

**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



August 29, 2022

Kristie Wheeler, Assistant Director
Community Development Department
City of Dublin
100 Civic Plaza
Dublin, CA 94568

Dear Kristie Wheeler:

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

Thank you for submitting the City of Dublin's (City) draft housing element received for review on May 31, 2022, along with revisions received on July 25, 2022 and August 15, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on July 7, 2022 with Michael Cass, Principal Planner and consultants Bill Wiseman and Ines Galmiche. In addition, HCD considered comments from Tom Evans, South Bay YIMBY, and Building Industry Association of the Bay Area (BIA) pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. 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 are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly

available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the hard work and dedication the 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 Jose Ayala, of our staff, at Jose.Ayala@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF DUBLIN

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Enforcement and Outreach: The element includes a general statement that the City complies with State and local fair housing laws; however, it should provide discussion to support this statement such as listing some state and federal housing laws and describing how the City complies with these laws. For more information on fair housing laws, please see HCD's guidance (p. 28) at <https://www.hcd.ca.gov/affirmatively-furthering-fair-housing>.

Integration and Segregation: While the element adds additional information and data, it must analyze this data for trends over time, patterns across census tracts, and coincidence with other components of the assessment of fair housing. Additionally, the element must evaluate patterns on a regional basis, comparing the City within the Tri-Valley subregion and Alameda County or bay area region as a whole. This analysis should particularly emphasize disparities in income compared to the region and include appropriate programmatic responses to encourage housing mobility and promote new affordable housing opportunities, regardless of the regional housing need allocation (RHNA).

Racially Concentrated Areas of Affluence (RCAA): While the element adds information for HCD's AFFH Data Viewer, the element must also include an analysis regarding the presence of a RCAA in the jurisdiction. The analysis should evaluate the patterns and changes over time at a local (e.g., neighborhood to neighborhood) and regional level (e.g., City to Tri-Valley and City to County).

Disproportionate Housing Need: While the element adds data regarding homelessness counts over the past five years, it should include meaningful analysis from this data, including disproportionate impacts on protected characteristics (e.g., race, family,

disability), patterns of need and access to opportunities, including services, and transportation.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element includes some discussion of the number of sites by concentrations of socio-economic characteristics. However, this approach to whether identified sites affirmatively further fair housing does not account for where the sites are located. The analysis should address the number of units by all income groups, and location (e.g., neighborhood, planning area, census tract), discuss any isolation of the RHNA by income group and evaluate the magnitude of the impact on existing concentrations of socio-economic characteristics by area. The analysis should be supported by local data and knowledge and other relevant factors and address overlapping fair housing issues with other components of the assessment of fair housing (e.g., segregation and integration, concentrated areas of poverty, disparities in access to opportunity).

Local Data and Knowledge: The element includes some code enforcement data and public outreach, but generally does not meet this requirement. The element must incorporate public outreach into the evaluation of fair housing. For example, the element includes public comment about how the City needs more affordable housing and then another public comment to not build apartments. These comments could be incorporated into the discussion of segregation and integration, explaining a high need for housing choices but then opposition to address that could contribute to the disparities of incomes when comparing the City to the broader region. Further, the City could utilize other sources of local data and knowledge to supplement the data and mapping including planning documents such as locally adopted ordinances, other elements of the general plan, infrastructure assessments, and mobility assessments to fully describe the impacts on fair housing patterns and trends.

Other Relevant Factors: While the element adds general information regarding redlining and anti-displacement policies, the element should complement federal, state, and regional data with other relevant factors. Other relevant factors include describing historical zoning and land use practices, the presence of any CC&Rs (or lack thereof), Camp Parks, and local, state, federal investments in Dublin, such as any community improvement plans, Bay Area Rapid Transit (BART), and the expansion of Dublin east of Dougherty Blvd to fully analyze factors related to fair housing issues in the City. This analysis should discuss how other relevant factors affect the patterns and disparities in access to opportunities in the City and region.

