

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

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April 21, 2023

Jeff Bond, Director  
Community Development Department  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

Dear Jeff Bond:

**RE: City of Albany's 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the City of Albany's (City) housing element adopted on February 21, 2023 and received for review on February 22, 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. In addition, HCD considered comments from Albany Thrives Together and YIMBY Law, Greenbelt Alliance, and Margie Marks pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses most statutory requirements described in HCD's December 9, 2022 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Article 10.6 of the Gov. Code), 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).)*

Goals, Actions, Metrics, and Milestones: The element was revised to include Table 6-2 (p. 6-61) identifying the City's affirmatively furthering fair housing (AFFH) programs and noted some geographic targeting. However, several of these programs do not include or have minimal quantifiable metrics that target beneficial impacts for people, households, and neighborhoods (e.g., number of

people or households assisted, number of housing units built, number of parks or infrastructure projects completed). Second, programs must include specific geographic targeting, where applicable. Lastly, while the element noted that certain place-based programs, given the community need demonstrated through the assessment of fair housing, the element must include significant and meaningful place-based strategies for revitalization and increasing housing choices and affordability throughout the City.

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).)*

*The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing, and whether the inventory affirmatively furthers fair housing. (Gov. Code, § 65583, subd. (c).)*

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

Zoning for a Variety of Housing Types (Emergency Shelters): The element was revised to indicate that emergency shelters in existing buildings would be approved ministerially and a new construction project would require design review and public hearing (p. 5-27). However, as found in HCD's prior review the element must demonstrate that the City has at least one zone that permits emergency shelters without discretionary action. The element should either clarify design review is nondiscretionary or add or modify programs to address the constraint.

For your information, zoning to permit emergency shelters without discretionary action was required as part of the 4th cycle housing element and prior to the 5th cycle housing element. If emergency shelter zoning was not completed to meet these requirements, HCD cannot find the element in compliance until the appropriate zoning to permit emergency shelters without discretionary action is demonstrated or 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>.

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 zoning available to encourage a variety of housing types.

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... ..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... (Gov. Code, § 65583, subd. (c)(3).)*

Local Processing and Permit Procedures: The element was revised to include examples of recently approved projects and the required steps for approval. The examples generally noted that applicants first underwent pre-application review with study session and then complete applications were submitted followed up by additional approval hearings. However, as found in HCD's prior review, the analysis must address the number of hearing and approval findings. The analysis should evaluate for impacts cost, timing, feasibility and approval certainty.

Persons with Disabilities: HCD prior review found that the element must evaluate the conditional use permit (CUP) requirement for group homes of seven or more and include a specific commitment to remove or mitigate this constraint. The element was revised to include Program 3-D (*Residential Care Facilities*) committing to reducing CUP requirements to a minor use permit and applying objective performance standards. However, group homes should be permitted similar to other uses of the same form. The element should either clarify performance standards are similar to other residential use of the same form or the Program should be revised to remove the commitment to applying performance standards and only commit to apply objective standards. Second, this program commits to implementation by 2028. Given the community need for and importance of this program, the element must commit to implementing

sooner in the planning period (e.g., by 2025). Lastly, the analysis acknowledged spacing requirements as a constraint and committed to evaluating this constraint in applicable programs. However, the programs did not reflect this commitment. The element should be revised to include a commitment to evaluating spacing requirements and removing constraints as part of this evaluation.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted to comply with the above requirements pursuant to Government Code section 65585.

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), including for lower-income households, shall be completed no later than one year from the statutory deadline. 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 rezones pursuant to Government Code section 65583, subdivision (c)(1)(A) or Government Code section 65583.2, subdivision (c) 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.

HCD appreciates the dedication of the housing element team. We are committed to assisting the City in addressing all statutory requirements of State Housing Element

Jeff Bond, Director  
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Law. If you have any questions or need additional technical assistance, please contact Claire Sullivan-Halpern, of our staff, at [Claire.Sullivan-Halpern@hcd.ca.gov](mailto:Claire.Sullivan-Halpern@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