

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

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January 25, 2023

Sofia Mangalam, Director
Planning and Building Department
Town of Los Altos Hills
26379 Fremont Road
Los Altos Hills, CA 94022

Dear Sofia Mangalam:

RE: Town of Los Altos Hills' 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the Town of Los Altos Hills' (Town) draft housing element that was received for review on October 27, 2022 along with revisions on January 9, 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 a conversation on December 22, 2022 with yourself, City Manager Peter Pirnejad, and attorneys Steve Mattas and Claire Lai from Meyers Nave. In addition, HCD considered comments from Kevin Meyer, YIMBY Law, South Bay YIMBY, Sasha Zborzek, Adam Buchbinder, Elain Haight, Chuong Vu, Campaign for Fair Housing Elements, and the League of Women Voters of Los Altos-Mountain View Area 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 these 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 pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 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 Town 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 town 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 Town 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 town 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 work and assistance the Town's housing element team provided during the update and review. We are committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Reid Miller, of our staff, at Reid.Miller@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX TOWN OF LOS ALTOS HILLS

The following changes are necessary to bring the Town'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 requirement is one of the most important features of the element update. The review of past programs should describe progress in implementation of previous actions, including results compared to objectives and evaluate the effectiveness of actions to make appropriate adjustments in the current planning period. Specifically, the prior element included Program 19 (Support Foothill College). This Program was geared toward promoting housing variety and affordability, housing mobility and inclusion into the Town given the lack of multifamily zoning. Yet, the current element does not evaluate past commitments, progress or effectiveness and merely states a new program is included. For example, the Program committed to amend the general plan and zoning to permit multifamily as well as meeting with developers and applying for funding to encourage affordable multifamily development.

The element omits the depth and importance of this commitment and did not discuss or evaluate the effectiveness of multifamily zoning, lack of alternative measures taken and outreach efforts. To address this requirement, the element must fully describe past commitments, progress in implementation, evaluate effectiveness and then discuss appropriate adjustments in the current planning period. Given the apparent lack of effectiveness and success in developing multifamily choices and affordability, this analysis should particularly focus on zoning for a variety of housing types, including multifamily and discuss significant actions to promote housing choice, affordability, and mobility to facilitate inclusion beyond the regional housing need allocation (RHNA) and beyond complying with related state laws (e.g., ADU law and SB 9).

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).)*

Income and Racial Concentration of Affluence (RCAA): The element briefly mentions incomes in the Town compared to the region as well as the entire Town's status as a RCAA. The element should include specific analysis of income and RCAA at a regional level (Town compared to the broader region). The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within and beyond Town boundaries (not limited to the RHNA).

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element includes some general discussion and conclusions that identified sites for lower-income households, while concentrated on three sites in a proposed multifamily housing overlay, do not exacerbate existing patterns of development in the Town. In addition, the element should include analysis to support these conclusions, including the number of units per site by income group for each of the AFFH categories relative to the existing patterns (number of households), impacts on patterns of disproportionate housing needs (e.g., overpayment, overcrowding, displacement) and expanding on the reasoning for apparently isolating the RHNA for lower-income households. Further, if the inventory continues to isolate the RHNA for lower-income households in certain areas, the element must have commensurate programs related to housing mobility and new opportunities in higher opportunity areas (beyond RHNA and throughout the Town) to promote inclusion and AFFH throughout the Town.

Local Data and Knowledge: The element does not address this requirement. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the Town related to fair housing issues. The housing element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. For example, the element could include information from code enforcement officers related to housing conditions, lack of public investment in affordable housing and relationships with the college.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess contributing factors and prioritize those factors then formulate appropriate policies and programs.

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).)

Extremely Low Income (ELI): While the element reports on households by income and mentions ELI households, it must analyze the housing needs of ELI households to formulate appropriate policies and programs. The analysis should address trends, tenure, overpayment, overcrowding and other characteristics and examine resources, disproportionate housing needs and the magnitude of the gap in addressing housing needs. Based on the outcomes of the analysis, the element should add or modify programs as appropriate.

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 Residential Capacity: While the element notes a lack of past trends or experience with multifamily development, it must still include a methodology for calculating residential capacity and account for land use controls and recent experience, including affordability. To address this requirement, the element could utilize a minimum density and no further analysis is required. Otherwise, the element could examine trends in the broader region in comparable zones by listing developments by zones, allowable and built density and affordability. In addition, since the element is utilizing an overlay zone, uses in the base zoning are still allowed and the methodology should account for the likelihood that development will occur or not occur according to the uses allowed by the base zoning. For example, the element could explain interest in multifamily development and add or modify programs to establish incentives for multifamily development and evaluate (mid-planning period) the effectiveness of the new zone in promoting multifamily development, including appropriate responses if the zoning is not effective. Alternatively, the element could commit to replace the base zoning with a multifamily zone instead of an overlay zone.