Contributing Factors: The element mentions fair housing issues and goals and priorities from the analysis on fair housing. However, these issues and goals do not appear adequate to facilitate the formulation of significant and meaningful action to AFFH. The element should re-assess and *prioritize* contributing factors upon completion of analysis and make revisions as appropriate.

Goals, Actions, Metrics, and Milestones: The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing

factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitments, milestones, geographic targeting, and metrics and given that most of the City is considered a higher-income community, the element should focus on programs that enhance housing mobility and encourage the development of more affordable housing choices in an inclusive manner.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Realistic Capacity: The element does not meet this requirement. Currently, the element (pp. D-9 and D-10) state the City calculated unit capacity on sites, there is no supportive information to justify buildout assumptions. While the element provides assumptions of buildout for sites included in the inventory, it must also describe the specific trends, factors, and other evidence that led to the assumptions. For some sites, the City appears to list the maximum density allowed in a zone multiplied by the size of the parcel. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and the current or planned availability and accessibility of sufficient water.

In addition, the element must account for the likelihood of 100 percent nonresidential uses in zones that allow 100 percent nonresidential uses or are designed for nonresidential uses. The analysis should discuss what zones allow 100 percent nonresidential uses, the presence or absence of any performance standards requiring residential uses, recent trends of all development in these zones, how often 100 percent nonresidential uses occurs, and account for that likelihood in the calculation of residential capacity.

Suitability of Nonvacant Sites: The element must include an analysis demonstrating the potential for redevelopment of nonvacant sites. The analysis shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city's or county's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. For example, Sites 18-20 are identified with existing big box store and parking lot uses, but no analysis was provided to demonstrate whether these existing uses would impede residential development of these sites. Additionally, Sites 23 and 25 have existing residential uses on the site. The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for residential development within the planning period. The element can summarize past experiences converting

existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. The element could also consider indicators such as age and condition of the existing structure expressed developer interest, low improvement to land value ratio, and other factors.

Accessory Dwelling Units (ADU): The element projects 248 ADUs over the planning period which well exceeds recent production (15 units per year). While the element includes Program B-7 (ADUs) with a few actions to promote ADUs, the element should reduce the number of ADUs assumed per year (e.g., 20 units per year) and utilize more recent information on permitted units to support realistic assumptions.

Large Sites: While the element states large sites will only use ten acres of buildable acreage to accommodate lower-income RHNA, it must still provide analysis regarding the development of housing for lower-income households on large sites where the acreage exceeds ten acres. For example, the element should describe how development will work on site, including opportunities and timing for specific-plan development, further subdivision, parceling, site planning or other methods to facilitate appropriately sized sizes and encourage the development of housing affordable to lower-income households on the identified site within the planning period. Absent sufficient evidence that sites of equivalent size with affordability were successfully developed during the planning prior planning period or other evidence that demonstrates the suitability of these sites, the large sites are deemed inadequate to accommodate housing for lower-income households. Based on the outcomes of this analysis, the element should add or modify programs.

Publicly-Owned Sites: Pursuant to Government Code section 65583, subdivision (c)(1), rezones to accommodate a shortfall must occur within three years of adoption of the housing element. While Program C.1 (Sites Inventory and RHNA Monitoring) states rezoning strategies will occur within three years of the January 31, 2023 submittal deadline, Program B.16 (Publicly-Owned Lands) states has a timeframe of three to five years. Program B.16 should include a specific commitment to facilitate development on these sites in the planning period. For example, instead of stating the City will coordinate with the Alameda County Surplus Property Authority within three to five years, the element should include the actual schedule and the actual actions with timing necessary to allow development in the planning period, including any known impediments to development (e.g., leasing, surplusing). In addition, Program C.1 or B.16 should include actions to facilitate development such as zoning, outreach with developers, incentives, fee waivers, priority processing, and financial assistance. Therefore, the City must amend Program B.16 to address the timing inconsistency and include the relevant development actions described herein, or identify additional sites to ensure available sites for the planning period.

