

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

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April 5, 2023

Clay Holstine, City Manager
City of Brisbane
50 Park Place
Brisbane, CA, 94005

Dear Clay Holstine:

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

Thank you for submitting the City of Brisbane's (City) housing element that was adopted February 2, 2023 and received for review on February 8, 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 the Bay Area Council, Housing Action Coalition, Housing Leadership Council of San Mateo County, and YIMBY Law pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses most statutory requirements described in HCD's January 4, 2023 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

1. *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).)*

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).)

Progress toward the Regional Housing Need Allocation (RHNA): As noted in the prior review, the element may utilize pipeline and potential development projects toward the RHNA but must also demonstrate their affordability and availability in the planning period. While the element now identifies 39 units toward the RHNA

(p. B-14), it must still demonstrate the affordability of the units, particularly for units utilized toward the lower-income and moderate-income RHNA. Affordability must be demonstrated based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed restrictions). Please see HCD's prior review for additional information.

In addition, the element now discusses that Remedial Action Plans have been approved and environmental clean up is estimated between three and four years to complete but should still demonstrate the availability of the Baylands in the planning period. Specifically, the element should still discuss the anticipated schedule, including timing for all entitlements, infrastructure, phasing requirements, build out horizons and any other factors or known barriers impacting the availability in the planning period.

Nonvacant Sites: The element now describes existing uses on sites identified in the PAOZ-1 and PAOZ 2 zoning districts and includes some recent experience with redevelopment on a similar site. However, the element should utilize additional experience or development trends on sites with similar uses to further support assumptions on PAOZ-1 and PAOZ zoned sites. The element may utilize development experience from nearby and comparable communities to complete this analysis. In addition, the element should evaluate the extent existing uses impede additional development on nonvacant sites outside of the PAOZ 1 and PAOZ 2 zoning districts. For example, several sites have existing single family residential uses where the potential added residential capacity does not far exceed the existing number of units (1 to 1 ratio). In addition, the inventory appears to identify sites with parking lots and the element should evaluate these existing uses and the potential for redevelopment. Please see HCD's prior review for additional information.

In addition, if the element relies on nonvacant sites to accommodate 50 percent or more of the RHNA for lower-income households, specific requirements are triggered to make findings (e.g., adoption resolution) based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period. While the element does not currently trigger this requirement, if future submittals do trigger this requirement, the appropriate findings must be made based on substantial evidence.

Electronic Sites Inventory: Although the City has submitted electronic sites inventory as described in the prior review, if any changes occur, the City should submit revisions as part of any future re-adoption or submittal. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for additional information.

Programs: As noted above, the element does not include a complete site analysis. Depending upon the results of that analysis, the City may need to add or revise programs. In addition, the element should be revised, as follows:

- *Program 2.A.9 (Monitor Approvals of Pipeline Projects)*: As noted above, the element must complete an analysis of the availability of the Baylands in the planning period. This Program should be revised based on the outcomes of a complete analysis. In addition, the Program should be revised with the anticipated number of units by affordability, anticipated dates for final entitlements and building permits and should commit to a specified date when alternative sites will be identified if the pipeline is not completed as anticipated.
 - *Program 2.A.8 (Transitional and Supportive Housing)*: The Program should be revised with an implementation date earlier in the planning period (e.g., by 2025).
 - *Prior Identified Sites*: HCD's prior review found the element must include a program to utilize sites identified in prior planning periods. In the City's comment summary, vacant sites from two or more planning periods were not identified toward the lower-income RHNA. However, the element appears to identify nonvacant sites from the prior planning period toward the lower-income RHNA which triggers this requirement. The element should either demonstrate nonvacant sites from the prior planning period are not used toward the lower-income RHNA or add or modify a program, as appropriate. Please see HCD's review for additional information.
2. *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... (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. 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).)

Land Use Controls: While the element now appears to show multifamily heights do not impact the ability to achieve maximum densities, it also notes multifamily height can constrain development. Further, the element indicates affordable

housing developers regard the multifamily heights as a constraint and would need to seek exception to the development standards. As a result, the element should either demonstrate the heights are not a constraint or add or modify a program to address the multifamily heights as a constraint on development.

On/Off-Site Improvements: The element now indicates that off-site improvements can substantially increase costs for additions or smaller developments. As a result, the element should either demonstrate these improvements are not a constraint or add or modify a program to address the identified constraint.

Persons with Disabilities: HCD's prior review found the element must analyze potential governmental constraints on housing for persons with disabilities, including the reasonable accommodation procedure, definition of family and requirements on group homes for seven or more persons. In response, the element now describes the definition of family which appears to explicitly exclude group homes for seven or more persons. Further, the City subjects these uses to a conditional use permit (CUP), a complex discretionary process that impacts timing, feasibility and approval certainty and acts as a constraint. As a result, the element should include a program to modify the definition of family and revise or remove the CUP permit procedure as identified constraints. Permit procedures should allow group homes in all zones allowing residential uses with objectivity to facilitate approval certainty similar to other residential uses of similar form.

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).)*

While the element now includes Program 2.F.7 to assist in the development of housing for extremely low-income (ELI) households, timelines should be adjusted earlier in the planning period (e.g., by 2025). In addition, the Program should clarify that outreach and coordination with affordable housing developers includes identifying development and other housing opportunities.

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).)*

While the element includes various programs to Affirmatively Furthering Fair Housing (AFFH), the programs should be modified with metrics or numerical targets and geographic targeting toward significant and meaningful outcomes. An example of a metric would be the number of households assisted or number of units produced. An example of geographic targeting would be throughout the City, higher income areas or lower density neighborhoods. Specifically, the

following programs should include metrics and geographic targeting: Programs 1.A.2 (Outreach), 1.A.3 (Targeted Outreach), 2.A.5 (Small Lots and Housing Type Variety), 2.B.1 (Baylands), 2.D.2 (Accessory Dwelling Units), 2.E.1 (Affordable Housing Strategic Plan), 2.E.5 (Linkage Fee), 2.E.6 (City-owned Sites), 3.B.1 (Housing Choice Vouchers), 4.A.1 (Affordable Housing Strategic Plan), 4.A.3 (Fair Housing Training), 4.A.4 (Fair Housing Complaints), 4.A.5 (Targeted Outreach) and 4.A.9 (Homeshare).

5. *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 now includes Program 5.A.(Stakeholder Committee) to establish a stakeholder committee, the Program should also commit to engage the Committee as part of the annual progress report on implementation pursuant to Government Code section 65400. In addition, as found in the prior review, moving forward as part of any future submittal, the City should employ additional methods for public outreach efforts in the future, particularly to include lower-income and special needs households or representatives. For example, the City could conduct targeted stakeholder interviews.

Finally, 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.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted, if necessary, to comply with the above requirements.

In addition, 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>.

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>.

HCD appreciates the hard work and cooperation the housing element update team provided in the housing element update and review. 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