

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

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January 10, 2023

Alex Andrade, Director
Economic Development Department
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Alex Andrade:

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

Thank you for submitting the City of Milpitas' (City) draft housing element received for review on October 18, 2022, along with revisions received on January 6, 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. In addition, HCD considered comments from Law Foundation of Silicon Valley, Silicon Valley@Home, South Bay YIMBY, Campaign for Fair Housing Elements and YIMBY Law and YIMBY Law and Greenbelt Alliance, pursuant to Government Code Section 65585, subdivision (c).

The draft element with revisions addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

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).)*

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).)

Disproportionate Housing Needs: The element includes some general information on persons experiencing homelessness and housing conditions but should also evaluate those needs, impacts and patterns within the City, such as areas of higher need. For homelessness, the element should examine patterns of need or areas with higher concentrations of persons experiencing homelessness,

including access to transportation and services. For housing conditions, the element should discuss any areas of potentially higher needs of rehabilitation and replacement. The element should utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

Local Data and Knowledge and Other Relevant Factors: The element must supplement the analysis and complement state and federal data with local data and knowledge to capture emerging trends and issues, including utilizing knowledge from local and regional advocates, public comments, and service providers. Additionally, the element should utilize other relevant factors in the assessment of fair housing and analyze historical and current land use, zoning and past local land use related initiatives, governmental and nongovernmental spending including transportation investments, utilization of publicly owned sites for housing affordable to lower income households, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices, affordability and mobility or effect the socio-economic patterns.

Programs: The element requires a complete analysis of affirmatively furthering fair housing (AFFH). 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, timelines, geographic targeting and metrics or numerical outcomes and, as appropriate, must address housing mobility enhancement, new housing choices and affordability in higher opportunity or relatively higher income areas, place-based strategies for community revitalization and displacement protection.

2. *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).)*

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... (Gov. Code, § 65583, subd. (c)(1).)

Suitability of Nonvacant Sites: The element lists various factors (e.g., existing floor area, age of structure, improvement to land value ratio, nonconforming uses) utilized to indicate the potential for redevelopment in the planning period

(p. E-14); however, it should support the validity of these factors. To support these factors, the element should evaluate development trends or recent experience in redevelopment relative to the factors. For example, the element could utilize Table 4-1 (Approved Units) and list the values of the factors for prior uses. This analysis should also evaluate the extent existing uses impede additional development such as current market demand for the existing use, existing leases or contracts that would perpetuate the existing use or prevent additional residential development or other relevant information to demonstrate the potential for redevelopment.

In addition, specific analysis and actions are necessary if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the Regional Housing Needs Allocation (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. 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.

Emergency Shelter Capacity: 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>.

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.

Programs: As noted above, the element does not include a complete site analysis. Depending upon the results of that analysis, the City may need to add or revise programs.

3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..land use controls...(Gov. Code, § 65583, subd. (a)(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... (Gov. Code, § 65583, subd. (c)(3).)

Land Use Controls: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The element lists and describes development standards and mentions recent development trends as an indicator that land use controls are not constraints. However, the element should still evaluate impacts on housing costs, supply (number of units), feasibility and ability to achieve maximum densities. For example, the element should discuss whether any recent or pending developments utilized exceptions to zoning standards (e.g., state density bonus law, conditional use, variance, planned development, rezone) to achieve densities. The element should also discuss whether the combination of various bulk standards by zone impede the ability to achieve maximum densities and should also discuss whether past projects have not progressed through the approval process due to land use controls. The City could utilize input from developers to assist in this analysis.

Programs: As noted above, the element requires a complete analysis of potential governmental and nongovernmental 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. *Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)*

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision process, the City must continue to engage the community, especially organizations that represent lower-income and special needs households, including local neighborhood groups and commenters on this review such as the Law Foundation of Silicon Valley and Silicon Valley@Home, by making information regularly available while 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.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and adopted to comply with the above requirements.

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 RHNA pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c), shall be completed no later than one year from the statutory deadline. 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 any 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 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 responsiveness and dedication of the City's housing element team during the 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 Shawn Danino, of our staff, at Shawn.Danino@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager