

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

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April 24, 2023

Marlene Subhashini, Director
Community Development Department
City of Foster City
610 Foster City Blvd
Foster City, CA 94404

Dear Marlene Subhashini:

RE: City of Foster City's 6th Cycle (2023-2031) Revised Draft Housing Element

Thank you for submitting the City of Foster City's (City) revised draft housing element update received for review on February 24, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from G.H. Dababo, David Kellogg, South Bay YIMBY, and Housing Leadership Council of San Mateo County pursuant to Government Code section 65585, subdivision (c).

The revised draft housing element addresses many statutory requirements described in HCD's October 3, 2022 review; however, additional revisions are necessary to substantially 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.

As a reminder, the City's 6th cycle housing element was due January 31, 2023. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

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 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.

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>.

HCD appreciates the hard work and dedication of the housing element team in preparation of the City's housing element and looks forward to receiving the City's adopted housing element. If you have any questions or need additional technical assistance, please contact Anthony Errichetto, of our staff, at

Anthony.Errichetto@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF FOSTER CITY

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).)*

Integration and Segregation: The element must be revised to include a regional analysis (e.g., comparing the City as a whole to the broader region) for familial status. The element should include local data and other relevant factors such as historical zoning and land use potentially resulting in a lack of access to housing choices and affordability.

Disparities in Access to Opportunity: The element should analyze whether there is equal access to jobs for residents of all economic segments, in addition to comparing employment trends in the City to patterns in surrounding areas (e.g., lower economic scores in areas bordering the City).

Disproportionate Housing Needs Including Displacement: The element should include a regional analysis of cost burden. In addition, the element must include a local (patterns within the City) and regional analysis of overcrowding. The element must also include an analysis of where local substandard housing exists geographically.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element must include a locational analysis (neighborhood by neighborhood) of the regional housing needs allocation (RHNA) by income group and evaluate the impact of identified sites in each area. The element should include an analysis of impacts on existing patterns of socio-economic concentrations and whether sites exacerbate conditions and identify further program actions that will be taken to promote equitable quality of life throughout the community (e.g., anti-displacement and place-based community revitalization strategies).

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Overpayment: While the element was revised to include extremely low-income households that are overpaying for housing, the element must quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner) and add or modify policies and programs as appropriate.

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).)*

Progress in Meeting the RHNA: While the element was revised to address affordability of the number of new units built or pending since June 30, 2022, it must also address the availability of projects in the planning period. The element should describe the status, any barriers to development, and other relevant factors to demonstrate their availability in the planning period. Lastly, because of the significance of pending and approved projects to meet the City's RHNA, the element should include a program to monitor progress including specific commitments to annually monitor production and affordability of pipeline projects and if necessary, evaluate whether build out will occur as anticipated in the sites inventory at least twice in the planning period. The Program should also commit to identify additional sites by specific dates if necessary.

Sites Inventory: The element must clarify whether the listed capacity is the total capacity (maximum allowable) or includes realistic capacity assumptions.

Realistic Capacity: While the element provides assumptions for buildout on each site, support must be provided for assumptions. Many of the sites are on parcels with existing apartment developments. Many of the sites assumes 100 percent of base zoned density for the multifamily units in the Beach Cove, Franciscan, Harbor Cove, Sand Cove, Lagoons, Eaves Apartments, and Shadow Cove sites. The analysis must provide substantial support and demonstrate a significant history of developing at maximum density. In addition to the information provided, the listing should include all multifamily development by allowable density and use of any exceptions to allowable densities. The analysis should also utilize gross allowable densities. Alternatively, the element could rescale assumptions (e.g., 80 percent of maximum allowable densities) or utilize minimum densities. Lastly, the element must clarify whether it is assumed that projects will have to utilize the planned development (PD) process and therefore have additional discretionary requirements.

Suitability of Nonvacant Sites: While the element states there is general interest from some property owners and existing leases will not prevent additional residential development, the discussion should address any barriers to redevelopment in the planning period. In addition, the 1010 Metro Center site states that realistic capacity was reduced

by 50 percent because 100 percent commercial is allowed. The element should discuss likelihood of residential development in addition to the letter of interest from the owner.

In addition, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, 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.

Zoning for a Variety of Housing Types:

- *Emergency Shelters*: While the element stated that there is sufficient capacity in the PF, C-1, and C-2 zones, it must demonstrate the permit processing, development, and management standards for emergency shelters are objective and encourage and facilitate the development of, or conversion to, emergency shelters. In particular, the element describes a maximum of ten beds, a maximum stay of 60 days, and parking requirements that do not appear to comply with statutory requirements pursuant to Government Code section 65583, subdivision (a)(4)(A). A program must be added to specifically address these constraints.
- *Low Barrier Navigation Centers*: The element was revised to state that low barrier navigation centers are allowed in the same zones as emergency shelters. Low Barrier Navigation Centers 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 65660. The element must demonstrate compliance with this requirement and include programs as appropriate.
- *Transitional and Supportive Housing*: While the element states transitional and supportive housing is allowed in all zones allowing residential uses where certain criteria are met, it must describe whether these criteria are in addition to what is required of other residential uses. If different, the element must include a program to address the constraint.
- *Single Room Occupancy (SRO) Units*: While the element added Program H-E-9-b (*Small Housing Units*), the program must clarify which zones will allow SROs, development standards and how they will be permitted.
- *Accessory Dwelling Units (ADUs)*: While the element includes Program H-D-4-a ADUs, it must commit to updating the City's ADU ordinance to comply with state law within a specific timeframe (e.g., 6 months).

