

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mary Strobel

1 CALIFORNIANS FOR HOMEOWNERSHIP, INC.

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11
12 CALIFORNIANS FOR
HOMEOWNERSHIP, INC., a
13 California nonprofit public benefit
corporation,

14 Petitioner,

15 v.

16 CITY OF BEVERLY HILLS,

17 Respondent.
18

Case No. 23STCP00143

**VERIFIED PETITION FOR
WRIT OF MANDATE**

[C.C.P. § 1085; Gov. Code §§ 65587, 65751]

19 Petitioner Californians for Homeownership (“Californians”) alleges as follows:

20 1. California is in the midst of a “housing supply and affordability crisis of
21 historic proportions.” Gov. Code 65589.5(a)(2). That crisis is driven in major part by
22 “activities and policies of many local governments that limit the approval of
23 housing” Gov. Code § 65589.5(a)(1)(B). As part of the effort to address this
24 crisis, cities must plan for housing development in their housing elements.

25 2. Beverly Hills has adopted a housing element that does not identify
26 adequate sites for housing development, among other deficiencies.

27 3. On behalf of the important public interest in the creation of new housing,
28 Californians seeks a writ compelling the City to adopt a revised housing element.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
LOS ANGELES, CA

PARTIES

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2 4. Petitioner Californians for Homeownership, Inc. (“Californians”) is a
3 California nonprofit public benefit corporation and 501(c)(3) public charity. Its
4 mission is to address California’s housing crisis through litigation in support of the
5 production of housing affordable to families at all income levels.

6 5. Respondent City of Beverly Hills is a city situated in Los Angeles
7 County.

JURISDICTION AND VENUE

8
9 6. The Court has general subject matter jurisdiction over this action
10 pursuant to Government Code Sections 65587 and 65751 and Code of Civil Procedure
11 Section 1085.

12 7. The Court has personal jurisdiction over the City of Beverly Hills
13 pursuant to Code of Civil Procedure Section 410.10.

14 8. Venue for this action properly lies with this Court pursuant to Code of
15 Civil Procedure Section 394.

STATUTORY BACKGROUND

16
17 9. In recent years, the California Legislature has sought to address what it
18 has described as a “housing supply and affordability crisis of historic proportions.”
19 Gov. Code 65589.5(a)(2). “The consequences of failing to effectively and
20 aggressively confront this crisis are hurting millions of Californians, robbing future
21 generations of the chance to call California home, stifling economic opportunities for
22 workers and businesses, worsening poverty and homelessness, and undermining the
23 state’s environmental and climate objectives. While the causes of this crisis are
24 multiple and complex, the absence of meaningful and effective policy reforms to
25 significantly enhance the approval and supply of housing affordable to Californians of
26 all income levels is a key factor.” *Id.* (subdivision numbers omitted).

27 10. As a result of the housing crisis, younger Californians are being denied
28 the opportunities for housing security and homeownership that were afforded to

1 previous generations. Families across economic strata are being forced to rent rather
2 than experience the wealth-building benefits of homeownership.¹ Many middle and
3 lower income families devote more than half of their take-home pay to rent, leaving
4 little money to pay for transportation, food, healthcare and other necessities.² Unable
5 to set aside money for savings, these families are also at risk of losing their housing in
6 the event of a personal financial setback. Indeed, housing insecurity in California has
7 led to a mounting homelessness crisis.³

8 11. Beyond the human toll, California’s housing crisis harms the
9 environment. “[W]hen Californians seeking affordable housing are forced to drive
10 longer distances to work, an increased amount of greenhouse gases and other
11 pollutants is released and puts in jeopardy the achievement of the state’s climate
12 goals.” Gov. Code § 65584.

13 12. At the core of California’s affordable housing crisis is a failure to build
14 enough housing to meet demand. California’s Legislative Analyst’s Office estimates
15 that the state should have been building approximately 210,000 units a year in major
16 metropolitan areas from 1980 to 2010 to meet housing demand. Instead, it built
17 approximately 120,000 units per year.⁴ Today, California ranks 49th out of the 50
18 states in existing housing units per capita.⁵

20 ¹ California Department of Housing and Community Development, *California’s*
21 *Housing Future: Challenges and Opportunities: Final Statewide Housing Assessment*
22 *2025* (2018), available at http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf, at 18-19.

23 ² *Id.* at 27.

24 ³ *Id.* at 3, 48-50.

25 ⁴ Legislative Analyst’s Office, *California’s High Housing Costs: Causes and*
26 *Consequences* (2015), available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>, at 21.

27 ⁵ McKinsey & Company, *A Tool Kit to Close California’s Housing Gap: 3.5*
28 *Million Homes By 2025* (2016), available at https://www.mckinsey.com/~media/mckinsey/featured_insights/Urbanization/Closing_Californias_housing_gap/Closing-Californias-housing-gap-Full-report.ashx, at document page 6.

1 13. California’s housing crisis has been building for decades. The
2 Legislature has recognized that the crisis is driven, in part, “by activities and policies
3 of many local governments that limit the approval of housing, increase the cost of
4 land for housing, and require that high fees and exactions be paid by producers of
5 housing.” Gov. Code § 65589.5(a)(1)(B).

6 14. Over the last five decades, the Legislature has increasingly sought to
7 address the power imbalance at play in local housing policy. The most important state
8 policy addressing the housing crisis is the Regional Housing Needs Allocation
9 (“RHNA”) and housing element system.

10 15. The RHNA system is a process for assessing and allocating housing
11 targets on a periodic basis, generally every eight years. Gov. Code § 65588. It starts
12 with an assessment of statewide housing needs by the California Department of
13 Housing and Community Development (“HCD”). The Department allocates the
14 state’s anticipated housing needs on a region-by-region basis, at different levels of
15 affordability, based on established criteria. Gov. Code §§ 65584.01, 65588. This need
16 is then usually meted out to individual localities by a regional council of governments.
17 Gov. Code § 65584.05.

18 16. Once the allocations are final, each locality is tasked with developing an
19 action plan (the housing element) to enact land use policies that will produce enough
20 housing to meet its RHNA goals. Gov. Code §§ 65583, 65583.2. The housing
21 element must provide an inventory of sites available for residential development and
22 assess constraints and market realities that affect the likely development activity at
23 those sites, including local land use regulations. Localities must make changes to
24 their land use rules, including by rezoning land, if needed to enable housing sufficient
25 to meet their RHNA goals. Gov. Code § 65583(c), 65583.2(h).

