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*Submitted via email*

October 12, 2022

Cindy McCormick, Senior Planner, Planning Division  
City of Gilroy  
7351 Rosanna St.  
Gilroy, CA 95020

Dear Ms. McCormick:

**RE: Draft Housing Element Update**

The 6th Cycle Housing Element Update process is a unique opportunity to fully assess housing needs in Gilroy and to identify new tools to address these needs and constraints on developing housing. This process is also an opportunity to engage deliberately with the full community, especially community members who represent populations that have been historically excluded and are at risk of displacement, to share their housing needs. This unique opportunity is one that is required to adhere to the clear legal guidance as outlined by the California Department of Housing and Community Development (HCD) in multiple documents interpreting state law.

This is not a simple process, and we appreciate the work that Gilroy staff, elected and appointed representatives, and members of the community have done over the last six to nine months. However, as you know, the expectations for this process are high, and jurisdictions throughout the State have struggled to generate compliant housing elements for this cycle. Santa Clara County has had the benefit of significant analysis and reflection on the substantive requirements of the Housing Element Update process, and the lessons learned by other regions. The Comment Letters recently received by the Cities of Mountain View and Sunnyvale have shown the consistency of HCD review throughout the State, and point to the importance of these next months to taking the steps necessary to produce a compliant document. We believe Gilroy's current draft will require significant, substantive revision to comply with state law and receive certification before state sanctions apply.

Local jurisdictions are required to make a Draft Housing Element available for a 30-day public comment period to receive input, and then address concerns prior to submission of the Draft Housing Element to the state. To that end, SV@Home is submitting the following comments.

**Outreach, community input, and targeted AFFH outreach as the foundation of the Housing Element Update process**

The Draft provides some documentation of stakeholder and community outreach, with summaries of groups, goals, and feedback received from stakeholders, as well as survey

responses that include quotes from participants and summaries of feedback. However, the Draft indicates that just over half of the invited individuals who represented service providers, nonprofits, and other stakeholders participated in focus group interviews about the housing needs and issues in Gilroy. It is not clear what efforts were made to re-engage with stakeholders who did not respond to the initial invitation, or to engage with populations represented by those who did not respond.

**We recommend that the City expand on prior community engagement efforts and create meaningful two-way engagement with all stakeholders to collect input on the current Draft, and update the Draft with a clear record of input received through this additional engagement. These discussions should clearly inform the housing needs assessment, the constraints analysis, and the policies and programs proposed in response.**

Although the Housing Needs Assessment illuminates housing challenges of key populations, including farmworkers, those with intellectual and developmental disabilities, and the elderly, it lists only a broad range of statistical sources as the basis for the assessment and does not incorporate local knowledge gathered from community outreach. As a result, the Draft does not respond to some of the community needs identified during community engagement. For example, despite having the second-highest number of unhoused residents in the county, Council's previous approval of a safe parking program, a letter from the South County community leaders recommending a safe parking program, and five community requests for a safe parking site written in on the survey, there is no mention of safe parking as a need or a program in the Draft.

**We recommend that the City reassess the components of the Housing Element to integrate local knowledge gained through robust outreach and community engagement process, along with data, as the foundation for decisions about housing goals, policies, and implementation programs.**

### **Meeting RHNA Levels and Housing Opportunity Sites Inventory**

We are concerned that the Sites and Resources and Draft Sites Inventory sections of the current Draft contain inaccuracies that have made it difficult for us to confidently assess these portions of the document. The following examples are intended to highlight some of these inaccuracies:

- The Sites and Resources section of the Draft describes several of the City's zoning ordinances incorrectly, and in several cases, fails to take into account recently passed legislation. For example, *Table 54: Existing Residential Parking Standards* indicates that an ADU is required to have one off-street parking stall, while the City's ADU ordinance lists a range of exemptions that would eliminate this requirement for most ADUs. *Table 55: Residential Use Table* lists restrictions on duplexes in R1 zones that are both illegal under California Senate Bill 9, which was signed into law on September 16, 2021, and in conflict with the City's own current [SB 9 ordinance](#).
- 16 sites listed in the Inventory (p. 239 - 241) have addresses on "Monterey Street" or "Monterey Highway" which are not names of any roadway within the City's boundaries. The correct address would be "Monterey Road," which is used appropriately for another 11 sites in the Inventory.
- The sites at the following addresses are listed in the Inventory as "Vacant," but have current uses:
  - 7273 Egleberry St: currently occupied by a multifamily home
  - 7101 Egleberry St: currently occupied by a single-family home
  - 8340 Swanston Lane: currently occupied by a single-family home
  - 110 Old Gilroy St: currently occupied by Muscle House Gym and surface parking

