

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

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October 9, 2024

Mayor Kim Bergel
City of Eureka
531 K Street
Eureka, CA 95501

Dear Mayor Kim Bergel and City Council:

RE: Adopted Housing Element Revision Process – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) is aware that the citizens of the City of Eureka (City) are considering Measure F on the ballot this November. HCD understands that Measure F proposes to amend the City's general plan, specifically the housing element sites inventory, by: (1) creating an "Off-street Public Parking Overlay Designation" on certain City-owned parking lots, (2) expanding the use of the Jacobs site, and (3) amending the City's housing element accordingly. This letter provides technical assistance to the City regarding the requirements and process for HCD's review of these amendments should Measure F pass.

Housing Element Background

As you are aware, HCD found the City's housing element in substantial compliance on March 16, 2020. Over the next two years, the housing element was amended to adjust the identification of sites and a subsequent adopted housing element was found in substantial compliance on November 11, 2022. As part of this amendment process, the City engaged with HCD to ensure that publicly owned sites at Sunny and Myrtle, 8th and G, and 6th and M meet all the requirements of the Surplus Land Act (SLA).¹ An additional goal was to ensure that disposition of the City's "parking lot properties" met all the requirements of the SLA and that these actions were correspondingly reflected in an update of the City's housing element.

As you know, the City has a Regional Housing Need Allocation (RHNA) of 952 units, of which 378 are for lower-income households. Most of that lower-income need is accommodated on City-owned parking lots in the Downtown area, which represented a significant strategy to both accommodate the RHNA and fulfill the City's obligation to affirmatively further fair housing.

¹ See Gov. Code, § 54220 *et seq.*

Process for Amending the Adopted, Substantially Compliant Housing Element

Pursuant to Government Code section 65585, prior to making any amendments to the housing element (including amending the sites inventory, or amending program commitments), the City must submit a draft of those changes to HCD at least 60 days prior to adoption.² HCD must then review those amendments to ensure substantial compliance with housing element requirements and report its findings to the City.³ The City must then consider those findings prior to adoption. If HCD finds that the amendments do not substantially comply with housing element requirements, the City can either (1) change the draft amendments to substantially comply or (2) adopt the amendments without changes but also include in the adopting resolution “written findings that explain the reasons [the City] believes that the ... amendment[s]” substantially comply with housing element requirements despite HCD’s findings.⁴ After readopting the housing element, the City is required to resubmit it to HCD.⁵ HCD is then required to review the amended housing element and determine if the amended element continues to substantially comply with Housing Element Law.⁶ Please be aware, the City is also responsible for providing adequate opportunity for public participation and review, no less than seven days prior to submittal of a draft to HCD.⁷

As part of this review, HCD will review any changes to the housing element to ensure that sites are suitable and available for housing development within the planning period and meet all the requirements of Government Code sections 65583, subdivision (c) and 65583.2. In addition, the element must demonstrate that any new development standards do not pose a constraint to the development of housing⁸ and do not inhibit compliance with other state housing laws, including, but not limited to, State Density Bonus Law,⁹ minimum parking limitations within one-half mile of public transit,¹⁰ and SB 330 preliminary application requirements.¹¹

Consequences for Housing Element Noncompliance

As a reminder, per Housing Element Law, HCD “shall review any action or failure to act by [the City] that it determines is inconsistent with an adopted housing element..., including any failure to implement any program actions included in the housing

² Gov. Code, § 65585, subd. (b)(1).

³ Gov. Code, § 65585, subds. (b)(3), (d).

⁴ Gov. Code, § 65585, subd. (f).

⁵ Gov. Code, § 65585, subd. (g).

⁶ Gov. Code, § 65585, subd. (h).

⁷ Gov. Code, § 65585, subd. (b)(1).

⁸ Gov. Code, § 65583, subd. (a)(5).

⁹ Gov. Code, § 65915.

¹⁰ Gov. Code, § 65863.2.

¹¹ Gov. Code, §§ 65941.1, 65589.5, subd. (o).

element....”¹² If HCD “finds that the action or failure to act by [the City] does not substantially comply with this article,” HCD may revoke its finding that the City’s housing element is in compliance with Housing Element Law until it determines that the City has come into compliance with state law.¹³

Various consequences may apply when a city does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General (AGO), court-imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the application of the “builder’s remedy.”¹⁴ In addition, pursuant to SB 1037 (Statutes of 2024), further penalties such as a minimum of \$10,000 per month and associated attorney costs are now authorized for any action brought by the AGO or HCD to enforce the adoption of housing element revisions, among other statutes¹⁵.

In addition, as you are aware, the City received a Prohousing Designation on December 1, 2023. In order to achieve this designation, the City met certain threshold requirements, including housing element compliance, and demonstrated how the City is accelerating the production of housing. This designation allows for the City to access certain funding as well as be more competitive for other funding sources, including housing, community development, and infrastructure funding programs. To maintain the City’s Prohousing Designation and benefits therein, it must maintain housing element compliance.¹⁶

Conclusion

HCD appreciates the opportunity to provide technical assistance to implement the provisions of Housing Element Law. We look forward to continued cooperation with City staff as the City continues to implement its housing element. If you have questions or need additional information, please contact me at Melinda.Coy@hcd.ca.gov.

Sincerely,



Melinda Coy
Proactive Housing Accountability Unit Chief

CC: Miles Slattery, City Manager
Autumn Luna, City Attorney

¹² Gov. Code, § 65585, subd. (i)(1)(A).

¹³ Gov. Code, § 65585, subd. (i)(1)(B).

¹⁴ Gov. Code, §§ 65585, subds. (j), (l); 65589.5, subd. (d)(5).

¹⁵ Gov. Code, § 65009.1, subds. (a)(1), (a)(2) (effective January 1, 2025).

¹⁶ CCR § 6607 (a)(1)(E).