

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

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\*\*\*\*\*CORRECTED COPY\*\*\*\*\*

September 3, 2020

Michael Codron, Director  
Community Development  
City of San Luis Obispo  
919 Palm Street  
San Luis Obispo, CA 93401-3218

Dear Michael Codron:

**RE: City of San Luis Obispo's 6<sup>th</sup> Cycle (2020-2028) Draft Housing Element**

Thank you for submitting the City of San Luis Obispo's (City) draft housing element received for review on July 7, 2020, along with revisions received on August 21, 2020. 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 telephone conversation on August 6, 2020 with Rachel Cohen, Associate Planner, and Tyler Corey, Principal Planner. In addition, HCD considered comments from California Rural Legal Assistance pursuant to Government Code section 65585, subdivision (c).

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

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of December 31, 2020 for San Luis Obispo Council of Governments (SLOCOG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4) requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: [http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375\\_final100413.pdf](http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf).

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.

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; SB 2 Planning Grants as well as ongoing SB 2 funding (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 meets housing element requirements for these and other funding sources.

HCD appreciates the cooperation Rachel Cohen and Tyler Corey 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 Shawn Danino, of our staff, at [shawn.danino@hcd.ca.gov](mailto:shawn.danino@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Megan Kirkeby', with a small dot at the end.

Megan Kirkeby  
Deputy Director

Enclosure

## APPENDIX CITY OF SAN LUIS OBISPO

The following changes would 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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Housing Needs, Resources, and Constraints**

1. *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).)*

The element relies upon American Community Survey data to evaluate the condition of the housing stock (page A-15 thru A-16). However, the element must include analysis of the condition of the existing housing stock based upon a local estimate. 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. Further, the analysis could collect information on unit type (single family, multifamily, mobilehomes) to better guide policies and programs. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>.

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).)*

The City has a regional housing need allocation (RHNA) of 3,354 housing units, of which 1,345 are for lower-income households. To address this need, the element relies on permitted and entitled projects, accessory dwelling units (ADUs), vacant and nonvacant sites, sites with existing historic structures, and specific plan areas. To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include complete analyses, as follows:

Progress in Meeting the RHNA: The element indicates (page D-9) that 47 units affordable to very low-income households, 49 units affordable to low-income household, and 27 units affordable to moderate-income households have been built, permitted or entitled. The element must also demonstrate affordability based on actual

or anticipated sales price or rent level of the units or other mechanisms ensuring assumed affordability levels (e.g., financing, inclusionary requirements). Given the City's growth management and phasing requirements, the element must also demonstrate their availability in the planning period. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/projected-housing-needs.shtml>.

Sites Inventory: The element appears to describe sites outside city limits. If utilizing sites outside city limits toward the regional housing need allocation, the element must:

- (1) identify and analyze the sites pursuant to statutory requirements,
- (2) demonstrate suitability and availability for development in the planning period including a schedule of anticipated milestones for annexation and accounting for any phasing requirements, and
- (3) add policies and programs with a schedule of actions to make the sites available for development in the planning period, including alternative measures with specified completion dates if the sites are not made available with zoning early in the planning period.

Previously Identified Nonvacant and Vacant Sites: If nonvacant sites were identified in a prior adopted housing element or vacant sites were identified in two or more consecutive planning periods, the sites are inadequate to accommodate housing for lower-income households unless:

- The site's current zoning is appropriate for the development of housing affordable to lower-income households by either including analysis or meeting the appropriate density. See Government Code section 65583.2, subdivision (c)(3), and
- The site is subject to a housing element program that requires rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower-income households (Gov. Code, § 65583.2, subd. (c).).

The element should identify which sites, if any, have been identified in multiple planning period and include the applicable program.

Suitability of Non-Vacant Sites: The element 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, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).) For sites with residential uses, the inventory could also describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For nonresidential sites, the inventory could also describe whether the use is operating, marginal or discontinued, and the condition of the structure or could

describe any expressed interest in redevelopment. The site inventory identifies multiple sites that include “contributing historic structures” or “historic structures”. The element should analyze the effect of historic structures on the ability to redevelop sites. For example, the element should describe additional restrictions, costs, and processes affiliated with redevelopment on these sites. Also, the element utilizes various factors to indicate potential for redevelopment but must also support these assumptions with analysis and development trends. For example, the element appears to assume existing lot coverages to indicate potential for redevelopment but should also support these assumptions with analysis and development trends. For additional information and sample analysis, see the *Building Blocks* at: <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#analysis>.