Environmental Constraints: While the element generally concludes that identified sites are not environmentally constrained, it should also discuss whether there are any other

known conditions precluding development on identified sites (e.g., irregular shapes, leases, contamination, title conditions, lawsuits) and add or modify programs as appropriate.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element includes a discussion of capacity and a program to modify parking requirements but it should also list all development standards and evaluate compliance with state requirements, including any constraints on the development of emergency shelters.
 - *Transitional and Supportive Housing:* Transitional and supportive housing must be permitted 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. (Gov. Code, § 65583, subd. (a)(5).) The element must demonstrate compliance with these requirements or add or revise programs that comply with the statutory requirements.
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: While the element describes development standards and some land use controls, it must also analyze those land use controls for impacts on housing supply (number of units), costs, financial feasibility, timing, approval certainty and ability to achieve maximum densities without exceptions (e.g., conditional use permits, variance, planned development).

In addition, the element concludes parking requirements are not an impediment to development; however, no analysis or supporting information was provided. The element should address parking requirements for multifamily development, particularly the covered or garaged parking requirement plus guest parking space for smaller bedroom types for impacts on cost, supply, housing choice, and financial feasibility and include programs to address identified constraints.

Processing and Permit Procedures: While the element now describes that most residential development requires a site development review and lists the approval body and required findings, it must also analyze the impacts on housing supply, cost, timing and approval certainty. For example, the element notes site development reviews are subject to planning commission approval but should also discuss the typical number of hearings and whether projects often are subject to subsequent submittal. Also, some listed approval findings appear subjective and should be evaluated for impact approval certainty, costs and timing.

In addition, the element generally describes a Planned Development (PD) Zoning District Ordinance process but must analyze this process for impacts on supply, cost, financial feasibility, timing and approval certainty. For example, the analysis should clearly state whether the Planned Development process is mandatory or optional, whether the burden of establishing zoning and development standards typically rests with the City or developers, particularly on identified sites, impacts of the PD Zoning Ordinance's process to obtain a Stage 2 Development Plan, the potential for projects to be subject to a referendum under the Ordinance, any additional legislative approvals and any other requirements or mechanisms that may act as a constraint. For your information, a zone that lacks fixed development standards is not zoning and is considered a constraint on development and may not be utilized toward the RHNA unless a program is added to establish zoning and development standards pursuant to Government Code section 65583 (c)(1). In addition, the element must also describe the Ordinance's compliance with state housing laws, including, but not limited to, SB 330's five-hearing limit, time limits associated with the Permit Streamlining Act, and any additional constraints that might only be resolved through litigation under the Housing Accountability Act, creating an additional constraint on residential development. The element must add or modify programs to address this constraint on development.

Inclusionary Housing: While the element describes the City's inclusionary requirements, it should also describe how the City's inclusionary requirements work with other state housing laws, such as State Density Bonus Law.

Constraints on Housing for Persons with Disabilities: The element must evaluate constraints on housing for persons with disabilities, as follows:

- *Reasonable Accommodation:* The element indicates a reasonable accommodation is subject to a zoning clearance and must meet various development standards like design compatibility, setbacks and lot coverage. The element further describes no requests have occurred in recent years and applicants may utilize the planned development process – a highly complicated and costly discretionary process that takes a year. First, the lack of requests is not an indicator that the current process works and is more an indicator the process acts as a constraint. Second, a reasonable accommodation is intended as an exception process to zoning, development standards and any other land use controls to provide access to housing for persons with disabilities. Contrarily, the City requires requests for exceptions to meet development standards. This

process is a clear constraint on housing for persons with disabilities and the element must add or modify programs to establish an appropriate process.

- *Definition of Family:* The element defines a family as “one or more persons occupying a dwelling and living as a single, nonprofit housekeeping unit, including any servants”. The element distinguished this definition from a group occupying a boarding house, community care facility, supportive or transitional housing when configured as group housing, hotel or motel, club, fraternity, or sorority house. These housing types should not be excluded from residential zones, most notably low-density zones, which can constrain the availability of housing choices for persons with disabilities. The element should analyze the definition of family and exclusion of several housing types as a potential constraint for persons with disabilities and add or modify programs as appropriate.

