

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

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November 7, 2022

Timothy Rood, Director
Community Development Department
City of Hercules
111 Civic Drive
Hercules, CA 94547

Dear Timothy Rood,

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

Thank you for submitting the City of Hercules (City) draft housing element update received for review on August 9, 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. HCD considered comments from YIMBY Law and Greenbelt Alliance, 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.

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

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance

pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c) (1) (A) and Government Code section 65583.2, subdivision (c) are completed.

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

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

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 Connor Finney, of our staff, at Connor.Finney@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF HERCULES

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. Review and Revise

Government Code (GC) Section 65588 requires: "Each local government shall review its housing element as frequently as appropriate to evaluate all of the following: (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal. (2) The effectiveness of the housing element in attainment of the community's housing goals and objectives. (3) The progress of the city, county, or city and county in implementation of the housing element." (4) The effectiveness of goals, policies, and related actions to meet the community's special housing needs. GC 65583(a)(7)."

As part of the review of programs in the past cycle, the element must analyze the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female headed households, farmworkers and persons experiencing homelessness). Programs should be revised as appropriate to reflect the results of this evaluation.

B. Housing Needs Resources and Constraints

1. *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).)*

Overcrowding: The element must quantify and analyze the number of households by tenure (rental and ownership) that live in overcrowded and severely overcrowded conditions.

2. *An analysis of any special housing needs, such as those of the elderly, persons with disabilities, including a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code; large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter...(Gov. Code, § 65583, subd. (a)(7).)*

Persons with Disabilities: The element should include a discussion of resources, including existing housing and services for people with disabilities. The element should identify housing types (e.g., residential care facilities) that can accommodate people with disabilities and zoning and capacity available to facilitate these housing types.

Developmental Disabilities: While the element quantified the number of persons with developmental disabilities, it should analyze the special housing needs of persons with developmental disabilities. The term developmental disability refers to a severe and chronic disability attributable to a mental or physical impairment, such as cerebral palsy, epilepsy, or autism, that begins before individuals reach adulthood. (Welfare and Institutions Code, § 4512.) The analysis could include the following:

- a description of the types of developmental disabilities;
- a description of the housing need, including a description of the potential housing problems; and
- a discussion of resources, policies and programs including existing housing and services, for persons with developmental disabilities.

Elderly: While the element provided a quantification of the elderly, it must also analyze their special housing needs. The analysis should include, but is not limited to, factors such as household income, tenure, housing types, zoning, and available resources. Local officials, special needs service providers, or City social and health service providers may be able to assist with information to complete the analysis.

Homeless: While the element provided a quantification of the homeless based on local estimates and anecdotal information, this information could be supported by the Point-in-Time Count, or PIT Count survey of homeless individuals conducted by the local Continuums of Care provider. When possible, the estimate should be divided into single males, single females and families (one or more adults with children) as the shelter needs of each subgroup differ significantly.

3. *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).)*

Fair Housing Enforcement and Capacity: While the housing element includes a summary of fair housing enforcement and outreach capacity at the county level, it does not provide information at the City level to adequately compare fair housing enforcement and capacity to the County. In addition, the element should provide details on how the City complies with existing fair housing laws and regulations.

Integration and Segregation: The element includes data on integration and segregation at the regional level for race, disability, familial status, and income; however, it does not include sufficient local information to adequately compare patterns and trends at a regional and local level. The element must include additional information related to race, disability, familial status, and income on a local level.

Racial/Ethnic Areas of Concentration of Poverty (R/ECAP) and Affluence (RCAA): The element provides analysis on the County and how it compares to the region; however, no information was included on the local level to compare RCAA and poverty at a regional and local level. The analysis should evaluate the patterns and changes over time at the local (e.g., neighborhood to neighborhood) and regional level (e.g., City to region) and include programs as appropriate.

Disparities in Access to Opportunity: The element provides analysis on education, economic, transportation and environment on the County, but no trends and patterns on the local level to compare significant disparities in access to opportunity at a local and regional level. A complete analysis should include the local and regional disparities of the educational, transportation, environmental, and economic scores through local, federal, and/or state data.

Disproportionate Housing Needs, Including Displacement Risk: The element provides analysis on the County for cost burden, overcrowding, substandard housing, and displacement; however, no information was provided on the local level to compare patterns and trends to the regional. In addition, no information was provided on homelessness on the local or regional level.

