

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

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May 1, 2023

Elise Semonian, Director
Community Development Department
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939

Dear Elise Semonian:

RE: City of Larkspur's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Larkspur's (City) draft housing element received for review on January 31, 2023, along with revisions received on April 21, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on April 3, 2023 with you and the City's housing element team. In addition, HCD considered comments from Campaign for Fair Housing Elements, YIMBY Law, and Greenbelt Alliance pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to substantially 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 January 31, 2023. 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.

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 (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation 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). 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). 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 these 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 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.

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 dedication and collaboration you and the City's housing element team provided during the course of our 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 Jose Ayala, of our staff, at Jose.Ayala@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF LARKSPUR

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).)*

Integration and Segregation: The element reports some data on integration and segregation by displaying income by census tracts. However, the element must discuss and analyze this data for trends over time and patterns across census tracts. Additionally, it must evaluate patterns on a regional basis, comparing the City to the region.

Racially Concentrated Areas of Affluence (RCAA): The element provides some information regarding the presence of an RCAA within Larkspur but does not provide a similar analysis for the larger region being mostly an RCAA. The element must evaluate the census tracts considered RCAA and analyze for regional patterns, trends, and other fair housing coincidences. Specifically, the element can analyze the presence of RCAAs to the south of the jurisdiction and the lack of RCAAs to the north of the jurisdiction.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element does not address this requirement. The analysis must identify whether sites improve or exacerbate conditions and whether sites are isolated by income group. A full analysis should address the income categories of identified sites with respect to location, the number of sites and units by all income groups, and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). Currently, the element provides maps that include the components of the assessment of fair housing but does not provide any analysis of identified sites related to these components. The element should also discuss whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program actions that will be taken to promote equitable quality of life throughout the community (e.g., anti-displacement and place-based community revitalization strategies).

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Housing Conditions: While the element provides Comprehensive Housing Affordability Strategy (CHAS) data and a general statement (“low number”, p. C-40), it must provide a local estimate of the number of units in need of rehabilitation and replacement. The estimate should go beyond the CHAS variables and look at physical defects (dilapidation, sites with blighted improvements, etc.). For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations.

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 Regional Housing Need Allocation (RHNA): The element indicates (pp. D-2 and D-3) that 44 units affordable to very low-income households and 2 units affordable to low-income households have been built or are under construction or approved but provides no information demonstrating the affordability of the units. The City’s RHNA may be reduced by the number of units pending, approved or built since June 30, 2022; however, the element must describe the City’s methodology for assigning these units to the various income groups based on the actual or anticipated sales price or rent level of the units or other mechanisms ensuring affordability (e.g., deed-restrictions). In addition, the element must demonstrate their availability in the planning period by explaining how the units will likely be built such as the status, anticipated completion and any potential barriers.

Furthermore, the element must reconcile information in the element regarding Site 3D. The element explains that this site was broken into two separate parcels, with Parcel One (APN 018-260-03) having an approved project of 126 residential units, with at least 25 affordable units, and Parcel Two (APN 018-260-02) being approved for a district office and corporation yard. With approved projects on both sites, the element must provide information on how future development will occur, especially considering Site 3D is currently projected for 64 units for very low-income, 64 units for low-income, 64 for moderate income, and 128 units for above moderate income. Absent additional information, the Department will only assume a site capacity of 126 units.

Suitability of Nonvacant Sites: While the element identifies nonvacant sites to accommodate the regional housing need for lower-income households, it must describe the methodology used to determine the additional development potential within the planning period. The methodology must consider factors including the extent to which existing uses may impede additional residential development, development trends, market conditions, any existing leases or other contracts that would perpetuate the

existing use or prevent redevelopment of the site for additional residential development, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).)

In addition, the housing element appears to rely upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) 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 regional housing need allocation.

Finally, the element utilizes sites with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c) (3).

Small Sites: While the element adds information regarding past projects that have consolidated small sites (under a one-half acre), it should further analyze common ownership (if any) and lot sizes prior to redevelopment. The element must also modify Program H1.N (Encourage Lot Consolidation) to establish incentives for the facilitation of development on small sites.

Large Sites: Sites larger than ten acres in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites are suitable to accommodate housing for lower-income households. The element list two sites (3C and 3D) that are larger than ten gross acres, but less than ten buildable acres and provides a general description of how redevelopment could work on those sites. However, the element must also describe whether sites of equivalent size or condition were developed in the prior planning period or other evidence that demonstrates the suitability of these sites.