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: While the element commits to revising minimum unit sizes, it should evaluate other various development standards for impacts on housing costs, feasibility, and the ability to achieve maximum densities. This analysis should specifically address minimum lot sizes, open space requirements.

Fees and Exaction: While the element was revised to list planning fee deposits, it must also list typical fees for multifamily and single-family developments and evaluate them for impacts on housing development costs.

Zoning and Fees Transparency: While the element was revised to reference fees on the City's website, it must also clarify its compliance with new transparency requirements for posting all zoning and development standards for each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

Local Processing and Permit Procedures: While the element includes information about processing times, it should also describe the procedures for a typical single family and multifamily development. The analysis should address the approval body, the number of public hearing if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing, and approval certainty. The element should also describe and evaluate the findings for a conditional use permit (CUP) if applicable to typical single family and multifamily developments that meet zoning requirements.

In addition, the element should clearly describe whether the PD process is required or optional to applicants. If required, the element should include specific analysis of the impacts of absence of fixed development standards on housing supply (number of units), cost, timing, feasibility and approval certainty.

Design Review: While Program H-D-6-e (Multifamily) states it will study design review, it must include a specific commitment to address identified constraints (i.e., lot size, coverage, setbacks, open space).

Inclusionary Requirements: While the element was revised to state the inclusionary requirements are feasible based on a study, it should analyze the requirements and its impacts as potential constraints on the development of housing for all income levels and mandated affordability levels.

Codes and Enforcement: While the element was revised to describe which building code is enforced, it must also describe the City's code enforcement process and procedures (i.e. proactive or complaint based) and analyze their impact as potential constraints on housing supply and affordability.

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, subd. (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:

- *Program H-D-2-a (Potential Re-Use of Commercial Sites)*: While the program will evaluate progress midcycle, it must also commit to implement the amendments with a discrete timeline.
 - *Program H-D-5-a (School Sites)*: The program should consider actions beyond meeting to have a beneficial impact in the planning period, including establishing appropriate zoning, anticipated outcomes, and discrete timelines.
 - *Program H-D-6-a (Minimize Governmental Constraints)*: While the program was revised to add a second review, they program should consider actions beyond reporting recommendations and include how constraints will be identified and removed with discrete timing.
 - *Program H-E-3-c (Cooperative Ventures)*: The program should be revised to include how often the City will conduct proactive outreach and discrete timing for implementation.
 - *Program H-F-1-a (Facilities and Services for Special Needs)*: The program should include actions for persons with developmental disabilities as well as discrete timing of how often outreach will occur.
 - *Program H-F-2-d (Emergency Shelter Zoning)*: The program must include specific commitment to address parking and other identified constraints by a specified date.
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 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, the element should be revised as follows:

- *Program H-D-1-b (General Plan and Zoning Amendments)*: While the program states that it was completed in January 2023, the City should demonstrate the rezones were complete by submitting documentation (e.g., resolution) to HCD. Please be aware, if rezoning, specifically for the lower-income RHNA, is not completed by January 31, 2023, the element must include a program(s) to rezone sites with appropriate zoning and development standards pursuant to Government Code sections 65583, subdivision (c)(1), and 65583.2, subdivisions (h) and (i).
 - *Program H-D-4-h (ADU Monitoring)*: While the program commits to evaluating alternative actions by the end of 2026, it must commit to specific alternative actions and monitor production and affordability of ADUs more than once in the planning period (e.g., every two years).
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 A4, 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 H-D-6-c (Parking Requirements)*: While the program was revised, it should commit to specific parking standards, including guest parking requirements, or ensure reductions will not constraint housing development and include a specific timeframe to amend accordingly.
- *Program H-D-6-b (Minimize Zoning Constraints)*: While the element commits to amend zoning for manufactured homes and minimum floor areas, it must commit and timing to amend all listed and necessary zoning amendments listed in the program. In addition, manufactured housing should be allowed as a single-family use in all zones allowing single family residential.
- *Program H-F-1-d (Reasonable Accommodation)*: The program should specifically commit to revising the City's reasonable accommodation constraints with specific timing for implementation.
- *Program H-F-1-i (Community Care Facilities)*: While the program states it will revise how community care facilities are allowed, it must commit to allowing group homes objectively to facilitate approval certainty similar to other residential uses of the same form. In addition, the program must allow group homes in all residential zones and should address spacing requirements as a constraint on housing for persons with disabilities.

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 may need to revise or add programs. The element must be revised to add goals and actions based on the outcomes of a complete analysis. 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. Actions must have specific commitment, metrics, milestones, and geographic targets as appropriate and must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection.