

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

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*****CORRECTED*COPY*****

October 20, 2022

Paul Spence, Director
Community Development
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94086

Dear Paul Spence:

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

Thank you for submitting the City of Livermore's (City) draft housing element update received for review on July 19, 2022, with revisions received on October 7, 2022. 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 1, 2022 with Tricia Pontau, Senior Planner; Grace Streltsov, Management Analyst; Steve Stewart, Project Manager; Andy Ross, Senior Planner, Stephen Riley and your consultants, Jennifer Gastelum, Joanna Jansen and Lucy Rollins. In addition, HCD considered comments from YIMBY Law and the Greenbelt Alliance, 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 (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City 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.

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 programs; 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 Tricia Pontau, Senior Planner; Grace Streltzov, Management Analyst; Steve Stewart, Project Manager; Andy Ross, Senior Planner, Stephen Riley and your consultants, Jennifer Gastelum, Joanna Jansen and Lucy Rollins, provided in preparation of the City's housing element and looks forward to receiving the City's adopted housing element. If you have any questions or need additional technical assistance, please contact Shawn Danino, of our staff, at shawn.danino@hcd.ca.gov.

Sincerely,

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

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF LIVERMORE

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/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/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Sites Inventory: While the element provides some analysis of the identified sites and socio-economic concentrations, including lower-income households in northern planning areas (p. 2-94), the element must analyze the concentration of lower-income units in the Isabel Neighborhood Specific Plan. This is critical as the element identifies 1,570 units of its 2,075-unit lower income Regional Housing Needs Allocation (RHNA) to be accommodated in this specific plan. A complete analysis should fully assess how the site inventory is expected to improve and/or exacerbate fair housing conditions. This analysis should address the location, number of units by income group, magnitude of the impact, and could consider topics such housing choice in other areas of the City, existing or proposed anti-displacement policies, place-based investments, and how such strategies will improve fair housing conditions when paired with the identified sites. Based on the outcomes of this analysis, the element should add or modify programs as appropriate.

Goals, Priorities, Metrics, Actions & Milestones: While the element provides some metrics and identifies contributing factors to fair housing issues, it does not include sufficient action to overcome patterns of segregation, foster inclusive communities, and methods for increasing housing opportunity in higher opportunity areas. For example, Program 5.2.1, Action K was revised to "address racial homeownership gaps and produce more missing middle housing through the City's inclusionary housing program," but it does not explain how it will do so or by when this action will be completed. As a result, programs must be revised as appropriate to sufficiently respond to contributing factors to fair housing issues. The element may, for example, commit to a firm date by which it will establish development standards for smaller housing types, including bungalow courts. In addition, all actions related to Affirmatively Furthering Fair Housing (AFFH) must contain specific commitment, timing, geographic targeting and metrics or numerical targets. Please see HCD's AFFH memo for more information: https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf#page=23.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Isabel Specific Plan: The element describes a realistic capacity of 3,323 units as part of the Isabel Neighborhood Specific Plan, 1,570 of which will be available to lower-income households on multifamily sites within that specific plan (Table A). However, to demonstrate the adequacy of these sites to accommodate the RHNA for lower-income households, additional information is necessary to show development potential within the planning period. First it is not clear how multifamily is to be accommodated (e.g. land capacity) within each specific plan. The element should provide indication of where the multifamily is to be located (e.g. map or other description of the specific plan), how much land is available for multifamily development (e.g. acreage), descriptions of any existing parcels, and describe additional entitlements or steps needed to build multifamily housing (e.g. subdivision map, lot splits, site plan review, design review, etc.). In addition, the element must indicate if there is any phasing requirements, and indicate capacity on a parcel basis, including allowed minimum and maximum densities.

Finally, the element identifies several large sites in the Isabel Neighborhood Specific Plan Area (Table A). 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. While the element provided a table of representative approved or completed projects (Table 4-2), no examples provided were over ten acres and therefore, recent trends do not appear to relate to identified sites. Specifically, the element must describe how these large sites within the specific plan are expected to be developed. For example, the element should describe if parcels are expected to be subdivided or if other mechanisms will be required make the sites available and suitable for development affordable to lower-income households.

Small Sites: The element identifies several very small sites of less than 0.1 acres including several smaller than 0.05 acres in Table A. The element must demonstrate the potential for these sites to accommodate new residential development given development standards. While some sites in the inventory indicate potential for consolidation, these sites were omitted from this analysis. The analysis could describe the City's role or track record in facilitating small-lot development and could describe consolidation potential on these parcels, and policies or incentives offered or proposed to encourage and facilitate lot consolidation.

