

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

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January 4, 2023

John Swiecki, Director
Community Development Department
City of Brisbane
50 Park Place
Brisbane, CA 94005

Dear John Swiecki:

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

Thank you for submitting the City of Brisbane's (City) draft housing element received for review on October 7, 2022. 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 YIMBY Law and Campaign for Fair Housing Elements, TransForm and YIMBY Law and Greenbelt Alliance, pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; 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. 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.

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) pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c), shall be completed no later than one year from the statutory deadline. Please be aware, if the

John Swiecki, Director

Page 2

City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until any necessary 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>.

HCD appreciates your hard work provided in the housing element update. 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 Molivann Phlong, of our staff, at Molivann.Phlong@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF BRISBANE

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. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

Shortfall of Sites from Prior Planning Periods: As noted on page A-15, the City had a shortfall of sites to accommodate the regional housing needs allocation (RHNA) for the 5th cycle of the housing element. The element notes that rezoning was completed but should describe how all requirements were met or include new programs to address any gaps in meeting requirements. Specifically, the element should clearly describe how the 5th cycle needs were accommodated with sites at appropriate densities, size and other suitability and availability factors. The element should also discuss the suitability and availability of the sites and how all by right requirements were met pursuant to Government Code section 65583.2, subdivisions (h) and (i) and add or modify programs, as appropriate.

Special Needs Housing: The element must provide an evaluation of the cumulative effectiveness of past goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness) and revise programs as appropriate.

B. 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).)*

Local Data and Knowledge: The element notes the City is comprised of one census tract. As a result, most of the fair housing information and mapping does not reveal a pattern. For example, there is no discernible pattern in poverty rates or persons with

disabilities. For these reasons, the element should utilize local data and knowledge to complement the fair housing information and mapping. For example, the element could utilize fair housing providers, City staff, school officials, transportation planners and other local and regional planning documents.

Other Relevant Factors: The element includes several other relevant factors to fair housing issues such as history, land use, redlining, CC&R, lending and related demographics. However, given the one census tract (noted above) for the City, the element could consider additional other relevant factors such as historical investment by areas (e.g., capital improvement program), state and federal investment, seeking investment or lack of seeking investment to promote affordability and inclusion or other information that complements the state and federal data to better describe the patterns and trends within the City and compared to the region. The analysis could also consider future fair housing implications of the Baylands which may result in difference in access to opportunity such as parks and open space and active transportation or other indicators of quality of life.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should reassess contributing factors and prioritize those factors then formulate appropriate policies and programs.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

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).)

Extremely Low-Income (ELI) Households: While the element quantifies existing and projected ELI households, it must also analyze their housing needs. The analysis of ELI housing needs could consider tenure, overpayment, overcrowding, resources and the effectiveness of strategies and the magnitude of housing need.

Special Housing Needs: While the element includes some quantification of special housing needs, it must still analyze those needs. The analysis should include, but is not limited to, factors such as trends, household income, tenure, housing types, zoning, available resources, effectiveness of past strategies and an evaluation of the magnitude of the need. Local officials, special needs service providers, or social and health service providers may be able to assist with information to complete the analysis. For additional information and a sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

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 toward the RHNA: While the element may utilize pipeline and potential development projects toward the RHNA, it must also demonstrate their affordability and availability in the planning period. Affordability must be demonstrated based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed restrictions). Availability should account for the likelihood of project completion in the planning period and should address the status, necessary steps to issue permits, any barriers to development and other relevant factors.

In addition, the analysis of affordability and availability should specifically address the Baylands and its affordability and availability for development in the planning period. Regarding affordability, the element should either demonstrate affordability based on sales prices and rents or other mechanisms ensuring affordability (e.g., deed-restrictions) or demonstrate how the large site will facilitate affordability. For availability, the analysis should address the anticipated scheduled for development, including completion, any known barriers to development in the planning period, impacts of remediation plans on site availability, infrastructure, phasing requirements, build out horizons and any other factors impacting the availability of sites in the planning period. Based on the outcomes of this analysis, the element should adjust residential capacity assumptions for the planning period.

Finally, given the element has identified a large portion of the RHNA through pipeline projects, the element should include programs with actions that commit to facilitating development and monitoring approvals of the projects, including the number of units and affordability (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals and monitoring of project progress, including rezoning or identification of additional sites, if necessary).

Parcel Inventory: While the element lists parcels by various factors such as acreage, general plan designation, zoning and realistic capacity by income group, it should also list parcels by existing use sufficiently to facilitate an analysis of potential for redevelopment. Currently, the element (pp. B-20 to B-21) lists existing uses generically (e.g., Warehouse, single family residential) which is not sufficient information to facilitate an analysis of the potential for redevelopment. Instead, the element could describe the existing uses such as abandoned structure with large parking lot or could utilize factors or indicators of potential for redevelopment such as age of structure, existing versus allowable floor area and improvement to land value.

