

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

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October 6, 2022

Trudi Ryan, Director
Community Development Department
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

Dear Trudi Ryan:

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

Thank you for submitting the City of Sunnyvale's (City) draft housing element update received for review on July 8, 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 6 and 22, 2022 with you, Ryan Dyson, Housing Specialist; Jenny Carloni, Housing Officer; and your consultants, Chelsey Payne, Kim Untermoser, and Rebecca Pope. In addition, HCD considered comments from YIMBY Law, Livable Sunnyvale, TransForm, Greenbelt Alliance, and SV @ Home, 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 you, Ryan Dyson, Housing Specialist; Jenny Carloni, Housing Officer; and your consultants, Chelsey Payne, Kim Untermoser, and Rebecca Pope, 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,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF SUNNYVALE

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).)*

Disproportionate Housing Needs, Including Displacement Risk: The element reports data on housing conditions and persons experiencing homelessness; however, it should also utilize local data and knowledge and analyze the patterns and magnitude of needs throughout the City. For example, the element discusses a housing condition survey and observations by City staff but could also discuss neighborhood planning areas with higher and less concentrations of housing rehabilitation needs. Further, the element briefly mentions the number of persons experiencing homelessness and disproportionate needs relative to protected characteristics such as disability and race but should also discuss patterns (areas of higher and lower need) throughout the City and access to opportunities such as shelter and services.

Affirmatively Furthering Fair Housing (AFFH) and Identified Sites: The element provides some analysis of the identified sites and socio-economic concentrations and brief statements on areas such as displacement vulnerability in the downtown area and high proportion of the regional housing need allocation (RHNA), including lower-income in northern planning areas. However, it should provide some quantification by area and evaluate the impacts on the existing patterns of socio-economic characteristics. For example, the element should discuss the impacts of isolating a large portion of the RHNA by income group or lack of RHNA by income group in other planning areas. 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 any isolation of the RHNA and could consider topics such as existing or proposed anti-displacement policies and 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.

Local Data and Knowledge and Other Relevant Factors: The element provides demographics and information on housing choice vouchers and location of publicly supported affordable housing. However, the purpose of local data and knowledge and other relevant factors is to complement state and federal data and complete an analysis of fair housing conditions. The element could consider knowledge from City officials such as the Neighborhood Preservation staff and other related planning and needs assessment documents such as infrastructure assessments or capital improvement programs. Other relevant factors could include past and current land use and zoning practices (e.g., low intensity, specific plans, inclusionary) and state, federal and local investments, including transportation relative to socio-economic patterns.

Contributing Factors to Fair Housing Conditions: Based on a complete analysis, the element should re-assess and prioritize contributing factors.

Goals, Priorities, Metrics, Actions & Milestones: While the element provides additional analysis and identifies contributing factors to fair housing issues, it does not include sufficient action to overcome patterns of segregation and foster inclusive communities. As a result, programs must be added as appropriate to sufficiently respond to contributing factors to fair housing issues. In addition, all actions related to AFFH must contain specific commitment, timing, geographic targeting and metrics or numerical targets.

The element may, for example, as discussed on the August 11, 2022 call, revise Program H20 (Zoning Code Amendments) to make a firm commitment for removing design review requirements and establishing development standards for missing middle housing types that are feasible in higher opportunity or income areas. The element may also, for example, revise Program H20 to allow SROs by right in additional zones, for example in the El Camino Real Specific Plan Area. To improve housing opportunities for persons experiencing homelessness or lower-income households employed in the City, the element could also evaluate zones to expand residential uses, including the North Washington District or target investments such as Project Homekey in areas of higher need and opportunity. The City may also, for example, discuss its efforts to improve pedestrian safety and active mobility as a way to increase access to opportunity. Additionally, the element should commit to assessing and revising programs through a mid-cycle review. 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. *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).)*

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).)