Realistic Capacity: The element must analyze the likelihood that the identified units will be developed as noted in the inventory in zones that allow nonresidential uses (e.g., Downtown Specific Plan Area). This analysis should consider the likelihood of nonresidential development, performance standards, and development trends supporting residential development.

Suitability of Nonvacant Sites: While the element includes some analysis of the potential for additional development on nonvacant sites for lower-income units, it must include an analysis demonstrating the potential for redevelopment of all nonvacant sites. To address this requirement, the element describes in general the existing use of each nonvacant site for example “low density residential” or “strip mall”. This alone is not adequate to demonstrate the potential for redevelopment in the planning period. A complete analysis should describe the methodology used to determine the additional development potential within the planning period. The methodology must consider factors including the extent to which existing uses may impede additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).) For sites with residential uses, the inventory could also describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For nonresidential sites, the inventory could also describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment.

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.

3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Fees & Exactions: Pursuant to comments received during your public participation related to the variety of multifamily housing types available (including missing middle housing types such as bungalow courts etc.), some fees may significantly impact housing types that are undertaken by non-traditional builders such as smaller builders, homeowners. The element should include a careful evaluation of how fees impact a variety of housing types. For example, the \$15,693 design review fee should be analyzed fees for how it may cumulatively constrain housing types. As part of this analysis, the City could also discuss total fees for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). As Program 1.4.1 includes a commitment to analyze fees by June of 2025, the City should modify this program to reflect the results of the analysis.

Processing and Permit Procedures: While the element provides a description of the types of permits required for housing developments (p. 3-39), it must describe the City’s design review process and analyze the permits’ processes, identify what is reviewed,

typical findings and approval procedures by zone and housing type. The analysis must specifically address the threshold for design review for projects fewer than five units. The analysis must evaluate impacts on housing supply (number of units), costs, timing, feasibility and approval certainty.

Persons with Disabilities: The element describes the City's Reasonable Accommodation (RA) process and provides its approval findings (p. 3-49). However, certain approval criteria, including evaluation of "whether there are alternatives to the requested waiver" and a decision "based on the physical attributes of the property and structure" appear discretionary in nature. It is unclear how this provision would be applied to a request for RA. The City should also revise the findings so that requests are based on "whether the requested RA would impose an undue financial *and* administrative burden to the City," per guidance from US Department of Housing and Urban Development.

In addition, the element should analyze how non-licensed group homes are permitted. Finally, the element excludes group homes for seven or more persons from most residential zones and subjects the use to a conditional use permit (p. 3-35), unlike other similar uses. The element should specifically analyze these constraints for impacts on housing supply and choices and approval certainty and objectivity for housing for persons with disabilities and include programs (for example, Program 1.5.2) as appropriate.

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... (Gov. Code, § 65583, subd. (c).)*

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. Several programs and actions have timelines that could be moved earlier in the planning period to ensure a beneficial impact. Examples include Programs 3.1.2 (Density Bonuses and Incentives), Program 3.2.2, Action A (RFPs for City Owned Sites), and Program 5.2.1 (Fair Housing Policies and Programs).

Additionally, programs must have specific commitment to clear outcomes or deliverables. Several programs include actions with no description of how those actions will be implemented (e.g., "support", "study", "explore", "evaluate", etc.). Programs should be amended, to include specific commitment to a housing related outcome. Examples include Programs 1.3.1 (Development Code Amendments), 1.4.1 (Reduce Governmental Constraints), 1.5.3 (Special Housing Needs), 3.1.2 (Density Bonuses and Incentives), 3.2.1 (Affordable Housing Fund), 3.2.3 (Partner with Affordable Housing

Services), 3.4.1 (Support for Low- and Moderate-Income Homeowners), 3.4.3 (Homelessness Intervention), and 4.1.1 (Residential Codes and Design Standards).

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 A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

Publicly-Owned Sites: The element identified City-owned sites to accommodate a portion of the RHNA. The element should amend program 3.2.2 (Support Acquisition and Development of New Sites for Affordable Housing) 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.

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 A3, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Programs to AFFH should go beyond status quo actions, include specific commitment, timing, geographic targeting and metrics or numerical targets and should,

as appropriate, address housing mobility; encourage new housing choices in higher resource areas, improve place-based strategies toward community revitalization and protect existing residents from displacement.

C. Public Participation

Local governments shall make a diligent effort to achieve public participation oof all 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 extensive efforts to reach the public, including hosting events and meeting with key stakeholders and summarizing community feedback, it should also discuss how input was incorporated into the housing element. In addition, HCD received and reviewed comments with many meaningful and valuable suggestions related to the housing element and HCD strongly encourages the City to consider and address these comments, including revising the document as appropriate.