Specific Plans: The housing element relies upon sites within specific plan areas to accommodate the City’s regional housing need for lower-income households. The element should analyze the specific plan areas for their suitability and availability for development in the planning period. The analysis must at least describe each overall plan, impacts of phasing on availability for development in the planning, the timing for overall buildout, and any affordability requirements.

Emergency Shelters: The element describes the Public Facilities zone as accommodating emergency shelters without discretionary action. However, the element must analyze the zone for its capacity (acreage, average lot size, vacant, non-vacant) and suitability (proximity to transit and services and other uses allowed in the zone) to accommodate emergency shelters. For more information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/zoning-for-variety-housing-types.shtml> and HCD’s SB 2 memo at [http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2\\_memo050708.pdf](http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf).

3. *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. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). 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. (Gov. Code, § 65583, subd. (a)(5).)*

Fees and Exaction: The element must describe all required fees for single family and multifamily housing development, including impact fees, and analyze their impact as potential constraints on housing supply and affordability. For example, the analysis could identify the total amount of fees and their proportion to the development costs for both single family and multifamily housing. For additional information and a sample analysis and tables, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/fees-and-exactions.shtml>.

Architectural Review: The element must describe and analyze the architectural review process, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply and affordability. The element describes three levels of review. The element should analyze each level separately for its impacts on housing development. For example, the analysis could describe 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 it must include a program to address this permitting requirement, as appropriate. Also, any subjective design standards are suspended pursuant to Government Code section 66300 (see below). For additional information and sample analysis, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/processing-permitting-procedures.shtml>.

Growth Caps: The element notes “the City’s housing supply shall grow no faster than one percent per year.” The Housing Crisis Act of 2019 (SB 330, 2019) was signed by Governor Newsom on October 9, 2019 and became effective on January 1, 2020. The Housing Crisis Act (Gov. Code, § 66300) generally prohibits a locality from enacting a development policy, standard or condition that reduces intensity, imposes moratoriums, enforces subjective design standards or implements any provision that limits approvals or caps population. These provisions remain in effect until January 1, 2025. Specifically, Government Code section 66300, subdivision (b)(1)(D), with limited exception not applicable here, does not allow affected jurisdictions to adopt new or enforce existing limits on the number of land-use approvals or permits. The City should evaluate consistency with these requirements and if necessary, immediately void or suspend the annual growth cap.

4. *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).)*

The element notes only 1.1 percent of the labor force in agriculture and other industries and therefore the housing needs of farmworkers are not critical. However, the element also notes close to 10,000 farmworkers in the County and appears to constrain housing for farmworkers through local preference policies (Policy 10.2). As a result, the element should acknowledge this significant need and include specific policies and programs.

## **B. Housing Programs**

1. *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 A-2, 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:

Replacement Housing Requirements: The housing element must include a program to provide replacement housing. Non-vacant sites identified in the sites inventory with existing, vacated, or demolished residential uses and occupied by, or subject to an affordability requirement for, lower-income households within the last five years, require a replacement housing program for units affordable to lower-income households (Gov. Code, § 65583.2, subd. (g)(3)). Absent a replacement housing program, these sites are not adequate sites to accommodate lower-income households. The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c)(3).

Sites Identified in Multiple Planning Periods: The element must include a program for vacant sites identified in two of more consecutive planning periods' housing elements or non-vacant sites identified in a prior housing element, that are currently identified to accommodate housing for lower-income households. The program must be implemented within the first three years of the planning period and commit to zone for the following:

- sites must meet the density requirements for housing for lower income households, and
- allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower income households (Gov. Code, § 65583.2, subd. (c).).

Program 4.5: The City's strategy to accommodate lower-income RHNA relies heavily on mixed-use sites. Program 4.5 should be revised to quantify the number of mixed-use projects the City hopes to incentivize through program actions and expedite project reviews.

Program 8.18 (zoning for a variety of housing types): The program proposes to amend zoning “if necessary” to facilitate a variety of housing types. However, based on analysis in the element, these zoning amendments are necessary, and the conditional language should be removed from the program.

2. *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 A-3 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. In addition:

Program 2.6: Program 2.6 commits to reviewing policies and standards annually to identify potential constraints to the development and preservation of affordable housing. The program should be revised to include a commitment for mitigation and/or removal of identified constraints within a specific timeframe when constraints are identified.

