

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

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November 1, 2023

Brandon Swanson, Planning Director
Community Planning and Building Department
City of Carmel
P.O Box CC
Carmel-by-the-Sea, CA 93921

Dear Brandon Swanson:

RE: City of Carmel-by-the-Sea's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Carmel-by-the-Sea's draft housing element received for review on August 3, 2023, along with revisions that were received on October 17, 2023. Our review was facilitated by a conversation on October 10, 2023 with Marnie Waffle and Katherine Wallace. In addition, the California Department of Housing and Community Development (HCD) considered comments from David Kellogg and Brian Wilke, pursuant to Government Code section 65585, subdivision (c). Pursuant to Government Code section 65585, HCD is reporting the results of its review.

The draft element addresses many statutory requirements; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

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. 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.

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 (December 15, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government

Code sections 65583, subdivision (c) and 65583.2, subdivision (c). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until all necessary rezones are completed.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Affordable Housing and Sustainable Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

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 cooperation and effort the City's housing element team provided during the housing element update and review. 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 Pierce Abrahamson, of our staff, at pierce.abrahamson@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF CARMEL

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

Fair Housing Enforcement and Outreach: While the element describes the City as having not been found in violation of fair housing laws, it should also describe how the City proactively complies with existing fair housing laws and regulations. For additional information, please see pages 28-30 on HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance Memo at https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

Integration and Segregation: The element reports some data on income at the regional (City compared to Region) and local level (areas within the City compared to each other) but should also analyze the data for patterns and trends over time, particularly at the regional level. An analysis should address trends over time, coincidences with other components of the assessment of fair housing and incorporate local data and knowledge and other relevant factors. Examples of local data and knowledge include service providers, nonprofit developers, local foundations and city officials. Other relevant factors include zoning and land use; state and federal investments including transportation; lack of applying for state and federal resources and demographics and market conditions.

Disparities in Access to Opportunity: While the element reports data on disparities in access to education, economic, and environmental opportunities, it should also address disparities in access to transportation opportunities, including accessibility and combined transportation and housing costs experienced by protected groups. Please refer to page 35 of the AFFH guidebook (link: https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf).

Disproportionate Housing Needs (Substandard Housing Conditions): While the element included some data regarding housing conditions, it must also identify any concentrations of substandard housing units or concentrations of older units in need of rehabilitation at the local level.

Identified Sites and AFFH: While the element provides some analysis regarding how sites affirmatively further fair housing, it should quantify the number of units by income category and location such as the northern and southern portions of the City. Then, the element should evaluate the impacts of identified sites on existing patterns, including addressing any isolation of the regional housing need allocation (RHNA) by income group, lack of identified sites by income groups in any areas of the City and whether the identification of sites improves or exacerbates existing patterns of socio-economic characteristics.

Contributing Factors to Fair Housing Issues: Upon a complete analysis of AFFH, the element should re-assess and prioritize contributing factors to fair housing issues.

2. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Special Needs Households: The element reports data and includes a generic discussion of housing challenges faced by special needs households. However, the element must analyze the housing needs of special needs households for each special need group including seniors, farmworkers, large households, persons with disabilities including developmental disabilities and persons experiencing homelessness. An analysis should address household characteristics, trends, local knowledge such as service providers, existing resources and strategies and the magnitude of the gap in addressing those housing needs.

In addition, for farmworkers, the analysis may utilize past farmworker housing studies and other studies generally applicable to their special housing needs. For example, the element could utilize a recent study conducted by the University of California at Merced that is available at

https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/fwhs_report_2.2_2383.pdf. Based on the outcomes of the analysis, the element should add or modify programs to address this special housing need in the region.

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).)*

Progress in Meeting the RHNA: Table C-2 (p. C-2) currently has a placeholder for “Units permitted between June 30, 2023 and December 31, 2023”. While jurisdictions in the AMBAG region may credit units permitted, entitled, approved, or built (pipeline) since June 30, 2023, the element must demonstrate the affordability and availability of pipeline units in the planning period. Affordability should be demonstrated based on anticipated or actual rents, sales prices, or other mechanisms ensuring affordability

(e.g., deed restrictions). Availability or likelihood of pipeline units being built in the planning period should address status, remaining steps, and any known barriers to development in the planning period, including other relevant factors such as the likelihood of an application or entitlement discontinuing toward development.