- 7050 Monterey Rd: entitled for Sumano Bakery Commercial to move in with a public storefront

The APNs listed for these sites do not match the addresses provided by the City.

**SV@Home recommends aligning the Draft Housing Element with state law and the City's current ordinances, and ensuring that all information provided is factually correct. If a parcel in the Draft Site Inventory does not have a street address, we recommend using a description of the parcel's location rather than a nearby address to clearly communicate which site is included.**

*Table 69: Proposed, Entitled, and Pending Projects* lists sites that the City indicates are pipeline projects, however, the definition of "Pending" projects is not established in the Draft. Our review indicates that "Pending" projects appear to include active construction sites with approved building permits and leased sites that have already been issued certificates of occupancy, but the information provided in the draft is inadequate to discern the current stage of the approval process for each project. According to the Housing Element Annual Progress Report, projects that acquired building permits within the current planning period would count as progress towards a jurisdiction's 5th Cycle RHNA, and would therefore **not** qualify to be included in the 6th Cycle Housing Element sites inventory. Including them in the 6th Cycle Housing Element would result in a Draft Sites Inventory that falls below adequate capacity for the City's RHNA, which is not permitted under SB 330 and State Housing Element law.

**We recommend that the City of Gilroy avoid double-counting housing units in both the 5th and 6th cycle by removing any sites from the inventory that received building permits prior to June 30, 2022.**

*Table 72: Housing Capacity* estimates that 140 new ADUs will be built during the RHNA cycle, and that 60 percent of these will count towards the City's lower-income obligations. These forecasts are likely based on the ADU calculation methodology provided to Bay Area cities by the Association of Bay Area Governments (ABAG). While we understand why cities are using this guidance in their Housing Element planning process, we believe that this methodology is flawed in two ways: 1) it assumes significantly lower rents than unpublished local studies have shown, and we have found in our analysis that the ABAG methodology subsequently credits far more units to affordable goals than is warranted, and 2) it assumes that all ADUs are used as primary residences, rather than home offices, guest rooms, or play spaces for children. Together, these failings lead to a significant overstatement of ADU impact.

Further, although the Draft includes programs intended to boost ADU production in high-resource areas (Programs A-6, A-7, and G-3), none of the programs incentivize ADU affordability or remove governmental constraints, such as Gilroy's current restriction of ADUs to 1,000 square feet rather than the State's allowable maximum of 1,200 square feet. Program G-3 commits to market ADU processes and benefits to homeowners in higher opportunity areas, and Program A-6 commits to review the geographic distribution of ADUs every 2 years and adjust the strategy if annual *city-wide* production rates do not increase by 7.5 units per year. It is not clear how these programs in combination will help the City achieve its lower-income RHNA through ADUs, or effectively measure or address real opportunities for affordability in ADUs in high-resource areas.

**We recommend that if the City intends to rely on ADUs for a substantial portion of its lower-income RHNA, particularly as a way to affirmatively further fair housing by giving lower-income families access to high-resource areas, that it create policies that actively incentivize ADU production and**

**affordability in these areas. We also recommend that the proposed review analyze both the actual use of existing ADUs, and the rental rates for those that are serving as housing.**

Placement of high density homes near public transportation is important in meeting our regional goals to reduce greenhouse gas emissions, expand multi-modal opportunities, and provide future tenants convenient access to the resources they need. However, complying with the requirement to affirmatively furthering fair housing (AFFH) requires that cities show efforts to provide access to affordable housing options throughout the entire city, including in high resource areas. This requirement has been documented explicitly in [HCD's extensive guidance](#), provided in April 2021, as well as in many subsequent HCD technical assistance and housing element review letters. It is important to site affordable housing throughout the city, especially in areas where lower-income communities and people of color have been historically excluded through land use restrictions and city policy.

