

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

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



February 1, 2019

Bryan Swanson, Director  
Development Services Department  
City of Hollister  
375 Fifth Street  
Hollister, CA 95023

Dear Bryan Swanson:

**RE: City of Hollister's Draft Revision to the Housing Element and Pending Growth Management Ordinance**

Thank you for submitting a draft revision to the housing element and Hollister's draft Growth Management Ordinance (Ordinance) received for review on December 5, 2018. Pursuant to Government Code Section 65585(b), the Department (HCD) is reporting the results of its review. Communications with the city facilitated the review. Also, HCD considered comments from the Building Industry Association of the Bay Area pursuant to Gov. Code Section 65585(c).

HCD found the city's housing element to comply with housing element law (Article 10.6 of the Government Code) on May 25, 2016. HCD understands that while the city is currently in compliance, the city is considering the adoption of the Ordinance and requests a review of the potential impacts of the Ordinance on housing element compliance. Based on a review of draft revisions and the pending Ordinance, the element would no longer comply with housing element law if the draft revisions and Ordinance are adopted. Specifically:

*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... including land-use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. (Government Code Section 65583(c)(5)).*

*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. Transitional*

*housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. Supportive housing, as defined in Section 65650, shall be a use by right in all zones where multifamily and mixed uses are permitted, as provided in Article 11 (commencing with Section 65650) (Government Code Section 65583(c)(3)).*

Generally, ordinances, policies, procedures, or measures imposed by the local government that specifically limit the amount or timing of residential development must be analyzed as potential governmental constraints and removed or mitigated, where necessary. The housing element must not only demonstrate the growth control can accommodate the regional housing need allocation (RHNA) at minimum, but must also analyze the impact on timing, approval certainty, feasibility, cost, supply, and affordability of housing. Further, the RHNA should not be considered or treated as a ceiling on the development of housing or as a basis for denying housing applications.

The proposed Ordinance and draft revisions to the housing element demonstrate that the growth control can accommodate the RHNA. However, the Ordinance and revisions appear to introduce constraints on development. The revised draft must include an analysis of the impacts and programs, as described above, and the Ordinance should be revised, as appropriate. For example, including but not limited to:

- *State Streamlining Requirements:* Recent state laws require streamlining approvals without discretionary action under specified criteria and include review timelines. SB 35 (Chapter 366, Statutes of 2017) creates a streamlined approval process for developments in localities that have not yet met their housing targets. AB 2162 (Chapter 753, statutes of 2018) streamlines and expedites the approval of supportive housing to better address the need of Californians experiencing chronic homelessness. The pending Ordinance appears to conflict with these new statutes. For example, an application appears to not be "deemed complete" until after award allocation. The element, including analysis and programs and Ordinance should be revised (e.g., exemptions) as appropriate.
- *Permit Processing, Approval Certainty and Timing:* The Ordinance appears to include several subjective criteria which may impact approval certainty and the timing of development. Further, the Ordinance's subjective criteria and timing could conflict with the Housing Accountability Act (Gov. Code Section 65589.5, particularly subdivision (j)). For example, rating criteria such as "distinguishing features", "community enhancements" could impact approval certainty. Also, a 3 month application window or not explicitly allowing concurrent processing with other entitlement could impact timing. The element, including analysis and programs, and Ordinance should be revised

as appropriate to address these potential constraints on development.

- *Rating Criteria:* Several rating criteria appear to have a direct impact on the cost and feasibility of development. For example, by HCD's calculation, a development maximizing points in just the twenty-point category would add at least \$80,000 per unit. Or, while the environmental goal is laudable, requiring 25 percent of labor and materials from within the county may impact feasibility. The element, including analysis and programs, and Ordinance should be revised as appropriate to address these potential constraints on development. Further, HCD encourages the city to engage with the development community in addressing these potential constraints.
- *Allotments and Carryovers:* The revised draft element should include an analysis of the 244 unit per year cap and carryovers. Potential areas include not carrying over unused allotments, allotment expirations, provisions such as reservations for developments that exceed the 244 unit per year and per project annual caps that can particularly hamper the feasibility of multifamily development. Programs should be included in the element and revisions to the Ordinance based on the outcomes of this analysis.
- *Rental Exemption:* The element and Ordinance should clarify whether all rental units are exempt from the Ordinance and could consider provisions for developments with units affordable to moderate income households.
- *Schedule for General Plan update:* HCD understands the general plan update will begin in 2019 and be completed in 2021, at which time the growth Ordinance will no longer apply to development. The Ordinance should include a clear and specific expiration date or a program in the element to monitor and take immediate action on potential constraints if the general plan update goes passed the anticipated schedule.

The housing element will comply with state housing element law once the Ordinance and the element has been revised as described above. HCD respects the challenges and many factors the city is considering in these important land-use matters and appreciates the opportunity to assist the city in its decision-making. If you have any questions or need technical assistance, please contact Hillary Prasad, of our staff, at (916) 263-1784.

Sincerely,

 for

Zachary Olmstead  
Deputy Director