe and analyze fees such as those for obtaining a conditional use permit (CUP), general plan amendments, and zone changes. For example, the analysis could identify the total amount of fees and their proportion to the development costs for both single family and multifamily housing. For additional information and a sample analysis and tables, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/fees-and-exactions>.

Zoning and Fees Transparency: The element should clarify its compliance with new transparency requirements for posting fees and all zoning and development standards for each parcel on the jurisdiction's website.

Building Codes and their Enforcement: The element should clarify which building code is utilized and any local amendments and evaluate impacts on housing costs. In addition, the element should describe the type (e.g., complaint-based) and degree of code enforcement. 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>.

On and Off-site Improvements: While the element general describes necessary streetscape improvements in Specific Plan areas (p. 134), it should also identify subdivision level improvement requirements, and analyze their impact on housing costs. 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>.

Processing and Permit Procedures: While the element provides a description of the types of permits required for housing developments, it must describe and analyze the permits' processes, identify what is reviewed, typical findings and approval procedures by zone and housing type. The analysis must specifically address the threshold for a CUP on multifamily uses and special development permits. The analysis must evaluate impacts on housing supply (number of units), costs, timing, feasibility, and approval certainty.

Housing for Persons with Disabilities: The element should analyze potential constraints on housing for persons with disabilities, as follows:

- *Definition of Family*: The element briefly mentions a definition of family. However, the element should describe and analyze its definition of family and, if necessary, include a program to address identified constraints.
- *Reasonable Accommodation*: The element describes the general requirements of reasonable accommodation, but it should list and analyze approval findings for impacts on housing for persons with disabilities.
- *Group Homes for Seven or More Persons*: The element describes its procedures for permitting residential care facilities of seven or more persons. However, the element excludes group homes for seven or more persons from some residential zones and subjects the use to a CUP, unlike other similar uses. The element should specifically analyze these constraints for impacts on housing supply and choices and approval certainty and objectivity for housing for persons with disabilities and include programs as appropriate.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

Several programs and actions have timelines that should be moved earlier in the planning period to ensure a beneficial impact. Examples include Programs H2.3 (Four Corners Development), H2.6 (Housing Development on School Sites), H2.8 (Zoning for Missing Middle Housing), H3.4 (Housing in Mixed Use Zones), and H3.5 (Parking Requirement Changes).

Additionally, programs must have specific commitment to housing outcomes or deliverables. Several programs include actions with no description of how those actions will be implemented (e.g., “support”, “study”, “explore”, “evaluate”, etc.). For example, Program H2.8 describes the ‘pursuit of’ minimum lot widths of 50 feet and minimum lot sizes of 5,000 feet, and parking that ‘may include a minimum of 1 per unit outside specific plan areas’. However, it does not make a specific commitment to adjust these development standards and to what extent. Programs should be amended, to include specific commitment to a housing related outcome. Examples include, but are not limited to, Programs H2.3 (Four Corners Development), H2.6 (Housing Development on School Sites), H2.8 (Zoning for Missing Middle Housing), H3.4 (Housing in Mixed Use Zones), H3.5 (Parking Requirement Changes), and H5.3 (Public Lands for Affordable Housing).

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the*

inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)

As noted in Finding A3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

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 Finding 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 include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Programs to AFFH should go beyond status quo actions, include specific commitment, timing, geographic targeting and metrics or numerical targets and should, as appropriate, address housing mobility, encourage new housing choices in higher resource areas, improve place-based strategies toward community revitalization and protect existing residents from displacement.

The element may, for example, as discussed on the May 23 and May 30, 2023, commit to adopting an ordinance to allow Accessory Commercial Uses in residential neighborhoods and revise Program H2.1 or another similar program accordingly. The element may also, for example, revise Program H2.10 to establish development standards for missing middle housing typologies and/or SROs that encourage their development, for example in specific plan areas. To improve housing opportunities for persons experiencing homelessness or lower-income households employed in the City, the element could commit to additional applications for Project Homekey in areas of

higher need and opportunity by using a scattered sites approach. The City may also, for example, commit to establishing minimum densities across residential and mixed-use zones to provide more certainty in housing choices and affordability. Finally, the City may also, for example, discuss its efforts to improve pedestrian safety and active mobility as a way to increase access to opportunity.

Finally, the element should commit to assessing and revising programs through a mid-cycle review. Please see HCD's AFFH memo for more information:
https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf#page=23.

5. *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).)*

As noted in Finding A3, the City's ADU Program (Program H2.2) should commit to amend the ordinance as necessary to comply with ADU law by a specified date.

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).)

The element provides a summary of quantified objectives starting on page 198 of the policy document. These objectives include new construction and rehabilitation but must also include conservation objectives by income group. Conservation objectives may include the variety of strategies employed by the City to promote tenant stability and the preservation of units at-risk of conversion to market rate uses. In addition, the element could add missing middle objectives for 20 units in the 8-year planning period and pursuant to public comments received, HCD encourages the City to re-consider increasing these objectives, as well as Program H1.2 objectives to provide 12 rental inspections and Program H1.1's goal to provide 20 home rehabilitations.

D. Public Participation

Local governments shall make a diligent effort to achieve public participation oof all 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 made extensive efforts to reach the public, including hosting events and meeting with key stakeholders and summarizing community feedback, it should also discuss how input was incorporated into the housing element.