Realistic Capacity: The element must calculate the realistic residential capacity on identified sites and, generally, account for land use controls, site improvements and typically built densities and affordability. However, the element may utilize minimum densities. The element appears to utilize minimum densities based on Program 3.1.G (Housing Priority Overlay Zoning). However, Program 3.1.G should be revised to clearly commit to establishing minimum densities and apply for all identified sites utilizing minimum densities. For example, several sites appear to utilize minimum densities but are not proposed with the overlay zone. Otherwise, the element provides a list of sites of approved projects from the 5th cycle planning period with relevant information such as total units built, density calculations, and affordability. However, the average density of completed developments is lower than 33 du/ac, and none of the projects included units affordable to lower- and moderate-income households. As a result, the element should either provide additional supporting information that accounts for land use controls and site improvements (e.g., heights, floor area ratio (FAR), lot coverages, parking, interior courtyard) or rescale assumptions to better align with recent trends.

In addition, given the City is utilizing an overlay and several sites appear with zoning that allow 100 percent nonresidential uses, the calculations of residential capacity should account for the likelihood that sites will utilize the overlay and include a residential component. For example, to demonstrate the likelihood of utilizing the overlay, the element could discuss interest from property owners or developers. To demonstrate the likelihood of a residential component, the element could examine all development in the relevant zones and how often a residential component occurs.

Suitability of Nonvacant Sites: The element identifies nonvacant sites to accommodate the RHNA and includes a site-by-site description. However, in many cases, the element only briefly mentions existing conditions such as what could be built, structure type and the improvement to land value tier. In addition, except for sites where owner interest in residential development in the planning period is expressed, the element should evaluate the extent existing uses impede additional development. For example, the evaluation should address (a) any existing leases or other contracts or conditions that would perpetuate the existing use or prevent redevelopment of the site for additional residential development; (b) existing regulatory framework, including incentives and potential barriers such as heights, FARs and interior courtyard requirements; (c) existing versus allowable floor area; (d) indicators of turnover such as vacancy, for sale or frequent changes in use; (3) the viability of the existing use and impacts of relocation or continuing the use and (4) any other relevant factors that may preclude or promote redevelopment.

In addition, for your information, the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, which 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. Absent findings (e.g.,

adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

City-Owned Sites: The element identifies City-Owned sites to accommodate the RHNA but also appears to indicate that redevelopment may not be likely. Specifically, the element mentions for Sites 1 (Sunrise Center North) and 2 (Sunrise Center South) that the City is only interested if the parking needs can be met and for Site 4 (City Public Works) the element discusses the City's interest if housing is feasible. The element should address the status of each of the City-Owned sites, necessary steps for entitlement and issuing building permits and any known barriers to development in the planning period. For example, the element should discuss the potential for meeting the parking needs of Sites 1 and 2 and the feasibility of Site 4. Based on the outcomes of this analysis, the element should either remove the sites or add or modify programs (See Finding B2 below)

Alternative Adequate Sites: The element may utilize a variety of methods to identify adequate sites and utilizes two methods (Hospitality Employee Housing and Overnight Visitor Accommodation). While the element lists several properties that could utilize the incentive programs, it should also discuss the potential for utilizing the program, recent development trends, interest or other relevant factors supporting assumptions or rescale assumptions in the planning period. For example, the element may utilize a method similar to accessory dwelling units (ADU) based on past trends. Furthermore, the element should list potential receiving sites for the transfer of development rights and analyze their suitability for development or redevelopment in the planning period. Finally, the element should include a program to evaluate the effectiveness of these programs, including progress aligned with assumptions in the inventory, and, if development is not occurring as assumed, take alternative action by a specified date to maintain adequate sites, including but not limited to additional incentives and rezoning additional sites with appropriate zoning.

Zoning for Lower-Income Households: The element must demonstrate adopted densities appropriate to accommodate housing for lower income households. For communities with densities that meet specific standards (at least 20 units per acre for Carmel), no analysis is required (Default Density). (Gov. Code, § 65583.2, subd. (c)(3).) Otherwise, an analysis must demonstrate appropriate densities based on factors such as market demand, financial feasibility, and development experience within identified zones. To address this requirement, the element should clearly identify which zones and allowable densities are being utilized to accommodate the lower-income RHNA. If utilizing existing zoning, the element should either meet the Default Density standard or demonstrate the appropriate densities based on the factors noted above. If utilizing planned zoning, (e.g., City-owned sites, Housing Priority Overlay, SB 10), the element must include a program(s) rezoning sites to meet all by-right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). This rezoning should not be limited to senior housing (e.g., Site 10 – Carmel Foundation).

In addition, please be aware, that 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 may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities less than 20 dwelling units per acre. *Martinez v. City of Clovis (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.*

Environmental Constraints: While the element discusses environmental constraints, it should also address any other conditions that could preclude development in the planning period. Examples of other conditions include shape, access, contamination, relocation, title conditions, historic preservation and easements.

Infrastructure: The element describes infrastructure limitations in the City. However, it must also demonstrate sufficient total dry utility capacity (existing and planned) to accommodate the City's RHNA for the planning period. (Gov. Code, § 65583.2, subd. (b).)

In addition, while the element includes Programs 1.2.A (Water Distribution Prioritization for Affordable Housing) and 1.2.B (Address Infrastructure Constraints) to maintain and augment the existing water supply, the program should be revised to include discrete timelines for implementation throughout the planning period.

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:

- *Emergency Shelters:* While the element provides general information on emergency shelters, it must also describe how it complies with the requirements of Assembly Bill 2339 (2022). Among other changes, this amendment to Government Code section 65583, subdivision (a)(4) expands the definition of "emergency shelters," specifying the type of zoning designations that must be identified to allow emergency shelters as a permitted use without a conditional use or discretionary permit and demonstrate the appropriateness of sites to accommodate emergency shelters, including analyzing proximity to transportation and services. The element must add a program committing to compliance with these requirements within one year of adoption.
- *Employee Housing:* The element indicates the City does not have agriculturally designated land and therefore is not required to identify any zones to provide farmworker housing. The Employee Housing Act (Health and Safety Code § 17000 et seq.), specifically, sections 17021.5 and 17021.6. 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. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone.

The element must either demonstrate consistency with these requirements or include programs to amend zoning as appropriate. For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/farmworkers>.

- *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.
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 must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types (e.g., multifamily rental housing). The analysis must also evaluate the cumulative impacts of land use controls on the cost and supply of housing, feasibility, and ability to achieve minimum. The analysis should specifically address heights, FARs, lot coverage and other standards such as interior courtyards and based on the outcomes of a complete analysis, the element should include programs to address or remove the identified constraints.

Fees and Exaction: While the element describes required fees for single-family and multifamily housing development, it must analyze their impact as potential constraints on housing supply and affordability. Specifically, the element must analyze the total per unit fee cost for multifamily housing units being higher than that of total fees for single family homes as a constraint and should include programs to reduce fees for multifamily housing. For additional information and a sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/fees-and-exactions>.

Local Processing and Permit Procedures: The element describes some typical permitting tracks under the City's processes, including design review and conditional use permits (CUP) but should also analyze the impacts on housing cost, timing and approval certainty. The analysis should specifically address approval findings for typical development that are consistent with zoning, Forest and Beach Commission hearing and story pole requirements. The element should include programs to address or remove the identified constraints.

In addition, while the element discusses compliance with the Permit Streamlining Act, it should also discuss intersections with the California Environmental Quality Act and timing requirements, including streamlining determinations and add or modify programs as appropriate.

