

**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



May 4, 2023

Luke Connolly, Acting Director
Department of Community Development
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Dear Luke Connolly :

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

Thank you for submitting the City of Cupertino's (City) draft housing element received for review on February 3, 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. HCD considered comments from South Bay YIMBY, YIMBY Law and Greenbelt Alliance, YIMBY Law, David Kellogg, Cupertino For All, and several residents pursuant to Government Code section 65585, subdivision (c).

The draft housing element addresses most 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 must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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, 2031), 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 is completed.

Please be aware Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

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 meets 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/County 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 assist 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 A. Jauregui, of our staff, at jose.jauregui@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX CITY OF CUPERTINO

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

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

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

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. In the most cases, the element does not describe any progress in implementation and particularly housing related outcomes and then simply concludes to continue or modify programs. The element must fully describe past commitments, progress in implementation, evaluate effectiveness and then discuss appropriate adjustments in the current planning period.

In addition, the element must provide an evaluation of the cumulative effectiveness of past 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) and revise programs as appropriate.

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).)*

Enforcement and Outreach Capacity: The element must describe capacity to provide enforcement and outreach which can consist of actions such as the ability to investigate complaints, obtain remedies, or engage in fair housing testing. The element currently describes the number and characteristics of housing discrimination complaints but should also describes services provided by the City or surrounding areas. The analysis could also

evaluate data and the results from any fair housing testing. In addition, the analysis must address compliance with existing fair housing laws as well as any past or current fair housing lawsuits, findings, settlements, judgements, or complaints.

Regional Level Patterns and Trends: While the element includes several maps and tables and reports data, it generally must evaluate the data and especially at a regional level, comparing the City to the broader region. This is particularly important since the City appears far different from the rest of the region. The analysis should address all components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity) and should focus on race, income, and overall access to opportunity). The analysis should address trends and incorporate local data and knowledge and other relevant factors (See below).

Income and Racial Concentration of Affluence (RCAA): The element briefly mentions incomes in the City compared to the region and notes it is safe to speculate the City has neighborhoods that are RCAAs; however, the entire City is a RCAA and the element should incorporate this information. Please see HCD's Affirmatively Furthering Fair Housing (AFFH) Data Viewer at <https://affh-data-resourcescahcd.hub.arcgis.com/>. The element should include specific analysis of income and RCAA at a regional level (City 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 City boundaries.

Disparities in Access to Opportunity: While the element provided a general analysis of opportunity areas, and high-level conclusions about the City's disparities in access to opportunity, it should analyze trends and patterns related to access to transportation on a local and regional level.

Disproportionate Housing Needs, Including Displacement Risk: The element includes some information on cost burden and overcrowding. However, the element must evaluate trends and patterns within the City for displacement, substandard housing and persons experiencing homelessness. This analysis should utilize local data and knowledge and other relevant factors. For substandard housing, the element should discuss areas of the City where proportions of housing units needing rehabilitation may be higher than other areas and may utilize local knowledge such as qualitative but should also discuss local patterns of housing conditions. For example, the element should discuss areas of the City where proportions of housing units needing rehabilitation may be higher than other areas and may utilize local knowledge such as qualitative information from code enforcement staff. information for code enforcement staff. For homelessness, the element should discuss protected characteristics (e.g., race, disability) and disproportionate impacts as well as areas of the City with higher need, including proximity to transportation and services.

Identified Sites and AFFH: The element must include data on the location of regional housing needs allocation (RHNA) sites by income group relative to all fair housing components. A full analysis should address the income categories of identified sites with respect to location, the number of sites and units by all income groups and how that effects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity). The element should also discuss any isolation of the RHNA by income group and whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program actions that will be taken to mitigate this (e.g., housing mobility, increasing housing choices and affordability).

Local Data and Knowledge and Other Relevant Factors: The element must include local data, knowledge, and other relevant factors to supplement the analysis and complement federal, state, and regional data to capture emerging trends and issues related to fair housing. The element could utilize knowledge from local and regional advocates and service providers, City staff and related local and County planning documents. Additionally, the element should analyze historical land use, zoning and barriers to housing choices, governmental and nongovernmental spending including transportation investments, seeking investment or lack thereof to promote affordability and inclusion, local initiatives, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Contributing Factors to Fair Housing Issues: Upon a complete AFFH analysis, the element must assess and prioritize contributing factors to fair housing issues and add or modify programs as appropriate.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)

Housing Conditions: The element includes regional data and analysis on the age and condition of the housing stock (pg B2-22), but it must include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including nonprofit housing developers or organizations.