Local Data and Knowledge: The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The 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, City staff and related local and county planning documents and should include an analysis of the history of exclusionary zoning in the City.

Affirmatively Furthering Fair Housing (AFFH) and Sites Inventory: The element must analyze how the identified sites contribute to or mitigate fair housing issues. An analysis should address all of the income categories of identified sites with respect to location, the number of units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). If sites exacerbate conditions or isolates the RHNA by income group, the element should identify further program actions (not limited to the RHNA) that will be taken to promote equitable quality of life throughout the community (e.g., housing mobility and new opportunities in higher resource areas).

Contributing Factors to Fair Housing Issues: The element must list and prioritize contributing factors to fair housing issues. Contributing factors create, contribute to, perpetuate, or increase the severity of fair housing issues and are fundamental to adequate goals and actions. Examples include community opposition to affordable housing, housing discrimination, land use and zoning laws, lack of regional cooperation, location and type or lack of affordable housing and lack of public or private investment in areas of opportunity or affordable housing choices. The analysis shall result in strategic approaches to inform and connect goals and actions to mitigate contributing factors to affordable housing.

Goals, Priorities, Metrics, and Milestones: Goals and actions must create meaningful impact to overcome contributing factors to fair housing issues. Currently, programs are not sufficient to facilitate meaningful change and address AFFH requirements. Based on the outcomes of a complete analysis, the element must be revised to add or modify goals and actions accordingly. 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 metrics and milestones as appropriate and must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection. For further guidance, please visit HCD's Affirmatively Furthering Fair Housing in California webpage at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

4. *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).)*

Approved/Pending Sites: The housing element appears to rely on approved/pending projects to accommodate a portion the City's regional housing need for lower-income households. While the housing element includes the number of units for each project by income group, it does not provide an analysis demonstrating the affordability and availability in the planning period. For availability, the element should describe the status of the project, including any necessary approvals or steps prior to development, development agreements, conditions, or requirements such as phasing or timing requirements that impact development in the planning period. For affordability, the element should utilize anticipated or actual rents, sales prices, or other mechanisms (e.g., financing, affordability restrictions) ensuring their affordability.

Sites Inventory: The element must list sites by parcel number, parcel size, zoning, general plan designation, affordability level of units, describing existing uses for any non-vacant sites and include a calculation of the realistic capacity of each site. The element on page 6 states Appendix B provides more detail on the sites inventory; however, there was no Appendix B included in the element with a list of sites available to determine whether there are sufficient sites to accommodate the City's regional housing need allocation (RHNA) in total, and by income category.

Suitability of Nonvacant Sites: The element must include a description of identified sites and their existing uses and include an analysis demonstrating the potential for additional development on nonvacant sites. The element should analyze the extent that existing uses may impede additional residential development. It 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 or property owner interest, existing versus allowable floor area, low improvement to land value ratio, and other factors.

In addition, since nonvacant sites accommodate 50 percent or more of the lower-income need, the housing element must describe “substantial evidence” that the existing use does not constitute an impediment for additional residential use on the site. Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Water and Sewer Priority: For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. HCD recommends including a cover memo describing the City’s housing element, including the City’s housing needs and regional housing need.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element should analyze whether parking requirements comply with AB139/Government Code section 65583, subdivision (a)(4)(A) or include a program to comply with this requirement.
- *Housing for Agricultural Employees:* The element mentions the City amended zoning to allow six or fewer employees as a single-family structure and is subject only to the zoning requirements that are required of a dwelling of the same type in the same zone. However, the element should clarify if the City allows agriculture uses. 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 the same zone. The element must demonstrate compliance with this requirement and include a program as appropriate.
- *Manufactured Housing:* The element states mobile homes built on a permanent foundation may be located in any residential zone where a conventional single-family detached dwelling is permitted subject to the same restrictions on density and to the same property development regulations, provided that the mobile home has received approval of the Planning Director or Planning Commission and received a Certificate of Compatibility. The element should clarify whether these procedures are similar to other single-family detached dwellings and include a program as appropriate.
- *Multifamily Housing:* The element states that Multifamily is only allowed through a conditional use permit (CUP) or administrative use permit (AUP). The element must analyze the AUP process as a potential constraint on housing supply and affordability. The analysis should identify findings of approval for the AUP and their potential impact on development approval certainty, timing, and cost.

