

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



December 15, 2022

Christopher Burton, Director  
Planning Division  
City of San José  
200 E. Santa Clara St. Tower, 3<sup>rd</sup> Floor  
San José, CA 95113

Dear Christopher Burton:

**RE: The City of San José's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element Update**

Thank you for submitting the City of San José's (City) draft housing element received for review on September 16, 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 December 8, 2022 and December 14, 2022 with Michael Brilliot, Kristen Clements, Ruth Cueto, Jerad Ferguson, Elizabeth Guzman, Joshua Ishimatsu, and David Ying. In addition, HCD considered comments from organizations listed in Appendix B 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 A describes the revisions needed to comply with State Housing Element Law.

HCD applauds several aspects of the City's approach to the housing element update. The element places a strong emphasis on acknowledging and repairing the harms of decades of racist, inequitable, and discriminatory zoning, land use, and planning policies that have historically resulted in exclusionary and disinvested communities, particularly for communities of color in San José. For example, the element is focusing on creating new housing opportunities for lower- and moderate-income families in well-resourced communities through implementation of the City of San José affordable housing report by California Housing Partnership and the Other & Belonging Institute. Additionally, the element includes actions to reinvest in communities of color by providing high-quality neighborhood amenities and housing opportunities that will foster positive economic, social, and health outcomes.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial 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.

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 should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and 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 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 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>.

Christopher Burton, Director  
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HCD appreciates the hard work and outstanding dedication your team provided during the review. 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 Chelsea Lee, of our staff, at [Chelsea.Lee@hcd.ca.gov](mailto:Chelsea.Lee@hcd.ca.gov).

Sincerely,

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

Melinda Coy  
Proactive Housing Accountability Chief

Enclosure

## APPENDIX A CITY OF SAN JOSÉ

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).)*

As part of the evaluation of programs in the past cycle, the element must provide an explanation of the effectiveness of 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).

### **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))*

Contributing Factors to Fair Housing Issues: The element must identify contributing factors to fair housing issues. In addition, the element should consider prioritizing these factors to better formulate policies and programs and carry out meaningful actions to Affirmatively Furthering Fair Housing (AFFH).

Regional Analysis: The element describes local and regional trends and patterns in Appendix B, but must also analyze San José relative to the rest of the region for disability, familial status, Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs), and Racially Concentrated Areas of Affluence (RCAAs), access to opportunity (i.e., education, economic, transportation, environmental) and some areas of disproportionate housing needs (i.e., cost burden, overcrowding, substandard housing, homelessness).

Sites Inventory: The element includes some analysis of sites in relation to AFFH, but additional information is required to address this finding. In particular, the element should

include analysis for the number of units per site by income group for each of the AFFH categories relative to the existing patterns (enforcement, all areas of access to opportunity, and impacts on patterns for all areas of access to opportunity and disproportionate housing needs (i.e., cost burden, overcrowding, substandard housing, homelessness), and segregation and integration (i.e., disability and familial status).

2. *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).)*

Quantification of Households: The element must quantify the number of existing households by total and tenure (i.e., renter and owner), experiencing cost burden by tenure and income, and overcrowding by tenure. This information is critical as while the element provides percentages for a number of factors, these percentages without a baseline figure, do not document the scope of the potential housing problems.

Housing Conditions: While the element identifies the age of the housing stock and utilizes American Community Survey (ACS) data (pages 38-39), it must also include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations.

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).)*

The City has a regional housing need allocation (RHNA) of 62,200 housing units, of which 23,775 are for lower-income households. To address this need, the element relies on approved projects, alternative adequate sites, vacant and non-vacant sites, including sites in Urban Villages, the Diridon Station and Specific Plan Area(s), and Accessory Dwelling Units (ADUs). To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include complete analyses:

Progress in Meeting the RHNA: The element indicates 20,398 units, of which 5,345 units will be affordable to lower-income households, are pending approvals, approved, or under construction, but provides no information documenting how affordability of the units was determined (pg. 5-6; App. G). The element must describe the City's methodology for assigning these units to the various income groups based on actual sales price or rent level of the units. In addition, to count these units as progress toward RHNA, the element must analyze and demonstrate the likelihood and availability of these units during the planning period. The element references an estimated 60 percent of development capacity for the pipeline projects in the planning period but must include analysis to support those assumptions. For example, the element could discuss infrastructure schedules and commitments, outreach with project developers, timelines

for final approvals, and the timing of any remaining steps prior to building permits. Lastly, given the element's reliance on pipeline projects, the element must include programs with actions that commit to facilitating development and monitoring approvals of the projects (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, commitment to expedite approvals, etc.) with a commitment to alternative actions (e.g., rezoning) if assumptions are not realized.

Parcel Listing: The element lists parcels by various factors such as size, zoning, and general plan designation (Appendix F). However, the description of existing use is generic (offices, retail) and must include sufficient detail to facilitate an analysis of the potential for additional development on nonvacant sites. In addition, the listing must include a calculation of the realistic capacity of each parcel. For more information, see the HCD's Housing Element Sites Inventory Guidebook at [https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites\\_inventory\\_memo\\_final06102020.pdf/](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf/).

