

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

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September 26, 2023

Michael Van Lonkhuysen, Planning Manager
Planning Department
Daly City
333 90th Street
Daly City, CA 94015

Dear Michael Van Lonkhuysen:

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

Thank you for submitting the Daly City's (City) draft housing element received for review on June 28, 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 YIMBY Law and 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.

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), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), Program 6.3 (Rezoning to Accommodate the Regional Housing Needs Allocation (RHNA) to rezone 973 units and Program 6.2 (Prior Identified Sites) must 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 make prior sites available or 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 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>.

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 Sohab Mehmood, of our staff, at sohab.mehmood@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX DALY CITY

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).)

Unaccommodated Regional Housing Need Allocation (RHNA) from the 5th Cycle: The element included a discussion regarding how the City addressed its unaccommodated need from the prior planning period (p. 133). However, the element also states that the City did not have an unaccommodated need for the 5th cycle (p. 21). The element should reconcile this information and clarify if the City needed to complete any required rezones to accommodate the 5th cycle RHNA.

Additionally, while the City included a discussion of alternative sites that were rezoned to accommodate the prior planning period rezones, the element must also demonstrate the sites comply with the requirements of Government Code section 65583.2, subdivisions (h) and (i). These requirements include rezoned sites have a site capacity of at least 16 units, permit rental and owner multifamily development without discretionary review at minimum densities of 20 dwelling units per acre, and that at least at least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for exclusive residential uses or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project.

The element must also demonstrate the sites were rezoned during the prior planning period which ended on January 31, 2023. (Gov. Code, §§ 65585 and 65588.) If the element does not demonstrate compliance with the statutory requirements, it must include programs to accommodate the unaccommodated need within the first year of the planning period. For additional information, go to <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos>.

B. Housing Needs, Resources, and Constraints

1. *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).)*

Extremely Low-Income Households (ELI): The element includes some general references to ELI households such as noting the methodology for determining projected ELI households and the need for an analysis (p. 132 and 168). However, the element must quantify the number of existing ELI households by tenure and analyze their housing needs, including overpayment, overcrowding and other characteristics, resources and strategies and the magnitude of housing needs. Additionally, the element must quantify the projected number of ELI households. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/extremely-low-income-housing-needs>.

Special Needs Households: The element includes data and a general discussion of housing challenges faced by special needs households. However, the element must be revised to include an analysis of the existing needs and resources for each special need group including farmworkers, seniors, large households, and ELI households (also noted above). For example, the element should discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

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).)*

Shortfall of Sites: The City has a shortfall of 973 units to accommodate the RHNA including 729 units for lower-income households. The element commits to implementing rezoning through identifying additional sites as R-3 and expanding the planned development zoning through Program 6.3. However, this program only commits to rezoning for 781 units, yet the City's total shortfall is 973 units. In addition, the element commits to rezoning portions of the C-1 and C-2 zones to the C-MU zone to allow for mixed-use and higher density development (Program 1.1) and increasing the permitted densities in several residential zones (Program 6.5). The element should clarify whether these programs (e.g., C-MU rezones and the density increases) are required to accommodate the RHNA. If these rezones are needed as part of accommodating the City's RHNA, the element must include commitments to rezone pursuant to all requirements under Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivisions (h) and (i).

Progress in Meeting the RHNA: As you know, the City's RHNA may be reduced by the number of new units built since July 1, 2022; however, the element must demonstrate their availability in the planning period. The element identified 3,092 units including 974 units for lower-income households that are either pending approvals, approved or under construction. While the element included the project status for each project, this does not demonstrate that the likelihood that these units will be available during the planning period. To demonstrate availability, the element could analyze infrastructure schedules, City's past completion rates on pipeline projects, outreach with project developers, describe any expiration dates on entitlements, anticipated timelines for final approvals, phasing requirements, and any remaining steps for projects to receive final entitlements. This analysis is particularly important for projects that were approved in past years but have still not requested building permits and large projects (e.g., over 150 units). Lastly, given the element's reliance on pipeline projects, the element must include programs with actions that commit to facilitating development and monitoring approvals of the projects (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals, etc.,).