In the Affirmatively Furthering Fair Housing chapter of the Draft Housing Element, the City completes a thorough analysis that demonstrates and produces clear visualizations of patterns of racial, ethnic, and economic segregation in the City. However, despite this thorough understanding, the City has chosen to deliberately site its lower-income RHNA in ways that will perpetuate existing segregation, with lower-income sites located in areas that are racially/ ethnically concentrated area of poverty (R/ECAPS), have poor scores for CalEnviroScreen 4.0, are overcrowded and rent-burdened, and have poor opportunity scores for economic, education, and environmental outcomes. This has led to sites for low- and very low-income residents being variously located in industrial areas and adjacent to sloughs, sandwiched between old motels, and pressed against railroad tracks. Although the City describes this as a deliberate effort to prevent displacement of vulnerable residents from their existing communities, this approach does not comply with legislative direction or HCD guidance to affirmatively further fair housing. Further, the City states that they expect the R/ECAPS to become rich in resources because of development occurring within the Downtown Specific Plan, which was passed in 2005 and has not yet had that effect on the area. While the draft siting decisions, as the City notes, may not worsen patterns of segregation, they fail to meet the AFFH standard of replacing segregated living patterns with truly integrated and balanced living patterns. This is particularly true in Gilroy, in which the Latinx community disproportionately experiences housing instability and exclusion from the higher resourced areas in the City.

**We recommend that the City of Gilroy comply with HCD's extensive guidance on planning sites for lower-income housing in high-resource areas, and dispersing low-income sites throughout the city rather than over-relying on the Downtown Specific Plan and concentrating lower-income sites in high-poverty areas.**

A review of the City's Sites Inventory focusing on the Downtown Specific Plan area, which falls within a R/ECAP, found that roughly half of the lower-income units are in this major plan area. Of those units, nearly 60 percent are planned for sites that have capacities of 50 units or less, a metric that holds true for lower-income sites throughout the site inventory. According to the Housing Element Sites Inventory Guidebook, lower-income sites that do not have a capacity of 50 to 150 units are less competitive for State and Federal resources to build affordable housing, which makes them less financially feasible. HCD requires a site-by-site assessment, and/or a detailed analysis that uses recent local development trends, to demonstrate the feasibility of these sites redeveloping with low-income housing despite their limited capacity. If these sites are not developed, the City would have a RHNA deficit (inclusive of the 15 percent buffer) of approximately 280 lower-income units. Given that the likelihood of adequately funding lower-income units is low, these sites

should either have their realistic capacity assumptions heavily discounted, or be removed from the Sites Inventory and be replaced with sites that, as HCD strongly recommends, could accommodate developments of 50-150 units.

**We recommend that sites planned for lower-income homes with a capacity of fewer than 50 units be removed from the Sites Inventory and be replaced with sites that, as HCD strongly recommends, could accommodate developments of 50-150 units. In lieu of that, the City should heavily discount the realistic capacity of sites planned for fewer than 50 lower-income units and add additional sites to the inventory to address the resulting capacity deficit.**

The Draft Sites Inventory and Sites and Resources section are also deeply concerning for the absence of the required thorough analysis to demonstrate the feasibility of lower-income sites developing at the stated realistic capacity within the 6th planning cycle. For example, 8955, 8915, and 8985 Monterey Rd., referred to in the Sites and Resources section as the “R4 Northern Cluster,” are adjacent nonvacant parcels that were included in both the 4th and 5th cycle Inventories. They contain active uses including a Spanish-language church, used car lot, and daycare center. The City provides no analysis as to why these uses are likely to be discontinued or the parcels are likely to be redeveloped with housing now, when they have not been in the prior two cycles.

[Housing Element guidance](#) requires that cities complete a robust analysis for any nonvacant site in the Inventory, including existing leases or other contracts that would prevent redevelopment of the site; development trends in the city related to nonvacant sites, such as a description of the local government’s track record and specific role in encouraging and facilitating redevelopment, adaptive reuse, or recycling to residential or more intensive residential uses, or a program to do so; and market conditions that would encourage redevelopment of the property. The housing element must include substantial evidence that the use will likely be discontinued during the planning period.