Constraints on Housing for Persons with Disabilities:

- *Reasonable Accommodation:* While the element lists the required findings to approve a reasonable accommodation request, it should analyze the finding that approving the accommodation “will not result in a significant and unavoidable negative impact on adjacent uses or structures.” The element must analyze how this is applied and include a program to remove subjectivity, as appropriate. In addition, the element should analyze any appeals processes, including the final decision-making body and parties who can request an appeal hearing of a reasonable accommodation request.
- *Conditional Use Permit:* While the element commits to removing use permits for certain types of housing, the element must also fully describe the CUP approval findings for potential constraints on the development of licensed residential care facilities of seven or more persons.

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... (Gov. Code, § 65583, subd. (c).)*

To achieve a beneficial impact during the planning period, programs should include, where appropriate, specific commitment toward housing outcomes and discrete timing (e.g., at least annually). Programs should be revised as follows:

- *Program 3.1A (Mixed Use Affordable Housing):* This Program commits to meeting with developers and soliciting input and feedback on the City’s design guidelines and approval process. However, the Program should commit to taking actions resulting from the feedback provided by the development community. For example, the Program could commit to revising the guidelines/approval process if any constraints are identified as part of the feedback received. This Program should also be modified to include a timeline or frequency for those actions.
- *Program 3.1F (Expedited Processing Procedures):* This Program commits to developing a policy that will shorten processing times by 50 percent for affordable housing projects by offering expedited review procedures for residential projects that will clarify and refine permit processing procedures for affordable housing to shorten processing procedures. However, the Program doesn’t describe specific actions to substantiate the quantified objective. This Program should consist of specific commitments, including but not limited to, the removal of the story pole requirement and the Forest and Beach Commission hearing requirement for affordable projects that would allow the City to reasonably achieve a 50 percent reduction in processing times.

- *Program 3.3D (Single-Room Occupancy (SRO) Units)*: While the element now commits to codifying SROs as a housing type, it should provide an implementation timeframe for this action.

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 A3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis; the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Shortfall of Sites to Accommodate the Lower-Income RHNA: As noted in Finding A3, if rezoning is necessary, including appropriate densities, to accommodate the lower-income RHNA, programs should specifically commit to acreage, allowable densities and anticipated units. In addition, the program should specifically commit to rezoning that meets all by-right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). Examples of by-right requirements include permitting all multifamily (not limited to senior housing) developments without discretionary action in which at least 20 percent of the units are affordable to lower-income households, 16 units per site, minimum densities and residential only performance standards. Based on the information in the element, these by-right and other program requirements should at least apply to City-Owned sites, some Housing Priority Overlay sites and SB 10 sites and Site 10 (Carmel Foundation).

- *Minimum Densities*: As noted in Finding A3, the element appears to be utilizing minimum densities to calculate residential capacity on identified sites. If so, Program 3.1.G (Housing Priority Overlay Zone) should specifically commit to establish minimum densities. Currently, the Program appears to commit to minimum densities as part of a menu of incentives. Further, the Program or another program should commit to establishing minimum densities aligned with assumptions in the inventory for all relevant zones.
- *City-Owned Sites*: In addition to meeting various requirements described above, Program 1.1.B (Underutilized Sites) should commit to numerical objectives consistent with assumptions in the sites inventory and a specific commitment to a

schedule of actions to facilitate development in the planning period, including alternative actions completed by a specified date (e.g., by 2028) if the sites will likely not develop in the planning period. Actions should include discrete timing for outreach with developers, issuing requests for proposals, incentives, assisting with funding and entitlement and issuing building permits.

3. *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 A4, 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 and address and remove or mitigate any identified constraints.

4. *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, disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics, and milestones as appropriate and must address housing mobility enhancement, new housing choices and affordability in high-opportunity areas, place-based strategies for community preservation and revitalization, and displacement protection.

In addition, promoting housing mobility removes barriers to higher opportunity areas and strategically enhances access to housing choices and affordability to promote more inclusive neighborhoods, cities and regions. Among other factors, the City is wholly the highest resource community in contrast to the rest of the region. As a result, the element should include significant and robust actions with numerical targets (not limited to the RHNA) to promote housing mobility and increase housing choices and affordability throughout the City. Examples include promoting more housing choices and affordability in lower density areas, religious institutional sites and enhancing ADUs and junior accessory dwelling units (JADU) and home sharing strategies.