



Association of Bay Area Governments



Technical Assistance
for Local Planning

HOUSING

Analysis of HCD Review Letters – ABAG Region (updated 11/3/22)

ABAG staff and consultants have reviewed Housing Element comment letters for Bay Area jurisdictions as HCD has released them. Starting with Redwood City in July, a total of 24 jurisdictions have received comment letters as of November 3, 2022. Another 50+ cities should receive comment letters in the coming three months. Key findings are summarized below:

Local Knowledge and Data

HCD has consistently emphasized that data must be analyzed with local knowledge gained from a variety of sources. **Sample HCD Comments:**

“Local Knowledge and Data: The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates, public comments, and service providers.”

Affirmatively Furthering Fair Housing (AFFH)

Fair Housing remains a central theme in comment letters. It is clear that HCD wants AFFH to be a comprehensive governing principle that affects all sections of the Housing Element. AFFH should guide the sites inventory, the policies and programs and all other aspects of the Housing Element. It is important to add local knowledge and details to any data that is presented and to consider how every aspect of the Housing Element affects AFFH. **Sample HCD Comments:**

“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.”

“Programs also should be based on identified contributing factors,[sic] be significant and meaningful. The element must add, and revise programs based on a complete analysis and listing and prioritization of contributing factors to fair housing issues. Furthermore, the element must include geographic targeting, metrics and milestones toward affirmatively furthering fair housing (AFFH) outcomes. For more information, please see HCD’s guidance at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.”

HCD Will Reward Jurisdictions That Demonstrate a Strong Commitment

HCD provided Alameda City with a “clean” review letter on the city’s first submittal, finding that the initial draft was in substantial compliance with state law. While this was common in previous cycles, it is very rare in the 6th Cycle. During proactive consultation with HCD initiated by city staff, the state recognized Alameda’s commitment to overcome previously self-imposed barriers to housing. For example, the city chose to conduct a thorough analysis of a voter initiative banning multifamily developments and ultimately determined that the initiative frustrated the city’s ability to comply with state law and therefore could not be enforced. HCD provided a letter affirming the city’s position early in the planning process, which enabled the city to proceed with incorporating multifamily housing in its draft Housing Element are part of a comprehensive strategy to meet its RHNA targets. Alameda’s experience reiterates the importance of not just having a well written Housing Element, but also sending clear signals that the community is embracing housing. ***HCD Opinion Letter to Alameda Prior to Housing Element Draft:***

“In 1973, the voters of Alameda approved an amendment to the City Charter that added Article 26 (Measure A). Measure A added Section 26-1 that states ‘[t]here shall be no multiple dwelling units built in the city of Alameda.’ Section 26-3 was adopted in 1991 by a subsequent ballot measure (also Measure A), which sets the maximum residential density of one housing unit per 2,000 square feet (21.78 dwelling units (du)/acre) throughout the City. Each of these provisions is problematic and compromise the City’s ability to comply with State Housing Element Law. Collectively, the Measure A Provisions prevent the City from complying with State Housing Element Law and other housing laws, and potentially trigger consequences related to a lack of housing element compliance.

Specifically, HCD finds and agrees with the staff analysis that Alameda City Charter Article 26 conflicts with state housing law and is preempted and unenforceable.”

Equitable Outreach

HCD continues to have concerns with the quality of outreach for Housing Elements. In particular, they have commented multiple times on the need to do more outreach to special needs populations and more fair housing outreach. Notably, HCD appears to have accepted the San Mateo County shared outreach efforts, coordinated by the REAP-funded Planning Collaborative known as 21 Elements. HCD has also commented on the need to document how the lessons from outreach were incorporated into the Housing Element. ***Sample HCD Comments:***

“While the element includes a general summary of the public participation process (pp. 6-10), it must also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. The element could describe the efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the element throughout the process. In addition, the element should also summarize the public comments and describe how they were considered and incorporated into the element.”

“While the element describes the public input received through the community outreach process, it generally describes why changes are not needed instead of responding with revisions. The City should re-consider public comments and make changes to the element.”

Sites Inventory

Generally, jurisdictions have not provided enough documentation about selected sites to satisfy legal requirements. Jurisdictions are encouraged to use the Housing Element Site Selection (HESS) tool to help address some of these concerns. If a jurisdiction uploads its sites, the HESS tool includes AFFH layers, preliminary realistic capacity estimates based on APR data, and much more. HESS can also automatically populate HCD's mandatory electronic sites inventory form with much of the required data. Contact Joshua Croff for more information about HESS at JCroff@BayAreaMetro.gov.

Most cities will need to provide sufficient evidence to overcome an assumption that existing uses will preclude development, and thus far jurisdictions have not satisfied this requirement. **Sample HCD Comments:**

“Realistic Capacity: The element provides assumptions for buildout of sites in the inventory by multiplying the maximum allowable density by the size of a parcel. However, the element must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. 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 that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.”

“Additionally, for sites that have been identified in zones that allow for 100 percent nonresidential uses, the element must analyze the likelihood that residential will occur in nonresidential zones (e.g., community commercial and high density residential/office). For example, while the element stated that residential densities are required and that multifamily is allowed excluding the ground floor, the element should address other criteria including whether these zones allow for 100 percent commercial projects.”