**SV@Home recommends that the City provide a robust analysis of nonvacant sites in the Inventory using the criteria required under housing element law, and include substantial evidence that the existing use will likely be discontinued during the planning period.**

Part of meeting AFFH guidelines is to invest in the infrastructure of historically disinvested communities. The City’s Downtown Specific Plan area, which falls within a R/ECAP, offers an opportunity to take advantage of regional transportation funding opportunities included in Plan Bay Area 2050 to invest in this historically disinvested area of the City. The program is administered by and supported through technical assistance from the Metropolitan Transportation Commission and the Association of Bay Area Governments.

**We recommend that the City explore how the Housing Element may align with the affordable housing protection, preservation, and production requirements of the Metropolitan Transportation Commission’s recently adopted [Transit Oriented Communities Policy](#) as a way to acquire transportation funding in 2023 for the REAP 2.0/PDA Planning and Technical Assistance Grants and in 2027 under the One Bay Area Grant 4 program. This would provide opportunities to invest in lower-resourced areas and meet AFFH requirements.**

## Anti-Displacement Policies and Programs to Affirmatively Further Fair Housing

October 12, 2022

Re: Draft Housing Element Update

Page 6 of 8

The experience of rent burden, displacement, homelessness, and other indicators of housing needs and instability in a community falls disproportionately on the Latinx residents of the City. As noted above, this assessment should be integrated into the sites selection process to provide access to resource rich areas of the City. To the extent that these needs cannot be fully addressed through the sites selection process, this assessment should also inform targeted policies and programs to address housing instability within this segment of the population. AFFH is not a uni-dimensional effort, but should be incorporated throughout the various sections of the Housing Element Update. We do not believe that the current draft has done this work.

*Policy F-5: Displacement Prevention Policy* lists a number of programs under consideration for inclusion, including tenant option to purchase agreements for redevelopment projects, a just cause eviction ordinance, relocation agreements, and one-for-one replacement of demolished housing units at equivalent affordability. However, this program lacks any quantifiable metrics, simply stating that the City will “adopt the policy,” which may or may not contain any of these programs, within three years of the adoption of the housing element. None of the policies under consideration are defined, and the scope and impact of policies with these titles can vary widely.

*Programs F-1: Source of Income Protection* and *F-2: Fair Housing Counseling* are conceptually worthy of inclusion in the housing element, but the metrics for success (outreach to 50 landlords or tenants, and provide information to 30 households annually) do not measure the impact or effectiveness of the programs.

Earlier this year, SV@Home sent a letter to the City of Gilroy describing anti-displacement policies the City could adopt to affirmatively further fair housing. Two of the recommended policies, a rent survey program and a tenant resource center, would enable the City to conduct outreach and gather data to ensure that these programs are advancing the City's housing goals. Our previous letter also lists a community / tenant opportunity to purchase (COPA / TOPA), eviction reduction program, tenant relocation assistance, and net loss policy, which seem to be reflected in Program F-5. However, since those programs are not defined in the Draft, it is unclear whether they are likely to be impactful. All programs should provide a clear timeline with concrete action steps.

**We applaud the intent to develop displacement prevention programs, but recommend that the City clearly define programs and enumerate concrete action steps to ensure that program goals are meaningfully met. The City should develop clear, measurable outcomes for their anti-displacement programs.**

*Program E-7: Development and Conservation of Housing for Farmworkers* lists as part of its quantified objective that the program will “Preserve and maintain the... Ochoa Migrant Center (100 units).” The Draft Housing Element repeatedly refers to the Arturo Ochoa Migrant Center as a “homeless facility in Gilroy,” including it as one of the City’s Accomplishments under 5th Cycle Program H-4.D, and as part of the City’s plan to address the needs of its unhoused residents. However, not only is the Ochoa Migrant Center not located within Gilroy’s boundaries, it receives no funding, support, or programming from the City.

