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

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October 2, 2023

Mary E. Lanier, Interim Director Community, Housing and Economic Development Department City of San Bernardino 209 N. D Street San Bernardino, CA 92401

Dear Mary E. Lanier:

### RE: City of San Bernardino's 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of San Bernardino's (City) draft housing element received for review on August 4, 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 September 28, 2023 with Travis Martin, Associate Planner and Mark Hoffman, PlaceWorks Consultant. In addition, HCD considered comments from ACLU Foundation of Southern California, Inland Counties Legal Services with Public Interest Law Project, Inland Region Housing Justice Coalition, and David Kellogg 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 these, and other revisions needed to comply with State Housing Element Law.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that failed to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) are completed. As this year has passed and Program 1.1 (Regional Housing Needs

Allocation (RHNA) Site Inventory) has not been completed, the housing element is out of compliance and will remain out of compliance until the rezoning have been 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 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.

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 meets 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: <a href="https://www.opr.ca.gov/planning/general-plan/guidelines.html">https://www.opr.ca.gov/planning/general-plan/guidelines.html</a>.

HCD appreciates the assistance the City's housing element team 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 Reid Miller, of our staff, at Reid.Miller@hcd.ca.gov.

Sincerely,

Melinda Coy

**Proactive Housing Accountability Chief** 

Meh 5

**Enclosure** 

# APPENDIX CITY OF SAN BERNARDINO

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 <a href="https://www.hcd.ca.gov/planning-and-community-development/hcd-memos">https://www.hcd.ca.gov/planning-and-community-development/hcd-memos</a>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <a href="https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks">https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks</a> 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))

<u>Enforcement</u>: While the element currently describes services provided by San Bernardino County and other agencies and organizations, it must also describe the City's capacity to provide enforcement and outreach which can consist of actions such as the ability to investigate or refer fair housing complaints, obtain remedies, or engage in fair housing testing.

<u>Outreach</u>: The element describes outreach efforts for the broader housing element, but it should also incorporate outreach relative to affirmatively furthering fair housing (AFFH). This outreach is particularly important to informing fair housing issues, contributing factors and appropriate goals and actions. Outreach should consider a variety of methods to gather input on the various components of the assessment of fair housing (e.g., segregation, integration, and disparities in access to opportunity, disproportionate housing needs). For example, the outreach could specifically target fair housing organizations or neighborhoods with relatively concentrated poverty for input related to housing and community development needs and access to opportunities such as education and transportation.

Integration and Segregation: The element provided a current analysis at local and regional level on integration and segregation and provided patterns and trends over time for income. However, the element must discuss and analyze data for trends over time and patterns across census tracts for race, disability, and familial status. Additionally, it must evaluate patterns over time at a regional basis, comparing the City to the region.

Racial/Ethnic Areas of Concentration of Poverty (R/ECAP): While the element includes analysis on R/ECAPs it should include additional information on conditions of the neighborhoods relative to quality of life (e.g., housing conditions, infrastructure, parks,

community amenities, safe routes to school, environmental health) and effectiveness or absence of past strategies related to equitable quality of life. This analysis is essential, as a large portion of the City (including sites being used to meet the City's lower income Regional Housing Needs Allocation (RHNA)) is made up of areas designated as R/ECAPs. The element must add or modify programs based on the outcomes of this analysis.

Racial/Ethnic Areas of Concentration of Areas of Affluence (RCAA): The element states that a RCAA does not exist; however, the City does certainly have more isolated areas, such as the Verdemont neighborhood in the northwest that are higher resource than the rest of the City. The element should include specific analysis of these patterns and formulate policies and programs to promote an inclusive community. For example, the City should consider additional actions (not limited to the RHNA) to promote housing mobility and improve new housing opportunities throughout the City.

<u>Disparities in Access to Opportunity</u>: While the element provided adequate analysis of access to transit at both the local and regional level, it must still provide a regional analysis for educational and economic opportunities, as well as a regional analysis for access to a healthy environment. Based on a complete local and regional analysis, the City must implement place-based strategies with specific goals and timelines to increase and improve access to opportunity in all areas of the City.

