

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

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July 6, 2023

Jimmy Forbis, City Administrator
City Hall
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Dear Jimmy Forbis:

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

Thank you for submitting the City of Gilroy's (City) housing element update that was adopted on May 1, 2023 and received for review on May 8, 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 housing element addresses most statutory requirements described in HCD's January 27, 2023 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), as follows:

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).)*

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).)

Fair Housing Enforcement and Capacity: As found in the prior review, the element should describe how the City complies with state and federal fair housing laws, including regulations, lawsuits, and related enforcement actions. While the element mentions that the City has no current complaints or lawsuits, it must still describe any past fair housing legal matters and should also describe compliance with state and federal fair housing laws. For example, the element should describe how the City complies with Government Code sections 8899.50, 65008 and 65589.5.

For additional information, please see HCD's affirmatively furthering fair housing (AFFH) guidance memo (p. 29) at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

Goals, Actions, Milestones and Metrics: As noted above, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis. In addition, the element should be revised, as follows:

Linking Analysis to Programs: The element organizes various actions according to fair housing issues (Table 58) but should also link these various actions with geographic targeting and metrics to the Housing Goals, Policies and Programs portion of the element by explicitly referencing Table 58 in Program F (Affirmatively Furthering Fair Housing).

Geographic Targeting: While the element includes many potentially meaningful actions to promote housing mobility, these actions are geographically targeted to high resource areas and targeting should be expanded to include relatively higher income areas and areas of concentrated affluence.

Metrics: Programs should be revised, as follows:

- Program A-6 (Accessory Dwelling Units (ADU)): The Program should have a metric or numeric target that is geographically targeted. For example, the Program could target 30 percent of annual ADUs in concentrated areas of affluence and relatively higher income and higher resource areas.
- Program A-10 (Missing Middle): The Program should increase the metric (e.g., 150 units) and geographically target the metric.
- Program A-11 (Inclusionary): The Program should include a geographically targeted metric or numeric target.
- Program A-16 (SB 9 Processing): The Program should include a geographically targeted metric or numeric target.
- Program F-3 (Place-Based Improvements): The Program should commit to ongoing prioritization of the capital improvement program in the downtown area and lower-resourced and lower-income areas.
- Program F-5 (Displacement Prevention): The Program should include a metric and mid-term evaluation of effectiveness and adjustment, as necessary.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for*

a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)

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

Suitability of Nonvacant Sites: While the element briefly discusses some recent trends and describes site characteristics, to demonstrate the potential for redevelopment, the element should be revised, as follows:

- *Indicators of Redevelopment Potential*: Currently, the element utilizes one indicator of redevelopment potential: improvement to land value ratio. However, the element should utilize additional indicator to demonstrate the potential for redevelopment. Examples include age of structure, existing versus allowable floor area, lack of improvements or structural condition, significant vacancy and frequent turnover of uses.
- *Development Trends*: The element briefly describes some recent development on nonvacant sites and concludes these sites have similar characteristics to identified sites but should include analysis to support this conclusion. For example, some identified sites toward the regional housing need allocation (RHNA) have underutilized parking area. The element could discuss how recent development consisted of similar characteristics. In addition, the element should utilize development trends to support assumptions for indicators of redevelopment potential. For example, the element could describe the prior use and improvement to land value of recently developed sites.
- *Extent Existing Uses Impede Additional Development*: The element must analyze the extent that existing uses may impede additional residential development. For example, the element includes sites identified with a general description of existing uses but could further clarify the potential for redevelopment such as significant underutilization, lack of current market demand for the existing use, absence of existing leases, contracts or conditions that would perpetuate the existing use and expressed interest in redevelopment.

Environmental Constraints: While the element generally describes environmental conditions and relationship to identified sites, it should also evaluate any other known conditions (e.g., shape, easements, contamination) that could preclude or impact housing development on identified sites in the planning period.

Electronic Site Inventory: 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 and submit an electronic version of the

sites inventory. While the City has submitted an electronic version of the sites inventory, if changes occur, any future re-adopted versions of the element must also submit the electronic version of the sites inventory.

Programs: As noted above, 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:

- *Program A-1 (No Net Loss):* As noted on page 274, the Program should explicitly monitor the status of pipeline projects and update the no net loss inventory if pipeline projects are not proceeding to completion as anticipated.
 - *Program A-2 (City-owned Lands):* The Program should go beyond advertising sites if they become available and specifically commit to when at least the one identified site will become available, disposed, entitled, and permit issues and to alternative actions if the sites do not come available.
 - *Program E-10 (Transitional and Supportive Housing):* The Program should explicitly commit to amend zoning as necessary to permit transitional and supportive housing as a residential use in all zones allowing residential uses and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone.
3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

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).)

Land Use Controls: As found in the prior review, the element concludes the City complies with State Density Bonus Law (SDBL) pursuant to Government Code section 65915 but should include a discussion to support this conclusion or add or modify programs to comply with SDBL. However, the element generally was not revised to demonstrate the City's ordinance complies with SDBL. Based on a cursory review, while the City's ordinance may defer to SDBL, the ordinance should at least have implementing procedures such as application and review requirements and decision-making criteria. As a result, the element should add or modify programs to amend the ordinance and comply with SDBL.

Fees and Exaction: While the element briefly describes aggregate ADU impact fees, it should still list all the various planning and impact fees on a per unit basis that add up to the total fees per unit. This analysis should address all the prior evaluated housing types and programs should be added or modified as appropriate to address identified constraints.

Local Processing and Permit Procedures: The element now clarifies that typical developments complying with zoning are reviewed administratively but should still list and evaluate approval findings for impacts on approval certainty.

Programs: As noted above, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, the element should be revised, as follows:

- *Program A-8 (Incentives for ADU)*: The Program should go beyond "evaluate" and reduce fees and reducing fees should not be dependent on a lack of production.
- *Program B-7 (Zoning Ordinance Update)*: The Program should specifically commit to amend zoning to address constraints and establish development standards that will facilitate achieving maximum densities, including listing development standards that will be modified such as heights in the DHD and DED districts.
- *Program E-10 (Housing for Persons with Disabilities)*: The Program commits to revise zoning and permit procedures for housing for persons with disabilities, "as necessary". The Program may conduct further review of potential constraints and revise as necessary but should clearly commit to remove the "potential impact on surrounding use" finding in the reasonable accommodation procedure. In addition, for group homes for seven or more persons, the Program should clearly commit to amend zoning and permit procedures to allow the uses in all residential zones with objective standards similar to other residential uses of the same type in the same zone zoning.

4. *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).*

Program E-7 (Housing for Farmworkers): The Program should go beyond forwarding information about surplus City-owned land to potential partners and developers. For example, the element could commit to proactive actions to coordinate with nonprofit developers, employers, and other related organizations, to explore funding and incentives and to identify specific development opportunities. Further, the Program should consider an objective greater than existing farmworker housing.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted, if necessary, to comply with the above requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City did not adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), Programs to make prior identified sites available and accommodate a shortfall of adequate sites to accommodate the RHNA must be completed no later than one year from the statutory deadline. Please be aware, if the City does not adopt a substantially compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until all necessary 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 aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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

Jimmy Forbis, City Administrator
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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 me at paul.mcdougall@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager