

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

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March 22, 2023

Ethan Bindernagel, Director
Planning Division
City of Pleasant Hill
100 Gregory Lane
Pleasant Hill, CA 94523

Dear Ethan Bindernagel:

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

Thank you for submitting the City of Pleasant Hill's (City) draft housing element received for review on December 27, 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. In addition, HCD considered comments from East Bay for Everyone, Derek Sagehorn, David Kellogg and Anne Paulson 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.

As a reminder, the City's 6th cycle housing element was due January 31, 2023. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), 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) (Program F) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). 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 these rezones are completed.

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>.

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, 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>.

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.

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 Jamillah Williams, of our staff, at Jamillah.Williams@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF PLEASANT HILL

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. 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: While the element included a summary of fair housing complaints on a county-wide basis, it should include information on fair housing complaints specific to the City and analyze those complaints for trends and impact on protected classes. The element must also evaluate any findings, lawsuits, or judgements related to enforcement actions regarding fair housing. In addition, the analysis must describe compliance with existing fair housing laws and regulations and include information on fair housing outreach capacity. For additional information, please see pages 28-30 on HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance Memo at https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

Racially Concentrated Areas of Affluence (RCAA): The element does not analyze census tracts or neighborhoods that are considered an RCAA. Additionally, HCD's fair housing data viewer indicates that majority of the City is considered an RCAA. The element must evaluate the census tracts considered RCAA, including trends, neighborhood conditions relative to other neighborhoods, local data and knowledge and other relevant factors. Based on the outcomes of this analysis, the element should include significant and meaningful programs to promote housing mobility (not limited to the regional housing need allocation (RHNA)). For more information, please visit: <https://affh-data-resources-cahcd.hub.arcgis.com>.

Local Data, Knowledge and Other Relevant Factors: The element included some information about regional history, referenced stakeholder comments and discussed the location of assisted projects and housing choice vouchers. However, the element needs to provide information and analysis that relates, supports, or supplements the existing analysis, fair housing conclusions and contributing factors. The element must consider

other relevant factors that have contributed to certain fair housing conditions. This analysis must consider information that is unique to the City, such as governmental and nongovernmental actions, historical land use and zoning practices (e.g., past redlining/greenlining, restrictive covenants, planning documents, etc.), disparities in investment to specific communities including transportation investments, seeking investment or lack thereof, efforts to promote affordability and inclusion, local initiatives, or other information that may have impeded housing choices and mobility. 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, public comments, and service providers.

Contributing Factors: The element includes contributing factors to fair housing issues but should re-evaluate and prioritize these factors based on a complete analysis to better respond to the fair housing issues.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element analyzed the identified sites for various fair housing components including race, income, access to opportunity and disproportionate housing needs and generally concluded that sites do not exacerbate current fair housing conditions. The analysis indicates that the City is generally higher resourced with few neighborhoods that are considered low and moderate-resourced areas specifically on the far north-east edge of the City and neighborhoods on the eastern side of the City bordering Concord and Walnut Creek. While the City is generally higher resourced, the element identified majority of its lower-income Regional Housing Needs Allocation (RHNA) in low and moderate resource areas that also corresponds with other fair housing coincidences including higher concentrations of low-moderate-income households, higher environmental hazards and higher rates of individuals that are part of a protected class. Additionally, the element identifies most of the City's moderate and above moderate income RHNA in higher resourced areas. The element must include a significant analysis and reasoning about the location of sites and impact on current fair housing conditions. Based on the outcomes of this analysis, the element should add or modify programs with specific commitment, metrics, milestones and geographic targeting that is commensurate with the level of isolation of the RHNA to promote inclusive communities and equitable quality of life.

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).)*

Overpayment: While the element identifies the total number of households overpaying for housing, it must quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner) and add or modify policies and programs as appropriate.

Housing Stock Conditions: The element utilized housing age to determine number of units likely needing major rehab or replacement. However, the element should supplement this analysis with other data sources to better reflect 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. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/housing-stock-characteristics>.

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: The element identifies 380 units as progress towards the RHNA. Of the 380 units, 109 units currently have approved entitlements or pending approvals. The element must demonstrate the availability of these units during the planning period. For example, the element could discuss and analyze any outreach with the applicants, anticipated timelines for final approvals, remaining steps for projects to request building permits, any known barriers, the City's past completion rates on pipeline projects, or any other information to demonstrate the availability or likelihood of development in the planning period.

Suitability of Nonvacant Sites: The element included a description of each nonvacant site including a discussion of size, type of existing uses, improvement to land value (ILV), building age, etc.,. However, the analysis should address how these factors are indicative of redevelopment potential. For example, the element referenced ILV and building age for most sites. To support the assumption that ILV and building age can demonstrate redevelopment potential, the element can provide examples of local or regional projects that have redeveloped with similar ILV and building age. Additionally, the element noted that the City conducted property owner outreach; the element can indicate which sites have seen owner interest. Additionally, while the element discussed site characteristics and trends, it must specifically address whether the existing uses impede additional development.

Finally, specific analysis and actions are necessary when the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (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.

Replacement Housing Requirements: Absent a replacement housing program, nonvacant sites with residential uses meeting specified criteria are not adequate sites to accommodate lower-income households. The replacement housing program has the same requirements as set forth in Government Code section 65915, subdivision (c)(3).

The housing element must be revised to include such analysis and a program, if necessary.

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

Accessory Dwelling Units (ADU): The element is projecting 320 ADUs for an average of 40 ADUs per year over the eight-year planning period to accommodate a portion of its RHNA. The element notes that while the City has permitted an average of 25 ADUs per year, the City will be projecting 40 ADUs each year throughout the planning period. Furthermore, the element notes that the projection is based on trends from 2019-2021. However, HCD's records indicate through the City's Annual Progress Reports (APR) that between 2019-2021, the City permitted an average of 11 ADUs per year. The City's past performance does not support a four-fold increase. The element should reconcile these figures and adjust assumptions based on a realistic estimate of the potential for ADUs or provide stronger analysis and supporting information for more aggressive assumptions. Lastly, the element should include significant policies and programs that commit to incentivizing ADUs. Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers anticipated in the housing element. If necessary, additional actions should be taken in a timely manner (e.g., within six months). The degree of additional actions should be in stride with the degree of the gap in production and affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then rezoning or something similar would be an appropriate action. If actual production and affordability is near anticipated trends, then measures like outreach and marketing might be more 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/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Water Sewer Priority: 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 discuss compliance with these requirements and if necessary, add or modify programs to establish a written procedure by a date early in the planning period. For additional information and sample cover memo, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/priority-water-and-sewer>.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element discusses parking requirements for emergency shelters and includes Program O to address the capacity requirements of AB 139 (Statutes 2019). However, in addition to the capacity requirements, the element must also address the new parking provisions under this requirement. Specifically, Pursuant to Government Code section 65583, subdivision a)(4)(A), also referred to as AB 139, parking for emergency shelters should only be the number of spaces necessary for staff working in the shelter and no more than other uses in the same zones. The element should demonstrate compliance with this requirement or include a program, if necessary.
 - *By-right Permanent Supportive Housing:* The element indicated that pursuant to AB 2162, the element allows transitional and supportive housing in all residential zones in the same manner as similar uses. However, by-right permanent supportive housing has unique requirements and shall be a use by-right (without discretionary action) in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with these requirements and include programs as appropriate.
 - *Accessory Dwelling Units :* While the element generally discussed the City's process to permit ADUs, it must specifically discuss whether ADUs are allowed in all zones that permit residential uses and include or modify program, if necessary. Additionally, after a cursory review of the City's ordinance, HCD discovered several areas which were not consistent with State ADU Law. This includes, but is not limited to, timing and process, maximum sizes and set-back requirements. The element must include a program to update the City's ADU ordinance in compliance with state law. Lastly, the City should submit a copy of the most recent adopted and executed ADU ordinance. For questions, please contact the ADU team through the following: https://calhcd.service-now.com/csp?id=csm_sc_cat_item_public&sys_id=19d0846297794910edea398c1253af2a.
 - *Employee Housing:* The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.)> Specifically, section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/farmworkers>.
4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of*

developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)

Land Use Controls: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should evaluate land use controls independently and cumulatively with other land use controls, 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. The analysis must specifically address heights, parking, lot coverage, scenic route setback requirements and minimum unit size requirements, as follows:

- For heights, the element notes that the City has a maximum height requirement of 35 feet and only 2.5 stories. Further, the element has also identified sites that allow for up to 70 du/ac. The element should describe how height requirements impacts the ability to achieve maximum densities and add or modify programs as appropriate.
- For parking, the element indicated that studio units are required to provide 1.5 parking spaces and multifamily units must provide one guest space for every two units. The element should evaluate the impacts of 1.5 spaces on smaller bedroom units (e.g., studios) and guest parking requirements.
- For lot coverage, the element notes that maximum lot coverage is 40 percent. The element should analyze how this requirement impacts the ability to achieve maximum densities.
- For scenic routes, setbacks must be 50 feet. The analysis should specifically address how this impacts supply, cost, feasibility and ability to achieve maximum densities.
- For minimum unit sizes, the element address the impact of these requirements on smaller bedroom types, housing choices, cost of development and ability to achieve maximum density.