26 17. A city may meet its RHNA allocation by planning for housing on vacant
27 or nonvacant sites. Gov. Code § 65583.2(a). The housing element must contain a
28 parcel specific inventory of sites where additional housing could be developed,

1 including existing residential sites that could be redeveloped with more residential
2 capacity (e.g., through rezoning and/or redevelopment), and non-residential sites that
3 could be redeveloped as housing through rezoning. Gov. Code § 65583.2(a). For
4 nonvacant sites, this sites inventory must describe the specific existing use on each
5 site. Gov. Code §§ 65583.2(b)(3), (c).

6 18. Under Government Code Section 65583.2(g)(1), for each nonvacant site,
7 a city must “specify the additional development potential . . . within the planning
8 period,” and it must explain how the developmental potential for each site was
9 measured. The methodology must consider the extent to which the existing use may
10 impede development.

11 19. Additionally, if a city intends to rely on nonvacant sites to make up more
12 than fifty percent of its lower-income housing need, it is also subject to Government
13 Code Section 65583.2(g)(2). This provision requires the city to adopt “findings based
14 on substantial evidence that the use is likely to be discontinued during the planning
15 period” at the time the city adopts its housing element. Without these findings, the
16 existing use is “presumed to impede additional residential development.”

17 20. Each city submits a draft of its housing element to HCD for review and
18 receives written findings. Gov. Code § 65585(b)(3). In its written findings, HCD
19 makes a determination whether the draft housing element “substantially complies”
20 with the requirements of state law. Gov. Code § 65585(d). Prior to adoption of a
21 housing element, a city must consider HCD’s findings and either amend its housing
22 element accordingly or provide findings of its own as to why it believes the housing
23 element is compliant despite HCD’s determination. Gov. Code §§ 65585(e), (f).

24 21. California is currently in the midst of the sixth statewide housing element
25 update cycle. For cities in the Southern California region, including Beverly Hills, the
26 sixth cycle covers an eight-year planning period starting October 15, 2021, and these
27 cities were required to update their housing elements by that date. Gov. Code
28 § 65588(e)(3).

1 housing element update cycle. As part of this effort, it has contacted approximately
2 80 cities to address concerns about their compliance with state law. In 2022 and
3 2023, Californians has filed eleven lawsuits to enforce state housing element law.

4 31. On July 14, 2022, consistent with Government Code Section
5 65009(d)(3)(A), Californians served a notice on the City informing it that its adopted
6 housing element does not substantially comply with state law and that Californians
7 would initiate litigation against the City if it did not adopt a legally adequate housing
8 element by September 12, 2022. Californians' letter is attached hereto as Exhibit 3.

9 32. For the City's proposed sites for redevelopment of nonvacant parcels, the
10 provided sites inventory does not account for the impediment created by the existing
11 uses, including the possibility that a site will be maintained in its current use rather
12 than redeveloped during the planning period.

13 33. The City's housing element relies on nonvacant sites to satisfy over fifty
14 percent of the City's lower-income RHNA, but the City has not made findings
15 identifying any evidence that the existing uses on each of these sites will be
16 discontinued during the planning period.

17 34. The City's adopted housing element therefore does not contain the
18 analysis required under Government Code Section 65583.2(g)(1), and in adopting it
19 the City did not make the findings required under Government Code Section
20 65583.2(g)(2).

21 35. The City's adopted housing element does not identify any basis for the
22 City's assumptions regarding the realistic capacity of the listed sites for residential
23 development, including the expected income levels of the housing anticipated on
24 those sites.

25 36. The City's adopted housing element does not comply with the City's
26 obligation to demonstrate that it will affirmatively further fair housing under
27 Government Code Section 65583(c)(10) and to assess the relationship between that
28 obligation and the sites it has identified for housing development as required by

1 Government Code Section 65583(a)(3).

2 37. The City’s adopted housing element is deficient in additional ways
3 identified in HCD’s letters attached as Exhibits 1 and 2.

4 **FIRST CAUSE OF ACTION**

5 **Writ of Mandate to Compel Compliance with Housing Element Law**
6 **(Gov. Code §§ 65587, 65751; C.C.P. § 1085)**

7 38. Californians incorporates and realleges all of the foregoing paragraphs.

8 39. Under Government Code Section 65587, any interested party may bring
9 an action to determine whether all or part of a housing element conforms to the
10 statutory requirements.

11 40. Pursuant to Government Code Sections 65587 and 65751, an action to
12 challenge the legal adequacy of a housing element shall be brought under Code of
13 Civil Procedure Section 1085.

14 41. Californians is an interested party for the purposes of these statutes.

15 42. Californians brings this action specifically in support of and to encourage
16 and facilitate the development of housing that would increase the City’s and the
17 region’s supply of housing affordable to persons and families with low and moderate
18 incomes (as defined in Section 50079.5 of the Health and Safety Code), persons and
19 families with very low incomes (as defined in Section 50105 of the Health and Safety
20 Code), and middle-income households (as defined in Section 65008 of the
21 Government Code).

22 43. The City’s housing element does not substantially comply with state law
23 and the City is therefore subject to an action under Government Code Sections 65587
24 and 65751.

25 44. Californians has no available administrative remedies.

26 45. Californians has no plain, speedy, or adequate remedy at law.

27 46. Accordingly, Californians is entitled to a writ of mandate.

28

PRAYER

WHEREFORE, Petitioner prays for relief as follows:

1. A writ of mandate directing the City to adopt a revised housing element pursuant to Government Code Section 65754.
2. An injunction or other order under Government Code Section 65755.
3. A declaration that:
 - a. The housing element adopted by the City on October 12, 2021 does not substantially comply with state law.
 - b. From October 16, 2021 until the City complies with the Court’s writ of mandate through the adoption of a housing element that substantially complies with state law, the City has not had a housing element that was revised in accordance with Government Code Section 65588;
 - c. The City is not permitted to use the provisions in subdivision (d)(1) or (d)(5) of Government Code Section 65589.5 to disapprove a housing development project that qualifies for approval under subdivision (d) of that section—that is, a project in which either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Health and Safety Code Section 50079.5, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Health and Safety Code Section 50093, or persons and families of middle income, as defined in Government Code Section 65008—or to condition the approval of such a project in a manner that renders it infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards.
4. Costs of suit;


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5. Attorneys' fees under Code of Civil Procedure Section 1021.5 and as otherwise allowed by law;

6. Such other and further relief as the Court deems just and proper.

Dated: January 18, 2023

Respectfully Submitted,
CALIFORNIANS FOR HOMEOWNERSHIP, INC.