In addition, the element must describe City actions to facilitate the development of lower-income housing on these large sites. For example, the element must add or modify a program that is geared toward promoting affordability on these larger sites. The program could address parceling at appropriate sizes and other site planning, additional incentives, or other mechanisms to encourage affordability, numerical objectives, including affordability, consistent with assumptions in the sites inventory, and alternatives strategies to meet the lower-income RHNA should progress not be made, including, but not limited to, rezoning additional sites.

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

final entitlement, issuance of building permits and alternative actions if sites do not develop as assumed in the inventory.

Availability of Infrastructure: The element describes infrastructure limitations (p. C-46) and adds Program H.3T to prioritize water connection permits to projects where 100 percent of the units are affordable-restricted. This does not meet statutory requirements. First, the element must describe the total existing and planned water capacity to accommodate the RHNA. Should there not be sufficient capacity, the element must add or modify a program that commits to actions and a timeline to make sufficient infrastructure available to accommodate the RHNA. Lastly, Program H.3T must be expanded to include any project that includes any number of affordable units, not projects that exclusively include affordable units.

Environmental Constraints: The element explains there are no environmental constraints to development on identified sites but should also describe any other known constraints that preclude development in the planning period. Examples include easements, property conditions, compatibility with other land use controls, and contamination or necessary site mitigations and timing impacts.

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/planning-and-community-development/housing-elements> 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*: For your information, Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.
- *Accessory Dwelling Units (ADU)*: HCD provided a cursory review of the City's draft ADU ordinance and found some inconsistencies with ADU law. Please continue to coordinate with the assigned ADU analyst to resolve any inconsistencies with State ADU law. In addition, the element should include a program to amend the ordinance and comply with state law by a specified date.
- *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: While the element generally describes existing land use controls, the element must also analyze land use controls as a potential constraint to residential development. For instance, the element (p. 3-13) states that land use controls do not pose any undue constraint on the development of affordable housing in Larkspur but does not provide analysis to support this conclusion. The analysis must evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve maximum densities and cost and supply of housing. For example, the element could describe a sample project and determine the feasibility of a project being built at maximum density without exceptions.

In addition, the element is proposing to, concurrent with the adoption of the housing element, adopt a Housing Element Overlay District to modify existing zoning. While this incentive could increase the feasibility of development, the element should describe and evaluate the development standards for these overlays relative to achieving maximum densities.

Furthermore, the element must provide specific information on guest parking requirements for residential developments. While the element provides information on parking size requirements and the spaces per unit relative to the number of bedrooms, it must also provide specific information on how guest parking is calculated. For example, the element could explain whether guest parking is always required, whether it is based on the number of bedrooms per unit, or whether it is based on the number of units in the project.

Fees and Exaction: The element describes all required fees for single family and multifamily housing development, including impact fees, but should also analyze their impact as a potential constraint on housing cost and choice. For example, the element notes that the City's fees are higher than adjacent jurisdictions but does not appear to address or justify this potential constraint in a program action. For additional information and sample analysis and tables, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/fees-and-exactions>.

Design Review: The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria, for their impact on housing supply (number of units), cost, timing, feasibility, and approval certainty. For example, the analysis should list and evaluate required findings and discuss whether objective standards and guidelines improve development certainty and mitigate cost impacts. The element must demonstrate this process is not a constraint or include a program to address this permitting requirement as a constraint.

Inclusionary Housing: The element describes the inclusionary housing fee requirement but does not analyze it as a potential constraint. For example, the element notes that the inclusionary housing fees can range as high as \$83,845 for a market rate rental, \$352,558 for an affordable rental, and \$558,967 for an affordable for-sale unit but does not analyze the cost impacts of the fees on development costs. In addition, the City's inclusionary housing requirement ranges from 15 to 20 percent but should evaluate the cost impacts of the requirement, including describing any off-setting measures such as alternatives means of compliance, exemptions, incentives and how the ordinance compliments State Density Bonus Law.