**We recommend that the City assume responsibility for all its residents, and take real, concrete, actionable steps to provide services and improve outcomes for the City’s residents experiencing homelessness. For specific recommendations, we refer the City to the letter sent via email on January 28, 2022 by a group of South County community leaders concerned about rising**

**homelessness and the inadequate supply of affordable housing, which outlined community priorities identified over the course of five meetings and proposed concrete, actionable solutions.**

### **Analysis of Governmental And Nongovernmental Constraints On Housing Production**

The City of Gilroy's analysis of governmental and nongovernmental constraints on housing production lacks the robust analysis required of the housing element by HCD. The following comments represent recommendations that could have the most impact and provide the City of Gilroy with improved tools to strengthen its ability to substantially increase its housing production.

Although the Draft summarizes the various sections of the City's Zoning Ordinance, no analysis is offered of the financial impact of any development standard listed. Instead, the Zoning Ordinance as a whole is summarily deemed to not be a constraint to development. For example, parking standards are virtually the same across the city, even in areas designated for high density, transit-adjacent land use, such as Downtown. The City requires multifamily developments to have 1-1.5 stalls per unit as well as guest space. While there is some acknowledgement of parking standards posing a constraint to development, the concern is dismissed as the recent construction of several developments demonstrate that existing parking standards "are not an unreasonable constraint."

**SV@Home recommends a deeper analysis of parking standards as they are applied across the city. Given that parking has been proven to increase the total cost of development, maintaining minimum parking ratios, particularly in those high density zoning districts, should be eliminated if not completely eliminated. This analysis should include an assessment of the impact of the recently passed, AB 2097, which eliminates minimum parking requirements for any development within a half-mile of public transit. Particular attention should be paid to AFFH Program E-6: Study Reduced Parking Requirements for Senior Housing.**

The current Inclusionary Zoning Ordinance is limited to two Neighborhood District areas, and is explicitly identified as a "constraint to development." There is, however, no analysis and no explanation of why inclusionary units are only designated for one type of land use. There is mention of a proposed study of an inclusionary policy, which SV@Home strongly supports. Recently adopted, Inclusionary Housing policies have become essential tools in increasing affordable housing units in jurisdictions throughout the county, including the nearby city of Morgan Hill. However, the costs of development in Santa Clara County are significant, and cities like Gilroy may need to develop locally appropriate policies to facilitate affordable housing development.

**SV@Home recommends that the City enact incentive mechanisms such as affordable housing overlay zones and local density bonuses to offset any potential for inclusionary policies to act as constraints to development, and highly recommend a detailed timeline for this proposal to ensure that the adoption and implementation of the inclusionary policy occurs during the 6th cycle planning period.**

The City of Gilroy has not provided any substantive analysis of the cumulative financial impacts of processing and permitting approval times. Lack of adequate staffing is cited as a reason for delays, but there remain key moments within the permitting approvals process that could be shortened or streamlined, including City Council and the Planning Commission roles in the discretionary approval process.

**SV@Home recommends that the City of Gilroy conduct a thorough analysis of its processing and permitting approvals timeline, with close attention to legislative input and timelines.**

**SV@Home recommends that. AFFH Program B-5: *Permit Streamlining* should be updated to include the administrative actions necessary to implement the new building permit transparency and streamlining process required under AB 2234.**

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Overall, SV@Home recognizes the work of the City of Gilroy to craft policies and programs focused on housing production that reflect RHNA requirements. There are proposed policies that indicate the City's commitment to not only increasing its housing production but also protecting its most vulnerable residents in need of decent, safe affordable housing. The concerns and recommendations outlined above will strengthen the efforts The City of Gilroy has made and ensure its success.

SV@Home values its partnership with the City of Gilroy and it is in that spirit that we provide our feedback on the Draft Housing Element. We welcome the opportunity to engage in an ongoing dialogue as the Draft Housing Element moves through cycles of review and revision, with the shared goal of addressing the City's urgent housing need by boosting production of homes at all income levels, preserving existing affordable homes, and protecting the families in them.

Sincerely,



Regina Celestin Williams  
Executive Director

CC:  
Mayor and Council  
HCD Housing Element Review Staff

