

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

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October 6, 2023

Viviana Esparza, Acting Director
Economic Development and Planning
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Dear Viviana Esparza:

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

Thank you for submitting the City of Commerce's (City) draft housing element which was received for review on July 10, 2023. In addition, the City submitted draft revisions on September 27, 2023; however, these revisions had not yet been released to the public for the requisite seven day noticing period. As such the revision these revisions are not considered as part of this review. 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 5, 2023 with you, Norma Lopez, contract planner, Sonia Griego, and your consultants. In addition, HCD considered comments from David Kellogg to Government Code section 65585, subdivision (c).

The draft housing element addresses most statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

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 ([Adequate Sites for RHNA and](#)

Monitoring of No Net Loss) has not been completed, the housing element is out of compliance and will remain out of compliance until the rezoning have been completed.

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. As found in prior reviews, HCD's future reviews will continue to 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. 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: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

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 A. Jauregui, of our staff, at jose.jauregui@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX CITY OF COMMERCE

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).)

The element includes a description of progress in implementation and effectiveness of programs from the previous planning period. However, the element must also address the appropriateness of actions moving forward in the housing element update. For example, the element includes Table B-1(Evaluation of 2014-2021 Housing Element Programs) to address these requirements, but then explains the status as "continued" or "updated". Instead, the element should show how the program can be improved and how the new element programs will be revised.

In addition, the element must provide an evaluation of the cumulative effectiveness of past 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) and revise programs as appropriate.

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 Capacity: The element must describe the City's compliance with state and federal fair housing laws, including findings, lawsuits, enforcement actions, settlements, or judgments related to fair housing or civil rights. Further, the element could incorporate its outreach into the assessment of fair housing to better understand pattern, trends and needs and formulate appropriate policies and programs.

In addition, the element generically describes past outreach efforts in the development of the housing element, but generally does not address affirmatively furthering fair housing (AFFH) requirements. For example, the element describes outreach from 2018 but provides no information on how it relates to AFFH. While AFFH outreach can be conducted with the other portions of the housing element, it must also be specific to AFFH. For example, the City could consider adding or modifying programs that 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.

Disproportionate Housing Needs, Including Displacement Risk: The element includes some information on cost burden and overcrowding. However, the element must evaluate trends and patterns within the City for displacement, substandard housing and persons experiencing homelessness. This analysis should utilize local data and knowledge and other relevant factors. For substandard housing, the element should discuss areas of the City where proportions of housing units needing rehabilitation may be higher than other areas and may utilize local knowledge such as qualitative but should also discuss local patterns of housing conditions. For example, the element should discuss areas of the City where proportions of housing units needing rehabilitation may be higher than other areas and may utilize local knowledge such as qualitative information from code enforcement staff. information for code enforcement staff. For homelessness, the element should discuss protected characteristics (e.g., race, disability) and disproportionate impacts as well as areas of the City with higher need, including proximity to transportation and services.

Local Data and Knowledge, and Other Relevant Factors: The element does not address this requirement. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element can analyze historical land use and investment practices or other information and demographic trends.

Contributing Factors to Fair Housing Issues: Upon a full analysis of the AFFH section, the element should re-evaluate contributing factors to fair housing issues. In addition, the element lists several contributing factors, but it should also prioritize those contributing factors. 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. The analysis shall result in strategic approaches to inform and connect goals and actions to mitigate contributing factors to affordable housing.

2. *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).)*

Special Housing Needs: The element includes data and a general discussion of housing challenges faced by special needs households. However, the element must be revised to include an analysis of the existing needs and resources for each special need group including seniors, farmworkers, large households, persons with disabilities including developmental disabilities, extremely low-income (ELI) households, and persons experiencing homelessness. For example, the element should discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), permanent and seasonal farmworkers (e.g., USDA County level data), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

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): While the element may utilize pipeline and potential development projects toward the RHNA, it must also demonstrate their affordability and availability in the planning period. Affordability must be demonstrated based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed restrictions). Availability should address the status, anticipated completion, any barriers to development and other relevant factors such as build out horizons, phasing, and dropout rates to demonstrate the availability or likelihood of development in the planning period.

Realistic Capacity: The element (page 4-3) mentions an assumption of 70 percent of maximum allowable densities to calculate residential capacity on identified sites and includes a few examples of recent developments. However, the element should 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.

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.

Suitability of Nonvacant Sites: The element must include an analysis demonstrating the potential for additional development on nonvacant sites. The analysis shall consider

factors including the extent to which existing uses may constitute an impediment to additional residential development, the City's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

In addition, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

City-Owned Sites: While the element briefly describes its strategy to use City-Owned sites to accommodate a portion of the RHNA for lower-income households (p. 4-8), the analysis should include an analysis of necessary steps, any known barriers to development in the planning period, development schedule, including anticipated completion dates and add or modify programs based on the analysis.

Environmental Constraints: While the element generally describes some potential environmental constraints, it must also describe any other known environmental or other conditions that could impact housing development on identified sites in the planning period. (e.g., shape, contamination, easements, conditions, compatibility).

