

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

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January 26, 2023

Brandon Phipps, Community and Economic Development Director  
Community Development Department  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

Dear Brandon Phipps:

**RE: City of Sausalito's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element Update**

Thank you for submitting the City of Sausalito's (City) draft housing element update received for review on October 28, 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. Our review was facilitated by a conversation on January 12, 2023, with you and your consultant, Beth Thompson, Principal, De Novo Planning Group. In addition, HCD considered comments from individuals and organizations listed in Appendix B pursuant to Government Code section 65585, subdivision (c). However, HCD was unable to fully examine the information and consider the comments received on January 26, 2023 from YIMBY Law as part of this review. Consequently, HCD will retain the comments for full consideration in the next review of the housing element.

The draft housing 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.

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 accommodate the regional housing needs allocation, including for lower-income households, shall be completed no later than one year from the statutory deadline. 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 rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) 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 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 of your team in the 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 Chelsea Lee, of our staff, at [Chelsea.Lee@hcd.ca.gov](mailto:Chelsea.Lee@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief

Enclosure

## APPENDIX CITY OF SAUSALITO

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).)*

Disproportionate Housing Needs and Displacement: The element must analyze local trends and patterns related to persons experiencing homelessness and disaster-driven displacement.

Regional Trends and Patterns: While the element includes some regional analysis related to factors such as fair housing issues, it must also analyze and compare the City and regional trends and patterns for the areas of enforcement, Racially Concentrated Areas of Affluence (RCAAs), Access to Opportunity (environmental), and Disproportionate Housing Needs (homelessness, substandard housing).

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 Regional Housing Needs Allocation (RHNA): The City's RHNA may be reduced by the number of new units built, approved, or pending since June 30, 2022. The element indicates 25 units are being credited toward the RHNA. First, to count these units as progress towards RHNA, the element must demonstrate the availability of these units within the planning period. To address this, the element could discuss project status, schedule for completion, outreach with developments, remaining steps for projects to receive final entitlements and any other relevant information. Additionally, the element must demonstrate the affordability of the units based on actual or anticipated sales price or rent level of the units or other mechanisms ensuring affordability (e.g., deed-restrictions).

Realistic Capacity: The element provides an 80 percent assumption for buildout of sites in the inventory and references Table 44 and Appendix D1 as support for these assumptions (pg. 108). However, Table 44 is limited to specifying permitted and allowed densities and it

is unclear how Appendix D1 identifies the specific trends, factors, and other evidence that led to the realistic capacity assumption. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in the City, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

Suitability of Nonvacant Sites: The element includes a discussion of non-vacant sites, including an analysis of existing uses, incentives, and past experiences the City has in converting underutilized sites to higher density residential development (pgs. 109-113), in addition to analysis on selected Opportunity Sites in Appendix E. However, to demonstrate the potential for residential development on sites identified in the inventory, the element should supplement the analysis on market conditions and development trends to include local data and knowledge and relate those trends to the sites identified in the inventory. It is HCD's understand that the City is re-evaluating sites identified in the inventory. Pursuant to third party comments, the City should consider sites that have the greatest potential for development within the planning period including those with developer interest.

For your information, as noted in the housing element, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. 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 RHNA.

Small and Large Sites: The element identifies several parcels that are less than a half-acre in size and a few that are greater than ten acres in size (Appendix D1). Sites smaller than half an acre or greater than ten acres are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites of equivalent size with affordability were successfully developed during the prior planning period or other evidence demonstrates the suitability of these sites. The element must provide analysis of past trends or present other evidence to demonstrate the suitability of these sites. For example, the analysis could describe the City's role or track record in facilitating past lot consolidation, common ownership, policies, or incentives offered or proposed to encourage and facilitate lot consolidation or other conditions rendering parcels suitable and ready-for-lot consolidation.

Publicly-Owned Sites: The element references several publicly-owned sites in the inventory including a school, parks, and City Hall, among others, notes that "the majority of the sites will remain in City ownership," and includes Program 8 (Public Property Conversion to Housing) to commit the City to the disposition of surplus land (pgs.13-14). However, additional information is required to address this finding. The element must include additional discussion on each of the publicly-owned sites identified to accommodate the RHNA. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses, any known conditions that preclude or could promote development in the planning period, status, and potential

schedule for development. Based on this analysis, Program 8 should be modified to include a schedule of actions to facilitate development in the planning period in stride with assumptions in the inventory such as numerical objectives, compliance with the Surplus Land Act, outreach with developers or property owners, removing barriers to development, issuing requests for proposals, incentives, fee waivers, priority processing, and financial assistance. In addition, element should include an analysis of Ordinance 1128 to ensure consistency with current Surplus Land Act requirements. For assistance, please contact [PublicLands@hcd.ca.gov](mailto:PublicLands@hcd.ca.gov).