Constraints on Housing for Persons with Disabilities:

- *Reasonable Accommodation*: The element lists approval findings for the reasonable accommodation process, but it should analyze these findings for potential constraints on housing for persons with disabilities. Specifically, the element must evaluate the findings related to “consistency with neighborhood character” and “undue hardship on ... adjacent property owners” as potential constraints and include a program to amend the reasonable accommodation process to address and remove constraints.
- *Group Homes for Seven or More Persons*: The City's zoning code appears to isolate and regulate group homes for seven or more persons based on the number of people and other factors. The element should analyze this regulatory framework for potential constraints on housing for persons with disabilities as zoning should simply implement a barrier-free definition of family instead of subjecting persons, potentially with disabilities, to special regulations such as the number of persons, population types, and licenses. For example, the element restricts larger group homes to the R-3 and A-P zones, potentially segregating where persons with disabilities may reside. Furthermore, the element states the Conditional Use Permit (CUP) process is not a constraint, but subjects larger group homes to a Planning Commission hearing and notification to neighboring property owners. The analysis should address licensing requirements, exclusion of larger group homes (seven or more persons) from several residential zones, particularly lesser density, and permit procedures such as conditional use permits, and add programs to remove these constraints.
- *Definition of Family*: The element should evaluate the definition of family for potential constraints on housing for persons with disabilities.

5. *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).)*

While the element quantifies the City's special needs populations, it must also analyze their special housing needs. For a complete analysis of each population group, the element should discuss challenges faced by the population, the existing resources to meet those needs (availability of senior housing units, number of large units, number of deed-restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

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).).*

The element (p. B-25) describes the City's discussions with Marin Housing, the entity managing the affordability restrictions on the ownership units. The element then concludes that due to exceeding RHNA allocation by 50 percent, those units will be replaced. However, this statement alone does not provide sufficient analysis regarding City actions to preserve affordability that go beyond having a surplus of sites. The element must include an analysis of the estimate of replacement and preservation costs, identification of qualified entities, and potential funding that could be used in efforts to preserve affordability. Then, the element must add or modify a program to include noticing requirements, coordination with qualified entities, and specific time parameters around such actions.

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 have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines (e.g., month and year), including for Programs H1.A (SB 9 Subdivision), H1.F (Infrastructure Capital Improvements), H1.G (Housing Priority Overlay Zone), H3.E (Waive Development Fees), H3.F (Accessory Dwelling Units), H3.H (Support Countywide Programs), H3.L (Increase Allowable Density for Small Site), H3.P (Respond to Complaints), H3.U (Develop Affordable Housing for ELI Residents).

Additionally, all programs should be evaluated to ensure meaningful and specific actions, objectives, and commitments. Programs containing unclear language (e.g., "consider"; etc.) should be amended to include specific and measurable actions. These programs include Program H1.L (Collaborate on Inter-jurisdictional Efforts), Program H2.E (Monitor and Regulate Short Term Rentals), Program H2.H (Universal Design), Program H3.L (Increase Allowable Density for Small Sites), and Program H4.D (Transit-Oriented Development). In addition, the element must review and modify program objectives to include quantifiable objectives for the planning period; for example, some programs list a performance metric of "# of units" but do not provide how or how many units program actions intend to achieve.

Finally, many program actions involve a review of existing standards, procedures, and practice, and additional actions to "consider". However, the programs should list the

specific trigger for additional action, such as non-progress made on SB 9 subdivisions and development of additional units (Program H1.A), reducing parking standards in other districts (Program H1.E), extending replacement unit provisions (Program H2.F), expanding fourplexes to other institutional uses (Program H3.A), waiving or deferring development fees for larger affordable housing projects (Program H3.E), expansion of Universal Design and Visitability Ordinance (Program H3.G), and increasing higher maximum densities for small sites zoned for multifamily and commercial uses (Program H3.L).

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.

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 now adds Program H3.U to assist in the development of affordable housing for extremely low-income (ELI) residents. However, the program must add specific actions that commit to assisting in the development of housing affordable to ELI residents. For instance, the element can describe how often it will pursue funding, describe in more detail how it will promote fair housing education, and how often the City will partner with local organizations. Once this has been revised, the element must add quantifiable metrics and a discrete timeline for implementation.

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 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.

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... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. 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, while the element includes meaningful actions towards AFFH, these actions should add geographic targeting to better promote inclusive neighborhoods. The element should consider areas of relatively higher income in addition to highest resource and concentrated areas of affluence and tailor program actions to promote housing mobility and more inclusive neighborhoods. Specifically, the element should add geographic targeting for Program H1.A (SB 9 Subdivision), Program H3.E (Waive Development Fees), Program H3.F (Accessory Dwelling Units), Program H3.H (Support Countywide Programs), Program H3.L (Increase Allowable Density for Small Site), Program H3.P (Respond to Complaints), Program H3.U (Develop Affordable Housing for ELI Residents), and H5.A (Affirmative Marketing for Affordable Housing).