Suitability of Nonvacant Sites: The element identifies nonvacant sites to accommodate the regional housing need for households of all incomes. not adequate to demonstrate the suitability of these sites. A complete analysis should describe the methodology used to determine the additional development potential within the planning period. The methodology must consider factors including the extent to which existing uses may impede additional residential development, including market demand for the current uses, leases or other indicators of turnover in uses.

Additionally, HCD received several public comments related to the lack of availability of identified sites such as owners of both the Foothill College site and the St. Nicholas Catholic School site explaining no interest in residential development in the planning period. While expressed interest in development is not necessarily required for sites to be used in the Town's sites inventory, statements made by these property owners seem to indicate that residential development on these sites is highly unlikely in the planning period, especially at the densities and affordability levels indicated in the element. The

element should address this lack of owner interest in development and provide alternative sites as needed to accommodate the Town's RHNA.

Finally, while the element notes that greater than 50 percent of the lower-income RHNA is identified on vacant sites, upon a complete analysis of identified sites, if this conclusion changes, specific actions are necessary if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. 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. 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.

Large Sites: Sites greater than ten acres are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or other evidence demonstrates the suitability of these sites. The element currently discusses how smaller portions of larger sites will be used toward the lower-income RHNA. However, the element should discuss how these smaller portions will be established and add or modify programs to encourage appropriately sized parceling or site planning. For example, the analysis could describe interest and plans from property owners or comparable developments in nearby communities.

Senate Bill 9 (Statutes of 2021) Projections: The element is projecting 32 units that will be developed based on the passage of SB 9 (Statutes of 2021) to accommodate a portion of its above moderate income RHNA. To utilize projections based on SB 9 legislation, the element must; 1) include a site-specific inventory of sites where SB 9 projections are being applied; 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute as an impediment for additional residential use and; 3) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9.

Accessory Dwelling Units (ADU): The element uses the Association of Bay Area analysis of ADU rents. However, these assumptions should also consider the Town's survey information and market rents from comparable and nearby communities and projections and affordability assumptions should consider other relevant factors such as availability of the units for rent.

Availability of Infrastructure: While the element includes some discussion of water and sewer capacity, it should specifically address whether sufficient total capacity is available or planned to accommodate the RHNA and modify Program B-8 (Infrastructure) as appropriate based on the outcomes of the analysis.

Environmental Constraints: While the element generally describes potential environmental constraints, it must still describe how these conditions relate to the St. Nicholas Catholic

School and Twin Oaks Court Sites. In addition, the element should discuss any other known environmental or other conditions (e.g., shape, contamination, easements, accessibility) that could preclude or impact housing development on identified sites in the planning period.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town 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 Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Employee Housing*: The element includes a program to amend zoning to permit employee housing similar to single-family uses pursuant to Health and Safety Code section 17021.5. However, the element should also discuss compliance with Health and Safety Code sections 17021.6 and 17021.8 and add or modify programs if necessary. For example, 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 zones allowing agricultural uses.
- *Emergency Shelters*: The element notes emergency shelters are permitted in the R-A zone but should also clarify these uses are permitted without discretionary action. In addition, the element lists several development standards that may impact capacity and the analysis should account for these factors. The element should also include specific commitment to amend development standards which appear to be constraints or contrary to state law including spacing or proximity provisions, bed limits and parking requirements. Finally, if intending to identify a new zone, the element should discuss potential capacity and include specific commitment to amend zoning appropriately, including development standards that comply with Government Code section 65583, subdivision (a)(4). Finally, statute was recently amended to specify how to demonstrate suitable sites and sufficient capacity to accommodate the need for emergency shelters. Future submittals may need to address these requirements. For more information and applicable timing, see HCD's AB 2993 memorandum at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

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: While the element generally describes land-use controls and identifies constraints on development, it then concludes the new multifamily overlay

zone will address these constraints. However, the element should discuss the constraints on existing allowable uses and add or modify programs as appropriate. In addition, the element, based on public feedback (p. 9) notes the line contour formula may be a constraint but should include specific analysis as a potential constraint. This analysis should also discuss story poles. The analysis should address impacts on housing supply (number of units), cost, feasibility, timing and ability to achieve maximum densities.