Accessory Dwelling Units (ADUs): The element projects 64 ADUs over the planning period or approximately 8 ADUs per year over the eight-year planning period. The element also notes that the City permitted 27 ADUs from 2019 to May 2022 and references recent ADU approvals to further supports its ADU assumptions. However, these trends appear inconsistent with HCD records (1 permitted in 2018, 6 permitted in 2019, 6 permitted in 2020, and 4 permitted in 2021). The element should reconcile these numbers and adjust assumptions as appropriate.

Suitability and Availability of Infrastructure: The element describes infrastructure limitations in the City (pgs. 98-102) but it should also clarify whether there is sufficient total water, sewer, and dry utilities capacity (existing and planned) to accommodate the regional housing need and include programs if necessary.

Water and Sewer Priority: 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. HCD recommends including a cover memo describing the City's housing element, including the City's housing needs and regional housing need.

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. 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](mailto:sitesinventory@hcd.ca.gov) for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov).

#### Zoning for a Variety of Housing Types:

- *Emergency Shelters*: The element mentions emergency shelters are permitted in the Public Institutional (PI) Zoning District with an overlay and includes some analysis on development and management standards, including information on available acreages and proximity to public utilities, but it must also it must also address proximity to transportation and services and any conditions inappropriate for human habitability. Please be aware Chapter 654, Statutes of 2022 (AB 2339), adds additional 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>.

- *Housing for Agricultural Employees:* While the element notes that the City does not have any provisions in the Zoning Ordinance addressing farmworker housing and that the City is not an agricultural community (pg. 21), it must still demonstrate zoning is consistent with Section 17021.6 of the Health and Safety Code. Specifically, Program 16 (Zoning Ordinance Amendments) must be revised to require that employee housing consisting of no more than 12 units or 36 beds will be permitted in the same manner as other agricultural uses in the same zone.
  - *Permanent Supportive Housing:* The element references Program 16 (Zoning Ordinance Amendments), and notes that the Zoning Ordinance “shall be revised as necessary...” (pg. 21) but must be revised to explicitly state that supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651.
  - *Mobilehomes and Manufactured Homes:* The element identifies constraints on mobilehomes and manufactured homes (pg. 62) and references Program 16 (Zoning Ordinance Amendments) to commit the City to “review and amend the Zoning Ordinance as necessary to remove restrictions...” (pg. 21). However, this program must be revised to explicitly demonstrate consistency with the provisions of Government Code section 65852.3.
3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: The element 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. Specifically, the analysis should address parking requirements in the Planned Development – High Density Residential (PR) and Historic District Overlay zones, in addition to open space requirements for all residential zones. Depending on the outcomes of a complete analysis, the element may need to include programs to address identified constraints.

Local Processing and Permit Procedures: The element identifies several constraints to the City’s existing permit and processing procedures (pgs. 80-85). Most notably, the element notes that a discretionary Design Review Permit is required to construct any single-family or multi-family housing in all zoning districts (pg. 82). However, additional information is required to address this finding. Additionally, the element notes that “the City Council and Planning Commission govern the review process in the City, or depending on the project, it might be reviewed by the Community Development Director” (pg. 80) but is unclear on the criteria or conditions that trigger staff-level approval for residential projects in the City. Further, the element provides a general discussion of its Historic Design Guidelines (pg. 85), but the analysis should be revised to include an analysis of compatibility and findings of approval for impacts on surrounding property. The element should analyze these standards for impacts on timing, cost, supply, and approval certainty and include programs to address identified constraints, as appropriate.

## Constraints on Housing for Persons with Disabilities:

- *Reasonable Accommodation:* The element states the City has a reasonable accommodation procedure (p. 67), but it should also analyze the procedure for potential constraints. The analysis should address the process, application requirements, and associated fees and list and evaluate the actual approval findings. Depending on its analysis, the element must add or modify programs as appropriate.
  - *Family Definition:* While the element includes a general statement that indicates “the City’s Zoning Ordinance does not have occupancy standards that apply specifically to unrelated adults...” (pg. 68) it must explicitly state whether the City has a definition of a family or household.
  - *Licensed and Unlicensed Residential Care Facilities for Seven or More Persons:* The element appears to exclude group homes for seven or more persons from most residential zones and subjects them to a Conditional Use Permit (CUP) in the R-3 Multiple-Family Residential zone (pg. 59). Zoning code regulations that isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors may pose a constraint on housing choice for persons with disabilities. The element should include specific analysis of these any other constraints for impacts on housing for persons with disabilities and add or modify programs as appropriate. For more information, please refer to HCD’s technical advisory <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.
4. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element states that there are no units at-risk of conversion to market rate housing in the planning period (pg. 8). However, HCD’s records indicate that affordability restrictions for Bee Street Housing (6 assisted units located on 408 Bee Street) are expiring on April 30, 2031. The element should reconcile this information with HCD’s records and modify its analysis and actions in Program 2 (Preservation of Existing Affordable Housing) to address the discrepancy.