By 
Matthew P. Gelfand

Attorneys for Petitioner,
Californians for Homeownership, Inc.

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VERIFICATION

I, Matthew P. Gelfand, declare:

1. I am employed by and hold the position of Counsel at Petitioner Californians for Homeownership, Inc., and am familiar with the matters discussed in the foregoing Petition.

2. I have read the Petition and know the contents thereof. The statements of fact therein are true and correct of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18, 2023 at Los Angeles, California.



Matthew P. Gelfand

EXHIBIT 1

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



July 30, 2021

Ryan Gohlich, Director
Community Development Department
City of Beverly Hills
455 North Rexford Drive, First Floor
Beverly Hills, CA 90210

Dear Ryan Gohlich:

RE: Review of City of Beverly Hills's 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Beverly Hills's (City) draft housing element received for review on June 2, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Abundant Housing LA and Josh Albrektson pursuant to Government Code section 65585, subdivision (c).

The draft 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.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2021 for Southern California Association of Governments (SCAG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf.

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.

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.

HCD is committed to assisting the City of Beverly Hills in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Chelsea Lee at Chelsea.Lee@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX CITY OF BEVERLY HILLS

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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> 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 part of the evaluation of programs in the past cycle (Appendix D), the element must provide an explanation 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).)*

The element generally does not address this requirement. The element, among other things, must include outreach, an assessment of fair housing, identification, and prioritization of contributing factors to fair housing issues and goals and actions sufficient to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity. For more information, please contact HCD and visit <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

The element includes analysis regarding extremely low-income (ELI) households such as the number of households and overpayment but must also identify projected

housing needs. The projected housing need for ELI households can be calculated by using available census data to determine the number of very low-income households that qualify as ELI households or presume that 50 percent of the regional housing need allocation (RHNA) for very low-income households qualify as ELI households. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>.

3. *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).)*

Parcel Listing: The element lists parcels by acreage, general plan and zoning but must also identify the anticipated affordability levels of all the units on identified sites. In addition, the parcel listing includes a column for existing uses. However, in many cases, the column is blank and should be completed. Finally, the parcel listing in some cases does describe existing uses, but the description is generic, such as office building or store building. Instead, the description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period.

Suitability of Nonvacant Sites: While the element describes the mixed-use overlay, it generally does not address this requirement. The element must include an analysis to demonstrate the potential for additional development. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the City's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

In addition, relying on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households triggers requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period.

Realistic Capacity: While the element includes an estimate of the number of units that can be accommodated on each site in the inventory, the estimate should rely on minimum density standards or include analysis demonstrating how the number of units for each site was determined. The estimate of the number of units for each site must account for 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.

In addition, the element appears to assume residential development on sites zoned for nonresidential uses, but to support this assumption, the element must analyze the likelihood of residential in zoning where 100 percent nonresidential uses are allowed. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses or other relevant factors such as enhanced policies and programs.

Small Sites: Many identified sites are smaller than half an acre. Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing. As a result, if utilizing these sites toward the housing need for lower-income households, the element must include analysis and programs as appropriate. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>.

Availability of Infrastructure: The element includes information on water capacity but must also address total sewer capacity sufficient to accommodate the RHNA. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#environmental>.

Environmental Constraints: While the element generally describes a few environmental conditions within the City (page B-49), it must also describe any known environmental constraints or other conditions on identified sites that could impact housing development in the planning period. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#environmental>.

Affirmatively Furthering Fair Housing: The element must demonstrate the sites inventory affirmatively furthers fair housing. For more information, see HCD's guidance at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

Replacement Requirements: If utilizing sites with residential uses, the element must include a policy requiring the replacement of all those units affordable to the same or lower-income level as a condition of any development on the site pursuant to Government Code section 65583.2, subdivision (g), paragraph (3). Replacement requirements shall be consistent with those set forth in Government Code section 65915, subdivision (c), paragraph (3).

Accessory Dwelling Units (ADUs): The element projects 150 ADUs over the planning period or approximately 18 ADUs per year over the eight-year planning period. The element also notes permitting 7 ADUs in 2018, 6 in 2019 and 9 in 2020. These trends are inconsistent with HCD records (nothing reported in 2018, 6 in 2019 and 4 in 2020) and do not support an assumption of 18 ADUs per year. To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if ADU assumptions for the number of units and affordability are not met.

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. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types: The element must demonstrate zoning to encourage and facilitate a variety of housing types, as follows:

- *Emergency Shelters*: Zoning may impose development standards on emergency shelters including sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone. The element describes parking requirements are based on need which appears inconsistent with statute. As a result, the element should add or modify programs as appropriate.
- *Permanent Supportive Housing*: 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. The element must demonstrate compliance with this requirement and include programs as appropriate.
- *Transitional and Supportive Housing*: Definitions for transitional and supportive housing and target population (page B-37) appear inconsistent in Government Code section 65582, and the element should be revised, including with programs, as appropriate.
- *Employee Housing*: The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) or add or modify programs. Specifically, section 17021.5 requires employee

housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone.

4. *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 lists several potential constraints, particularly unit sizes, setbacks, parking, modulation requirements and heights and then appears to conclude these standards are not constraints because projects have been built near maximum densities. This analysis does not demonstrate these land use controls are not constraints. For example, none of the listed projects are less than a decade old and most did not achieve maximum densities under the general plan. The analysis should at least address a newer and more complete list of projects, whether exceptions or deviations to developments standards were utilized, the lack of regularly achieving general plan densities, why assemblage appears necessary to achieve higher densities, which zones were used and any other factors that impact the cost, supply and feasibility of development. Based on the outcomes of the analysis, the element must include programs to address identified constraints.

Fees: The element indicates that fees are approximately \$100,000 per multifamily unit and concludes the fees are nominal based on sales prices. However, regardless of proportion of sales prices, cumulative fees of \$100,000 per unit have a significant impact on development costs. The element should include a closer evaluation of these fees and add programs to address the constraint as appropriate.

Processing and Permit Procedures: The element describes planning and architectural commission reviews as well as decision making standards such as "...promote harmonious development...", "...conformity with good taste...", and "...contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality." The City's processing approach to these potentially roving standards is to provide technical assistance and examples of past projects. While this approach could be effective in facilitating approval certainty, the analysis should also consider impacts on costs, supply and built density. Also, given the significant ambiguity implied in these decision-making standards, the element should include programs to monitor their impacts and should consider more fixed and objective standards.