In addition, the Town does not contain any provisions for development on sites less than one acre, severely impacting housing choices since Town incorporation (p. 112) and there are no multifamily units in the Town. Essentially, there is a lack of a variety of minimum lot sizes and allowable densities. The lack of a variety of lot sizes and densities can impact housing supply, choices and affordability. As a result, the element should include analysis of the impacts of a large lot land use pattern and include programs as appropriate such as establish zoning for a variety of lot sizes and densities regardless of RHNA. These programs should further commit to appropriate development standards to facilitate intended densities.

Finally, the element lists various standards to implement Government Code sections 65852.21 and 66411.7 (SB 9) but should also analyze those standards, compliance with the law and add or modify programs as appropriate to comply with state law.

Fees and Exaction: The element lists total development fees for single-family and multifamily development but should also list the various fees that comprise the total fees per unit. For example, the element should list and evaluate the various impact fees per unit for impacts on housing cost.

Processing and Permit Procedures: While the element generally describes processing and permitting procedures, it must still list and evaluate the site development permit and design review, including typical approval findings, typical number of hearings if applicable, and timing and then evaluate impacts on housing supply, cost, feasibility and approval certainty.

Constraints on Housing for Persons with Disabilities: The element concludes the Town has a definition of family that does pose a constraint to housing for persons with disabilities. However, the element should evaluate its potential impacts, including impacts on unrelated persons. For example, the element could explain the application of provisions such as “close social or economic or psychological commitments to each other” and whether that impacts unrelated persons.

On/Off-Site Improvements: The element generally describes some on-site improvements but identify the actual standards and any off-site improvements applied to typical development then analyze impacts on housing costs and add or modify programs if appropriate.

Codes and Enforcement: The element explains that code enforcement is generally reactive in response to complaints but should also discuss which building code is

utilized (e.g., 2022) and identify and analyze any local amendments for impacts on housing costs.

Other Local Ordinances: The element must analyze any locally adopted ordinances that directly impacts the cost and supply or residential development (e.g., inclusionary requirements, short term rentals, growth controls).

5. *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 identify the length of time between receiving approval for housing development and submittal of application for building permits and discuss any hindrances on construction.

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 Town may need to add or revise programs to address an additional shortfall of sites or zoning available to encourage a variety of housing types. Additionally, the element should be revised as follows:

- *Shortfall of Sites:* The element describes a shortfall of sites and indicates rezoning will occur to accommodate the RHNA. While the element includes Program A-1 (Availability of Adequate Sites for New Housing to meet the RHNA), it must specifically commit to acreage, allowable densities, appropriate development standards, anticipated units and meet all requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i).
- *Program A-3 (Town-owned Sites):* The Program should go beyond reviewing sites and commit to identify sites, including a schedule of actions to facilitate development, compliance with the Surplus Land Act and numerical objectives.

- *Program E-2 (Emergency Shelters)*: The Program should specifically commit to remove or modify development standards or identify an additional zone based on a complete analysis as described in Finding B3.
- *Program E-4 (Transitional and Supportive Housing)*: The Program commits to amend zoning to comply with AB 2162 (By-right Permanent Supportive Housing) but should also specifically commit to permit transitional and supportive housing as a residential use in all zones allowing residential uses and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. These requirements are separate and in addition to AB 2162.
- *Program E-9 (Single Room Occupancy (SRO))*: The Program should explore and establish additional zoning opportunities given the lack of results in the prior planning period.
- *Future Zones*: The element should commit to allow uses as appropriate in any future zones, including in the multifamily zones or other zones that may be created as a result of a complete analysis of zoning for a variety of housing types. For example, future zoning may need to incorporate transitional and supportive housing and ADUs.

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).)*

The element must include a program to assist in the development of adequate housing to meet the needs of lower and moderate-income households, including ELI and special needs households. These actions should be significant and specific, given the lack of implementation and results in the prior planning periods. Examples of actions include proactive an annual outreach to developers of affordable housing, assisting with funding, supporting funding applications, land acquisition, priority processing, fee waivers, concessions and incentives beyond State Density Bonus Law, assistance with infrastructure and site improvements and monitoring and adjustment at least annually.

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

As noted in Findings B4 and B5, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town 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 must include a complete analysis of AFFH. The element must be revised to add 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, discrete timing, geographic targeting and metrics or numerical targets. Programs, as appropriate, must address housing mobility enhancement, new housing choices and affordability in higher opportunity areas (throughout the Town), place-based strategies for community preservation and revitalization and displacement protection. For example, the element must add significant and meaningful housing mobility and new housing choices and affordability actions (not limited to the RHNA) to overcome the existing patterns in the Town related to the broader region.

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).)*

While the element includes Program A-7 (ADU Tracking and Monitoring) to monitor ADU production and affordability and adopt another ADU program, if necessary, the Program should commit to rezoning if production and affordability is significantly not meeting assumptions in the sites inventory.