Parcel Listing: The element lists parcels by various factors such as size, zoning, and general plan designation. While the element includes a general discussion of existing uses, the parcel listing must include a description of existing use and sufficient detail to facilitate an analysis of the potential for addition development on nonvacant sites.

Site Size: 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. The inventory includes sites of less than 0.5 acres for lower-income houses and several parcels that were aggregated to create a site. However, for sites expected to be aggregated, the element must describe circumstances leading to consolidation, such as common ownership, the City's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, specific examples of projects that were built for lower-income households on similarly sized sites, densities and affordability and relate those examples back to the sites inventory. Based on a complete analysis, the City should consider adding or revising programs to include incentives for facilitating development on small sites.

Realistic Capacity: The element is assuming 90 percent realistic capacity on most sites to accommodate the RHNA. To support this assumption, the element states that historical trends have generally developed at or above 90 percent of maximum allowable density and included four project examples (p. 141). However, this analysis is insufficient to support the assumptions in the element. A complete analysis should include and evaluate all recent development in the City by acreage, zone, allowable density, allowable uses, built uses, built densities and affordability. The element should also evaluate the proposed densities for projects in the pipeline and whether they support these assumptions. Further, it must account for land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. The element must include a robust analysis evaluating all

the factors mentioned above. Based on a complete analysis, the element may need to rescale assumptions.

Additionally, the element identifies sites in zones that appear to allow for nonresidential uses. The element must analyze the likelihood that the identified units will be developed as noted in the inventory in zones that allow 100 percent nonresidential uses. This analysis should consider the likelihood of nonresidential development, performance standards, and development trends supporting residential development. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/analysis-sites-and-zoning>.

AB 725: For jurisdictions that are considered Metropolitan, the element must identify at least 25 percent of the remaining moderate and above-moderate RHNA on sites that allow at least four units of housing (e.g., four plex or greater). (Gov. Code, § 65583.2, subd. (c)(4).).

Suitability of Nonvacant Sites: The element noted that most of the nonvacant sites are occupied by either parking lots or agricultural land uses. The inventory must sufficiently detail each site's existing use, as noted above. Second, the element also states that sites with existing agricultural uses are likely to redevelop due to having an improvement value (ILV) of less than 1.0, previous development trends, and expressed interest. The element must identify each site's ILV. Additionally, the element must support the assumption of redevelopment trends by including projects converting similar existing uses and characteristics to higher density residential development. Lastly, Sites 11 and 13 generally rely on previous or current interest and that a portion of the site is vacant. However, the element must include additional analysis to demonstrate the redevelopment potential of the site including evaluating existing uses, the degree of underutilization, development trends, and any other information.

Availability of Infrastructure: The element states that all sites have sufficient water, sewer, and dry utilities capacity (p. 145). However, the element later states that water capacity “should” be sufficient to accommodate future growth (p. 174). The element must reconcile this information and clearly analyze the City’s utilities capacity and whether it is sufficient to accommodate the RHNA. In addition to available capacity, the element must also demonstrate that all sites have access to sufficient current or planned utilities. Based on a complete analysis, the element may need to add or modify programs to address any constraints.

Sites Inventory Electronic Form: Please note, pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. 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. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element stated that this zone allows for emergency shelters by-right, it must specifically indicate whether it permits emergency shelters without discretionary action.

For your information, as of March 31, 2023, AB 2339 (2022) is now applicable to the City. AB 2339 (2022) specifies how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. While the element has addressed most requirements under this provision; it still should analyze the adequacy of sites identified in zones to accommodate emergency shelters without discretionary action. Specifically, the element stated the City has identified one site that is appropriate for emergency shelters due to its proximity to services and transit. However, the analysis should expand this statement and include additional information about the available services and transit in that zone.

Second, the element should address whether this site is vacant or nonvacant. If sites are generally nonvacant, the analysis must address the extent existing uses impede additional development. For example, to demonstrate the potential for redevelopment, the analysis could evaluate a sample of representative sites, the existing uses and reuse opportunities.

Lastly, the element must analyze the suitability of the identified zone e.g., C-R/O zone. While the element includes a very brief statement, indicating that this zone is close to services and transit, as mentioned above, the element should discuss the type of services and transit available, general uses in this zone and any conditions inappropriate for human habitability.