Program 6.13: Program 6.13 commits the City to general plan amendments and rezoning as projects are proposed on 12 specific sites. However, the program limits actions to accommodate only two rezones per year. Limiting the number of rezones and placing the burden on applicants is a constraint that must be addressed. The program must be revised to eliminate any annual caps on rezoning and should not rezone only when a project is proposed.

Program 8.23: Program 8.23 should be revised to clarify compliance with the Employee Housing Act, Health and Safety Code sections 17021.5 and 17021.6. For example, local zoning should allow single family uses for six or fewer employees in all zones allowing single family uses, not limited to zones allowing High Occupancy Residential Uses.

Policy 10.2: Policy 10.2 indicates the City’s interest in giving preference to individuals employed in the geographic area, individuals residing in the County, and lastly, individuals from outside of the County. This policy potentially erects barriers and prevents access to housing opportunities, particularly to individuals from outside of the City, and should be removed.

Program 10.4: Program 10.4 commits the City to work with developers to include restrictions in Covenant Codes and Restriction’s requiring for-sale properties to be restricted to owner-occupants for the first 5 years after sale. Given the shortage of



housing for students and other special-needs groups. The element should include analysis describing why the actions are needed. In addition, the program should commit to monitoring its impacts as a constraint on the availability of housing in the City. If a constraint is identified, the program should also commit to mitigating the constraint by a specific date.

3. *The housing element shall include programs to conserve and improve the condition of the existing affordable housing stock. (Gov. Code, § 65583, subd. (c)(4).)*

As noted in Finding A-1 the element requires a complete analysis of housing conditions. Depending upon the results of that analysis, the City may need to revise or add programs to address identified needs. In addition:

Program 1.5: Program 1.5 commits to improving “at least one” unsafe, unsanitary or illegal housing condition, barrier to accessibility, energy efficiency, or unsafe neighborhood annually. Given the severity of need in the City, the program should be revised to commit greater assistance to households and could target some of its funding toward lower-income households.

Program 1.6: Program 1.6 commits to code enforcement actions to expedite the removal of illegal or unsafe dwellings, to eliminate hazardous site or property conditions, and to resolve chronic building safety problem. The program should be revised to include enforcement officers provide a list of potential resources to homeowners when violations are cited.

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, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

Reasonable Accommodation: The element describes the City currently has a procedure for requesting and granting a reasonable accommodation to zoning and land use requirements for persons with disabilities. To affirmatively further fair housing, the element could include a program to provide outreach and education on the availability of the reasonable accommodation procedure. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/constraints-for-people-with-disabilities.shtml> .

Fair Housing: The element must demonstrate how fair housing complaints are resolved and how fair housing information is disseminated in a variety of locations throughout the City or include a program to do so. For example, the program could:

- Contract with the Fair Housing Council to provide fair housing services to its residents and property owners
- Distribute educational materials to property owners, apartment managers, and tenants every two years;
- Make public service announcements through different media (e.g., newspaper ads and public service announcements at local radio and television channels) at least two times a year; and
- Conduct public presentations with different community groups.

For additional information and a sample program, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/equal-housing-opportunity.shtml> .

Affirmatively Further Fair Housing: The element must include actions that promote and affirmatively furthering fair housing opportunities. For example, the element could include a program committing to implement Government Code section 8899.50(b) which requires the City to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing and take no action that is materially inconsistent with its obligation to affirmatively further fair housing (Gov. Code, § 65583, subd. (c)(5).)

For your information pursuant to Government Code section 8899.50 “Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all public agency’s activities and programs relating to housing and community development.”

### **C. Quantified Objectives**

*Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b) (1 & 2).)*

The element must include quantified objectives to establish an estimate of housing units by income category that can be constructed, rehabilitated, and conserved over the planning period. While the element includes objectives for new construction and units at-risk of conversion to market rate uses, it must also include rehabilitation objectives and additional conservation objectives (e.g. rental inspections, mobilehomes, replacement requirements).

### **D. Public Participation**

*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)(8).)*

While the element includes a general summary of the public participation process (Appendix G), it must also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. The element includes a list of stakeholders that were invited to participate in the housing element update. However, the list did not demonstrate diligent effort to reach out to all economic segments of the community. While the City engaged many organizations, it should also include groups representing special-needs populations and consider and respond to comments received by HCD. During the period between the date of this review letter and the adoption of the final housing element, the City should continue its diligent public participation efforts to include all economic segments of the community. The element should be updated to describe additional efforts to circulate the revised housing element among low- and moderate-income households and organizations that represent them and consider and respond to comments received by HCD. In addition, the element should also summarize additional public comments and describe how they were considered and incorporated into the element. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>.