Special Needs: While the element quantifies most of the City's special needs populations, it must also quantify the number of elderly, farmworkers, and persons experiencing homelessness. Further, the element must analyze their special housing needs. For a complete analysis of each population group, the element should discuss challenges faced

by the population, the existing resources to meet those needs (available senior housing units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding help address those gaps.

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).)*

Progress in Meeting the RHNA: While the element may utilize pipeline and potential development projects toward the RHNA, it must also demonstrate their affordability and availability in the planning period. Affordability must be demonstrated based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed restrictions). Availability should account for the likelihood of project completion in the planning period and should address the status, necessary steps to issue permits, any barriers to development and other relevant factors. Given the element's reliance on pipeline projects, the element should include programs with actions that commit to facilitating development and monitoring approvals of the projects (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals and monitoring of project progress, including rezoning or identification of additional sites, if necessary).

Sites Inventory: The element lists parcels by various factors such as size, zoning, and existing use (Table B4-3) but must also include parcels by general plan designation, parcel size for pipeline projects. In addition, it appears that all of the sites listed in the sites inventory for development potential require rezoning. The inventory should also indicate the current general plan and zoning designations. Lastly, the element must provide a description of existing uses with sufficient detail to facilitate an analysis of the potential for addition development on nonvacant sites.

Realistic Capacity: While the element provides assumptions of buildout for sites included in the inventory, it must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. 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 on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. In addition, the element appears to assume residential development on sites with zoning that allows 100 percent nonresidential uses, but to support this assumption, the element must analyze the likelihood of residential development in zoning where 100 percent nonresidential uses are allowed. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses or other relevant factors such as enhanced policies and programs.

Zoning for Lower-Income Households: The element must demonstrate densities appropriate to accommodate housing for lower income households. For communities with densities that meet specific standards (at least 30 units per acre), no analysis is required. (Gov. Code, § 65583.2, subd. (c)(3).) Otherwise, an analysis must demonstrate appropriate densities based on factors such as market demand, financial feasibility and development experience within identified zones.

Suitability of Nonvacant Sites: While the element identifies nonvacant sites to accommodate the regional housing need for lower-income households, it provides no methodology or description of their potential for redevelopment. The element must 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, development trends, market conditions, any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, and regulatory or other incentives or standards to encourage additional residential development on these sites.

In addition, the housing element appears to rely 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. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Finally, if element utilizes sites with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c) (3).

Small Sites: The element identifies several sites at less than a half-acre in Table B4-3 to accommodate a portion of the lower-income need. These sites are not eligible absent a demonstration that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless other evidence is provided. If the inventory indicates some sites can be consolidated it should also provide analysis demonstrating the potential for consolidation. For example, the analysis could describe the City's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for lot consolidation, or information from the owners of each aggregated site.

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

Sites Identified in Prior Planning Periods: Sites identified in prior planning periods shall not be deemed adequate to accommodate the housing needs for lower-income households unless a program, meeting statutory requirements, requires rezoning within three years. The element should clarify if sites were identified in prior planning periods and if so, which sites and include a program if utilizing previously identified sites in the current planning period. For more information on program requirements, please see the Department's Housing Element Sites Inventory Guidebook at https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf.

Accessory Dwelling Units (ADU): The element projects 200 ADUs over the planning period or approximately 25 ADUs per year over the eight-year planning period. While the element does identify recent trends in ADUs to support assumptions, all ADUs permitted were for moderate income levels. The element should be revised to commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if the City is not on track.

Availability of Infrastructure: The element must include a discussion on water, sewer, and dry utility providers in the City. It must also clarify whether there is sufficient total water, sewer, and dry utility capacity (existing and planned) to accommodate the regional housing need and include programs if necessary.

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. The element should demonstrate compliance with these requirements and add or modify programs, if necessary. For additional information see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/priority-water-and-sewer>.

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.

Sites with Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element mentions emergency shelters are allowed in the Quasi-Public zone, subsequent draft submissions must comply with the requirements of Chapter 654, Statutes of 2022 (AB 2339). Please note, these requirements became effective on January 1, 2023 and apply to any housing element submitted after January 1, 2023 if a jurisdiction failed to submit the initial draft before the due date of the housing element. As the City's initial draft was submitted on February 2, 2023, after January 31, 2023 due date, these

provisions will apply. Among other things, the element should clarify shelters are permitted without discretionary action in a zone that allows a residential use and discuss available capacity, calculate the capacity available on sites to accommodate emergency shelters, and proximity to transportation and services. Secondly, the element must demonstrate the permit processing, development, and management standards for emergency shelters are objective, encourage and facilitate the development of, or conversion to, emergency shelters, and are in accordance to Government Code section 65583, subdivision a)(4)(A) or include a program to comply with this requirement. For your information, pursuant to Government Code section 65583, subdivision a)(4)(A), parking requirements should be limited to allowing sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.