Constraints on Housing for Persons with Disabilities: The element must include an analysis of zoning, development standards, building codes, and process and permit procedures as potential constraints on housing for persons with disabilities, as follows:

- *Family Definition*: The element discusses definitions of family, bona fide housekeeping unit and single-family housekeeping unit that appear to constrain housing, including for persons with disabilities. For example, the definitions require households to be the “functional equivalent of a traditional family” with members that are “non-transient”, “interactive” and several other provisions. The element should add or modify programs to address these constraints.
- *Group Homes*: Group homes for seven or more persons appear to be excluded from most residential zones and the element does not otherwise address this important housing type. The element should identify what zones permit this housing and evaluate approval requirements for impacts on objectivity and approval certainty. For example, excluding this housing from residential zones or imposing standards such as compatibility with surrounding uses without clarity would be considered a constraint. The element must include programs as appropriate to address identified constraints based on the outcomes of this analysis.

SB 35 Streamlined Ministerial Approval Process: The element must identify and analyze written procedures for the SB 35 Streamlined Ministerial Approval Process.

Zoning, Development Standards and Fees: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards and fees for each parcel on the jurisdiction’s website.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Government Code section 65584. (Gov. Code, § 65583, subd. (a)(6).)*

Identified Densities and Approval Times: The element did not address these requirements. The element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The analysis must address any hinderances on housing development and programs should be added as appropriate.

6. *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).)*

While the element identifies the Beverly Hills Senior Housing project is at risk of converting from affordable to market-rate during the next ten years, the element must also estimate the total cost of preserving these units and include a list of entities with the capacity to acquire multifamily developments that are at risk. The analysis should guide policies and programs necessary to address the critical activity of preserving at-risk units. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/assisted-housing-developments.shtml> and for more information on identifying units at-risk, see the California Housing Partnership Corporation at <http://www.chpc.net>.

C. 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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (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 Programs 9.3 (Home Repair and Improvement), 10.3 (Housing Trust Fund), 10.4 (ADUs), 10.6 (Partnerships with Affordable Housing Developers), 11.5 (Housing Opportunities for Persons with Disabilities) and 12.1 (Development Standards).

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 B3, the element does not contain a complete sites inventory and analysis. 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.

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).)*

The element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-income households and individuals and households with special needs (beyond seniors). The program(s) could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to lower and moderate-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/assist-in-development-housing.shtml>.

4. *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 B4, 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 to address and remove or mitigate any identified constraints. In addition, Program 12.1 must be revised with specific commitment to complete actions early in the planning period. While the program commits to “explore” and “evaluating”, these actions must be coupled with specific actions to amend and complete the appropriate zoning changes. Finally, as noted on page B-15, this program should be revised to evaluate and revise parking requirements.

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 B1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. For additional guidance on program requirements to affirmatively further fair housing, please see HCD’s guidance at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

6. *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).)*

As noted in Finding B6, the element must complete an analysis of units at risk of conversion to market rate during the planning period. The element must add or modify programs based on the outcomes of that analysis. In addition, Program 9.7 should be revised to comply with noticing requirements, provide education and assistance to tenants, assist with funding, and promptly reach out to qualified entities to preserve at-risk housing units.

7. *Develop a plan that incentivizes and promotes the creation of ADUs that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low-, low-, or moderate-income households. (Gov. Code, § 65583, subd. (c)(7).)*

The element is required to include a program that incentivizes or promotes ADU development for very low-, low-, and moderate-income households. To address this requirement, the element includes Program 10.4, but many actions only “explore” or “consider” and the program should be revised with specific commitment to complete, adopt, amend or begin implementation of actions that will have an actual and beneficial impact on housing.

D. Public Participation

Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)

While the element describes a survey, public meetings and a webpage; the element should include additional efforts to include a broad spectrum of individuals and representative organizations; consider language access barriers and describe how comments were incorporated into the housing element. In addition, other public participation requirements may be triggered if the City did not make the element available to the public prior to submittal to HCD. By not providing an opportunity for the public to review and comment on a draft of the element in advance of submission to HCD, the City will have not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD’s ability to consider public comments in the course of its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD’s review. The City must

proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents were circulated and 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.

EXHIBIT 2

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



January 14, 2022

Ryan Gohlich, Director
Community Development Department
City of Beverly Hills
455 North Rexford Drive, First Floor
Beverly Hills, CA, 90210

Dear Ryan Gohlich:

RE: City of Beverly Hills' 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Beverly Hills' (City) housing element adopted October 12, 2021 and received for review on October 18, 2021. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted housing element addresses most statutory requirements described in HCD's July 30, 2021 review; however, additional revisions are necessary to fully 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 October 15, 2021. 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 (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), 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).

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 note, upon adoption of the housing element, the City must submit an electronic

Ryan Gohlich, Director
Page 2

version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions.

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.

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 Chelsea Lee, of our staff, at Chelsea.Lee@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall

Senior Program Manager

Enclosure

APPENDIX CITY OF BEVERLY HILLS

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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> 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).)*

The element now includes additional information on outreach conducted, a few maps, and marginal sites analysis for some of the fair housing areas but generally does not address this requirement. Please see HCD's prior review for additional information and HCD's data viewer and guidance at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

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).)*

Parcel Listing: The element now identifies the anticipated affordability levels of units on identified sites, but still does not include revisions to clarify generic descriptions of existing uses of sites identified in the inventory. Please see HCD's prior review for additional information.

Realistic Capacity: The element now includes minimal discussion that indicates allowable densities in the Mixed-Use Overlay Zone are higher than the default density for the City and lists recently approved projects in the R-4 zone that achieved densities between 30-59 units per acre. However, the element provides no analysis based on land-use controls, environmental constraints, infrastructure, and site improvements to demonstrate the calculation of residential capacity on identified sites. Please see HCD's prior review for additional information.

Suitability of Nonvacant Sites: HCD's prior review found the element must include analysis that demonstrates the potential for additional development of nonvacant sites.

In response, the element adds some information on ILV ratios and market conditions of sites in the Mixed-Use Overlay zone. However, the element does not provide sufficient analysis to demonstrate existing uses will discontinue in the planning period, analyze existing leases or contracts that would prevent redevelopment of sites, or provide evidence of the City's past experience with converting existing uses to higher density residential development. Please see HCD's prior review for additional information.