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters*: While the element mentions emergency shelters are allowed in the MU (Mixed Use) zone, it must clarify emergency shelters are permitted without discretionary action, discuss available acreage such as the presence of reuse and redevelopment opportunities to demonstrate sufficient capacity to accommodate the need for emergency shelters. In addition, the analysis should address proximity to transportation and services and any conditions inappropriate for human habitability. Based on the outcomes of the analysis, the element should add or modify programs as appropriate.
- *Single-Room Occupancy (SRO) Units*: SRO at minimum must be conditionally permitted in one zone and must also include analysis of how the City's development

standards and permitting procedures facilitate and encourage the development of SROs. This is a particularly relevant and significant housing type given the City's total area size and its unique geographical constraints.

- *By Right Permanent Supportive Housing*: By-right permanent supportive housing shall be a use by-right in zones where multifamily and mixed-uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs as appropriate.
 - *Accessory Dwelling Units (ADU)*: 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.
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).)*

Fees and Exaction: While the element lists the total fees per units for single-family and multifamily development, it should also list the fees that comprise that total pertinent fees then evaluate those total fees for impacts on development costs.

Local Processing and Permit Procedures: While the element includes information about processing times, it should also describe the procedures for a typical single-family and multifamily development. The analysis should address the approval body, the number of public hearing 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.

In addition, 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.

Local Ordinances: The element must specifically analyze any locally adopted ordinances such as growth control, inclusionary ordinance, or short-term rental ordinances that directly impact the cost and supply of residential development.

On/Off-Site Improvements: While the element includes a general discussion of the site improvements (p 3-22), it must identify typical subdivision level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width), and analyze their impact as potential constraints on housing supply and affordability.

Building Codes and Enforcement: The element states it is currently utilizing the most recent California Building Code (p.3-18); however, it still must describe the City's building and zoning code enforcement processes and procedures, including any local amendments to the building code, and analyze their impact as potential constraints on housing supply and affordability and add or modify programs, if necessary.

5. *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 lists several projects at-risk of converting to market rate uses in the planning period, it must provide analysis to guide appropriate policies and programs that commit to preserve these units. Specifically, the element must still:

- Evaluate the risk of conversion, including ownership type and any known conditions that may lead to potential conversion.
- Identify and consider the use of federal, state, and local financing and subsidy programs.

For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/assisted-housing-developments-risk-conversion>.

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:

Rezoning Requirements: The element describes a shortfall of sites and indicates rezoning will City-Owned underutilized nonresidential sites to accommodate the RHNA. While the element includes Program 1.1 (Adequate Sites for RHNA and Monitoring of No-Net Loss), it must specifically commit to acreage and allowable densities. In addition, the program should specifically commit to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i).

Replacement Housing Requirements: Program 1.2 Replacement Housing must be revised to adhere to the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).

City-Owned Sites: The element identified city-owned sites to accommodate a portion of the lower-income RHNA. The element should add or modify a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development of City-Owned sites used towards the RHNA. Actions (with discrete timing) should include outreach with developers, issuing requests for proposals, incentives, financial assistance, zoning, issuing entitlement and issuing permits.

Transitional and Supportive Housing: While the element includes Program 3.2 to amend zoning in the C-2 zone it does not appear to permit transitional and supportive housing as residential uses similar to other residential uses of the same type in the same zone. Program 3.2 should be revised to specifically amend this zone as appropriate.

Program 3.3 (Lot Consolidation): The Program should commit to what incentives will be established and include a proactive and regular (e.g., annual) marketing component with the development community and property owners.

2. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

The element includes Program 1.4 to assist and establish incentives to encourage the development of housing for ELI households and households with special needs. This program should consider establishing a list of incentives such as adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to ELI households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers with specific actions and timelines. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

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(s) B4 the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

In addition, program 3.2 specifically commits to acknowledge group homes serving seven or more languages and clarify that zoning and permit procedures will be amended to permit these housing types in all zones allowing residential use with objective standards to facilitate approval certainty similar to other residential uses.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics 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 B1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City must revise or add or modify goals and actions. 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. Actions must have specific commitment, milestones, geographic targeting and metrics or numerical targets and, as appropriate, address housing mobility enhancement, new housing choices and affordability, place-based strategies for community revitalization and displacement protection. Particularly given that most of the City is considered a low-resource community, with high environmental screen scores and potential displacement risk; the element could focus on programs that center on place-based strategies for economic and community revitalization protecting residents from disaster-driven and investment-driven displacement; and enhancing housing mobility to encourage the development of more housing choices and affordable housing. While the element includes a program commitment to implement policies in the environmental justice element, it does not describe those policies or include specific actions with timelines to implement.

5. *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 1.3 (Accessory Dwelling Units): While the element commits to amend the ordinance and comply with ADU law, the element should consider other ways of incentivizing ADUs such as modifying development standards (e.g., heights), making prototype plans available, waiving fees beyond ADU law, proactive marketing and establishing points of contact to ease permitting processes. In addition, the element should monitor the production of affordability of ADUs at least twice in the planning period and commit to act within a specified time (e.g., six months) if assumptions are not realized.

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 for number of housing units that will be conserved/preserved for moderate and above moderate-income category (e.g., lower, moderate, and above-moderate). Conservation objectives may include the variety of strategies employed by the City to promote tenant stability, code enforcement and repair programs that conserve the housing stock, and the preservation of units at-risk of conversion to market rate.

E. Consistency with General Plan

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

While the element discusses how internal consistency will be achieved with other elements of the general plan as part of the housing element update, it should also discuss how internal consistency will be maintained throughout the planning period and could include a program to ensure consistency as the completes its general plan update.