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 analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land use controls. In addition, the element should also evaluate any maximum lot coverage requirements in the R-3 zone and indicate whether the City allows 3 stories in the R-3 and C-1 zones. The analysis should evaluate for impacts on supply, housing choice, affordability, and ability to achieve maximum densities and include programs to address identified constraints.

Parking: The element indicated that multifamily projects are required to provide 1.5 spaces for one-bedroom units. The element should analyze these requirements including discussing whether the City requires guest parking and any parking coverage requirements. For your information, requiring smaller bedroom types (e.g., studio and one-bedrooms) to provide more than one space per unit is generally considered a constraint. Based on a complete analysis, the element may need to add or modify programs to address any potential or actual constraints.

Local Permit and Processing Procedures: The element should address public comments regarding compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

Inclusionary Housing: The element included a discussion of the City's inclusionary ordinance indicating that certain projects can pay in-lieu fees to meet the City's inclusionary requirements. However, the element should identify and analyze the required in-lieu fees. Additionally, the element stated that to offset any constraints the inclusionary ordinance may impose, the City implements a density bonus program. The element should clarify whether the City's density bonus program is in reference to state law or if the City implements a local density program. If state law, the element should discuss how the benefits of State Density Bonus Law (SDBL) are triggered. If a local law, the element should evaluate whether the program undermines the use of SDBL. A complete analysis must discuss and analyze the required in-lieu fees, available incentives, relationship with SDBL and any other factors that impact housing costs.

Codes and Enforcement: The element should describe and analyze how the City enforces building codes (e.g., complaint versus proactive based).

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).)*

Approval Times: The element must indicate and analyze the length of time between receiving approval for a housing development and submittal of an application for building permits. The element must address any hinderance on the development of housing and include programs as appropriate.

C. Housing Programs

1. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding B3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete

sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Shortfall of Sites – Program 6.3 (Rezoning for RHNA): The element indicates that rezones to accommodate a shortfall will be implemented through rezoning to the R-3 zone and expanding the planned development zone for specific sites to increase capacity. While the element commits to rezoning the R-3 areas pursuant to all the rezoning requirements (Gov. Code section 65583 (c)), the element must also demonstrate that the rezoning for the planned development zoning will comply with all the rezone requirements. Additionally, while the element identified sites and capacity to address the RHNA (after completing rezonings), the element does not include programs committing to rezoning for the entire shortfall. For example, Program 6.3 commits to rezoning for 781 units, however the City's total shortfall is 973 units.

In addition, the element must clarify whether Programs 1.1-1.5 (C-MU Zoning) and 6.5 (Increasing Densities in Several Residential Zones) are needed to accommodate the City's RHNA, and if so, address the requirements above.

2. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

While the element includes programs to assist in the development of very low-, low-, and moderate-income households, it must also include a program(s) to assist in the development of housing for persons experiencing homelessness. Program actions could include proactive outreach and assistance to non-profit service providers and developers, prioritizing some funding for housing developments affordable to special needs households and offering financial incentives or regulatory concessions to encourage a variety of housing types.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings B4 and B5, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

While the element includes some programs to address Affirmatively Furthering Fair Housing (AFFH), programs must be significant and meaningful to overcome contributing factors and address fair housing issues. Second, given the patterns and trends throughout the City, the element will need to include stronger programs to address housing mobility and increasing housing choices and affordability in higher-income areas (e.g., along Skyline Blvd) and place-based strategies for community revitalization (e.g., northeastern/Bayshore neighborhoods). Third, these programs must have specific geographic targeting to relevant quadrants, designations (higher-income areas), census tracts or neighborhoods in the City. Lastly, the element must include metrics that target impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed). For a list of sample policies and programs, please visit page 73 of HCD's AFFH Guidance: https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf.

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 stated that it will consider and incorporate public comments throughout the drafting of the housing element (p. 11); the element must summarize public comments and discuss how comments were considered and incorporated where applicable. To address this, the element could summarize key themes from public comments and feedback and include corresponding programs, actions, strategies, or information on how the City addressed various themes.