

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

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December 22, 2023

Dana Ayers, Director
Community Development Department
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

Dear Dana Ayers:

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

Thank you for submitting the City of Clayton's (City) housing element that was adopted January 17, 2023 and received for review October 24, 2023, with technical modifications received December 20, 2023. All technical modifications were authorized by Resolution Number 6-2023 and were made available to public for seven days prior to submittal to the California Department of Housing and Community Development (HCD). Our review was facilitated by a preliminary review sent on November 8, 2023 and conversations on November 8, 17, 30, 2023 and December 6, 2023 with you and the City's consultant, Laura Stetson. In addition, HCD considered comments from Colleen VanOstrive, and Vincent Moita pursuant to Government Code section 65585, subdivision (c). Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted housing element, including technical modifications, addresses most statutory requirements described in HCD's March 30, 2023 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et. seq.), 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).)*

Nonvacant Sites: HCD's prior reviews found that the element must expand on existing criteria and for some sites include additional criteria for determining the redevelopment potential of sites. The element was revised to note the existing number of units on each site and include a high-level statement that high density can be developed. The element appears to be reflecting the number of new units

that can be added to demonstrate its redevelopment potential. To do this, the element should be revised to reflect number of new units that can be added through a new net ratio. Second, per HCD's prior reviews, for sites chosen based on owner interest, the element must clarify whether owners are interested in redeveloping residential during the eight-year planning period and provide additional analysis and criteria to support the redevelopment potential of these sites or identify additional sites.

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. As of now, the City has not completed this action. 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.

- 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... (Gov. Code, § 65583, subd. (c)(1).).*

As noted in Finding 1, 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 – Program D1 (GP Amendments) and D2 (Zoning Code Amendments): As found in HCD's prior reviews, the element does not identify sites with available zoning and densities to accommodate the regional housing need allocation (RHNA). As such, the element must include program(s) committing to rezoning sites pursuant to all requirements under Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivisions (h) and (i). Specifically, Program D2 (Zoning Code Amendments) was revised committing to allowing projects with 20 percent affordability by-right. However, the element does not address whether 50 percent of the shortfall has been identified on residentially only zoned sites. If the inventory did not identify at least 50 percent of the shortfall on residentially only zoned sites but rather mixed-use sites, the element must commit to allowing 100 percent residential and requiring a minimum of 50 percent of the square footage in a mixed-use development to be residential. Additionally, now that the element was revised to indicate the number

of units with current zoning and sites that need to be rezoned, the element still shows a shortfall of 8 moderate-income units, after sites are rezoned. The element must address the information above and update the program, as appropriate.

3. *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 was revised to include programs to address housing choice vouchers and some metrics for faith-based properties, this does not address HCD's prior reviews. As found in HCD's prior reviews, the City is wholly a highest resource, highest income, and racially concentrated area of affluence (RCAA). The element must include a significant suite of programs to facilitate housing mobility and promote housing choices and affordability throughout the City. These programs should not be limited to the RHNA and, instead, target significant and meaningful change. Additional examples include promoting more housing choices and affordability in lower-density areas (e.g., missing middle housing types), identifying additional multifamily areas, additional religious institutional sites, City-owned sites, and enhancing accessory dwelling units (ADU), junior accessory dwelling units (JADU) or additional conversion of existing space, and home sharing strategies. For examples of jurisdictions with appropriate actions meeting statutory requirements, please see nearby Walnut Creek, Moraga, San Ramon, and Pleasanton.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted, if needed, to comply with the above requirements pursuant to Government Code section 65585.

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 City does not adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), programs (e.g., Program D1 (General Plan Amendments) and D2 (Zoning Code Amendments)) to make prior identified sites available or accommodate the RHNA must 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).

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.

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, that 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. HCD's future reviews will continue to consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.

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 Affordable Housing and Sustainable Communities program, 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.

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 Sayed Murad, of our staff, at Sayed.Murad@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager