

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

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February 1, 2024

Michelle Zumwalt, Architect
Planning and Development Department
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Dear Michelle Zumwalt:

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

Thank you for submitting the City of Fresno's (City) draft housing element received for review on November 3, 2023. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on December 20, 2023 with the City's housing element team. In addition, HCD considered comments from Leadership Counsel, Public Interest Law Project, and California Consortium of Addiction Programs and Professionals pursuant to Government Code section 65585, subdivision (c).

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.

As a reminder, the City's 6th cycle housing element was due December 31, 2023. 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.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government does not 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 (RHNA) 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 does not 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 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 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 housing element update. 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 FRESNO

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). While the element provides an overview of outcomes supporting special needs populations, the element should evaluate the cumulative effectiveness of programs in addressing the objectives of the programs and 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 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>.

Concentrated Areas of Poverty: The element includes information relative to areas of High Segregation and Poverty but should evaluate the characteristics of these areas,

changes over time, comparisons to other neighborhoods in terms of equitable quality of life and consider other relevant factors, such as public participation, past policies, practices, and investments and demographic trends. The analysis should utilize local data and knowledge and other relevant factors to complement the data and analysis. Given most of the Southern portion of the City is an area of High Segregation and Poverty, and based on a complete analysis, the element should have significant and beneficial actions, including place-based strategies toward community revitalization, that are targeted towards these areas.

Racially Concentrated Areas of Affluence (RCAA): While the element briefly mentions the presence of RCAs, it should also include a specific analysis of patterns and trends for RCAs 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 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 by income group for various fair housing components including race, income, access to opportunity, and disproportionate housing needs. However, the element should also evaluate whether the location of sites improves or exacerbates current fair housing conditions. The analysis should utilize local data and knowledge and other relevant factors to complement the data. The analysis indicates the City is primarily high- and higher-resource in the Northern portion of the City, while the Southern portion of the City is low-resource and has areas of High Segregation and Poverty. However, the analysis provided is limited to the West Area Neighborhood Specific Plan (WANSP) and the West Shaw Avenue Town Center, with no analysis describing the developed core of the City. The element must include 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.

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, the 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, the effectiveness of resources and strategies, the 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_2.2.2383.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 in Meeting the Regional Housing Needs Allocation (RHNA): The element may utilize constructed, approved, and pending development (pipeline) toward the RHNA. However, the element must demonstrate the affordability and availability of these developments in the planning period, as follows:

- *Availability:* The element lists developments by status and anticipated number of units, but should also discuss any phasing, anticipated build-out horizons beyond the planning period, and any known barriers to development in the planning period. Additionally, the element includes sites that have been submitted for review, but have not received entitlements, approvals, or been constructed.
- *Monitoring and Alternative Actions:* Given the degree of reliance on pipeline projects to accommodate the RHNA, the element should include a program that commits to (1) facilitating development in the planning period (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals) and (2) monitoring development progress toward completion and, if necessary, by a specified date (e.g., December 31, 2027), take alternative action such as rezoning or identification of additional sites by a specified date.

In addition, while the element relies on the monthly rent levels of previously-built developments, the element must also, to the extent feasible, base the affordability of approved and pending developments on the actual or projected sales, prices, rent levels, or other mechanisms establishing affordability in the planning period. This analysis should particularly address whether it is appropriate to assume new development will be affordable to moderate-income households, as noted in the element. For additional information, please see the HCD Housing Element Sites Inventory Guidebook at https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf.

Realistic Capacity: The element notes in place of a density standard, it relies on an analysis of development standards in the respective zones and then applies a factor using projects from 2018 to 2020 to establish a capacity assumption for the planning period. However, the capacity assumptions for the planning period should go beyond this sample size and incorporate more recent projects, such as those listed in Table 1E-2.3, to establish more appropriate capacity assumptions for the planning period.

In addition, the element should account for the likelihood of 100 percent nonresidential development in zones that allow 100 percent nonresidential development. The element notes recent development activity reflect a high demand for residential development and appears to use a conservative assumption for residential development, however, the element should support these assumptions. The element should clearly describe which zones allow 100 percent nonresidential use. The element should discuss the trends in these zones for all development and how often development includes a residential component to support the residential assumption or make adjustments to account for the likelihood of residential in the calculation of capacity.

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 developments of equivalent size and affordability or provide other evidence for assuming the development of housing for lower-income households. For example, the element could discuss the timing for the

West Area Neighborhood Specific Plan and West Shaw Avenue Town Center 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 describes several categories of nonvacant sites (e.g., agricultural uses planned for residential, largely vacant, parking lots) that are assumed to have redevelopment potential in the planning period and lists a few examples of sites. However, the element should support these assumptions with an analysis of additional representative sites from the sites inventory and analyze recent development trends to support assuming these categories will redevelop in the planning period. An analysis of representative sites should evaluate the extent existing uses impede additional development, past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts or other conditions that would perpetuate the existing use or prevent additional residential development.

Environmental Constraints: While the element generally describes a few environmental conditions within the City, it should also 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, access, contamination, property conditions, easements, Williamson Act contracts, conservation easements, overlays and airport and military compatibility. Specifically, the element should describe any process delays within the Military Training Flight Route and provide a schedule for when sites subject to the Airport Land Use Commission (ALUC) will be updated per the amended Airport Influence Area (AIA) decision.

In addition, based on public comments received, the element must also evaluate the suitability of sites for residential development, particularly sites located in South Fresno adjacent to industrial and agricultural uses.

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 17 (Surplus Public Lands), if applicable, target numerical objectives consistent with the inventory and commit to a schedule of actions to facilitate development, including alternative actions, if necessary, by a specified date.

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.

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 allowable densities and include programs to address identified constraints. The analysis could seek input from development community.

Local Processing and Permit Procedures: The element generally concludes that processing and permit procedures do not unduly constrain housing development. However, the element must still provide analysis to support this conclusion. An analysis should identify and analyze the permit procedure (e.g., Development Permit) for a typical development conforming to zoning, including decision-making body, number of public hearings and approval findings. The analysis should address potential impacts on housing cost, supply (number of units) and approval findings. The analysis could seek input from the development community.

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:

- *Residential Care Facilities (Seven or More Persons):* While the element includes a program to permit large residential care facilities in all zones where other residential uses are permitted, the element should clarify whether this use will be permitted in a similar manner to other residential uses, or subject to a Conditional Use Permit (CUP). The element must also analyze the CUP approval findings for the impacts on approval certainty relative to the approval of large residential care facilities.
- *Land Use Controls:* The element should analyze parking requirements for residential care facilities 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.
- *Reasonable Accommodation Appeals:* While the element provides information regarding the reasonable accommodation process, the element should further clarify the appeals process for reasonable accommodations. Specifically, the element should describe whether a third-party can contest a reasonable

accommodation approval and the applicant's appeal process for a denial of a reasonable accommodation request.

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:

- *Program 5 (Large and Small Lot Development):* Given the City's reliance on large sites to accommodate the RHNA, the Program should include additional and proactive actions to facilitate affordable development on lots larger than ten acres. Examples include establishing incentives or other strategies to promote affordability, priority processing, assisting with funding and fee waivers.
 - *Program 25 (Development Code Amendments):* While the Program commits to revising emergency shelter standards, it should also commit to amending the definition of emergency shelters in compliance with new statutory requirements (AB 2339).
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).)*

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, annually identify specific development opportunities, pursuing strategies to integrate affordable housing and targeting rehabilitation and conservation and improvement programs toward farmworkers.

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.

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 34 (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 3 (Encourage and Facilitate Accessory Dwelling Units) includes various actions to incentivize accessory dwelling units (ADUs.), it should also monitor permitted ADUs and affordability every other year and take appropriate actions such as adjusting assumptions or rezoning within a specified time (e.g., six months).

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).)

The element must include quantified objectives to establish an estimate of housing units by income category that can be constructed, rehabilitated, and conserved over the planning period. While the element includes these objectives by income group for very low-, low-, moderate- and above-moderate income, and folds objectives for ELI households into the very low-income category, the element must separate out objectives for ELI households to accurately measure the success of programs.

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 provides an overview of public comments recently received, it must also describe how prior comments are incorporated into the housing element. In addition, the discussion of public participation should not be limited to comments received on the City's housing element and should incorporate comments received on the Multi-Jurisdictional Housing Element. Further, Self Help Enterprises has provided helpful comments to other Cities in the region that have meaningful application County-Wide. HCD encourages the City to consider these comments and will send the comments under separate cover.

Finally, public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.