- *Accessory Dwelling Units (ADUs)*: The element indicates the City amended its zoning ordinance on January 2021 to address changes in State housing law. However, after a cursory review of the City's ordinance, HCD discovered several areas which are not consistent with State ADU Law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should include a new or revise a program to update the City's ADU ordinance to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state requirements surrounding ADU development.

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), 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. Please note, 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/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.

5. *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)).*

Fees and Exaction: The element lists planning and development fees and their costs, for all developments; however, there are several fees in Table H-5.11, page 5-32, that say "Actual + 20 %." The element should clarify what this means and should list all the planning and development fees associated with development.

Processing and Permit Procedures: The element indicates all proposals for subdivisions or developments requires a Planned Development Plan (PDP). However, it must describe and analyze the permit processing procedures impacts as potential constraints on housing supply and affordability, particularly for residential development affordable to lower-income households. The element describes the findings required for approval; however the finding regarding "the area surrounding the project site can be planned and zoned in coordination and substantial compatibility with the proposed development" should be analyzed as a potential constraint on housing supply and affordability and should include a program(s) to address or remove the identified constraints.

Housing for Persons with Disabilities: The element describes the City currently has a procedure for requesting and granting a reasonable accommodation for persons with disabilities; however the element should also describe approval findings and the process for providing reasonable accommodations. In addition, it appears based on Table H-5.9, page 5-15 that that residential care facilities for seven or more persons are permitted in all

residential zones subject to a CUP. The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty.

Zoning Fees and Transparency: The element must list all fees and clarify its compliance with new transparency requirements for posting all zoning and development standards, and fees for each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

6. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and 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 Time and Requests for Lesser Densities: The element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The analysis must address any hinderances on housing development and programs should be added as appropriate.

Price of Land: The element should provide an estimate of the average cost or range of costs per acre for single-family and multifamily-zoned developable parcels in the city.

Cost of Construction: The element provides national averages for costs per square foot; however, it should provide estimates of cost of typical total construction costs, including materials and labor in the City.

C. 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).)*

Programs must be revised to demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines (month, year), dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. Examples of programs that should be revised include but are not limited to Program H1-1: First-Time Homebuyer Assistance Programs, Program H1-2:

Affordable Housing Partnerships and Funding Sources, Program H1-3: Section 8 Housing Choice Voucher Program, Program H1-5: Code Enforcement, Program H2-2: Mixed-Use and TOD Sites Lot Consolidation, Program H2-8: Development on Nonvacant Sites, Program H4-2: Fair Housing Services, and Program H4-4: Outreach Plan.

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

As noted in Finding B4, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

3. *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).)*

Assist in Development Programs: The element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-, very low-, low-, and moderate-income households, including specific actions to assist housing for persons with special needs (e.g., farmworkers, elderly, homeless and persons disabilities, including developmental). While the element includes Program H4-1 for Special Needs Housing, it does not commit to assisting in the development of housing. The program could commit the City to annual outreach with affordable developers to identify development opportunities and further assist through actions such as adopting priority processing, granting fee waivers or deferrals, granting concessions and incentives for housing developments (beyond density bonus law) that include units affordable to lower and moderate-income households; assisting and supporting or pursuing funding applications.

Program H3-2: Housing for Extremely Low-Income (ELI) Households: While the program commits to prioritize funding toward ELI, it does not include an outcome. Program should be revised to include a proposed measurable outcome.

4. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for*

housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)

As noted in Finding(s) B5 and B6, 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.

5. *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 B3, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. 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, metrics, milestones, and geographic targeting as appropriate and must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

While the element includes Program H2-4: Accessory Dwelling Units (ADUs), which includes a commitment to create a public outreach program to encourage ADU development, it does not include a timeline of when or how often the outreach will occur. Program should be revised to include a timeline which sets forth a schedule of actions during the planning period.

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element provides an estimate of the number of anticipated new construction and conservation/preservation units, it must also include rehabilitation objectives by income group.

E. 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 includes a general summary of the public participation process, the element should also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. The element could describe the efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the element throughout the process. In addition, the element should also summarize the public comments and describe how they were considered and incorporated into the element.