

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

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August 14, 2023

Renee Mathis, Director
Planning and Development Department
City of Clovis
1033 Fifth Street
Clovis, CA 93612

Dear Renee Mathis:

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

Thank you for submitting the City of Clovis' (City) draft housing element received for review on May 16, 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 July 11, 2023, with the City's housing element team. In addition, HCD considered comments from Rachel Youdelman, Patience Milrod, Central California Legal Services, and Public Interest Law Project 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 (Gov. Code, § 65580 et seq.). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As you are aware, the appellate court in *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193 determined that the City's prior rezoning under Government Code section 65584.09 (attempting to accommodate a shortfall carryover of adequately zoned sites from the 4th cycle planning period) did not meet the statutory requirements of Government Code section 65583.2 (h). As a result, HCD is revoking its March 25, 2019 finding that the City of Clovis' 5th cycle housing element is in substantial compliance with California's Housing Element Law (Gov. Code, § 65580 et seq.). This revocation will remain in effect until HCD can determine that the City has once again come into substantial compliance with California's Housing Element Law.

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 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.

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 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.

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, 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 hard work and dedication the City's housing element team provided during the update and review of the housing element. 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 CLOVIS

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. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

As part of the evaluation of programs in the past cycle, the element must also describe the cumulative effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness). Programs should be revised as appropriate to reflect the results of this evaluation.

B. 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).)*

Enforcement and Outreach: While the element discusses the City's referral process for fair housing complaints, it should discuss the effectiveness of that process, including outreach. Further, the element explains a recent court case but should also discuss how the City complies with fair housing laws and any other fair housing legal matters such as consent decrees. For more information on fair housing laws, please see HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance (starting on page 29) at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

Racially Concentrated Areas of Affluence (RCAA): While the element briefly mentions the presence of RCAAs, it should also include a specific analysis of patterns and trends for RCAAs within the City. The analysis should at least address trends, conditions, comparisons to other neighborhoods, effectiveness or absence of past strategies, local data and knowledge and other relevant factors related to equitable quality of life. The

element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within the City.

Disproportionate Housing Needs, including Displacement Risk: The element includes some general information on persons experiencing homelessness but should also evaluate that information. Specifically, the element should examine disproportionate impacts on people with protected characteristics and services available and patterns of need or areas with higher concentrations of persons experiencing homelessness, including access to transportation and services. The element should utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

In addition, to better evaluate displacement risks, the element could utilize new data available for displacement risk on HCD's AFFH Data Viewer available at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

Identified Sites and AFFH: The element analyzed the identified sites for various fair housing components including race, income, access to opportunity, and disproportionate housing needs. However, the element must also conclude whether the location of sites improves or exacerbates current fair housing conditions. The analysis indicates the City is generally higher resourced with one area of the City considered moderately resourced. While the City is generally higher resourced, the element identifies a majority of its lower-income regional housing needs allocation (RHNA) in Master Plan areas, away from the developed core of the City. The element must include stronger analysis and reasoning about the location of sites and their impact on current fair housing conditions. As noted below, upon a complete analysis the City must add or modify goals and actions, specifically increasing housing mobility options and housing opportunities in high-opportunity areas. Examples of programs include addressing missing middle housing and additional zoning strategies to create additional housing choices, beyond compliance with state housing laws and meeting the RHNA.

Local Data and Knowledge and Other Relevant Factors: While the element reports state and federal data on patterns and trends of socio-economic characteristics, the analysis of patterns and trends is minimal or absent. The element must supplement the state and federal data with local data and knowledge and other relevant factors to complete an analysis and better evaluate patterns and trends. For example, local data and knowledge can include information from City staff such as code enforcement officials, city engineers. This information can also include service providers, past planning documents, past assessments of need in funding applications, analysis of impediments and, particularly, could be based on focused outreach on fair housing issues. Other relevant factors can include demographics, coincidence with other AFFH factors, governmental and nongovernmental actions, historical land use and zoning practices (e.g., past redlining/Greenlining, restrictive covenants, planning documents, etc.), disparities in investment to specific communities including transportation investments, seeking investment or lack thereof to promote affordability and inclusion, local initiatives, or other information that may have impeded housing choices and mobility. For example, as part of other relevant factors, the element should integrate the recent court case and past

planning practices such as annexations and master planning processes and impacts on patterns and trends of socio-economic characteristics to better understand the impacts and formulate appropriate policies and programs.

Contributing Factors to Fair Housing Issues: The element identifies many contributing factors to fair housing issues. In addition, the element should re-assess the contributing factors to fair housing issues and consider prioritizing these factors to better formulate policies and programs and carry out meaningful actions to AFFH.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

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).)

Extremely Low-Income (ELI) Households: While the element quantifies existing ELI housing needs, it must still analyze their housing needs – beyond quantification. The analysis of ELI housing needs should analyze the disproportionate housing needs of ELI households, resources, effectiveness of strategies and the magnitude of needs. For additional information, please see HCD's Building Blocks.