Environmental Constraints: HCD's prior review found the element must describe any known environmental constraints or other conditions on identified sites that could impact housing development in the planning period. In response, the element now states, "while environmental constraints will require development to incorporate measures to mitigate potential hazards, these constraints are not expected to preclude housing development consistent with the regional housing needs allocation (RHNA)," (p. B-56). This statement indicates the presence of constraints on sites identified; therefore, the element did not address this finding.

Replacement Requirements: HCD's prior review found the element includes sites in the Mixed-Use Overlay Zone with existing residential uses. The element was not revised to address this requirement. Please see HCD's prior review.

Accessory Dwelling Units (ADUs): The element now indicates that an additional 14 ADU permit applications were submitted in September 2021 to justify its projection of 150 ADUs in the planning period. The analysis should be based on permitted ADUs. Further, the City did not address discrepancies between the City and HCD's records on ADUs permitted in 2018, 2019, and 2020. The City must reconcile ADU figures with HCD records and rescale assumptions based on permitted ADUs.

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: In response to HCD's prior review to analyze development standards for impacts on achieving maximum densities, the element now includes additional examples of projects recently approved in the R-4 zone. In addition, the element addresses lot assemblage issues, noting that some of the R-4 projects involved singular lots and still achieved high densities. However, revisions added to Program 12.1 (Development Standards) to "study" and "consider" do not result in meaningful actions to address potential constraints on multifamily housing and this analysis.

Fees: In response to HCD's prior review to analyze fees for impacts on development costs, the element now includes a statement that indicates Program 12.2 (Reduced Fees for Affordable Housing) commits the City to conducting a fee study to assess whether additional waivers can be granted for affordable housing projects. However,

there are no revisions found in Program 12.2, nor is there an evaluation of fees. Please see HCD's prior review.

Processing and Permit Procedures: In response to HCD's prior review to analyze its permit and processing procedures for impacts on cost, supply, and built density, the element now adds minor revisions describing the design content of the "Residential Design Style Catalog," which includes architectural features, materials, and pictures of each design style. These revisions do not address HCD's findings. Please see HCD's prior review.

Constraints on Persons with Disabilities:

- *Family Definition:* In response to HCD's prior review, which found that the City's definition of family acts as a constraint on persons with disabilities and is discriminatory, the City responded to HCD by noting that "the City believes that the current definition complies with State law and that no revisions are necessary or appropriate at this time. It is important to recognize that the existing definition is part of an integrated set of land use regulations that has been carefully crafted to protect the integrity of existing single-and-multi-family neighborhoods..." (Exhibit 1, Housing Element Comments and Responses). Based upon the City's refusal to address these constraints, the adopted element still does not address this finding. Please see HCD's prior review.
- *Group Homes:* Similarly, HCD's prior review found that group homes for seven or more persons are excluded from most residential zones and did not evaluate approval requirements for impacts on objectivity and approval certainty. The City responded to HCD by noting that "the City believes the regulations for group homes for 7+ persons complies with State law" (Exhibit 1, Housing Element Comments and Responses). Based upon the City's response, the adopted element still does not address this finding. Please see HCD's prior review.

4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. (Gov. Code, § 65583, subd. (a)(6).)*

HCD's prior review found the element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The element was not revised to address this requirement. Please see HCD's prior review for additional information.

5. *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).)

HCD's prior review found the element must estimate the total costs of preserving at-risk units that are in danger of converting to market-rate during the next ten years. In response, the element presents confounding information that the earliest date of conversion for the Beverly Hills Senior Housing project is 2028 and is "technically classified as being at-risk of conversion..."; however, the "City has the right to purchase the upper floor for one dollar in 2041; therefore, this project is not at risk of conversion to market rate." These revisions do not address HCD's findings. Please see HCD's prior review for additional information.

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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

The element now includes revisions that satisfactorily addresses timeframes for Programs 11.5 and 12.1. However, there are no revisions to Programs 9.3 (Home Repair and Improvement) and 10.3 (Housing Trust Fund). In addition, Program 10.4 (Accessory Dwelling Units) still requires timeframes for creating pre-approved ADU plans and for outreach materials, including an ADU webpage.

- 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 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.

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).)*

In response to HCD's prior review, the element now includes revisions that identify additional actions to assist low-, very low-, low- and moderate-income households in Program 10.6 (Partnerships with Affordable Housing Developers). However, none of these actions have corresponding timeframe commitments for implementation that will result in beneficial impacts during the planning period.

4. *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 Findings A3 and A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to add programs and address and remove or mitigate any identified constraints. In addition, while the element now includes revisions to Program 12.1 (Development Standards) that commit the City to amendments by 2024, it still contains terms including "studying" and "evaluating" that do not result in beneficial impacts during the planning period.

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 must include a complete analysis of affirmatively furthering fair housing (AFFH). Based on the outcomes of that analysis, the element must add or modify programs.

6. *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).)*

As noted in Finding A5, the element must complete an analysis of units at risk of conversion to market rate during the planning period. The element must add or modify programs based on the outcomes of that analysis.

7. *Develop a plan that incentivizes and promotes the creation of ADU that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "ADU" has the same meaning as "ADU" as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

The element now includes revisions that address some timeframes to actions identified in Program 10.4 (Accessory Dwelling Units). However, other actions still lack specified timeframes other than indicating "throughout the planning period," including amending the zoning code to remove barriers regarding ADUs in multi-family zones, pre-plan checks and pre-approved ADU plans, and creating an ADU webpage.

C. Public Participation

Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)

The element now includes revisions that address when the draft was disseminated and how public comments were incorporated. The element also includes clarifying revisions on the types of outreach conducted, including an additional Planning Commission meeting, mailings to property owners, and an ADU survey. However, these revisions are insufficient in demonstrating that all economic segments of the community, particularly low-and moderate-income households and organizations that represent them, were involved in the development of the housing element. Please see HCD's prior review.

EXHIBIT 3



July 14, 2022

VIA EMAIL AND PRIORITY MAIL

Huma Ahmed
Office of the City Clerk
City of Beverly Hills
455 N. Rexford Dr.
Beverly Hills, CA 90210
Email: hahmed@beverlyhills.org, cityclerk@beverlyhills.org

RE: Gov. Code § 65009(d) Notice Regarding Beverly Hills' Housing Element.

To the City Clerk:

PLEASE TAKE NOTICE pursuant to Government Code Section 65009(d)(3)(A) that the housing element of the City of Beverly Hills' general plan is inadequate and does not substantially comply with the requirements of Article 10.6 (Section 65580 et seq.) of the Government Code and that Californians for Homeownership, Inc. may initiate litigation against the City if it does not adopt a revised and legally adequate housing element by September 12, 2022.

The specific deficiencies in the City's housing element are identified in the July 30, 2021 and January 14, 2022 letters sent to the City by the California Department of Housing and Community Development, which we have attached to this letter as Exhibits A and B respectively and which we incorporate here by reference, in their entirety.

Sincerely,

Matthew Gelfand

cc: City of Beverly Hills
Laurence Wiener, Esq., City Attorney (by email to lwiener@rwglaw.com)
City Council (by email to mayorandcitycouncil@beverlyhills.org)

California Department of Housing and Community Development
Chelsea Lee (by email to Chelsea.Lee@hcd.ca.gov)

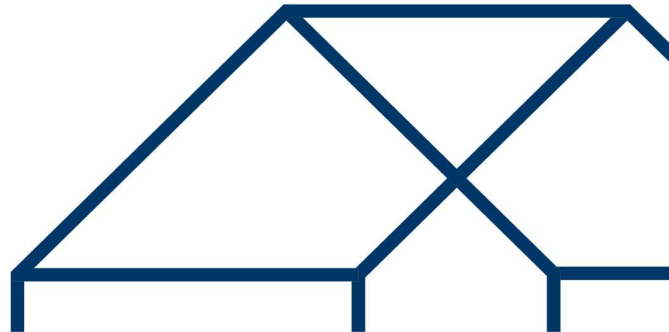


EXHIBIT A

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



July 30, 2021

Ryan Gohlich, Director
Community Development Department
City of Beverly Hills
455 North Rexford Drive, First Floor
Beverly Hills, CA 90210

Dear Ryan Gohlich:

RE: Review of City of Beverly Hills's 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Beverly Hills's (City) draft housing element received for review on June 2, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Abundant Housing LA and Josh Albrektson pursuant to Government Code section 65585, subdivision (c).

The draft 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.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2021 for Southern California Association of Governments (SCAG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf.

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.

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.

HCD is committed to assisting the City of Beverly Hills in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Chelsea Lee at Chelsea.Lee@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" being more prominent than the last name "West".

Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX CITY OF BEVERLY HILLS

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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> 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 part of the evaluation of programs in the past cycle (Appendix D), the element must provide an explanation 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).)*

The element generally does not address this requirement. The element, among other things, must include outreach, an assessment of fair housing, identification, and prioritization of contributing factors to fair housing issues and goals and actions sufficient to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity. For more information, please contact HCD and visit <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

The element includes analysis regarding extremely low-income (ELI) households such as the number of households and overpayment but must also identify projected

housing needs. The projected housing need for ELI households can be calculated by using available census data to determine the number of very low-income households that qualify as ELI households or presume that 50 percent of the regional housing need allocation (RHNA) for very low-income households qualify as ELI households. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>.

3. *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).)*

Parcel Listing: The element lists parcels by acreage, general plan and zoning but must also identify the anticipated affordability levels of all the units on identified sites. In addition, the parcel listing includes a column for existing uses. However, in many cases, the column is blank and should be completed. Finally, the parcel listing in some cases does describe existing uses, but the description is generic, such as office building or store building. Instead, the description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period.

Suitability of Nonvacant Sites: While the element describes the mixed-use overlay, it generally does not address this requirement. The element must include an analysis to demonstrate the potential for additional development. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the City's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

In addition, relying on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households triggers requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period.

Realistic Capacity: While the element includes an estimate of the number of units that can be accommodated on each site in the inventory, the estimate should rely on minimum density standards or include analysis demonstrating how the number of units for each site was determined. The estimate of the number of units for each site must account for 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.

In addition, the element appears to assume residential development on sites zoned for nonresidential uses, but to support this assumption, the element must analyze the likelihood of residential in zoning where 100 percent nonresidential uses are allowed. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses or other relevant factors such as enhanced policies and programs.

Small Sites: Many identified sites are smaller than half an acre. Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing. As a result, if utilizing these sites toward the housing need for lower-income households, the element must include analysis and programs as appropriate. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>.

Availability of Infrastructure: The element includes information on water capacity but must also address total sewer capacity sufficient to accommodate the RHNA. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#environmental>.

Environmental Constraints: While the element generally describes a few environmental conditions within the City (page B-49), it must also describe any known environmental constraints or other conditions on identified sites that could impact housing development in the planning period. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#environmental>.

Affirmatively Furthering Fair Housing: The element must demonstrate the sites inventory affirmatively furthers fair housing. For more information, see HCD's guidance at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

Replacement Requirements: If utilizing sites with residential uses, the element must include a policy requiring the replacement of all those units affordable to the same or lower-income level as a condition of any development on the site pursuant to Government Code section 65583.2, subdivision (g), paragraph (3). Replacement requirements shall be consistent with those set forth in Government Code section 65915, subdivision (c), paragraph (3).

Accessory Dwelling Units (ADUs): The element projects 150 ADUs over the planning period or approximately 18 ADUs per year over the eight-year planning period. The element also notes permitting 7 ADUs in 2018, 6 in 2019 and 9 in 2020. These trends are inconsistent with HCD records (nothing reported in 2018, 6 in 2019 and 4 in 2020) and do not support an assumption of 18 ADUs per year. To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if ADU assumptions for the number of units and affordability are not met.

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. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types: The element must demonstrate zoning to encourage and facilitate a variety of housing types, as follows:

- *Emergency Shelters*: Zoning may impose development standards on emergency shelters including sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone. The element describes parking requirements are based on need which appears inconsistent with statute. As a result, the element should add or modify programs as appropriate.
- *Permanent Supportive Housing*: 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. The element must demonstrate compliance with this requirement and include programs as appropriate.
- *Transitional and Supportive Housing*: Definitions for transitional and supportive housing and target population (page B-37) appear inconsistent in Government Code section 65582, and the element should be revised, including with programs, as appropriate.
- *Employee Housing*: The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) or add or modify programs. Specifically, section 17021.5 requires employee

housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone.

4. *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 lists several potential constraints, particularly unit sizes, setbacks, parking, modulation requirements and heights and then appears to conclude these standards are not constraints because projects have been built near maximum densities. This analysis does not demonstrate these land use controls are not constraints. For example, none of the listed projects are less than a decade old and most did not achieve maximum densities under the general plan. The analysis should at least address a newer and more complete list of projects, whether exceptions or deviations to developments standards were utilized, the lack of regularly achieving general plan densities, why assemblage appears necessary to achieve higher densities, which zones were used and any other factors that impact the cost, supply and feasibility of development. Based on the outcomes of the analysis, the element must include programs to address identified constraints.