Suitability of Nonvacant Sites: The element must include an analysis demonstrating the potential for additional development on nonvacant sites. To address this requirement, the element should address the extent to which existing uses may constitute an impediment to additional residential development, the City's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional

residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

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 that the existing use is not an impediment to additional residential development in the planning period. This can be demonstrated by providing substantial evidence that the existing use is likely to be discontinued during the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) In addition, as part of adoption in its resolution, the City must find, based on substantial evidence, existing do not impede additional residential development and will likely be discontinued during the planning period. Otherwise, existing uses are presumed to impede additional development and the sites will not be utilized toward the RHNA.

Availability of Infrastructure: The element includes some general discussion of water and sewer capacity but should clarify sufficient existing and planned water and sewer capacity to accommodate the RHNA and include programs, if necessary.

Environmental Constraints: While the element generally describes potential environmental constraints, it must still describe any other known environmental or other conditions that could impact housing development on identified sites in the planning period. (e.g., shape, contamination, easements, conditions, compatibility)

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element mentions emergency shelters are permitted in the Southwest Bayshore Commercial district without a use permit, it should clarify the use is permitted without discretionary action. In addition, the element should discuss available acreage such as the presence of reuse and redevelopment opportunities to demonstrate sufficient capacity to accommodate the need for emergency shelters. In addition, the analysis should address proximity to transportation and services and any conditions inappropriate for human habitability and should list and evaluate development standards, including parking requirements as potential constraints. For example, the analysis should address the 12-bed limit as a constraint. Based on the outcomes of the analysis, the element should add or modify programs as appropriate.
- *Transitional and Supportive Housing:* Transitional housing and supportive housing must be permitted 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. While the element notes these uses are permitted the same as other residential uses, it should also clarify the

uses are permitted in all zones allowing residential uses and similar to residential dwellings of the same type in the same zone.

- *By Right Permanent Supportive Housing*: By right permanent 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 this requirement and include programs as appropriate.
- *Employee Housing*: The element must demonstrate zoning complies with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) or add or modify programs. Specifically, section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone.
- *Manufactured Housing*: Pursuant to Government Code section 65852.3, manufactured homes that are built on a permanent foundation must be allowed in the same manner and in the same zones as conventional or stick-built structures. The element must demonstrate consistency with this requirement or add or modify programs as appropriate.
- *Accessory Dwelling Units*: The element indicates the City modified its zoning code to ease barriers to the development of accessory dwelling units (ADU's). However, after a cursory review of the City's ordinance, HCD discovered several areas which were not consistent with State ADU law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should add a program to update the City's ADU ordinance to comply with State law.

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: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address multifamily heights. The analysis should address any impacts on housing cost, supply (number of units), feasibility and ability to achieve maximum densities and include specific commitment to address identified constraints in program.

Fees and Exaction: The element shows the total amount of fees per unit for typical single-family and multifamily development but should also list and evaluate all impact fees as part of the analysis. Currently, the analysis shows a aggregate figure for impact fees.

Local Processing and Permit Procedures: The element provides a general summary of some permit procedures but should discuss the procedures for a typical single family

and multifamily development that is consistent with zoning and the general plan. The analysis should address the decision-making body, typical number of hearings, timing and approval findings. The analysis should evaluate impacts on cost, timing and approval certainty and add or modify programs to address any identified constraints.

Housing for Persons with Disabilities: The element must analyze potential governmental constraints on housing for persons with disabilities. The analysis must address reasonable accommodation, definition of family and zoning and permit procedures for group homes for seven or more persons. For reasonable accommodation, the element should discuss the procedures, decision maker, timing and specifically list and evaluate approval findings. For the definition of family, the element should identify the definition and evaluate any potential impacts on the number of persons and unrelated persons. For group homes for seven or more persons, the element should specifically analyze and add or modify programs to address the conditional use permit procedure as a constraint.

On- and Off-Site Improvements: The element briefly mentions the City has standards for on- and off-site improvements but should list the actual standards for a typical development and evaluate the cost impacts on housing development.

Zoning and Fees Transparency: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City's website and add a program to address these requirements, if necessary.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

Requests for Lower Density and Permit Times: The element must analyze (1) requests to develop housing at densities below those identified in the inventory and (2) the length of time between receiving approval for a housing development and submittal of an application for building permits. The analysis should address any hinderances on the construction of a locality's share of the regional housing need and programs should be added or modified as appropriate.

