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TRANSMITTED VIA EMAIL

Mayor and Council
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

RE: Comments on the 6th Cycle Draft Housing Element

The 6th Cycle Housing Element Update process is designed to enable jurisdictions across the State to fully assess their housing needs and analyze any constraints to housing development. In order to identify and craft tools to address these needs and constraints, community outreach and collaboration between jurisdictions and relevant stakeholders is a central tenet of HCD guidance.

We are submitting these comments on the Draft Housing Element Update for the City of Milpitas. We hope they provide some additional clarity to the comments we were able to provide in the Equity Advisory Group session during the comment period. These comments will also be forwarded directly to the HCD reviewer assigned to review your draft.

STAKEHOLDER AND COMMUNITY OUTREACH

The Draft provides excellent 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, some key stakeholder groups, such as residents with physical, intellectual, or developmental disabilities, or seniors (older adults) are not represented. Notably, the Silicon Valley Independent Living Center, the disability justice organization that administers the City's rent relief program, is not listed among the stakeholders the City sought input from. Beyond providing Vietnamese translation of materials and interpretation at events, it also does not appear any targeted outreach was made to the city's large Vietnamese-, Chinese-, or Filipino-American communities, which are overrepresented in the lower-income renter population of the city.

SV@Home recommends that local jurisdictions conduct robust outreach to all stakeholder communities specifically enumerated in HCD's guidance, which include independent living centers and community service organizations that serve ethnic/linguistic minorities.

The demographics of survey respondents were not included in the Draft, but were shared on the City's Housing Element website. Since respondents skewed substantially wealthier, older, and whiter than Milpitas' population, survey responses are not representative of the full range of housing needs in the community, and therefore do not provide the City with all the insights required to create policies and programs that affirmatively further fair housing and meet all its residents' needs. Some jurisdictions have used surveys as a tool to specifically target and collect knowledge and insights from communities missing in the process. At minimum, the Draft should acknowledge that the responses are unrepresentative of the city's residents as a whole.

SV@Home recommends that the preparation, adoption, and implementation of a housing element includes a diligent effort to include public participation from all economic and demographic segments of the community.

ANALYSIS OF CONSTRAINTS

Although the City of Milpitas provides an overview of constraints on development that covers processes and procedures, there is little detail or explanation and this section of the Housing Elements presents more as a list than of a full assessment of policies and the evaluation of their outcomes. SV@Home would like to express concern that revisions of the City's General Plan land use designations and zoning ordinance are all in "progress" but are deemed not to be constraint to housing production. We would like to remind the City of Milpitas that the Housing Element is not only mandated to be in alignment with the General Plan but these proposed changes have the potential to affect the full implementation of policies and procedures if delayed or rejected. Additionally, the legislative process (re: City Council discussion and adoption) is also not properly detailed so it is unclear how far along in the legislative process the proposed Zoning Ordinance changes have gotten.

To that end, SV@Home recommends that the City of Milpitas provide a timeframe for the adoption of all proposed revisions as housing production is dependent on the measures set forth in the Zoning Ordinance.

In addition to the recommendation listed above, SV@Home has also found a number of shortfalls as it pertains to the lack of both detail and analysis on integral procedural processes and proposed policies.

On governmental constraints:

There is no analysis of the city's development processing procedures. A single sentence suggests streamlining the permitting and approval process would be useful for housing development. The City of Milpitas is faced with the task of increasing its housing production, but without understanding where there are issues in its development processing procedures the City may not reach its goals. For example, a chart detailing the length of time it takes a market-rate development versus an affordable housing development through the development stages listed on B-31 could prove useful. We would recommend that this analysis include an assessment of the pre-application process, as we have found this to be a less than certain process in many cities.

SV@Home recommends the City of Milpitas conduct an analysis of its permitting and approvals processes in order to identify and resolve any shortfalls that could be detrimental as it rapidly increases its housing production.

Also, there is a brief but insufficient analysis on planning and development fees. The City of Milpitas acknowledges that it has "the highest per unit fees for...multifamily developments...and high impact fees for multi-family developments." (pg. B-33). While there is no mention of waivers or concessions for affordable housing projects, planning waivers and fee deferments are given to projects with inclusionary units "to encourage on-site construction of affordable units" (pg. B-29).

SV@Home recommends the City of Milpitas review its planning and development fees, particularly as it relates to multi-family housing and affordable housing. As mentioned previously, we know that the City of Milpitas is committed to increasing its production of housing, but high planning and

development fees can be a barrier to non-inclusionary affordable housing getting built. Just like inclusionary units, planning waivers and fee deferrals should be crafted for 100% affordable housing projects and would go a long way in ensuring those units are built.

On Non-Government Constraints:

The City of Milpitas states that the average time between project entitlements and building permits is 6 months but includes no further analysis. In fact, the City states that timing issues are out of their control. While this may be true, SV@Home considered the length of time between the submission of plans and the issuance of building permits to be the greater issue. It would be helpful to know how this timeframe affects developments since it can have an impact on development's financing and funding. We would also recommend an assessment of the building permitting process, which should include a description of the process the City will undertake to become compliant with AB 2334.

SV@Home recommends that the City of Milpitas evaluate its post-entitlements permitting process to mitigate any potential delays that could impact a development's funding and financing schedule, and include a timeline for local implementation of AB 2334.