<u>Disproportionate Housing Needs Including Displacement</u>: The element must be revised to add patterns and trends over time for cost burned and overcrowding at both the local and regional level and must provide a more detailed local analysis of concentrations of substandard housing throughout the City. The element should also be revised to provide a regional comparison of displacement risk.

Other Relevant Factors: The element includes some discussion of other relevant factors in section 5 of chapter 5 of the element, such as economic trends and patterns of development in the City, as well as a history of the various cultures and communities present in and around the City. However, the element should include additional analysis of how this historical information and knowledge was incorporated into the element, the effectiveness of efforts to reverse any exclusionary or discriminatory patterns and practices and add or modify programs as appropriate.

Identified Sites and AFFH: While the element identifies sites throughout the community, it is not clear that the distribution of sites fosters inclusive communities and AFFH, nor does the analysis adequately address whether the identified sites improve or exacerbate each of the fair housing issue areas. Specifically, page 5-75 of the element indicates that 92 percent of the allocated units to the Downtown Area for purposes of meeting the City's RHNA are lower-income units. As the Downtown Area experiences high levels of concentrated poverty, it is not clear how this distribution of RHNA sites improves existing conditions. The element must be revised to fully analyze the location of these sites and their impact on improving access to educational opportunities, transit, jobs, and a healthy environment for all income levels. The element should then provide an analysis of affordable opportunities in high resource areas and include programs as necessary to encourage housing mobility.

<u>Contributing Factors</u>: The element must clearly identify and then prioritize contributing factors to fair housing issues. Contributing factors create, contribute to, perpetuate, or increase the severity of fair housing issues and are fundamental to adequate goals and actions. Examples include community opposition to affordable housing, housing discrimination, land use and zoning laws, lack of regional cooperation, location and type or lack of affordable housing and lack of public or private investment in areas of opportunity or affordable housing choices.

Goals, Priorities, Metrics, and Milestones: The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. 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. While Table 5-24 provides general time frames and quantifiable objectives, *all* actions must have specific commitment, metrics, milestones 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.

2. 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).)

Housing Conditions: While the element identifies the age of the housing stock and includes some analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement on page 2-24, these estimates appear to be based largely on a survey that is over 20 years old. The element should be revised to describe what additional local knowledge was used to calculate units in needs of rehabilitation in the City, and supplement this with a more recent set of data. 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.

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).)

The City has a RHNA of 8,123 housing units, of which 2,512 are for lower-income households. To address this need, the element relies on vacant sites, some of which are publicly owned, pending and approved projects, and accessory dwelling units (ADUs). To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include complete analyses:

<u>Progress in Meeting the RHNA</u>: The element relies heavily on pipeline projects to meet its RHNA. Specifically, the element has identified 2,881 units that are either pending,

approved, or under construction, 767 of which are units affordable to lower-income households. As you know, the City's RHNA may be reduced by the number of new units built since July 1, 2021; however, the element must describe the City's methodology for assigning these units to the various income groups based on actual sales price or rent level of the units; describe the status of each project; and demonstrate their availability in the planning period. To demonstrate the availability of units within the planning period, the element could analyze infrastructure schedules, City's past completion rates on pipeline projects, outreach with project developers, and should describe any expiration dates on entitlements, anticipated timelines for final approvals, and any remaining steps for projects to receive final entitlements. Additionally, given the element's reliance on pipeline projects, the element must include 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, expediating approvals, rezoning or identification of additional sites should the applications not be approved).

<u>Sites Inventory</u>: While the element generally provides adequate parcel listings for sites included in Table 4-10, it does not identify which sites will be rezoned to allow increased densities in RH and RMH zones described on page 4-23 to accommodate the City's lower-income RHNA. Additionally, Table 4-1 should be revised to indicate what the City's RHNA shortfall is, and how these rezones address this shortfall.

Realistic Capacity: The element (page 4-26) briefly outlines the method used to calculate residential capacity on identified sites and includes a few examples of recent developments. However, densities assumed in Table 4-10 are in many cases up to double what recent development trends would support, particularly for sites accommodating lower income RHNA. The element should be revised to include additional and clear supporting information on typical densities of existing or approved residential developments at a similar affordability level. For example, the element could clearly list other recent projects, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus. For sites that are subject to increased density through rezones, the City should also describe specific actions being taken to facilitate and encourage higher-intensity development than indicated by past trends.

In addition, the element appears to assume residential development on sites with zoning that allows 100 percent nonresidential uses, but to support this assumption, the element must analyze the likelihood of residential development in zoning where 100 percent nonresidential uses are allowed. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses or other relevant factors such as enhanced policies and programs.

<u>City-Owned Sites</u>: The element must include additional discussion on each of the City-Owned sites identified to accommodate the RHNA. Specifically, while Table 4-6 provides some information on City-Owned sites, including the sites' parcel numbers and sizes. The analysis should address general plan designations, allowable densities, support for residential capacity assumptions, affordability information, existing uses and any known conditions that preclude development in the planning period and the

potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). Additionally, the table appears to indicate that some sites are "projects", while others are "sites." The table should be revised to clearly indicate which parcels are pipeline projects, and which parcels are being used in the sites inventory. Finally, the housing element must include a description of whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

Accessory Dwelling Units (ADU): The element assumes an ADU build out of 100 to 150 ADU and/or junior accessory dwelling unit (JADU) per year. Given that the City has only produced an average of 86 units per year since 2020, it is not clear if this production level will be achievable in the planning period. As a result, the element should be updated to include a realistic, definitive estimate (e.g., a clear number, not an estimated range) of the potential for ADUs and include policies and programs that incentivize the production of ADUs. Depending on the analysis, the element must commit to monitor ADU production throughout the course of the planning period and implement specific additional actions if not meeting target numbers anticipated in the housing element. In addition to monitoring production, Program 1.5 (ADUs) should also monitor affordability. Additional actions, if necessary, should be taken in a timely manner (e.g., within six months). Finally, if necessary, the degree of additional actions should be in stride with the degree of the gap in production and affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then rezoning or something similar would be an appropriate action. If actual production and affordability is near anticipated trends, then measures like outreach and marketing might be more appropriate.

<u>Environmental Constraints</u>: While the element generally describes a few environmental conditions within the City (page 3-57 to 3-59), 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.

#### Sites with Zoning for a Variety of Housing Types:

- Single-Room Occupancy (SRO) Units: While the element allows SROs with a Conditional Use Permit (CUP) in CG-2 and CR-2 zones, the City should describe any procedures in place to encourage and facilitate SROs in allowable zoning districts and add programs as appropriate.
- Emergency Shelters (ES): While the element states that ES are allowed by-right in zones included in the ES Overlay, it appears on page 3-12 that they are only allowed "pursuant to an Administrative Permit and compliance with development standards and approved management plan." This should be analyzed further as a constraint, and specific program actions should be included in keeping with deadlines outlined in the Stipulated Final Judgment and Order submitted in the case of Gracia et al. v. City of San Bernardino et al., Superior Court of San Bernardino case number CIVSB2301828.

- ADUs: For your information, HCD reviewed the City's ADU ordinance and noted the following areas, which may be inconsistent with statutory requirements:
  - ADUs and JADUs: The ordinance does not clearly state that it is possible for single-family properties to allow for one conversion ADU, one detached ADU, and one JADU as allowed by state law under Government Code section 65852.2, subdivision (e).
  - ADUs in Multifamily Structures: The ordinance does not clarify whether
    multifamily allowances under Government Code section 65852.2, subdivision (e)
    may be combined to allow for at least one unit converted from unlivable space
    and two detached ADUs.
  - Front Yard Setbacks: The ordinance enforces front yard setbacks that are in excess of what is allowed by state law under Government Code section 65852.2, Subdivision (c).
  - Parking Requirements: The ordinance does not specify ADU parking requirements.
  - Urgency Ordinance: The ordinance was adopted as an urgency ordinance, despite the lack of evidence of any true threat to public health and safety.

The element should evaluate these potential constraints on the development of ADUs and include programs as appropriate to address identified constraints.

