

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

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March 17, 2023

Debbie Pedro, Director
Community Development Department
City of Saratoga
13777 Fruitvale Avenue
Saratoga, CA 95070

Dear Debbie Pedro:

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

Thank you for submitting the City of Saratoga's (City) revised draft housing element received for review on January 26, 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. Our review was facilitated by a conversation on March 6, 2023 with yourself, consultants Curtis Banks and Olivia Salter. In addition, HCD considered comments from David Kellogg pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements described in HCD's October 26, 2022 letter; however, additional revisions are 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.

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 should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets 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 you, and consultants Curtis Banks and Olivia Salter provided during the 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 Hillary Prasad, of our staff, at Hillary.Prasad@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF SARATOGA

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).)

As noted in the prior review, while the element provided a program-by-program review of the previous element, the element must include an evaluation of the effectiveness of 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).

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).)*

Integration and Segregation: While the element was revised to update data sources, it still must analyze identified differences in income relative to the region including other relevant factors such as zoning and land use patterns, and investments. In addition, the element should describe and analyze any local concentrations or patterns of familial status geographically within the City.

Disparities in Access to Opportunity: While the element was revised to provide some information on disparities in access to opportunity, it must provide a regional analysis of disparities of the educational, environmental, and economic scores within the City compared to the region. In addition, while the element stated that utilizing a car is common, it must describe access to transit within the City and regionally.

Disproportionate Housing Needs including Displacement: The element must describe any geographic concentration of cost burden both locally (within the City) and regionally (City compared to the region).

Affirmatively Furthering Fair Housing (AFFH) and Identified Sites: While the element was revised to summarize fair housing issues (Table 11), it should analyze the data by area, including quantification and impact of the fair housing issues in the City. The analysis should specifically address isolation of the regional housing needs allocation (RHNA) by income group. If sites exacerbate conditions or isolates the RHNA by income group, the element should identify further program actions (not limited to the RHNA) that will be taken to promote inclusion and equitable quality of life throughout the community (e.g., housing mobility and new opportunities in higher resource or relatively higher income areas).

Other Relevant Factors: While the element was revised to add additional information regarding the City's incorporation as well as information from the regional Analysis of Impediments to Fair Housing Choice (AI), it should describe the potential effects on fair housing issues if it sunsets in 2025.

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).)*

Progress in Meeting the RHNA: While the element was revised to address affordability of the units built, approved, or pending since June 30, 2022, it must demonstrate availability or likelihood of development during the planning period. The element should discuss the status, any barriers to development, anticipated completion, drop-out rates, or other relevant factors to demonstrate availability of the units during the planning period.

Small Sites: The element was revised to include examples of development on small sites but should also describe affordability of the examples and demonstrate similarities to sites identified in the inventory. In addition, the element should describe potential for lot consolidation and provide examples of past lot consolidations within the City. Lastly, Table 6-7 should indicate which sites are assumed to be consolidated for development.

Suitability of Nonvacant Sites: While the element includes adequate analysis for most sites, it should specifically evaluate the potential for redevelopment on the Village East Site. The element should describe previous experience of conversion of residential to higher density development. In addition, the element should describe all existing uses on the site and whether they are an impediment to development. The element should describe the degree of underutilization, conditions and viability of the residential uses given market rents, any common ownership, or other indicators of the potential for lot consolidation. The element should also discuss the regulatory framework and whether it is sufficient to encourage redevelopment, including but not limited to, experience with similarly situated sites.

For your information, 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 regional housing need allocation.

SB 9 Sites: While the element states that there are currently 23 requests for lot splits utilizing SB 9, it should clarify whether those units are included in the 80 anticipated SB 9 lot splits during the planning period. The element must list the potential SB 9 sites and demonstrate the likelihood of redevelopment, including whether existing uses constitute as an impediment for additional residential use. The analysis should describe how the City determined eligible properties, whether the assumed lots will have turnover, if the properties are easy to subdivide, and the condition of the existing structures. The analysis should also describe interest from property owners as well as experience. The analysis should provide support for the 80 units being developed within the planning period. Based on the outcomes of this analysis, the element should add or modify programs to establish zoning and development standards early in the planning period. While Program 3.2-8 (Senate Bill 9 Monitoring) commits to monitoring SB 9 production, it must also include specific commitment to implement incentives to encourage and facilitate development.