HCD remains skeptical of using SB 9 to meet RHNA targets – the standards to claim credit for potential SB 9 projects are extremely difficult to satisfy. Specifically, HCD wants a list of sites that are likely to develop, which is difficult to produce with SB 9 given lack of historic trends and the sheer number of property owners. HCD may be open to alternative methodologies for small sites programs, but has made clear that there should be significant incentives well beyond the provisions of SB 9, as well as very conservative assumptions that would be developed as part of a new program. **Sample HCD Comments to Redwood City:**

“SB 9 and Missing Middle Sites: The element identifies SB 9 and Missing Middle as strategies to accommodate the part of the City's need of moderate and above-moderate RHNA. To support these assumptions, the analysis must include experience, trends and market conditions that allow lot splits and missing middle uses. The analysis must also include a nonvacant sites analysis demonstrating the likelihood of redevelopment and the existing use will not constitute as an impediment for additional residential use. The analysis should describe how the Turner Center study 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 assumption of 25 percent of eligible properties being developed within the planning period. Based on the outcomes of this analysis, the element should modify Programs H4-5 (SB 9 Zoning) and H4-3 (Middle Housing) to establish zoning and development standards early in the planning period and implement incentives to encourage and

facilitate development as well as monitor development every two years with and identify additional sites within six months if assumptions are not being met. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. A similar analysis should also be completed for sites identified as accommodating missing middle and clarify whether the sites identified under SB 9 overlap with the sites identified to accommodate missing middle.”

HCD has also made it clear that publicly owned sites will face scrutiny. It is not acceptable to assume publicly owned sites will redevelop without significant evidence. In the best case scenario, jurisdictions should have a letter from the agency that owns the land and/or have taken proactive steps to turn the public land into housing. Specifically, HCD wants to see evidence that housing will be developed on the sites within the eight-year planning period, similar to the analysis for non-public sites. **Sample HCD Comments:**

“Publicly-Owned Sites: The element must include additional discussion on 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, and any known conditions that preclude development in the planning period and the potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, the housing element must include a description of whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act (Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5).”

“Publicly Owned Sites: The element identified City-owned sites to accommodate a portion of the RHNA. The element should include a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development of City-owned sites. Actions should include outreach with developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance. “

“Caltrans Sites: As noted in the element, sites currently owned by Caltrans are not currently listed as surplus or excess property. In addition, while the element includes Action 1.B to work with Caltrans to decertify the site, it is unclear whether the site will be declared excess or surplus and be available for housing within the planning period. Absent further evidence that Caltrans will dispose of this site within the planning period, this site should not be utilized to accommodate the RHNA.”

Policies and Programs

Policies and programs must be action items that are measurable and timebound. Jurisdictions should use caution with any task identified as “ongoing” or programs that consist of “studying” an issue. **Sample HCD Comments:**

“Ongoing Programs: Majority of the programs lists implementation timelines as “ongoing.” While this may be appropriate for some programs, programs with specific implementation actions must include completion or initiation dates resulting in beneficial impacts within the planning period.”

“Specific Commitments: The element includes several programs lacking specific commitments (e.g., “explore,” “consider,” etc.). While the element can include programs to study certain topics, it includes a preponderance of programs that do not go beyond studying or exploring a particular action. Programs should be amended, as appropriate to include more specific and measurable actions.”

“Implementation Actions: As noted above, programs must have clear outcomes or deliverables. Several programs include actions with no description of how those actions will be implemented (e.g., “encourage”, “assist”, “partner”, “maintain”, etc.). For example, Program 1.2-1 states that the City will encourage new residential development to be built to the maximum density, however, does not describe how the City will encourage this action from occurring [sic](e.g., develop requirements, pre-application meetings, etc.). Programs should be amended, as appropriate to include implementation steps.”

Policies and programs should provide clear “goals, priorities, metrics and milestones.” **Sample HCD Comments:**

“Timelines: The element includes many programs with three general timelines: short (0-5 years), medium (6-15 years), and long (16 plus years). However, actions should have timelines more appropriate for an eight-year planning period, including earlier and within the planning period, as well as more specific to the intended actions and housing or people outcomes. For example, many of the identified policies and actions included implementation timelines range [sic] from 6 to 15 years. The element must be revised to include timelines that are within the eight-year planning period. Also, some actions have short-term timing (0-5 years), over halfway through the planning period. Instead, these actions should occur earlier in the planning period (1-2 years). Finally, some actions do not have timing that commits to how often an action will be taken and should be revised with specific commitment and timing to complete steps toward housing outcomes.”

Housing Needs

It is important that jurisdictions document the needs of farmworkers, even if that population is small.

“Farmworkers: The element describes farmworkers are a small percentage of the City’s labor force, that Redwood City has no farmland and; therefore, specific programs are not needed. However, the housing needs of farmworkers are often under-counted and are not limited to the amount of farmland in Redwood City. As a result, the element should at least consider the housing needs at a county level and add or modify programs as appropriate to address the specific and unique needs of farmworkers. The analysis may utilize United States Department of Agricultural data (Agricultural Census) and information available through the Department of Education to address this requirement.”

Copies of Bay Area 6th Cycle Housing Elements & Comment Letters

PDFs of Bay Area Housing Elements and HCD’s Comment Letters can be found in this publicly available folder which is updated approximately every two weeks:

<https://mtcdrive.box.com/s/rn34iqzf81et28glz65763f51p1louq3>.