<u>Electronic Sites Inventory</u>: 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 <a href="https://www.hcd.ca.gov/planning-and-community-development/housing-elements">https://www.hcd.ca.gov/planning-and-community-development/housing-elements</a> for a copy of the form and instructions. The City can reach out to HCD at <a href="mailto:sitesinventory@hcd.ca.gov">sitesinventory@hcd.ca.gov</a> for technical assistance.

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. 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). (Gov. Code, § 65583, subd. (a)(5).)

Land Use Controls: The element provides a detailed analysis on some land use controls; it 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 specifically address requirements related to cover parking, lot coverage requirements, and limits on allowable densities in each zone that allows residential development. The analysis should address any impacts on cost, supply, housing

choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

<u>Fees and Exaction</u>: 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. Specifically, the element should provide a more detailed analysis of planning fees (e.g., specific plan amendments, vesting tentative maps, development agreements and/or amendments) and environmental fees to determine if the constitute a constraint on development. Currently the rate for all these fees is based on an hourly rate for City Staff plus "consultant fees" and 10 percent "contract administrative overhead", but there is no additional information as to the average cost of these fees and their impact on feasibility of single-family or multifamily development.

Processing and Permit Procedures: While the element includes information about processing times and describes the procedures for a typical single-family and multifamily development, it does not provide a full description and analysis for an administrative permit. The analysis should address the approval body, the number of public hearings if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing and approval certainty. For example, the element should identify and analyze approval findings for impacts on approval certainty; the presence of processes or guidelines to promote certainty; and add or modify programs as appropriate. Additionally, the analysis for all processing and permit procedures should clarify if requirements are the same in all areas of the City, or if certain zones require other specific findings. Finally, the element should address public comments on this revised draft submittal and discuss compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

In addition, while housing for multifamily is allowed with an administrative or development permit in multiple zones, it is not allowed by-right in any residential or commercial zone. This should be analyzed as a potential constraint on developing housing, and program actions should be added as appropriate.

<u>Design Review</u>: The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply and affordability. Specifically, the analysis should further analyze the Development Environmental Review Committee's (DERC) required findings are objective standards and 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.

<u>Codes and Enforcement</u>: The element describes on page 3-31 a "Single Family Rental Inspection Program", and Program 3.4 discusses the implementation of a "Multi-family Housing Inspection Program." Both programs appear to monitor only rental housing, and specifically indicate that they are largely intended to inspect housing for lower-

income households. While code enforcement is important to ensuring habitable conditions for residents, programs that apply only to housing for lower income should be further analyzed to ensure they comply with Federal and State Fair Housing Law and include or modify programs as appropriate to address any constraints.

<u>Zoning and Fees Transparency</u>: The element must clarify its compliance with new transparency requirements for posting all zoning and development standards for each parcel on the jurisdiction's website.

<u>Other Local Ordinances</u>: The element must analyze any locally adopted ordinances that directly impacts the cost and supply or residential development (e.g., inclusionary requirements, short term rentals, growth controls). Specifically, the element should provide further analysis on the following:

- Density Bonus Ordinance: While the element provides a general analysis of its
  current density bonus ordinance and acknowledges that changes are necessary
  because it has not been updated since 2013, it does not discuss what provisions of
  the ordinance constitute constraints. The element must be revised to provide this
  information and add specific program actions as appropriate, while ensuring that
  program actions and timelines are .in keeping with deadlines outlined in the
  Stipulated Final Judgment and Order submitted in the case of Gracia et al. v. City
  of San Bernardino et al., Superior Court of San Bernardino case number
  CIVSB2301828.
- Anti-Camping Ordinance: While the element provides some detailed analysis on the impact of the City's anti-camping ordinance, the discussion largely revolves around the City's ability to provide shelter capacity for those that would be affected by the ordinance. The element should be revised to analyze how the ordinance could affect unhoused residents' access to services and modify programs as appropriate. This is also essential to ensuring the City is meeting its obligation to AFFH by taking actions to improve conditions for the City's unhoused population and lower the risk of displacement for already vulnerable populations.
- 5. An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and 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. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)

<u>Approval Time and Requests Lesser Densities</u>: While the element includes a general analysis of the length of time between receiving approval for a housing development and submittal of an application for building permits, it must still analyze if this time

frame applies equally to multifamily projects and single-family projects. The element must address any hinderance on the development of housing and include programs as appropriate.

6. Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).).

While the element provides much of the required analysis of existing assisted housing projects at risk of converting to market rate within the planning period, it must still provide greater explanation as to how the risk of conversion to market rate was calculated. For example, Table 2-32 on page 2-56 list the Kendall Drive and Kendall Park Apartments as "low risk", even though their earliest covenant expiration date is 2024. This analysis is particularly important given the fact that the City has had affordable projects unexpectedly convert to market rate quite recently, as evidenced by the Dorjil I and II projects.

### **B.** Housing Programs

1. Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)

To address the program requirements of Government Code section 65583, subd. (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Table 7-1 should be revised to ensure each program meets *all* these requirements. The element must provide discrete timing for <u>all program actions</u> (e.g., month, year) to account for how often the action will occur as well as to ensure a beneficial impact throughout the planning period and quantify objectives where feasible.

2. 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 A3, 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:

<u>Program 1.1 (RHNA Housing Site Inventory)</u>: The element includes Program 1.1 to address a shortfall of sites, particularly for lower-income households. The Program commits to amend zoning concurrent with adoption of the housing element. For your information, if any zoning amendment or rezoning is necessary in the planning period to accommodate a shortfall of adequate sites or unaccommodated need for lower-income households, the zoning must permit multifamily uses without discretionary action and address several other requirements pursuant to Government Code section 65583, subdivision (c), paragraph (1) and section 65583.2, subdivisions (h) and (i).

<u>City-Owned Sites:</u> The element includes Programs 1.2 (Downtown Housing) with mention of city-owned lands, but this program should include specific commitment to facilitate development on these sites in the planning period including required affordability necessary to comply with the Surplus Land Act. For example, instead of stating the City will implement a schedule of actions, the element should include the actual schedule and the actual actions. This is particularly important since Site C continues to be undeveloped. Also, Program 1.2 should include actions to facilitate development such as zoning, outreach with developers, incentives, fee waivers, priority processing and financial assistance, and additional specific actions needed to facilitate development on parcels listed in Table 4-6. If zoning at appropriate densities is necessary, Programs should commit to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i). HCD encourages the City to continue to engage with HCD throughout the disposition process and seek to maximize the housing potential for these sites.

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 A4 and A5, the element requires a complete analysis of potential governmental and nongovernmental constraints. The City will need to revise and add programs to address and remove or mitigate 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 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).)

As noted in Finding A1, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis.

5. The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance. (Gov. Code, § 65583, subd. (c)(6).)

The element includes Program 4.1 (Preserve Assisted Multifamily Rental Housing) and specifies actions to monitor at-risk units, including contacting property owners within at least one year of the affordability expiration dates on projects. However, the program should be modified to include noticing requirements within three years and six months of the affordability expiration dates, in addition to coordinating with qualified entities such as non-profit organizations and establish specific time parameters around such actions.

6. Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)

Program 1.5 (ADUs) must be expanded to include clear incentives to promote the creation and affordability of ADUs. Examples include exploring and pursuing funding, modifying development standards, and reducing fees beyond state law, increasing awareness, pre-approved plans and homeowner/applicant assistance tools. In addition, given the City's assumptions for ADUs exceed recent trends, the element should include a program to 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).

#### C. 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 City made effort to include the public through workshops and surveys when the housing element preparation process began in 2020, moving forward, the City should employ additional methods for public outreach efforts, particularly including lower-income and special needs households and neighborhoods with higher concentrations of lower-income and special needs households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income and special needs households in future public outreach efforts.

In addition, HCD understands the City has not made draft revisions available to the public prior to submittal to HCD. Please note, new public participation requirements pursuant to AB 215 (Chapter 342, Statutes of 2021) requires the City to post draft revisions on its internet website and email a link to the draft revision to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting the draft revision to HCD. By not providing an opportunity for the public to review and comment on a draft of the element in advance of submission, the City has not yet complied with statutory mandates. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD's review. The City must proactively make future revisions available to the public pursuant to Government Code section 65585 (b), prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.