ANTI-DISPLACEMENT POLICIES AND ADHERENCE THE AFFH MANDATE

Earlier this year, SV@Home sent a letter about anti-displacement policies the City could adopt to affirmatively further fair housing. A number of policies included in that letter would expand on the City's existing programs. For example, a rent survey program would enable metrics for the City to determine the efficacy of the programs and the city's goals of targeting certain neighborhoods. It could be used to assess the need and impact of the City's rental assistance program. It would be a reasonable expansion of the City's existing rent review ordinance.

Other policies mentioned in our previous letter were a Tenant Resource Center; Eviction Reduction Program and Anti-Gouging program; and, a Community/Tenant Opportunity to Purchase Act (COPA / TOPA). A tenant resource center policy will help the city reach more displacement impacted populations to access the services they need including information about existing state and local renter protections, referrals to legal services providers, referrals to the City's mediation program, and the City's emergency rental assistance program. This would help with program 8: Fair Housing Enforcement, Outreach, and Education. Program 9: Anti-Displacement is focused on expanding on and implementing protections provided through state law. An Eviction Reduction and Anti-Gouging Program, which builds on the State protections under AB 1482, would create opportunities to adopt specific policies to expand that protection for Milpitas renters. COPA or TOPA could be a strong policy to assist with the City's acquisition plans, particularly Program 11: Preservation of at-risk housing. We support the city studying and exploring expansions to their mobile home protections (program 11), but we would like to see more tangible plans with metrics.

In the Goals, programs and policies section, the city of the Milpitas has good initial ideas, but they need more specificity and need to go beyond what they are already doing.

MEETING RHNA LEVELS AND HOUSING OPPORTUNITY SITES INVENTORY

Based on our analysis we have some concerns in the City of Milpitas' Sites Inventory.

Overdependence on Specific Plan Areas and Opportunities to Spread Affordable Housing Throughout Milpitas

As proposed, approximately 85 percent of the lower-income units in opportunity sites will be located in Specific Plan areas. Roughly 54 percent of these units are within the Metro Specific Plan area, while 32 percent of them are planned to be in the Gateway-Main Specific Plan area. Moreover, 83 percent of lower-income units under “rezone sites” are planned to also be in the Gateway-Main Specific Plan. Overall, we are pleased with the Sites Inventory’s incorporation of the Metro Specific Plan. We acknowledge that development has shown favorable trends for affordable housing in this major plan area with the new BART station being one of the main catalysts of such growth. However, we are concerned that the Sites Inventory assumed the same robust development trends for the Gateway-Main Specific Plan area, particularly with the sites north of the BART station and in other moderate-resourced areas around the city, where the feasibility of affordable housing developments will be at a disadvantage in competing for state and federal financing. (We would also note that it appears that the City of Milpitas is using an outdated 2021 TCAC Map under Appendix F for its siting assumptions, as opposed to the most [updated 2022 TCAC Map](#), which shows a predominant moderate-resourced city.) Only the 612 South Main Street project, which proposes no lower-income units, appears to be in a highest resource census tract. The bar is set high for the Housing Element and cities need to be confident about the sites they place in their inventories, while meeting AFFH requirements.

We recommend that the City of Milpitas 1) provide site specific evidence of favorable lower-income development trends within the Gateway-Main Specific Plan area; 2) provide more lower-income sites throughout the entire city in order to avoid concentrations of poverty and maximize AFFH guidelines; and 3) commit to producing progress bench-marks for each major plan area in the final Sites Inventory, which can be assessed at intervals throughout the planning period.

Concerns Regarding Non-Conformance with HCD’s Housing Element Sites Inventory Guidebook

The Housing Element Sites Inventory Guidebook, produced by HCD, has a number of requirements and recommendations for lower-income sites. Most notably, in relation to the City’s Sites Inventory, are the rules and guidance for site-specific analysis for parcels, sites below half an acre, and lower-income capacities below 50 units.

Although we found descriptions of several sites, they fall short in many areas of what is required: 1) providing substantial evidence that indicates existing non-residential use will be discontinued or will not be an impediment to future residential development, 2) clearly describing how the realistic capacity calculations were used to determine the number of units that can be reasonably developed on a site, and 3) incorporating potential constraints (e.g. environmental, parking, open space, parcel shape etc.) into the inventory’s realistic capacity calculations consistent with the Guidebook. These details need to be provided on a site-by-site basis in the Sites Inventory.

We also found that approximately nine percent of total lower-income units (165 units) are planned to be in sites that are below half an acre. Sites below half an acre must demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or unless the Milpitas can provide other evidence to HCD that the site is adequate to accommodate lower income housing. Unfortunately, we could not find such proof but we would like to see as many of Milpitas’ lower-income sites accepted by HCD as possible.

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We recommend the Sites Inventory provide a more comprehensive and in-depth site-specific analysis as described above, including a more detailed description of the likelihood that affordable development has occurred locally on sites that are below half an acre.

Moreover, about 13 percent of lower-income units (522 units) are projected to have less than 50 units. According to the Housing Element Sites Inventory Guidebook, sites that do not have 50 to 150 units also make them less competitive for State and Federal resources to build affordable housing. The viability of financing affordable housing is of utmost importance. If the likelihood of adequately funding sites for lower-income units is low, then they should be taken out of the Sites Inventory unless it can be demonstrated otherwise.

We recommend replacing sites that would produce less than 50 lower-income units with other sites that would produce 50 or more affordable units to improve the City's confidence that these sites will be feasible and financially competitive.

Overall, SV@Home recognizes the work of the City of Milpitas to craft policies and programs focused on housing production that reflect the vision of the General Plan and the RHNA requirements. There are many numerous policies throughout the report that show 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 Milpitas has made and ensure its success.

SV@Home values its partnership with the City of Milpitas, 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