C. 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 have a beneficial impact in the planning period and achieve the goals and objectives of the housing element, programs should have specific commitment toward housing outcomes (e.g., remove or modify “evaluate feasibility”, “study feasibility”, “study potential”, “examine how”, “explore potential”) and discrete and early timing (e.g., at least annually or by Jan 2025).

Examples of programs that should be revised with discrete timing include Programs 2.B.3 (Regional Shelter and Services to Homeless), 2.E.1 (Affordable Housing Strategic Plan), 2.F.3 (Land Banking), 2.F.4 (City Funding), 4.B.1 (Collaborate with Other Agencies on Housing Repair and Home Rehabilitation), 4.B.2 (Preservation Polices) and 5.A.4 (Publicize Funds for Rehabilitation).

Examples of programs that should be revised with specific commitment include Programs 2.A.5 (Reduce Minimum Lot Sizes), 2.A.7 (Commercial Zoning Amendments for Mixed Use), 2.D.1 (Special Needs Housing), 2.D.2 (ADU and JADU), 2.E.3 (ADU Construction Loan), 2.E.6 (City-owned Sites), 2.F.4 (City Funding in Private Development), 2.G.1 (Density Transfer) and 4.A.11 (Extend Affordability Covenants).

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 B3, 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:

- *Shortfall of Sites to Accommodate the RHNA:* The program should commit to *comply* (replace “consistent”) with all of the by right requirements pursuant to Government Code section 65583.2 (h) and (i). For example, the program should commit to affordability provisions and residential performance standards as well as permitting multifamily development without discretionary action.
- *Baylands and Pipeline Projects:* As noted in Finding B3, the element should include a program that commits to facilitate development and monitor approval of pipeline projects, including the Baylands, number of units and affordability.

- *Sites Identified in Prior Planning Periods*: If necessary, the element must include a program for vacant sites identified in two of more consecutive planning periods' housing elements or nonvacant sites identified in a prior housing element, that are currently identified to accommodate housing for lower-income households. The program must be implemented within the first year or three years, whichever is appropriate, of the planning period and commit to zoning that will meet the density requirements for housing for lower-income households (30 units per acre) and allow by-right approval (without discretionary action) for housing developments that include 20 percent or more of its units affordable to lower-income households.
 - *Replacement Requirements*: The element should include a program to provide replacement housing. (Gov. Code, § 65583.2, subd. (g)(3).) The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).
 - *Program 2.B.5 (Low Barrier Navigation Centers)*: The program must specifically commit to amend zoning (beyond “explore”) o permit low barrier navigation centers in all zones allowing multifamily uses pursuant to Government Code section 65661.
3. *The Housing Element shall contain programs which 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).)*

Given the lack of progress toward the regional housing need allocation for lower income households and special needs households in the prior planning period, the element must include significant and specific commitment to assist in the development of housing for lower-income households. While the element includes some actions (e.g., Goal 2), many of these actions do not commit to housing outcomes. Several actions commit to studies, examinations or building relationships. While these efforts are important and meaningful, these efforts should be complimented by additional steps that lead to housing outcomes. For example, Program 2.F.2 commits to annually develop a relationship with nonprofit housing developers. Instead, the Program should include clear and specific commitment to identify affordable development opportunities, grant incentives, assist with funding and process entitlements on an annual basis. The Program should also commit to a numerical target and evaluate and adjust efforts as necessary every other year. Other examples include programs under Policies 2.B (Special Needs), 2.D (Reduce Development Costs), 2.E (Seek Funding) and 2.F (Facilitate Affordable Housing).

In addition, the element must include specific actions to assist in the development of housing for extremely low-income households. Actions could include adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to extremely low-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers.

4. *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 Findings B4 and B5, 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.

5. *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 B1, the element must include a complete analysis of affirmatively furthering fair housing (AFFH). 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, milestones, geographic targeting and metrics or numeric objectives and, as appropriate, must address housing mobility enhancement, new housing choices and affordability in higher opportunity or income areas, place-based strategies toward community revitalization and displacement protection.

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).)*

The element should commit to monitor the production and affordability of ADUs every two to three years (e.g., three times in the planning period) and take action if assumptions in the sites inventory are not met (e.g., additional incentives, rezoning) within a specified time (e.g., six months).

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element includes new construction objectives, these objectives should include numerical targets for extremely low-income households and should also consider rehabilitation and conservation objectives by income group, including extremely low-income households.

E. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

While the element described various efforts to achieve public participation in the preparation of the housing element update, moving forward, the City should employ additional methods to engage all segments of the community, including lower-income and special needs households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income and special needs households in future public outreach efforts.

F. General Plan Consistency

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

While the element discusses how internal consistency will be achieved with other elements of the general plan as part of the housing element update, it should also discuss how internal consistency will be maintained throughout the planning period.