Fees and Exaction: The element indicated that while there is some variation between fees for multifamily and single-family housing, they are generally the same. Additionally, the analysis shows that fees for multifamily are 24 percent of total development costs. Fees that are more than 10-15 percent of the total cost of a unit and requiring multifamily housing to incur the same costs of fees as single family may be considered a constraint. The element should analyze this constraint for impacts on the cost and supply for housing and include programs that specifically address and mitigate this constraint. For additional information and a sample analysis and tables, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/fees-and-exactions.shtml>.

Code Enforcement: While the element indicates that building codes are verified through the plan check process, it should describe and analyze how the City enforces building codes (e.g., complaint versus proactive based).

Local Processing and Permit Procedures: The element should address public comments on this draft submittal and discuss compliance with the Permit Streamlining Act and

intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

On/Off-Site Improvements: While the element lists generally on/off-site improvements, it must identify 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.

For additional information and a sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/codes-and-enforcement-and-onsite-offsite-improvement-standards>.

Constraints on Housing for Persons with Disabilities:

The element must include analysis of potential constraints on housing for persons with disabilities, as follows:

- *Group homes (Residential Care Facilities)* – The element notes that unlicensed small facilities (6 or fewer persons) are allowed in residential zones with a use permit and that parking requirements are also determined by the use permit. The element also notes that licensed facilities for seven or more persons are only conditionally permitted multifamily zones and thus excluded from several zones that allow for residential uses. Lastly, the element indicates that the City imposes a minimum spacing requirement of 300 feet.

For your information, zoning should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations such as the number of persons, population types and licenses. 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. Requiring these housing types to obtain a special use or conditional use permit (CUP) could potentially subject housing for persons with disabilities to higher discretionary standards, unlike other residential uses.

The element should evaluate these requirements as constraints and include specific commitment to amend zoning and permit procedures to allow these uses in all zones allowing residential uses with objectivity to facilitate approval certainty similar to other residential uses of the same form. For more information, please see HCD's guidance at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf>.

- *Other Requirements* – The element must describe the City's reasonable accommodation procedure including the process and decision-making criteria such as approval findings and analyze any potential constraints on housing for persons with disabilities. Additionally, the element must identify and analyze the City's definition of family used in zoning and land use.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction*

of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)

Permit Times: The element must be revised to analyze the length of time between receiving approval for a housing development and submittal of an application for building permits that potentially hinder the construction of a locality's share of the regional housing need.

6. *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).)*

Analysis of Special Housing Needs: The element quantifies the City's special needs populations and broadly discusses the challenges faced by the population. However, a complete analysis should also evaluate the existing resources to meet those needs (availability senior housing units, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies and programs to help address those gaps.

B Housing Programs

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

As noted in Finding A3, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Shortfall of Sites – Program F (Increase Allowable Densities): The element demonstrates that most sites for lower-income require rezoning with new designations or up-zoning to accommodate the RHNA. For your information, if zoning is not in place by beginning of the planning period (January 31, 2023) to approve projects at the densities and uses as identified in the inventory, the element must include a program to commit to adopting the zoning changes. Additionally, for sites that are expected to accommodate the City's lower-income RHNA, programs must commit to housing element rezone requirements pursuant to Government Code section 65583.2 (h) and (i).

While the element included Program F to comply with some of the requirements to address a shortfall of sites, the program must also commit to:

- acreage and anticipated units; and
- at least 50 percent of the lower-income need must be accommodated on sites designated for residential use only or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites:
 - allow 100 percent residential use, and
 - require residential use occupy 50 percent of the total floor area of a mixed-use project.

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).

2. *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 A4 and A5, 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.

3. *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).)*

Goals, Priorities, Metrics, and Milestones: As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. Specifically, while the element included programs and actions related to increasing housing choices and affordability in high resourced areas, the element must also include strong actions related to enhancing housing mobility and place-based strategies for neighborhoods considered low and moderate resource and have coincidences of fair housing issues such as higher concentration of lower-income households and more disparate access to opportunities compared to other parts of the City. Additionally, based on a complete analysis the element must be revised to add or modify goals and actions. 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. Lastly, actions must have specific commitment, metrics, milestones and geographic targeting to promote inclusive community and equitable quality of life.