

**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 16, 2023

Alexis Morris, Director
Department of Community Development
City of Brentwood
City Hall, 150 City Park Way
Brentwood, CA 94513

Dear Alexis Morris:

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

Thank you for submitting the City of Brentwood's (City) housing element adopted March 14, 2023 and received for review on March 17, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted draft element addresses many statutory requirements described in HCD's January 13, 2023 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the and other revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) 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). 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 these rezones are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the 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

Alexis Morris, Director

Page 2

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.

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

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF BRENTWOOD

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).)*

Patterns and Trends: While the element now includes additional discussion regarding individual data points, as found in HCD's prior review, the analysis of patterns and trends must also analyze coincidences and overlaps with other components of the assessment of fair housing (e.g., income, race, racially concentrated areas of affluence, etc.,)

Disparities in Access to Opportunities: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Disproportionate Housing Needs – Substandard Housing Conditions: While the element now includes city-wide and general data on substandard housing conditions, this data must be analyzed for trends and patterns across census tracts, neighborhoods, or specific geographies. Additionally, as noted above, the element should analyze this data for coincidences with other fair housing issues.

Local Data, Knowledge, and Other Relevant Factors: The element was not revised to address this finding. Please see HCD's prior review for additional information

Sites Inventory and Affirmatively Furthering Fair Housing (AFFH): While the element was revised to include additional analysis regarding the location of sites relative to integration and segregation, the analysis must still evaluate sites relative to access to opportunities and racially concentrated areas of affluence (RCAA). Please see HCD's prior review for additional information.

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. *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).)*

Special Needs Households: While the element was revised to include additional information about proposed programs, as found in HCD's prior review, it did not include an evaluation of existing resources and needs for each special needs group including seniors, farmworkers, homelessness and extremely low-income (ELI) households. The element must discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to 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).)*

Nonvacant Sites: The element must provide an analysis demonstrating the likelihood of nonvacant sites redeveloping into residential development. The element was revised to indicate the uses on each site, include a general statement that property owners have been involved and are supportive of redevelopment and provide examples of past projects with similar uses that have redeveloped into higher density residential developments. While the element included examples of past redevelopment projects, the analysis must also consider current market demand for the existing use, existing leases or contracts that would perpetuate the existing use or prevent additional residential development or other relevant information to demonstrate the potential for redevelopment. For example, the element notes that many of these sites are used for seasonal agriculture. The element could discuss how likely these uses will discontinue through evaluating market demands for these uses. The element also noted that the property owners are supportive of redevelopment. The analysis could expand on this information such as discussing the extent of owner interest including whether the property owners are interested in selling or redeveloping their properties with the densities identified in the inventory during the planning period.

Additionally, the sites inventory (Table B-8) noted several sites as vacant but also noted seasonal agricultural uses. For your information, a vacant site is defined as a site with no improvements including sites generally with no crop developments. The element should clearly indicate whether sites are truly vacant or nonvacant by evaluating whether the sites include any improvements. For example, Site 11 in the inventory is described as vacant with seasonal agricultural use; however, assessor parcel data indicates the site potentially has existing structures and an improvement value of \$100,000. The element must evaluate its sites and clearly identify whether sites are vacant or nonvacant.

HCD's previous review found that the element did not rely upon nonvacant sites to accommodate more than 50 percent of the regional housing need allocation (RHNA) for lower-income households. However, based on the findings above regarding clearly identifying nonvacant sites and as found in HCD's prior review, if future revisions and modifications result in the City relying on nonvacant sites to accommodate more than 50 percent then the 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.

Realistic Capacity: The element was revised to describe three high density projects within the City of Brentwood and multiple projects from the City of Antioch as supporting information to realistic capacity assumptions. However, the City is using various pipeline projects and other development projects (Table B-7) to accommodate the RHNA, indicating that the City has several other projects that are excluded from the supporting information and does not necessarily need to utilize projects from nearby communities which may have unique features. As such, the element should provide information on typical densities on all recent and pipeline projects including a listing of residential development activity, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus. Further, the element should analyze and evaluate this data to support its realistic capacity calculations. 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.

The element was not revised to address HCD's prior review regarding gross and buildable site acreage. As found in HCD's prior review, the element stated that realistic capacity assumptions were based on the buildable acreage of the site and that buildable acreage was determined by discounting sites for environmental constraints, infrastructure, or other necessary site improvements. However, the sites inventory indicated that there were no discounts applied to sites i.e., gross, and buildable acreage are listed as the same.

Lastly, while the element was revised to state that ground floor retail is required in the PA-1 TV zone, this still does not address HCD's prior review. The element must clearly specify whether the City has identified any sites in zones that allow for 100 percent nonresidential uses. The element must analyze the likelihood that the identified units will be developed as noted in the inventory in zones that allow 100 percent nonresidential uses. This analysis should consider the likelihood of nonresidential development, performance standards, and development trends supporting residential development. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/analysis-sites-and-zoning>.

Site Size: The element continues to utilize large sites to accommodate the lower-income RHNA. Additionally, it appears that acreage within these large sites are in specific plan areas that have yet to be parceled or subdivided according to the plan. The element should include a discussion of the specific plan including an analysis of potential future parceling. The analysis should provide additional description of the specific plans, the acreage of sub-areas, presence of any land use maps, future parcel sizes and add or modify programs to facilitate development on parcel sizes that are deemed appropriate to accommodate housing during the planning period. Programs should include a commitment to facilitating the subdivision of parcels, outreach and working with property owners and providing incentives for appropriate parceling, development and monitoring.

Infrastructure Availability: The prior version of the element indicated that the City is currently in the process of expanding the City's wastewater treatment facility. HCD's prior review found that the element must clarify if the expansion is a necessary step to accommodating the RHNA. The element was revised to indicate that the expansion will accommodate the RHNA (p. B-3). As found in HCD's prior review, the element should clarify if there is sufficient infrastructure capacity to accommodate the RHNA. In addition, if the City is dependent on the expansion of water treatment facility to accommodate the RHNA, the element must include a program committing to actions and a timeline to make sufficient infrastructure available to accommodate the RHNA.

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

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 – Zoning and Densities: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Planned Development Zones: While the element was revised to list specific development standards established through the planned development (PD) process, it still should clearly explain whether PDs are optional or required for areas intended for residential uses and whether there are established development standards prior to the approval of the PD. If the PD is mandatory in areas intended for residential uses without fixed development standards, the element should specifically evaluate these

requirements for impacts on cost, supply, feasibility, and approval certainty of housing. Lastly, the element still must identify and analyze any minimum unit size requirements.

Parking: The element included a hypothetical example of a 6,000 square feet parcel and some applicable development standards. Further the analysis stated that since projects would still be able to reach maximum densities, the current parking requirements (e.g., two spaces per unit) is not a constraint. However, HCD's prior review stated that the analysis must also consider impacts on cost, supply, housing choice and affordability. The analysis does not address these factors. Additionally, HCD finds that requiring smaller bedroom types (e.g., studio and one-bedroom units) to provide two parking spaces is considered a constraint. The element must include a program committing to reducing parking requirements for smaller bedroom types.

Local Processing Procedures: The element was not revised to address this finding. Please see HCD's prior review for additional information

Design and Site Development Review: While the element was revised to include a commitment to removing certain subjective criteria, this still does not address HCD's prior review. As noted in the prior review, the element must clearly detail the type of uses that are subject to a design and site development review. Additionally, and as noted above, the element must identify and evaluate any approval findings or decision-making criteria for this requirement. The analysis should address impacts on housing cost, supply, timing, and approval certainty. Based on a complete analysis, the element should include programs to address or remove the identified constraints.

Locally Adopted Ordinances: The element was revised to indicate that the City recently updated its inclusionary policy requiring that developers must construct the required affordable units and will not be given the option of paying in-lieu fees (Program H.2a (Affordable Housing Ordinance)). The element must discuss alternatives for compliance, incentives for meeting requirements and the required in-lieu fees. The element must analyze these requirements for consistency with state law and impacts on cost and feasibility.

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... (Gov. Code, § 65583, subd. (a)(6).)*

The element was not revised to address this finding. Please see HCD's prior review for additional information.

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).).

HCD's prior review found that the element must identify and analyze all assisted units and assess the risk of these units converting in the next ten years. While the element was revised to include a listing of assisted units from CHPC database, the element did not include any information on assessment risk, conversion or expiration dates, and update the at-risk analysis regarding cost of preserving and replacing these units. The element must be revised to include an assessment of units at-risk of converting to market rate within the next ten years and the cost of replacing and preserving these units.

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, Program H.1b (Accessory Dwelling Units (ADUs)) and H.1c (ADU Monitoring) commits to annual monitoring of ADU affordability and production trends and commitments to certain actions if production does not keep pace such as increased densities or fee incentives. However, given the City's strong ADU assumptions, this program must commitment to identifying and rezoning sites if actual production and affordability is far from anticipated trends.

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. The element should be revised as follows:

Program H.4n (Definition of Family): While this program commits to removing potential constraints to the definition of family, it must specifically commit to removing constraints, namely the requiring all residents to be under a single written lease to be considered a family.

Program H.4o (Residential Care Facilities): While this program commits to allowing these uses in the same way as similar uses, this program should be revised with a commitment to allow these uses in the same way as other residential uses in the same zone.

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).)*

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. Additionally, while the element was revised to include some metrics and geographic targeting, this generally does not address HCD's prior review. First, many of the actions are generally not significant and meaningful to address the City's fair housing issues, create equitable communities and address the four required program areas (e.g., increasing housing choices and affordability in higher opportunity or higher income areas, promoting housing mobility, place-based strategies for revitalization and conservation and addressing displacement risks). Second, several programs are scheduled to begin implementation halfway through the planning period. To achieve beneficial impact, programs must be implemented earlier in the planning period. Third, the element included geographic targeting based on specific census tracts. However, the assessment of fair housing did not call out specific census tracts but rather discussed geographic quadrants and neighborhoods. Therefore, it is unclear how these census tracts relate to the analysis and fair housing issues.

C. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

HCD's prior review found that the City employed limited outreach methods to engage various economic segments of the community during the preparation of the element. While the element was revised to indicate that the city provided language translation and advertised public workshops to special needs organizations, the City has still not demonstrated diligent outreach efforts to the community. As such, HCD's prior review found

that moving forward, the City should employ a variety of methods to involve all economic segments of the community. Through the adoption process, the City had another opportunity to meaningfully engage with the community. However, the element noted that the City posted the revised element online for seven days and emailed organizations on the listserv. HCD will be considering the extent the City has outreached, engaged and considered comments in future submittals.

Additionally, the housing element noted that the City summarized and addressed public comments in Appendix C. However, Appendix C includes a list of all public comments and meeting materials. As found in HCD's prior review, the element must summarize public comments and discuss how comments were considered and incorporated where applicable. To address this, the element could summarize key themes from public comments and feedback and include corresponding programs, actions, strategies or information on how the City addressed various themes.