Fees: The element indicates that fees are approximately \$100,000 per multifamily unit and concludes the fees are nominal based on sales prices. However, regardless of proportion of sales prices, cumulative fees of \$100,000 per unit have a significant impact on development costs. The element should include a closer evaluation of these fees and add programs to address the constraint as appropriate.

Processing and Permit Procedures: The element describes planning and architectural commission reviews as well as decision making standards such as "...promote harmonious development...", "...conformity with good taste...", and "...contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality." The City's processing approach to these potentially roving standards is to provide technical assistance and examples of past projects. While this approach could be effective in facilitating approval certainty, the analysis should also consider impacts on costs, supply and built density. Also, given the significant ambiguity implied in these decision-making standards, the element should include programs to monitor their impacts and should consider more fixed and objective standards.

Constraints on Housing for Persons with Disabilities: The element must include an analysis of zoning, development standards, building codes, and process and permit procedures as potential constraints on housing for persons with disabilities, as follows:

- *Family Definition*: The element discusses definitions of family, bona fide housekeeping unit and single-family housekeeping unit that appear to constrain housing, including for persons with disabilities. For example, the definitions require households to be the “functional equivalent of a traditional family” with members that are “non-transient”, “interactive” and several other provisions. The element should add or modify programs to address these constraints.
- *Group Homes*: Group homes for seven or more persons appear to be excluded from most residential zones and the element does not otherwise address this important housing type. The element should identify what zones permit this housing and evaluate approval requirements for impacts on objectivity and approval certainty. For example, excluding this housing from residential zones or imposing standards such as compatibility with surrounding uses without clarity would be considered a constraint. The element must include programs as appropriate to address identified constraints based on the outcomes of this analysis.

SB 35 Streamlined Ministerial Approval Process: The element must identify and analyze written procedures for the SB 35 Streamlined Ministerial Approval Process.

Zoning, Development Standards and Fees: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards and fees for each parcel on the jurisdiction’s website.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Government Code section 65584. (Gov. Code, § 65583, subd. (a)(6).)*

Identified Densities and Approval Times: The element did not address these requirements. The element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The analysis must address any hinderances on housing development and programs should be added as appropriate.

6. *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).)*

While the element identifies the Beverly Hills Senior Housing project is at risk of converting from affordable to market-rate during the next ten years, the element must also estimate the total cost of preserving these units and include a list of entities with the capacity to acquire multifamily developments that are at risk. The analysis should guide policies and programs necessary to address the critical activity of preserving at-risk units. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/assisted-housing-developments.shtml> and for more information on identifying units at-risk, see the California Housing Partnership Corporation at <http://www.chpc.net>.

C. 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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (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 Programs 9.3 (Home Repair and Improvement), 10.3 (Housing Trust Fund), 10.4 (ADUs), 10.6 (Partnerships with Affordable Housing Developers), 11.5 (Housing Opportunities for Persons with Disabilities) and 12.1 (Development Standards).

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 B3, the element does not contain a complete sites inventory and analysis. 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.

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).)*

The element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-income households and individuals and households with special needs (beyond seniors). The program(s) could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to lower and moderate-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/assist-in-development-housing.shtml>.

4. *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 B4, 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 to address and remove or mitigate any identified constraints. In addition, Program 12.1 must be revised with specific commitment to complete actions early in the planning period. While the program commits to “explore” and “evaluating”, these actions must be coupled with specific actions to amend and complete the appropriate zoning changes. Finally, as noted on page B-15, this program should be revised to evaluate and revise parking requirements.

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 B1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. For additional guidance on program requirements to affirmatively further fair housing, please see HCD’s guidance at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

6. *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).)*

As noted in Finding B6, the element must complete an analysis of units at risk of conversion to market rate during the planning period. The element must add or modify programs based on the outcomes of that analysis. In addition, Program 9.7 should be revised to comply with noticing requirements, provide education and assistance to tenants, assist with funding, and promptly reach out to qualified entities to preserve at-risk housing units.

7. *Develop a plan that incentivizes and promotes the creation of ADUs that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low-, low-, or moderate-income households. (Gov. Code, § 65583, subd. (c)(7).)*

The element is required to include a program that incentivizes or promotes ADU development for very low-, low-, and moderate-income households. To address this requirement, the element includes Program 10.4, but many actions only “explore” or “consider” and the program should be revised with specific commitment to complete, adopt, amend or begin implementation of actions that will have an actual and beneficial impact on housing.

D. Public Participation

Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)

While the element describes a survey, public meetings and a webpage; the element should include additional efforts to include a broad spectrum of individuals and representative organizations; consider language access barriers and describe how comments were incorporated into the housing element. In addition, other public participation requirements may be triggered if the City did not make the element available to the public prior to submittal to HCD. By not providing an opportunity for the public to review and comment on a draft of the element in advance of submission to HCD, the City will have not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD’s ability to consider public comments in the course of its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD’s review. The City must

proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents were circulated and 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.

EXHIBIT B

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



January 14, 2022

Ryan Gohlich, Director
Community Development Department
City of Beverly Hills
455 North Rexford Drive, First Floor
Beverly Hills, CA, 90210

Dear Ryan Gohlich:

RE: City of Beverly Hills' 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Beverly Hills' (City) housing element adopted October 12, 2021 and received for review on October 18, 2021. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted housing element addresses most statutory requirements described in HCD's July 30, 2021 review; however, additional revisions are necessary to fully 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 October 15, 2021. 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 (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), 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).

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 note, upon adoption of the housing element, the City must submit an electronic

Ryan Gohlich, Director
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version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions.

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.

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 Chelsea Lee, of our staff, at Chelsea.Lee@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall

Senior Program Manager

Enclosure

APPENDIX CITY OF BEVERLY HILLS

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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> 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).)*

The element now includes additional information on outreach conducted, a few maps, and marginal sites analysis for some of the fair housing areas but generally does not address this requirement. Please see HCD's prior review for additional information and HCD's data viewer and guidance at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

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).)*

Parcel Listing: The element now identifies the anticipated affordability levels of units on identified sites, but still does not include revisions to clarify generic descriptions of existing uses of sites identified in the inventory. Please see HCD's prior review for additional information.

Realistic Capacity: The element now includes minimal discussion that indicates allowable densities in the Mixed-Use Overlay Zone are higher than the default density for the City and lists recently approved projects in the R-4 zone that achieved densities between 30-59 units per acre. However, the element provides no analysis based on land-use controls, environmental constraints, infrastructure, and site improvements to demonstrate the calculation of residential capacity on identified sites. Please see HCD's prior review for additional information.

