DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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March 30, 2023

Dana Ayers, Director
Community Development Department
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

Dear Dana Ayers:

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

Thank you for submitting the City of Clayton's (City) housing element that was adopted January 17, 2023 and received for review on January 31, 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. HCD considered comments from East Bay for Everyone, East Bay YIMBY, Greenbelt Alliance and YIMBY Law, pursuant to Government Code section 65585, subdivision (c).

The adopted element addresses many statutory requirements described in HCD's October 12, 2022 review; 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.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while 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, 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 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.

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 CLAYTON

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: As found in HCD's prior review, the element must describe the City's compliance with existing fair housing laws and regulations. While the element indicates that the Housing Authority of Contra Costa County provides monitoring and enforcement services, based on the response provided, the element must still describe how the City complies with state and federal fair housing laws. For additional information, please see pages 28-30 on HCD's AFFH Guidance Memo at https://www.hcd.ca.gov/community-development/affh/index.shtml.

   Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element was revised to state that Clayton does not have concentrations of low-income or minority households; and therefore, no additional analysis was provided. Please see HCD's prior review for additional information.

   Contributing Factors to Fair Housing Issues: The element was revised noting that public opposition and the need to retain a small-town character contributed to the lack of housing in the City. However, this analysis should also discuss how certain factors have disproportionately impacted various households including special needs populations and protected classes in the City and throughout the region. This analysis should also consider how these, and other relevant factors have contributed to the fair housing issues and conditions in the City. Based on a complete analysis, the element should re-evaluate and prioritize these factors.

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).)*

Realistic Capacity: The element was revised to include a list of approved projects from neighboring communities to support the assumption that the identified regional housing needs allocation (RHNA) sites will develop at 80 percent of maximum allowable densities. However, as found in HCD's prior review, the estimate of the number of units for each site should be adjusted, as necessary, based on land use controls and site improvements. For example, the element noted that several sites including environmental and topological conditions that can constraint development. The analysis should consider these factors, include additional supporting information for the assumptions or make adjustments as necessary.

In addition, the element did not address HCD's prior review regarding the likelihood of residential on sites that allow 100 percent nonresidential uses. Please see HCD's prior review for more information.

Nonvacant Sites: The element was revised to indicate that sites were identified based on one or more criteria. The element also identified the criteria used on a site-by-site basis. The analysis indicates that majority of sites were either identified solely based on the degree of underutilization, whether the site was city-owned or if the site has owner interest. Furthermore, several sites were identified solely based on owner interest. First, for sites that were identified based on the degree of underutilization, the element must include supporting information demonstrating how factors such as building age and low improvement value (ILV) are indicative of redevelopment potential. Second, for sites chosen based on owner interest, while having owner interest can be an important part of the determining redevelopment potential, the element must clarify whether owners are interested in redeveloping during the eight-year planning period or provide additional analysis and criteria to support the redevelopment potential of these sites or identify additional sites. Lastly, please see the finding below regarding the use of publicly identified sites. In addition to a complete analysis, HCD received public comments regarding the uses and suitability of many of these sites. The element should address and consider public comments.

HCD's prior review found that the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. As a result, 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.

The adopted resolution did not include the required findings. 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. If applicable, any future re-adoption of the housing element must include the appropriate finding as part of the adoption resolution.

Publicly-Owned Sites: The element was revised to indicate that several sites are City-Owned and that this criteria indicates that sites are likely to be redeveloped during the planning period. The element must include additional discussion on each of the City-Owned sites identified to accommodate the RHNA. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses and any known conditions that preclude development in the planning period and the potential schedule for development. This is particularly important since many of these City-Owned sites were also identified in the last planning period. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, the housing element must include a description of whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act.

Small Sites: As stated in HCD's prior review, the element must provide an analysis of sites smaller than 0.5 acres to accommodate lower-income households. While the element was revised to state that small sites have been assigned to above moderate incomes, the inventory shows that lower income units are still planned to be developed on sites smaller than 0.5 acres. This includes sites N, F, P, and I. The element must be revised with an analysis demonstrating the suitability of these sites for lower-income households. Please see HCD's previous review for more information.

Infrastructure: The element was revised to indicate that water demand will likely exceed water supply and that water conservation and supply expansion will likely be needed; however, since water supply is a statewide issue, this is not considered a constraint. Given the lack of water capacity, the element must include programs to address water infrastructure capacity such as pursuing funding and other opportunities to expand water supply through conservation or employing strategies to secure additional water capacity.

Environmental Constraints: HCD's prior review found that the element must analyze and relate environmental conditions to the identified sites including any other known conditions or other environmental constraints that could impact housing development on identified sites during the planning period. The element was revised to discuss various environmental conditions and how it may impact sites. For example, the element notes certain development restrictions apply to sites with slopes. The element should discuss these restrictions and analyze the impacts on the ability to achieve maximum allowable densities. HCD received public comments regarding the environmental constraints and impacts on suitability of the identified sites. In addition to address this finding with a complete analysis, the element should address and consider public comments.

Zoning for a Variety of Housing Types:

- *Emergency Shelters (Parking)*: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Please be aware Chapter 654, Statues 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.

- *Permanent Supportive Housing*: The element was revised to include Program D-2, committing to allowing supportive and transitional housing in mixed-use zones with objective standards. However, HCD's prior review found that supportive housing shall be a use by-right 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.

- *Manufactured Housing*: The element was revised committing to allow manufactured housing in multifamily and mixed-use zones. However, HCD's prior review found that according to state law, manufactured homes on a permanent foundation are to be allowed the in the same as single-family homes. The element must demonstrate compliance with this requirement or add or modify programs.

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).)*

   Land Use Controls: The element was revised to state that lot coverage requirements do not constraint development (p. 4-11). The element further states that the City does not requirement minimum unit sizes. However, page 4-13 of the element describes requirements for minimum lot area per unit. As found in HCD's prior review, the element should include an analysis to 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. Based on a complete analysis, the element should include programs to address or remove the identified constraints.

   Local Permit and Processing Procedures: HCD's prior review found that the element should analyze all permits and processes required to approve single family and multifamily development especially the use permit, site plan permit and development plan permit. The element also indicates that the City identified majority of its RHNA sites in the planned development zone and that multifamily housing is generally subject to a site plan permit in this zone. Further, the element notes that the approval process entails neighborhood notifications, public hearing, examining uses with computability of surrounding uses. HCD's prior review found that the element must analyze these requirements for impacts on certainty and feasibility. The element was not revised to address these findings. While

the element included Program D-2 committing to streamlining the process, the element must include a complete analysis evaluating all permit and process requirements for potential constraints on housing supply (number of units), costs, timing, feasibility and approval certainty. Based on a complete analysis, the element should modify programs with specific commitments.

Design Review: The element was revised to indicate that the City does not have specific findings to be made for a project's design and the review process is intended to ensure compatibility with surrounding uses. This does not constitute as an analysis. As found in HCD's prior review, The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria for each SPA, for their impact as potential constraints on housing supply and affordability. For example, the analysis could describe required findings and discuss whether objective standards and guidelines improve development certainty and mitigate cost impacts. The element must demonstrate this process is not a constraint or it must include a program to address this permitting requirement, as appropriate. In addition, the Housing Crisis Act of 2019 (SB 330, 2019) was signed by Governor Newsom on October 9, 2019, and became effective on January 1, 2020. The Housing Crisis Act (Gov. Code, § 66300), under specified conditions, suspends the use of subjective design standards.

Fees and Exactions: The element was revised to state that fees are lower than nearby communities such as Pittsburg and Concord. However, the element still should include an analysis of fees and evaluate this for disproportionate impacts on certain housing types. Please see HCD's prior review for additional information.

Zoning and Fees Transparency: The element was not revised to address this finding. Please see HCD's prior revie for additional information.

Constraints on Housing for Persons with Disabilities: HCD's prior review found that the City treats group homes of seven or more as a commercial use, only allowed with a use permit, onerous parking requirements, and a spacing requirement of 1,000 feet. The element was revised to include Program D-2 committing to allow these uses by-right. However, that does not address HCD's prior review regarding spacing, parking, allowance in all residential zones. Additionally, as found in HCD's prior review, the element did not address the City's definition of family and clarify how the city permits unlicensed residential care facilities or group homes. Please see HCD's prior review for additional information.

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

5. *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).).*

At-Risk Housing: The element was revised stating that the City will send notices to property owners with preservation options. However, as found in HCD's prior review, the element must include a list of qualified entities known to have the legal and managerial capacity to acquire and manage at-risk units. Please see HCD's prior review for additional information.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element… (Gov. Code, § 65583, subd. (c).)*

   To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Programs to be revised include the following:

   Shortfall of Sites: As stated in the previous review because the element does not identify adequate sites, including available zoning and development standards, to accommodate the RHNA for lower-income households, it must include a program(s) to specifically commit to rezoning sites pursuant to Government Code section, 65583.2, subdivisions (h) and (i). While Program D-2 was updated to include some for the needed language, it does not appear to meet all these requirements. The program should also identify the acreage and allowable densities or anticipated units on the sites and specify a complete list of statutory requirements.

   City-Owned Sites: The element identified City-Owned sites to accommodate a portion of the RHNA. The element should include a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development of City-Owned sites. Actions should include outreach with developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance, issuing permits and alternative actions if sites are not developed as anticipated.

2. *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 A2, 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.

3. *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 Finding A3 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.

4. *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 will need to add or revise programs. 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. For example, although the contributing factors identified exclusionary zoning and lack of multifamily housing in higher resource areas, there must be significant and meaningful actions to promote housing mobility (not limited to the RHNA) or housing choices and affordability throughout the City. Additionally, as found in HCD's prior review, actions must have specific commitment, metrics, milestones, and geographic targeting as appropriate and must address housing mobility enhancement (more choices and affordability across geographies), new housing choices and affordability in higher opportunity and income areas (e.g., missing middle housing types), place-based strategies for community revitalization and displacement protection.

   Lastly, the analysis explicitly notes that the City and the broader region is significantly different regarding fair housing conditions and demographics between Clayton and its eastern neighbors. The analysis also noted that exclusionary zoning and lack of affordable housing has created disproportionate impacts on protected classes and special needs populations throughout the region. Further the analysis demonstrated that along with its neighbors, Clayton is predominately highest resourced, highest income, and wholly a racially concentrated area of affluence. To promote housing choices and affordability throughout the City, the element must include a significant suite of programs to promote housing mobility and provide new opportunities in higher resource areas. These programs

should not be limited to the RHNA and, instead, target meaningful change in terms of housing choices and affordability.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a)... (Gov. Code, § 65583, subd. (c)(6).)*

   While the element was revised committing to send letters to property owners, this does not address HCD's prior review. Please see HCD's prior review for more information.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

   HCD's prior review found that the element must include a program committing to removing planning commission approval on large accessory dwelling units (ADU) as it was demonstrated that this is a constraint. The element was not revised to address this finding.

   Additionally, given the City's reliance on ADUs to accommodate a portion of the RHNA, the element must include a program committing to frequent monitoring and adjusting the projected assumptions if they do not actualize during the planning period. Specifically, the program should commit to monitor ADU production and affordability throughout the course of 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