- *Low Barrier Navigation Centers (LBNCs):* While the element references a program to develop by-right procedures for processing LBNCs (B5-7); however it must include parameters that shall allow LBNCs to be allowed by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65660. The element must demonstrate compliance with this requirement and include programs as appropriate."
 - *Single Room Occupancy (SRO) Units:* SRO at minimum must be conditionally permitted in one zone, and must also include analysis of how the City's development standards and permitting procedures facilitate and encourage the development of SROs. This is a particularly relevant and significant housing type given the City's total area size and its unique geographical constraints.
 - *Manufactured Housing:* Manufactured homes that are built on a permanent foundation must be allowed in the same manner and in the same zones as conventional or stick-built structures. Specifically, manufactured homes on a permanent structure should only be subject to the same development standards that a conventional single-family residential dwelling would be subject to. While the element includes a discussion of manufactured housing (p. B5-7), it must also demonstrate consistency with this requirement or add or modify programs as appropriate.
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. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). (Gov. Code, § 65583, subd. (a)(5).)*

Land-Use Controls: The element must identify and analyze all relevant land use controls

impacts as potential constraints on a variety of housing types. While the element identifies some information for some residential zoning designations, it does not include the zoning designations for P(CG/Res) or P(Res) which are included in the sites inventory. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to parking, height limit, setbacks, minimum lot sizes, and limits on allowable densities. As an example, the analysis should address parking requirements for R-2,R-3, A-1/RHS, and ADUs (e.g., 1.5 closed and 1.5 covered parking in the R-2 zone, 1 closed and 1 open parking required in R-3, 4 parking spots in the A-1/RHS zone, and 1 off-street spaces for ADU) as potential constraints on housing. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Fees and Exaction: While the element included a listing of fees, the analysis should identify the total amount of fees and their proportion to the development costs for both single family and multifamily housing and analyze their impact as potential constraints on housing supply and cost.

Local Processing and Permit Procedures: While the element includes a general discussion of the City's permitting and processing procedures (pB5-12; 15-16), it must still list and evaluate by design review and site development permits, including timing, typical approval findings, and typical number of hearings for their impacts on housing supply, cost, feasibility, and approval certainty. Depending upon the outcomes of this analysis, the element may need to add or modify programs to address identified constraints.

SB 35 Streamlined Ministerial Approval Process: The element must clarify whether there are written procedures for the SB 35 (Chapter 366, Statutes of 2017) Streamlined Ministerial Approval Process and add a program to address these requirements.

On/Off-Site Improvements: While the element includes a general discussion of the site improvements (p B5-14), it must identify typical subdivision level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width), and analyze their impact as potential constraints on housing supply and affordability.

Building Codes: The element states it is currently utilizing the 1998 uniform Building Code (p.B-13) but should also discuss the more recent Building Code, any local amendments made to the more recent Building Code, and add or modify programs, if necessary.

Zoning, Development Standards and Fees: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City's website and add a program to address these requirements, if necessary.

SB 330: The element should demonstrate how the City complies with SB 330 and add or modify programs if necessary. For example, the element should address actions that result in lesser intensification pursuant to Government Code section 66300 as well as provisions related to the Housing Accountability and Permit Streamlining Acts.

Local Ordinances: The element must specifically analyze locally adopted ordinances such as inclusionary ordinances or short-term rental ordinances that directly impact the cost and supply of residential development.

Constraints on Housing for Persons with Disabilities: The element must include an analysis of potential constraints on housing for persons with disabilities, as follows:

- *Reasonable Accommodation:* The element must describe the City’s reasonable accommodation procedures. The element should describe the process and decision-making criteria such as approval findings and analyze any potential constraints on housing for persons with disabilities.
 - *Family Definition:* The element must describe the City’s definition of family and evaluate its potential impacts, including impacts on the number of persons or unrelated persons, as potential constraints on housing for persons with disabilities.
 - *Group Homes:* The element mentions residential care homes are permitted by right in all residential districts (B5-6); however, group homes for seven or more persons are subject to the use to a conditional use permit by Planning Commission approval. The element should specifically analyze these constraints for impacts on housing supply and choices and approval certainty and objectivity for housing for group homes for seven or more and include programs as appropriate. For more information on group homes, please see HCD’s Group Home Technical Advisory at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf>.
5. *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. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality’s planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)*

The element includes some general discussion of land prices, construction costs and availability of financing but generally provides no information or quantification to analyze the impacts of nongovernmental constraints. In addition, while the element includes a general discussion of approval times but must still identify the actual length of time between receiving approval for housing development and submittal of application for building permits (rather than length of time to process a building permit) and discuss any hindrances on construction.

6. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).).*

The element indicates that the City has 112 affordable units with expiring affordability restrictions within the next eight years. The element must include an assessment of conversion risk estimate and analyze the cost for replacing versus preserving the units and identify qualified entities and funding sources to assist with maintaining its affordability.

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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

All programs in the element must be evaluated to ensure beneficial impact in the planning period and that they can achieve the goals and objectives of the housing element. Programs must have discrete timing early in the planning period (e.g., at least annually or by 2025) and specific commitment to housing outcomes (e.g., refrain from language such as “explore”, “develop”, “consider”). Examples of programs to be revised include, but are not limited to: 3.2 (Accessory Dwelling Units), 3.3 (Lot Consolidation), 3.4 (Objective Development Standards), 3.11 (Lower parking Requirements for Studios Apartments and SROs), 2.3.1 (Office and Industrial Housing Mitigation Program), 2.3-2 (Residential Housing Mitigation program), 2.3.3 (BMR Affordable Housing Fund), 2.3.5 (Surplus Properties for Housing), 2.3.6 (Incentives for Affordable Housing Development), 2.3.7 (Density Bonus Ordinance), 2.3.8 (ELI Housing and Housing for Persons with Special Needs), 2.3.9 (Employee Housing), 3.3.4 (Housing Preservation Program), 5.1.1 (Emergency Shelters).

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 B3, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Replacement Housing Requirements: The housing element must include a program to provide replacement housing. (Gov. Code, § 65583.2, subd. (g)(3).) The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).

Rezone to Accommodate Shortfall: The element indicates rezoning will occur to accommodate the RHNA. While the element includes Program 1.3.6, it must specifically commit to acreage, allowable densities and anticipated units. In addition, if necessary, to accommodate the housing needs of lower-income households, the program should specifically commit to rezoning pursuant to the requirements of Government Code section 65583.2, subdivisions (h) and (i).

Sites Identified in Prior Planning Periods: The element must include a program for vacant sites identified in two of more consecutive planning periods' housing elements or non-vacant sites identified in a prior housing element, that are currently identified to accommodate housing for lower-income households. The program must be implemented within the first year of the planning period and commit to zoning that will meet the density requirements for housing for lower-income households and allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower-income households (Gov. Code, § 65583.2, subd. (c)).

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).)*

The element includes Program 2-3.8 to assist in the development of housing for extremely low-income households and households with special needs. However, rather than “considering incentives”, this program could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to extremely low-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers with specific actions and timelines. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

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

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 B1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City must revise or add or modify goals and actions.

Goals, Actions, Metrics, and Milestones: 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, milestones, geographic targeting and metrics or numerical targets and, as appropriate, address housing mobility enhancement, new housing choices and affordability in higher opportunity or higher income areas, place-based strategies for community revitalization and displacement protection. For example, the element must add significant and meaningful housing mobility actions to overcome the existing patterns in the City related to the broader region.

6. *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).)*

The element includes Program Preservation of At-Risk Housing Units and specifies actions to annually monitor at-risk units, including contacting property owners within at least one year of the affordability expiration dates on projects. However, the program should be modified to include noticing requirements within 3 years of the affordability expiration dates, in addition to coordinating with qualified entities such as nonprofit organizations and establish specific time parameters around such actions.

7. *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 commits to amend the ordinance and comply with ADU law, it should also commit to establish incentives such as modifying development standards (e.g., heights), pursuing funding, making prototype plans available, waiving fees beyond ADU law, proactive marketing and establishing points of contact to ease permitting processes. In addition, the element should monitor the production of affordability of ADUs at least twice in the planning period and commit to act within a specified time (e.g., six months) if assumptions are not realized.

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).)

Conservation objectives in Table H-2 appear to be limited to units at-risk of conversion to market rate uses and no numeric objective is listed for rehabilitation for moderate or above moderate income households. However, rehabilitation and conservation objectives may include other activities intended to rehabilitate and conserve housing such as those outlined under Goal HE-2 Stable and Physically Sound Residential Neighborhoods.

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 City made effort to include the public through workshops and surveys, moving forward, the City should employ additional methods for public outreach efforts, particularly including lower-income and special needs households, organizations that represent their interest, and neighborhoods with higher concentrations of lower-income and special needs households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income and special needs households in future public outreach efforts. In addition, the element should also summarize public comments received and describe how they were considered and incorporated into the element. HCD received comments with many meaningful suggestions related to public participation, concerns with site selection, and AFFH. HCD encourages the City to consider these comments in the next housing element submittal.

F. Consistency with General Plan

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

While the element discusses how internal consistency will be achieved with other elements of the general plan as part of the housing element update, it should also discuss how internal consistency will be maintained throughout the planning period.