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: The element includes analysis regarding ELI households such as the number of households and overpayment but must also identify projected housing needs. The projected housing need for ELI households can be calculated by using available census data to determine the number of very low-income households that qualify as ELI households or presume that 50 percent of the RHNA for very low-income households qualify as ELI households.

Overpayment: The element must quantify and analyze the number of lower-income households overpaying by tenure (i.e., renter and owner).

Housing Costs: While the element includes estimated rents for residents, it utilizes American Community Survey (ACS) data. The element should supplement census data with other sources (e.g., local knowledge).

Special Needs Populations: While the element quantifies the City's special needs populations, it must also analyze their special housing needs, particularly for persons with disabilities, large households, and female-headed households. For a complete analysis, the element should discuss challenges faced by the population, the existing strategies, and resources to meet those needs, an assessment of any gaps in resources and magnitude of needs, and proposed policies, programs, and funding to help address those needs.

- 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 RHNA: The City's RHNA may be reduced by pending, approved, or completed projects; however, the element must demonstrate their availability in the planning period. The element lists many projects by affordability and status in various stages of the entitlement process, including several projects that are pending approval. The element should generally discuss any remaining steps, barriers to development, phasing, build out or planning horizons and other relevant factors to demonstrate their availability in the planning period.

Realistic Capacity: The element describes a realistic capacity of 9,626 units as part of the Moffett Park Specific Plan, 3,852 of which will be available to lower-income households, with a realistic capacity of 100 percent of allowable densities in the planning period. However, the element must clarify, as stated on the September 22, 2022 call, the build out period for the Specific Plan and provide supporting evidence that these units will be constructed during the planning period.

Additionally, the element should support or adjust realistic residential capacity assumptions in the Downtown Specific Plan and El Camino Real Specific Plan. For the Downtown Specific Plan, the element should support the assumption of 100 percent of maximum base densities based on land use controls and recent trends by affordability. This analysis may utilize minimum density policies (Policy H-1.4). For the El Camino Real Specific Plan, the element should discuss assumptions relative to the 10 to 15 year build out period that exceed the 8 year housing element planning period.

Suitability of Nonvacant Sites: The element must include analysis demonstrating the potential for additional development on nonvacant sites. While the element mentions underutilized sites were identified based on assessed value (AV) and floor area (FAR) ratios, it must support the validity of these assumption in demonstrating the potential for redevelopment. For example, the element could utilize recent development activity. In addition, the element should consider additional factors such as building age, structural conditions, expressed interest in residential development and reflect those values in the sites inventory. Finally, the element should account for the extent existing uses impede additional residential development including market demand for the existing use and existing leases or contracts that would perpetuate the existing use or prevent additional residential development.

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.

Environmental Constraints: While the element generally describes environmental constraints were considered (p. C-68), it must also describe any other known environmental or other conditions (e.g., shape, easements, contamination) that could impact housing development on identified sites in the planning period.

Priority Water and Sewer: For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) The element should demonstrate compliance with this requirement or include a program to establish a procedure 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.

Zoning for a Variety of Housing Types:

- *Accessory Dwelling Units (ADUs)*: HCD records indicate permitted ADUs of 29 in 2018, 17 in 2019, 56 in 2020, and 30 in 2021, figures that are inconsistent with those in the element submitted. The element should reconcile these numbers, resubmit Annual Progress Reports (APRs) and adjust assumptions as appropriate.

In addition, after a cursory review of the City's ordinance, HCD discovered some areas which are not consistent with State ADU Law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should add a program to update the City's ADU ordinance to comply with state law.

- *Single Room Occupancies (SRO)*: The element describes the zones in which SROs are currently permitted. However, given the success of SROs in providing housing for ELI households, the element should also describe how zoning will encourage and facilitate SRO development.

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 identifies many land use controls as potential constraints on a variety of housing types. However, the analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to floor area ratios, open space, setbacks, height limits, parking and limits on allowable densities. 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.