Special Housing Needs: While the element generally quantifies special housing needs, it should also analyze those needs. The analysis should include, but is not limited to, factors such as household income, tenure, housing types, zoning, and available resources. Local officials, special needs service providers, or City/County social and health service providers may be able to assist with information to complete the analysis.

In addition, while the element includes data on farmworkers, it should analyze their housing needs to better formulate policies and programs. The analysis should address trends, characteristics, disproportionate needs, effectiveness of resources and strategies, magnitude of the housing need, including disproportionate housing need and the effectiveness of past policies, programs, and funding to help address those gaps. 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 University California at Merced that is available at https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/fwhs_report_2.2.23_83.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 toward the RHNA: While the element demonstrates the affordability of approved and pipeline developments, it must also demonstrate the likelihood of their availability in the planning period. Specifically, the element should discuss the status, remaining steps, any barriers to development and other relevant factors to demonstrate their likelihood of availability in the planning period.

Realistic Capacity: The element discusses assumptions for calculating residential realistic capacity (80 percent of maximum) and briefly mentions the calculation accounts for the likelihood of 100 percent nonresidential uses and base zoning in overlay zoning. However, the element should include supporting information for these assumptions. For sites with zoning that allows 100 percent nonresidential uses, the element should discuss all recent development trends (residential and nonresidential), how often 100 percent nonresidential uses occur or is anticipated to occur and how those trends are incorporated into the calculation of residential capacity. For the overlay, the element should discuss the likelihood of development utilizing the overlay based on recent trends and adjust assumptions as appropriate.

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 identifies several large sites and briefly describes anticipated developable areas were identified but should also discuss recent comparable developments or provide other evidence for assuming the development of housing for lower-income households. For example, the element could discuss the timing for Master Plan process, parceling, site planning, or other methods and how the City can facilitate appropriately sized lot sizes. Absent sufficient evidence that sites of equivalent size with affordability were successfully developed during the prior planning period or other evidence that demonstrates the suitability of these sites, the large sites are deemed inadequate to accommodate housing for lower-income households. Based on the outcomes of this analysis, the element must add or modify programs.

Suitability of Nonvacant Sites: The element does not address this requirement. The element must include an analysis to demonstrate the potential for redevelopment. The analysis shall consider factors including, but not limited to, the extent existing uses constitute an impediment, recent developments, development trends, and market conditions. For example, the element briefly describes the site selection process but does not list or describe factors used to select sites.

In addition, the element lists several sites with existing agricultural uses but does not provide a description of redevelopment trends. Given the region's status as a strong agricultural producer, the element should describe the likelihood of agricultural uses discontinuing to facilitate residential development. For example, the element lists some recent trends and should describe any similarities to the identified sites.

Zoning Appropriate for Lower-Income Households and Annexations: The element explains the R-3 zone will be modified to allow 30 units per acre which is deemed appropriate to accommodate housing for lower-income households. The element also explains that annexations will be complete prior to the beginning of the planning period. Please be

aware, if these actions do not occur prior to the beginning of the planning period, including the availability of zoning at appropriate densities for annexations, specific statutory requirements could be triggered. For example, the element may need to demonstrate existing zoning is appropriate, address by-right requirements pursuant to Government Code section 65583.2, subdivision (h) and (i) or identify other sites with appropriate densities.

Annexations and Specific Plans: To demonstrate the availability of sites within annexation and specific plan areas, the element must discuss any known barriers to development or other relevant factors that may impact availability in the planning period. For example, the element should discuss anticipated phasing and build-out horizons relative to the eight-year planning period. Further, the element should discuss the anticipated parceling and timing for the availability of zoning and add or modify programs, as appropriate.

Availability of Infrastructure: The element includes some discussion on water and sewer providers in the City by Plan Area. However, it must also clarify whether sufficient total water and sewer capacity (existing and planned) can accommodate the RHNA and include programs, if necessary.

Water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. The element should discuss compliance with these requirements and if necessary, add or modify programs to establish a written procedure by a date early in the planning period.

Environmental Constraints: While the element generally describes a few environmental conditions within the City, it must relate those conditions to identified sites and describe any other known environmental or other constraints that could impact housing development on identified sites in the planning period. Examples of other known conditions include shape, contamination, property conditions, easements, Williamson Act contracts, conservation easements, overlays and airport and military compatibility.

Publicly-Owned Sites: If the element is utilizing publicly-owned sites to accommodate a portion of the RHNA, it should include analysis to demonstrate their suitability and availability in the planning period. For example, the element should discuss the status, remaining steps to be available for development and any known barriers to development in the planning period including leases for existing uses or relocation of existing uses. Based on the outcome of this analysis, the element should add or modify Program H3 (Surplus Public Land).

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 (Single Room Occupancy (SRO)): While the element explains the R4 zone allows SROs and includes a program to permit the use, it should also discuss realistic opportunities and development standards and, if necessary, add or modify programs to identify additional zones or modify development standards to encourage and facilitate the use.

