STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

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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,



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.