Suitability of Nonvacant Sites: HCD's prior review found the element must include analysis that demonstrates the potential for additional development of nonvacant sites.

In response, the element adds some information on ILV ratios and market conditions of sites in the Mixed-Use Overlay zone. However, the element does not provide sufficient analysis to demonstrate existing uses will discontinue in the planning period, analyze existing leases or contracts that would prevent redevelopment of sites, or provide evidence of the City's past experience with converting existing uses to higher density residential development. Please see HCD's prior review for additional information.

Environmental Constraints: HCD's prior review found the element must describe any known environmental constraints or other conditions on identified sites that could impact housing development in the planning period. In response, the element now states, "while environmental constraints will require development to incorporate measures to mitigate potential hazards, these constraints are not expected to preclude housing development consistent with the regional housing needs allocation (RHNA)," (p. B-56). This statement indicates the presence of constraints on sites identified; therefore, the element did not address this finding.

Replacement Requirements: HCD's prior review found the element includes sites in the Mixed-Use Overlay Zone with existing residential uses. The element was not revised to address this requirement. Please see HCD's prior review.

Accessory Dwelling Units (ADUs): The element now indicates that an additional 14 ADU permit applications were submitted in September 2021 to justify its projection of 150 ADUs in the planning period. The analysis should be based on permitted ADUs. Further, the City did not address discrepancies between the City and HCD's records on ADUs permitted in 2018, 2019, and 2020. The City must reconcile ADU figures with HCD records and rescale assumptions based on permitted ADUs.

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: In response to HCD's prior review to analyze development standards for impacts on achieving maximum densities, the element now includes additional examples of projects recently approved in the R-4 zone. In addition, the element addresses lot assemblage issues, noting that some of the R-4 projects involved singular lots and still achieved high densities. However, revisions added to Program 12.1 (Development Standards) to "study" and "consider" do not result in meaningful actions to address potential constraints on multifamily housing and this analysis.

Fees: In response to HCD's prior review to analyze fees for impacts on development costs, the element now includes a statement that indicates Program 12.2 (Reduced Fees for Affordable Housing) commits the City to conducting a fee study to assess whether additional waivers can be granted for affordable housing projects. However,

there are no revisions found in Program 12.2, nor is there an evaluation of fees. Please see HCD's prior review.

Processing and Permit Procedures: In response to HCD's prior review to analyze its permit and processing procedures for impacts on cost, supply, and built density, the element now adds minor revisions describing the design content of the "Residential Design Style Catalog," which includes architectural features, materials, and pictures of each design style. These revisions do not address HCD's findings. Please see HCD's prior review.

Constraints on Persons with Disabilities:

- *Family Definition:* In response to HCD's prior review, which found that the City's definition of family acts as a constraint on persons with disabilities and is discriminatory, the City responded to HCD by noting that "the City believes that the current definition complies with State law and that no revisions are necessary or appropriate at this time. It is important to recognize that the existing definition is part of an integrated set of land use regulations that has been carefully crafted to protect the integrity of existing single-and-multi-family neighborhoods..." (Exhibit 1, Housing Element Comments and Responses). Based upon the City's refusal to address these constraints, the adopted element still does not address this finding. Please see HCD's prior review.
- *Group Homes:* Similarly, HCD's prior review found that group homes for seven or more persons are excluded from most residential zones and did not evaluate approval requirements for impacts on objectivity and approval certainty. The City responded to HCD by noting that "the City believes the regulations for group homes for 7+ persons complies with State law" (Exhibit 1, Housing Element Comments and Responses). Based upon the City's response, the adopted element still does not address this finding. Please see HCD's prior review.

4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. (Gov. Code, § 65583, subd. (a)(6).)*

HCD's prior review found the element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The element was not revised to address this requirement. Please see HCD's prior review for additional information.

5. *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).)

HCD's prior review found the element must estimate the total costs of preserving at-risk units that are in danger of converting to market-rate during the next ten years. In response, the element presents confounding information that the earliest date of conversion for the Beverly Hills Senior Housing project is 2028 and is "technically classified as being at-risk of conversion..."; however, the "City has the right to purchase the upper floor for one dollar in 2041; therefore, this project is not at risk of conversion to market rate." These revisions do not address HCD's findings. Please see HCD's prior review for additional information.

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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

The element now includes revisions that satisfactorily addresses timeframes for Programs 11.5 and 12.1. However, there are no revisions to Programs 9.3 (Home Repair and Improvement) and 10.3 (Housing Trust Fund). In addition, Program 10.4 (Accessory Dwelling Units) still requires timeframes for creating pre-approved ADU plans and for outreach materials, including an ADU webpage.

- 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 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.

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).)*

In response to HCD's prior review, the element now includes revisions that identify additional actions to assist low-, very low-, low- and moderate-income households in Program 10.6 (Partnerships with Affordable Housing Developers). However, none of these actions have corresponding timeframe commitments for implementation that will result in beneficial impacts during the planning period.

4. *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 Findings A3 and A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to add programs and address and remove or mitigate any identified constraints. In addition, while the element now includes revisions to Program 12.1 (Development Standards) that commit the City to amendments by 2024, it still contains terms including "studying" and "evaluating" that do not result in beneficial impacts during the planning period.

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 must include a complete analysis of affirmatively furthering fair housing (AFFH). Based on the outcomes of that analysis, the element must add or modify programs.

6. *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).)*

As noted in Finding A5, the element must complete an analysis of units at risk of conversion to market rate during the planning period. The element must add or modify programs based on the outcomes of that analysis.

7. *Develop a plan that incentivizes and promotes the creation of ADU that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "ADU" has the same meaning as "ADU" as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

The element now includes revisions that address some timeframes to actions identified in Program 10.4 (Accessory Dwelling Units). However, other actions still lack specified timeframes other than indicating "throughout the planning period," including amending the zoning code to remove barriers regarding ADUs in multi-family zones, pre-plan checks and pre-approved ADU plans, and creating an ADU webpage.

C. Public Participation

Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)

The element now includes revisions that address when the draft was disseminated and how public comments were incorporated. The element also includes clarifying revisions on the types of outreach conducted, including an additional Planning Commission meeting, mailings to property owners, and an ADU survey. However, these revisions are insufficient in demonstrating that all economic segments of the community, particularly low-and moderate-income households and organizations that represent them, were involved in the development of the housing element. Please see HCD's prior review.