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. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should address any impacts on cost, supply (number of units) and ability to achieve maximum densities and include programs to address identified constraints.

Fees and Exaction: While the element describes the jurisdiction's total development fees and as a proportion to the overall development cost, the element concludes the City's fees are higher in comparison to other jurisdictions in Fresno County. The element should provide additional analysis on its fee structure, including any post-development dedication, and add programs to reduce fees, as appropriate.

On/Off-Site Improvements: The element generally describes typical on- and off-site improvements such as street widths, street lighting and rights of way. However, the element should analyze the cost impacts on a typical development, including specifically addressing public comments and add or modify programs if necessary.

Constraints on Housing for Persons with Disabilities: The element lists the City's definition of family but should also analyze that definition for impacts on housing for persons with disabilities. For example, the element should analyze provisions such as requiring common access, established ties and familiarity and control over who becomes a family member. In addition, the element should analyze parking requirements for group homes for impacts on housing cost and feasibility. Based on the outcomes of this analysis, the element should add or modify programs to address the constraints on housing for persons with disabilities. For example, Program H24 (Zoning Code Amendments) should specifically commit to reduce parking requirements for group homes.

C. 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 B3, 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:

- *Pending Rezoning*: As noted in Finding B1, if rezoning does not occur prior to the beginning of the planning period, the element may need to include specific commitment to accommodate a shortfall of capacity with appropriate zoning to accommodate the RHNA, including addressing by-right requirements pursuant to Government Code section 65583.2, subdivision (h) and (i).
 - *Program H1 (Annexation Program)*: While the Program generally commits to approval of annexations by a specified date, it should also commit to necessary steps to complete annexations, including the availability of zoning and alternative actions by a specified date, if annexations are not complete by a specified date. Please be aware, if appropriate zoning is not available prior to the beginning of the planning period, specific requirements may be triggered as described above.
 - *Program H8 (Development Standards and Zoning Consistency)*: The Program should commit to specific parking requirements and heights or minimum parking requirements and heights for amendment. For example, the Program should commit to amend heights to at least three stories in the R3 zone or a minimum parking requirement of one space for a one-bedroom unit. This is particularly important given the lack of implementation from the previous planning period.
 - *Program 24 (Zoning Code Amendments for Special Needs Housing)*: The Program should commit to sufficient capacity to meet the need for emergency shelters, appropriate parking requirements limited to employees, proximity of capacity near transportation, amenities and homelessness services and amending the definition of emergency shelters.
 - *Program 3 (Surplus Public Land)*: Based on the outcomes of a complete analysis, the Program should commit to a numerical target, schedule of actions to facilitate development (e.g., coordination, assisting with funding, facilitating entitlements, issuing building permits) and alternative actions if development does not occur by a specified date.
2. *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 should add or modify actions to assist in development of housing and shelter, as follows:

- *Farmworkers*: While the element briefly mentions farmworkers in a few programs, it must have specific efforts based on the outcomes of a complete analysis. For example, the element could commit to proactive actions to coordinate with nonprofit developers, employers, and other related organizations, to explore funding and incentives and to identify specific development opportunities.
 - *Program 22 (Address Homelessness)*: The Program should commit to actions beyond coordination including steps that will be taken and when to facilitate development of shelter or housing for persons experiencing homelessness.
 - *Program 23 (Neighborhood Revitalization)*: The Program should go beyond reviewing capital improvement projects and commit to how often the City will fund or pursue projects.
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 B4, 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, while Program H24 (Zoning Code Amendments for Special Needs Housing) commits to removing constraining factors for the approval of a reasonable accommodation request, the program must also remove the requirement to consider the “potential impact on surrounding uses”.

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

As noted in Finding B1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. In addition, goals and actions must specifically respond to the analysis and 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 or numeric targets, geographic targeting, and milestones and must address, as appropriate, housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization, and displacement protection.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a)... (Gov. Code, § 65583, subd. (c)(6).)*

While Program H9 ((Preserve At-risk Housing) commits to various actions to preserve at-risk units, actions, particularly noticing, appear dependent on the event that the units are not preserved. These actions should occur regardless and before the conversion of at-risk properties. In addition, the Program should commit to provide support and education to tenants early in the process.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

While Program 6 (Missing Middle Housing Tools) commits to various actions to incentivize accessory dwelling units (ADUs), it should also monitor permitted ADUs and affordability every other year and take appropriate action such as adjusting assumptions or rezoning within a specified time period (e.g., six months) by a specified date.

D. 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).)

While the element includes quantified objectives for new construction and rehabilitation by income group (Table 2-1), quantified objectives for conservation should not be limited to at-risk preservation and should be increased to better reflect the identified needs. Examples of other programs that can be incorporated include tenant stability, housing choice vouchers, code enforcement, weatherization, and mobile home park conservation.

E. 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)(9).)

While the element includes a general summary of the public participation process, including comments and responses, HCD encourages the City to continue engaging commenters and other organizations representing lower-income and special needs households and make adjustments to better address the housing needs of the community.