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 mentions requirements to analyze the length of time between application approval and building permits and then concludes projects are constructed in a reasonable time. However, to better inform the analysis and policies and programs, the element must identify the actual length of time between receiving approval for housing development and submittal of application for building permits and discuss any hindrances on construction.

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).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines (e.g., month and year), including for Program A.4 (Condominium Conversion Ordinance), Program A.5 (Preserve and Monitor Affordable Units At-Risk of Converting to Market Rate), Program B.4 (Inclusionary Zoning), Program B.5 (Commercial Linkage Fee), Program B.7 (Accessory Dwelling Units and Junior Accessory Dwelling Units), Program B.9 (Non-Vacant Adequate Sites to Satisfy By-Right Requirements of AB 1397), Program B.11 (Transitional and Supportive Housing), Program B.12 (Single-Room Occupancy), Program B.15 (Replacement Housing), Program B.16 (Publicly-Owned Lands), Program

B.17 (Community Care Facilities), Program C.2 (Safety Element and Environmental Justice Policies), Program D.3 (Emergency Shelters), Program D.4 (Monitoring of Development Fees), Program E.1 (Affirmatively Further Fair Housing), Program E.2 (Equal Housing Opportunity), Program E.4 (Low-Barrier Navigation Centers), Program E.5 (Housing for Persons with Developmental Disabilities), Program E.6 (Farmworker and Employee Housing), and Program E.7 (First-Time Homebuyer Loan Program).

Additionally, all programs should be evaluated to ensure meaningful and specific actions, objectives, and commitments. Programs containing unclear language (e.g., “consider”; etc.) should be amended to include specific and measurable actions. These programs include Program B.12 (Single-Room Occupancy).

In addition, many program actions involve a review of existing standards, procedures, and practices, and additional actions “as necessary” or “if needed”. However, the programs should list the specific trigger for additional action, such as the amount of code enforcement cases in Program A.3 (Code Enforcement) or the pace of condominium conversions for Program A.4 (Condominium Conversion Ordinance). The element should review all programs with such language, and describe what action, or lack thereof, would trigger additional program changes.

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

As noted in Finding A2, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City must add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element must be revised as follows:

Adequate Sites: The element describes a shortfall of sites (p. D-15) and indicates rezoning will occur to accommodate the RHNA. While the element includes Program C.1 (Sites Inventory and RHNA Monitoring), it must specifically commit to acreage, allowable densities and anticipated units. In addition, if necessary, to accommodate the housing needs of lower-income households, programs should specifically commit to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i).

Publicly-Owned Sites: As previously described, Program B.16 must be revised to ensure sites on publicly-owned land are made available within three years of the beginning of the planning period. This program should commit to a schedule of actions for development, such as coordinating with developers, making zoning available, issuing requests for proposals, facilitating subsequent entitlement and issue permits.

The program should also include a numeric objective consistent with the assumptions in the sites inventory.

Large Sites: The element must add a program to facilitate the development of lower-income housing on sites with an acreage of more than ten acres. This program should include a schedule of actions to facilitate parceling and zoning consistent with site inventory assumptions on appropriately sized sites (e.g., 1 to 10 acres).

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

As noted in Findings A3 and A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

In addition, Program B.17 (Community Care Facilities) should commit to amend zoning to allow these uses in all zones allowing residential uses.

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.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance. (Gov. Code, § 65583, subd. (c)(6).)*

Program A.5 (Preserve and Monitor Affordable Units At-Risk of Converting to Market Rate) should be revised to commit to proactively seeking funding for units at-risk of converting to market rate uses.

C. 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 describes the public input received through the community outreach process, it generally describes why changes are not needed instead of responding with revisions. The City should re-consider public comments and make changes to the element.