## **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 have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines, including for Programs 2

(Preservation of Existing Affordable Housing), 3 (Condominium Conversion Regulations), 6 (Accessory Dwelling Units and Junior Accessory Dwelling Units), 9 (Liveaboard Housing), 13 (Homebuyer Assistance), and 21 (Fair Housing Services).

Additionally, programs should be revised to ensure meaningful and specific actions and objectives. Programs should be amended to include more specific and measurable actions, including for Programs 1 (Home Rehabilitation, Energy Efficiency, and Improvement/Code Enforcement), 3 (Condominium Conversion Regulations), 6 (Accessory Dwelling Units and Junior Accessory Dwelling Units), 8 (Public Property Conversion to Housing), 9 (Liveaboard Housing), 10 (Affordable Housing Development Assistance), 12 (Partnerships for Affordable Housing), and 13 (Homebuyer Assistance). As an example, Program 6 commits the City to conducting increased outreach and education on ADUs for homeowners and homeowner associations in 2024 and 2026, but must be revised to include metrics, milestones, and specific timing for these actions. As another example, Program 9 commits the City to work with Marin Housing and other providers to develop a model water-based housing program that can be implemented in the City's marinas but should be revised to identify specific timing commitments.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

- Program 4 (Ensure Inventory of Sites Accommodate RHNA throughout Planning Period): The element describes a shortfall of sites and indicates rezoning will occur to accommodate the RHNA. While the element includes Program 4 (Ensure Inventory of Sites Accommodate RHNA throughout Planning Period) and commits to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i), it must also specifically identify the acreage, allowable densities, and anticipated units commit to rezoning pursuant to Government Code section 65583.2(c).

In addition, as noted in the program, some sites that require rezoning are subject to voter approval pursuant to ordinances 1022 and 1288. The program must detail the steps and timeframes for initiating voter approval and include alternative steps and actions should that vote fail to accommodate the shortfall.



Program 4 also references SB 6 and AB 2011 in relation to sites requiring approval by voter initiative. Please be aware, the operability of these laws should not be considered a substitute for zoning.

- Program 19 (Development Review Procedures): The element includes Program 19 (Development Review Procedures) and describes a tiered implementation strategy to develop Objective Design and Development Standards (ODDS) for eligible projects. However, it is unclear whether the ODDS will apply to all multifamily projects or only those subject to by-right processing. The element should clarify how ODDS will address the permit processing constraints related to the approval process identified by public comments and referenced in the element on page 81.
- Infrastructure and On/Off Site Improvements: The element indicates that “infrastructure capacity in the City is limited” and that “road and water facilities” in particular, “have very limited capacity for expansion” (pg. 99). The element should be revised to add a program with specific timing and commitments to identify and seek funding for the research and development of additional alternative road and infrastructure systems. For your information, potential funding sources for wastewater treatment or infrastructure serving affordable housing includes the Small Community Wastewater Grant Program, Infrastructure State Revolving Loan Fund, and Infill Infrastructure Grant Program.
- Sites Identified in Multiple Planning Periods: Appendix D1 identifies at-least one nonvacant site (Site 78, Opportunity-Backup) that was identified in a prior housing element. Although this site is denoted in the inventory as a backup site, it is unclear to HCD whether the site inventory includes other vacant or nonvacant sites identified in prior or multiple planning periods that are being utilized to accommodate housing for lower-income households. For your information, the element must include a program for vacant sites identified in two or more consecutive planning periods or non-vacant 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 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 (Gov. Code, § 65583.2, subd. (c)).

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding A3, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance. (Gov. Code, § 65583, subd. (c)(6).)*

Program 2 (Preservation of Existing Affordable Housing): The element includes Program 2 (Preservation of Existing Affordable Housing) and specifies actions to monitor at-risk units, including contacting property owners and conducting technical assistance. However, the program should be modified to include noticing requirements within three years and six months of the affordability expiration dates, in addition to coordinating with qualified entities such as non-profit organizations and establish specific time parameters around such actions.

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 protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element requires a complete Affirmatively Furthering Fair Housing analysis. Depending upon the results of that analysis, the City may need to revise or add programs.

**APPENDIX B  
CITY OF SAUSALITO**

HCD received and considered public comments from the following organizations:

- Campaign for Fair Housing Elements/YIMBY Law
- Carlo Berg (Berg Holdings)
- Dan Morgan (Morgan Properties, Inc.)
- David Kellogg/Scott O’Neil/Watson Ladd/Marven Normal/Dara Dadachanji/George Grohwin
- Jenny Silva
- John Giacomini
- Leon Huntting
- Marin Environmental Housing Collaborative
- Patricia Elton
- Peter McGuire
- Shea Putnum/Kristen Wolslegel
- YIMBY Law/Greenbelt Alliance