

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

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February 13, 2024

Angelica Frausto-Lupo, Director
Community Development Department
City of South Pasadena
1414 Mission Street
South Pasadena, CA 91030

Dear Angelica Frausto-Lupo:

RE: City of South Pasadena's 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of South Pasadena's (City) housing element that was adopted on May 30, 2023 and received for review on December 15, 2023. The California Department of Housing and Community Development (HCD) also received various resolutions and ordinances pertaining to rezoning and implementation and informal revisions to the sites inventory for review. Pursuant to Government Code section 65585, subdivision (c), HCD considered comments from Josh Albrekston, South Pasadena Tenants and YIMBY Law. Pursuant to Government Code section 65585, HCD is reporting the results of its review.

On May 16, 2023, HCD found the revised draft to meet the statutory requirements of State Housing Element Law. (Gov. Code, § 65580 et seq.) However, the element could not be found in substantial compliance until the City has completed the necessary rezones to make prior identified sites available or address the shortfall of sites to accommodate the regional housing needs allocation (RHNA) pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021) as described below. Further, to comply with State Housing Element Law, the City must adopt and submit the housing element and be approved by HCD in accordance with Government Code section 65585.

The adopted element was found to be substantially the same as the revised draft element that HCD's May 16, 2023 review determined met statutory requirements. However, the adopted element cannot be found in substantial compliance for various reasons and the element and related documents must be revised, as follows:

Completion of Necessary Rezoning

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that did not adopt a compliant housing element within one year from the statutory deadline (January 31, 2023) cannot be found in compliance until rezones to make

prior identified sites available or accommodate a shortfall of sites to accommodate the RHNA are completed pursuant to Government Code sections 65583, subdivision (c)(1)(A) and 65583.2, subdivisions (c), (h) and (i). HCD has reviewed the various resolutions and ordinances related to rezoning, particularly the General Plan Update, Downtown Specific Plan, Mixed-Use Overlay Zone and Increasing Density in the Residential Medium and Residential High Zoning District. These resolutions and ordinances do not appear to meet statutory requirements, including, among other requirements, by-right and appropriate development standards pursuant to Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivisions (h) and i), as follows:

- *General Plan Update and Downtown Specific Plan:* To the extent necessary to accommodate the lower-income RHNA, sites must be zoned to permit owner-occupied and rental multifamily residential use by-right for developments in which at least 20 percent of the units are affordable to lower-income households during the planning period. The General Plan Update and Downtown Specific Plan do not appear to meet this affordability requirement.

In addition, to the extent necessary to accommodate the lower-income RHNA, rezoning must meet minimum densities and residential only performance standards. Specifically, the rezone must require a minimum density of 20 units per acre and residential only performance standards generally include 50 percent of the lower-income RHNA on residential only zoned sites or the zone allows 100 percent residential uses and requires residential to occupy 50 percent of the total floor area of a mixed-use project. The General Plan Update and Downtown Specific Plan do not appear to meet these requirements.

- *Mixed-Use Overlay:* The Mixed-Use Overlay does not appear to meet the affordability requirement, as described above. In addition, the Mixed-Use Overlay Zone may not meet statutory requirements pursuant to Government Code section 65583.2, subdivisions (c), (h) and (i). Please be aware, the recent California appellate decision in *Martinez v. City of Clovis* found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The City should consult with its legal counsel regarding the impacts of this decision for the current rezone strategy and adjust its recent rezoning accordingly. *Martinez v. City of Clovis (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.*
- *Overlay Zones and Increasing Density in the Residential Medium and Residential High Zoning District:* To the extent necessary to accommodate

the lower-income RHNA, these zones or pending overlay zones (Program 2.j and 2.k) must meet the by-right requirements pursuant to Government Code section, subdivisions (h) and (i), including the recent court decision, as described above. For example, zoning associated with Site 7 (Methodist Church) should meet these by-right requirements. In addition, HCD understands rezoning with the overlays (Program 2.j and 2.k) have not been completed and the element cannot be found in compliance until these rezones are complete.

- *Heights:* Appropriate development standards to facilitate achieving the proposed maximum densities (e.g., 70 and 110 units per acre) are crucial to completing zoning. While Program 2.n (City-wide Height Limit) proposes to revise heights, zoning cannot be deemed complete without appropriate development standards to implement the densities. The City may utilize an interim procedure to meet this requirement. However, the procedure should be written and administrative and should not be subject to special requirements such as demonstrating cost reduction as required by State Density Bonus Law.

To address these requirements, the City should either submit zoning that meets all requirements pursuant to Government Code section 65583.2, subdivisions (c), (h) and (i) or provide additional documentation to demonstrate recent rezoning complies with these statutory requirements. HCD will review the documentation and issue correspondence identifying the updated status of the City's housing element compliance.

Nonvacant Sites and Required Findings

The housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. As a result, the City must find (as part of an adoption resolution), based on substantial evidence, existing uses are not an impediment to additional residential development in the planning period and will likely discontinue in the planning period (Gov. Code, § 65583.2, subd. (g)(2).). HCD has reviewed Resolution Number 7817, which does not appear to meet this statutory requirement. As a result, the City should re-adopt the housing element with the appropriate findings and submit the resolution, including any pertinent documentation, to HCD.

Effective Implementation

Effective implementation of programs is crucial to the development and conservation of housing for all segments of the community. Based on a cursory review, some programs do not appear consistent with the intent of housing programs or may pose a constraint to development. For example, regarding employee housing, the ordinance appears to exclude employee housing in some residential zones for

existing single-family residences. Also, some design and development standards be constraints on development. For example, setbacks, massing setbacks, distance requirements between buildings and open space requirements may act as a constraint. The City should closely evaluate implementation of programs and make adjustments as appropriate to address constraints and encourage and facilitate a variety of housing types as part of any future submittal of the housing element. Also, while HCD acknowledges the City's progress in implementation, HCD also recognizes many programs are pending or in progress and urges the City to continue diligently implementing programs.

Informal Revisions and Public Participation

The City has submitted informal revisions regarding the sites inventory, particularly revisions to Table IV-51 (Downtown Specific Plan Rezoning Capacity Analysis). The framework for revising the table is preliminarily sufficient to meet statute. However, given the amount of time since HCD's May 2023 review, recent implementation such as the General Plan Update, Downtown Specific Plan and Mixed-Use Overlay Zone and other changing circumstances, the City should re-evaluate the methodology. Particularly, the element should re-evaluate factors and probabilities and make changes, as appropriate. The re-evaluation should at least address enhanced probabilities for densities exceeding 50 units per acre and locations within half mile of a transit stop. As part of this re-evaluation, the element should consider any recent trends or interest in development, build out projections anticipated in the eight-year planning period for the planning horizon of the Downtown Specific Plan and particularly seek to engage the public and development community. Based on the outcomes of this re-evaluation, the element should make adjustments as appropriate.

Further, public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. The City should actively 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. For example, future submittals of the housing element should engage the public and representative organizations as part of re-evaluating the sites inventory and review and adjustment to recently adopted zoning and development standards and other implementation. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

The element will meet the statutory requirements of State Housing Element Law once it and associated documents such as rezoning ordinances have been revised, adopted,

submitted, and reviewed and approved by HCD to comply with the above requirements pursuant to Government Code section 65585.

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 program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the hard work and dedication the City's housing element team provided throughout the housing element review. HCD is 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 me at paul.mcdougall@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager