

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

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October 30, 2023

Jessica Hill, Manager
Community Development and Planning Department
City of Modesto
1010 10th St.,
Modesto, CA 95354

Dear Jessica Hill:

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

Thank you for submitting the City of Modesto's (City) draft housing element received for review on August 1, 2023 along with revisions on October 23, 2023. The review was facilitated by a conversation with you and the housing element update team on September 27, 2023. In addition, the California Department of Housing and Community Development (HCD) considered comments from David Kellogg and Sam Helps pursuant to Government Code section 65585, subdivision (c). Pursuant to Government Code section 65585, HCD is reporting the results of its review.

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

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), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (December 31, 2023), sites to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) must 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 all necessary rezones are completed pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c).

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 cooperation of you, your staff, and consultants, during the housing element update and 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 Joanna Chang, of our staff, at Joanna.Chang@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF MODESTO

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).)*

Enforcement: While the element includes analysis of fair housing complaints, it must describe the City's compliance with existing fair housing laws and regulations. For additional information, please see pages 28-30 on HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance Memo at https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

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).)*

Progress in Meeting the Regional Housing Need Allocation (RHNA): As you know, the City's RHNA may be reduced by the number of new units built since June 30, 2023. However, the element must demonstrate the availability of these units in the planning period. The element is counting 3,739 units including 359 lower-income units towards the RHNA. The element states that no applications in the prior planning period were withdrawn or denied so there is a high likelihood that pending or approved projects will be built during the planning period (p. 252). However, while projects were not withdrawn or denied, this does not demonstrate whether they were constructed within the last planning period. To analyze the City's past completion rates on pipeline projects, the element should discuss how many proposed projects were actually built in the last planning period. Additionally, the element should address any barriers to development and remaining steps for projects to receive final entitlements. Lastly, the element included Program A-1 (No Net Loss) and A-4 (Mid-Cycle Review) committing to a mid-cycle review and identifying additional sites, if needed. However, the element should

include or modify programs with actions that commit to facilitating development and monitoring approvals of the projects (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals, rezoning or identification of additional sites should the applications not be approved).

Suitability of Nonvacant Sites: The element utilized various criteria in identifying nonvacant sites potential for redevelopment. This criterion included examining existing uses, building age, land to improvement ratio (LIR), case studies based on lot conditions and size and building coverage. Additionally, to demonstrate the applicability of this criteria, it included a sample size of sites and a description of the criteria (pp. 282-291). However, the element must provide support for the criteria utilized to demonstrate redevelopment potential through redevelopment trends. For example, while the element included the existing uses, building age, and LIR for past projects (p. 265), it should also include Factor #D (e.g., quantification of building coverage).

Second, the element should list these factors identified sites and quantify where possible (e.g., building age, LIR, etc.). Based on a complete analysis the element may need to add or revise programs to facilitate redevelopment.

Finally, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the City must make findings based on substantial evidence, the existing uses will be presumed to impede additional residential development. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution), the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Shortfall of Adequate Sites: If the element does not identify adequate sites to accommodate the regional housing need for lower-income households, it must include a program(s) to identify sites with appropriate zoning to accommodate the regional housing need within the planning period. The program should identify the shortfall by income group, acreage, allowable densities, appropriate development standards and meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i), including but not limited to permitting multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. Currently, the element is utilizing assumptions that sites will be rezoned prior to the start of the planning period. The revised zoning must be adopted by City Council prior to the start of the planning period, or the City must identify additional sites or meet by-right requirements listed above.

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov. Please note, the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> 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:* Zoning to permit emergency shelters without discretionary action was required as part of the 4th cycle housing element and prior to the 5th cycle housing element. The element states that the City's zoning regulations do not allow emergency shelters without discretionary use and includes Program B-5 (Zoning Code Amendments) to comply with State Law prior to the adoption of the housing element. For your information, because zoning for emergency shelters was supposed to be completed two planning periods ago and the time to identify appropriate zoning has lapsed, HCD cannot find the element in compliance until actions related to emergency shelter zoning in Program B-5 (Zoning Code Amendments) is completed.
- *Supportive Housing:* The element was revised indicating that because the City allows transitional and supportive housing by-right in all zones, the City complies Government Code § 65651. However, Government Code § 65651 includes additional provisions for permanent supportive housing including the definition of by-right and application review procedures. The element should clarify whether the City complies with all the requirements under Government Code § 65651 and include or modify programs as appropriate.
- *Accessory Dwelling Units:* After a cursory review of the City's ordinance, HCD discovered several areas which were not consistent with State ADU Law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should add a program to update the City's ADU ordinance in order to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2022, which provides detailed information on new state requirements surrounding ADU development:
<https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.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... (Gov. Code, § 65583, subd. (a)(5).)*

Fees and Exaction: The element noted that the City has 16 Community Facilities Districts (CFD), each with their own fees for new development and provided one example of typical fees in North Beyer community (p. 223). However, the element should include a listing of fees for each CFD area and analyze their impact as potential constraints on housing supply and affordability. For additional information and a 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>.

Growth Controls: The element included an overview of the City's growth control measures indicating that the goal of the City's urban growth policy is to maintain vacant supply of land for 3-5 years. Further, if the review indicates an inadequate supply of

land through the City council, a public advisory election will be held to address the inadequate supply and infrastructure constraints (p. 216). Lastly, the review and revise section of the element, indicated that the City has not been conducting growth review reports and has removed this program for the current planning period (p. 38). While the element described the policy, it must analyze this for any potential constraints on development such as the amount of available acreage and other relevant factors that explain whether the requirements may be triggered in the planning period and include or modify programs, as appropriate.

Constraints on Housing for Persons with Disabilities:

- *Reasonable Accommodation* –The element was revised to include information about fees and the City’s review process for reasonable accommodation requests (p. 226). However, the element must include and analyze the decision-making criteria such as approval findings and analyze any potential constraints on housing for persons with disabilities. Based on a complete analysis, the element may need to add or modify programs to remove any potential constraints.
- *Group Homes of Seven or More Persons* – While the element was revised to address residential care facilities for 6 or fewer, it must address how the City allows group homes for seven or more persons. For your information, zoning should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations such as the number of persons, population types and licenses. These housing types should not be excluded from residential zones, most notably low-density zones, which can constrain the availability of housing choices for persons with disabilities. Requiring these housing types to obtain a special use or conditional use permit (CUP) could potentially subject housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. As such, the element must include a program removing the spacing requirements and commit to allowing these uses in any zone that permits residential uses and only subject to those restrictions that apply to similar residential uses. Please see HCD’s for more info <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf>.

4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

The element was revised to indicate that an applicant may have between 2-5 years from planning approvals to request a building permit (p. 217). However, the element must analyze the typical length of time between receiving approval for a housing development and submittal of an application for building permits, and any local efforts to

address or mitigate nongovernmental constraints such as reduced fees, financing for affordable housing or expedited processes. The analysis should address any hinderances on the construction of a locality's share of the regional housing need and programs should be added or modified as appropriate.

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 A2, 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.

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).)*

Single-Room Occupancy (SRO) Units: The element states that the City does not specifically define SRO units; however, has a history of approving projects with SRO units (p. 215). SROs provide a valuable source of affordable housing especially for persons experiencing homelessness and extremely low-income households. The element should include or modify programs committing to encouraging and facilitating SROs. This includes explicitly defining and allowing SROs as a permitted use. For additional information, please see: <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/zoning-variety-of-housing-types>.

Farmworkers: The element was revised to include some general commitments to address farmworkers including complying with the Employee Housing Act (EHA) and broader outreach efforts. However, given the importance of farmworkers and the local and regional needs, the element must include specific and significant actions to address the needs of farmworkers that are responsive to the analysis. For example, the analysis indicated that farmworkers live in substandard housing that need a variety of repairs (p. 79). The element should include a program that specifically addresses issues of substandard housing for farmworkers including applying for funding, establishing or expanding existing programs related to rehabilitation, outreach and technical assistance with employers, and additional support such as expedited

permitting, flexible development standards, gap funding, fee waivers, and applying for state and federal funding.

Energy Conservation: The element indicates the City enforces Title 24 and describes some conservation programs of local utilities. However, the element must include programs that provide energy conservation opportunities in residential development. For example, in the review and revise section, the element noted that the City consolidated energy conservation efforts with Program C-3 (p. 25); however, Program C-3 does not reflect any actions related to energy conservation (p. 313). The element should be revised with programs that encourage energy conservation. For example, programs could provide incentives to promote higher density housing along transit, encourage green building techniques and materials in new construction and remodels, promote energy audits and participation in utility conservation programs, and facilitate energy conserving retrofits upon resale of homes. For additional information and sample analysis, see the *Building Blocks* at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/opportunities-energy-conservation>.

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 Findings A3 and A4, 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. *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).)*

Goals, Priorities, Metrics, and Milestones: The Analysis of Fair Housing demonstrated that the City's Southern and western edges have concentrated areas of poverty, majority minority populations, lower access to resources and overall lower quality of life; a stark contrast to the City's eastern and northern neighborhoods. While the element included some programs to address the requirements, the element will need to be revised with 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. Additionally, quantified metrics that target beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed).

HCD will follow-up under a separate cover with additional guidance.