Accessory Dwelling Units (ADU): The element notes a steady climb in the number of ADUs since 2019 but also describes a decrease in the number of permitted units in 2022. While the element describes this decrease as an anomaly and that numbers will continue at a higher rate of approximately 60 ADUs per year, the element should consider reducing assumptions similar to recent averages (approximately 50 units per year) or increase the frequency of adjusting the ADU monitoring strategy (Program 3.1-5) to three times in the planning period.

Availability of Infrastructure: For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. Please see HCD's prior review for additional information.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element was revised to describe the City's capacity and potential for reuse, it must still clarify whether emergency shelters are permitted without discretionary action. The element should also add or modify a program to comply with emergency shelter requirements including parking 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>.

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: While the element was revised to state that the C-N(RHD) zone is being replaced during the proposed rezone, it should describe and analyze heights and maximum lot coverage in the proposed zone as well as describe and analyze heights and maximum lot coverages for the CN, C-V, CH-1, CH-2, and P-A zones. In addition, the element should analyze the 40 percent maximum lot coverage, setbacks, and two-story height limits in multifamily zones as a constraint on development and add programs as appropriate. The element should discuss minimum lot sizes and any impacts on identified sites to accommodate the RHNA. While Program 3.3-1 (Objective Design Standards: SB 330 for Mixed-Use and Multi-Family Developments) was revised to review development standards, timing and actions only relate to SB 330 objective design standards. The actions should specifically commit to reviewing and revising the constraints identified and include specific timing and commitment to revisions. Lastly, while the element was revised to list exceptions to parking requirements, it must analyze the parking requirements (p. 4-13) of one garage space and 1.5 additional spaces per dwelling unit or one garage space and an additional 0.5 space for a one-bedroom unit. This is particularly important since parking requirements were identified as a constraint in the prior housing element and the program appears to only have been partially implemented. Should the analysis determine the parking standards or permit procedures are a constraint on residential development, it must include a program to address or remove any identified constraints.

Local Processing and Permit Procedures: While the element was revised to add design review findings, it should also address the approval body, the number of public hearings if any, and any other relevant information. The analysis should address impacts on housing cost, supply, timing, feasibility, and approval certainty.

Codes and Enforcement: The element was not revised to address this finding. Please see HCD's prior October 26, 2022 review.

Constraints on Housing for Persons with Disabilities: While Program 3.2-7 (Group Homes) was added to allow group homes for six or fewer and seven or more residents by-right in residential zones, the Program should be revised to permit them in all zones that allow residential uses, objectively with approval certainty similar to other residential uses of the same form.

C. Housing Programs

1. *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 B2, 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:

Sites Identified in Prior Planning Periods: While Program 1.1-1 (Adequate Sites for Housing or RHNA Rezoning) states the City will up-zone reuse sites, the element must clarify whether all previously identified sites will be rezoned. The element identifies sites from the prior planning period and as a result must include a program to make the site available or remove the site. The program must be implemented within the first year or three years of the planning period and commit to zoning that will meet the density requirements for housing for lower-income households and allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower-income households.

2. *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).)*

Program 4-3.1 (Development of Housing for Extremely Low Income (ELI)): The Program should include commitments and timing to implement the specified activities beyond meeting.

Program 4-2.4 (Affordable Housing Incentives and Waivers): While the Program was revised to include all special needs groups, it must include additional revisions to clarify whether the incentives listed are currently in place or include timing to implement the incentives.

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

As noted in Finding B3, 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 3-2.2 (Reduced Setbacks for Smaller Parcels): While the Program was revised to address the size of lots that would qualify for the program, it should clarify the potential setback reduction.

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 B1, the element must include a complete analysis of AFFH. The element must be revised based on the outcomes of a complete analysis. In addition, while the element includes general metrics for some programs, the element must be revised to add or modify 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 numerical targets and, as appropriate, address housing mobility enhancement, new housing choices and affordability in higher opportunity areas (throughout the City), place-based strategies for community preservation and revitalization and displacement protection. Lastly, the element should add or modify housing mobility beyond meeting the City's RHNA specifically in relatively higher income areas and concentrated areas of affluence.