Fees and Exactions: The element includes some discussion of required fees for single family and multifamily housing development, including impact fees. However, the element must analyze their impact as potential constraints on housing supply and affordability. For example, the analysis could identify the total amount of fees on ADUs, Junior Accessory Dwelling Units (JADUs), and other forms of small housing, and analyze their proportion to the development costs for both single family and multifamily housing. Specifically, the element must analyze the use of its \$95,832 park in-lieu fee applied to lot splits in addition to all "Sense of Place" fees provided. For additional information and a sample analysis and tables, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/fees-and-exactions.shtml>.

Processing and Permit Procedures: While the element provides a description of the types of permits required for housing developments (p. 6-31), it must describe 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 a conditional use permit on multifamily uses and special development permits. The analysis must evaluate impacts on housing supply (number of units), costs, timing, feasibility and approval certainty.

Persons with Disabilities: The element identifies the definition of family and concludes the definition is not a constraint on housing for persons with disabilities. However, the element should evaluate the impacts of the provision for an "individual or group is in possession of the entire unit" and include a program to address identified constraints.

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).)*

Some programs list implementation timelines as "ongoing." While this may be appropriate for some programs, programs with specific implementation actions must include completion dates resulting in beneficial impacts within the planning period. Examples include Program H6 (Affordable Housing Development Assistance) and H29 (Programs to Address Homelessness).

Additionally, several programs and actions have timelines that should be moved earlier in the planning period to ensure a beneficial impact. Examples include Programs H4 (ADU Toolkit with Preapproved Plans and DUO Units), H17 (Open Space Requirements), H18 (Review Development Fees).

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.). For example, Program H18 states that the City will "review and consider whether reductions to the park in-lieu fee... and development impact fees are appropriate". However, it does not state when and to what extent these fees will be reduced. Programs should be amended, to include specific commitment to a housing related outcome. Examples include Programs H3 (Increase Affordable Housing in High Resource Areas), H12 (Preservation of Government Assisted Housing), H16 (El Camino Real Specific Plan Active Ground Floor Requirement), H17 (Open Space Requirements), H18 (Review Development Fees), H19 (Adaptive Reuse), H20 (Preventing Displacement / Homelessness), H29 (Programs to Address Homelessness), H32 (New Age Friendly Housing), H35 (Prioritize Capital Improvement Program in low resource areas).

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.

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 A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

In addition, Program H20 (Zoning Amendments) commits to amend zoning (“as necessary”) to ensure requirements for group homes (6 or fewer and seven or more persons) are consistent with fair housing requirements. These uses, in most cases, are either excluded from residential zones or subject to a use permit which typically acts as a constraint on housing for persons with disabilities. The Program should specifically commit to amend zoning to allow these uses in all residential zones and replace or revise procedures to promote objectivity and approval certainty.

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.

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).)*

Program H12 states an objective to preserve 46 at risk units and notes the importance of facilitating long-term preservation of existing below market rate housing, committing to “track affordability agreements” (p. 2-10). However, the program should make a specific and firm commitment to maintain the long-term affordability of these units, including compliance with all noticing requirements, coordination with qualified entities and assistance with funding and support, education and assistance for tenants.

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).)*

Program H4 (ADU Toolkit) should commit to monitor permitted ADUs and affordability every other year and take appropriate action such as adjusting assumptions or rezoning within a specified time (e.g., 6 months) if assumptions are not realized. In addition, as noted in Finding A3, the Program should commit to amend the ordinance as necessary to comply with ADU law by a specified date.

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 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. Examples include park-in-lieu fees for lot splits, timing and affordability of housing in specific plans (e.g., Moffett Park Specific Plan), specific commitment with metrics to promote housing choices or affordability in relatively higher income neighborhoods, additional suitable sites (e.g., Village Centers along Hollenbeck Avenue and Homestead Road), parking and facilitating missing middle housing types throughout the City.