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. 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](mailto:sitesinventory@hcd.ca.gov) for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov).

Realistic Capacity: The element references the Tolemi Building Blocks platform, a data analysis and modeling tool that was used to calculate residential capacity on identified sites based on thirteen property attributes that are used to identify comparables for each parcel in the inventory with similar characteristics (pgs. 5-11-12). Based on this tool, the element appears to adopt a realistic capacity assumption of 100 percent based on the comparables generated for each parcel, but the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. The element should include clear supporting information on typical densities of existing or approved residential developments at a similar affordability level. For example, the element could clearly relate the recent projects listed in Appendix K to the sites in the inventory based on 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 includes some general discussion of non-vacant sites (pgs. 5-11-12) and references the projects in Appendix K to note that the value of land as residential and the opportunity for new housing often exceeds the value

of current uses before concluding that existing prior uses such as retail or offices do not pose an impediment to additional development in the planning period. This alone is not adequate to demonstrate the potential for redevelopment of non-vacant sites in the planning period. The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. For example, the element includes sites in Appendix F identified as single-family residences, religious institutions, mortuaries, and supermarkets, but no analysis was provided to demonstrate whether these existing uses would impede development of these sites within the planning period. The element should also summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. The element could also consider indicators such as age and condition of the existing structure expressed developer interest, low improvement to land value ratio, and other factors.

In addition, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. The element must demonstrate existing uses are not an impediment to additional residential development (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.

Small Sites: Sites smaller than an half acre in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated 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 housing element describes other evidence to HCD that the site is adequate to accommodate lower income housing (Gov. Code, § 65583.2, subd. (c)(2)(A)). For example, a site with a proposed and approved housing development that contains units affordable to lower income households would be an appropriate site to accommodate housing for lower-income households. (Gov. Code, § 65583.2, subd. (c)(2)(C)). The element may need to add or modify programs based on the outcomes of the analysis.

Large Sites: Sites larger than ten acres in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated 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 housing element describes other evidence to HCD that the site is adequate to accommodate lower income housing (Gov. Code, § 65583.2, subd. (c)(2)(A)). For example, a site with a proposed and approved housing development that contains units affordable to lower income households would be an appropriate site to accommodate housing for lower-income households. (Gov. Code, § 65583.2, subd. (c)(2)(C)). The element may need to add or modify programs based on the outcomes of the analysis.



Zoning for Lower-Income Households: The element indicates in Appendix F that the City is utilizing several parcels in the Residential Neighborhood (R-1-8 district) (with a maximum density 8 units per acre) to accommodate a portion of the lower-income need. While the inventory does state these sites are subject to General Plan Policy IP-5.12, it is HCD's understanding that a project would have to be 100 percent affordable to qualify for the higher density. As the site inventory seems to assume a mix of capacity for above moderate-income households and lower-income households, it is not clear what the expected density is for the site or whether the site requires rezoning to achieve the densities allowed. For communities with densities that meet specific standards (at least 30 units per acre for San José), no analysis is required. (Gov. Code, § 65583.2, subd. (c)(3).) Otherwise, an analysis must demonstrate appropriate densities based on factors such as market demand, financial feasibility, and development experience within identified zones.

Publicly-Owned Sites: The element must include additional discussion on publicly-owned sites identified to accommodate the RHNA. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses, and any known conditions that preclude development in the planning period and the potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (l). In addition, the housing element must include a description of whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act (Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5).

Assembly Bill 725: For jurisdictions that are considered Metropolitan, the element must identify at least 25 percent of the remaining moderate and above moderate RHNA on sites that should allow at least four units of housing (e.g., four plex or greater) (Gov. Code section 65583.2, subd. (c)(4)).

Adequate Sites Alternatives: To credit the Homekey 2.0 rehabilitation projects toward the City's regional housing need, the element must demonstrate compliance with all the statutory requirements (Gov. Code, § 65583.1). For additional information and an Alternative Adequate Sites Checklist, see the *Building Blocks* at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/adequate-sites-alternative>.

Accessory Dwelling Units (ADU): The element assumes an ADU build out of 3,556 ADUs and/or junior accessory dwelling unit (JADUs) over the eight-year planning period. According to HCD records, 192 units were permitted in 2018, 416 were permitted in 2019, and 331 were permitted in 2020. The trends noted in the element appear inconsistent with HCD records and, further, do not support an assumption of 445 ADUs per year. To support assumptions for ADUs in the planning period, the element should reconsider assumptions, reconcile trends with HCD records, include additional information such as resources and incentives, other relevant factors, and modify policies and programs as appropriate. In addition, after a cursory review of the City's ordinance,



HCD discovered several areas that were not consistent with State ADU Law. This includes, but is not limited to, bedroom limitations, design requirements, and standards in the Historic District, among others. 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 in order to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state requirements surrounding ADU development.

Suitability and Availability of Infrastructure: The element must demonstrate sufficient existing or planned water, sewer, and other dry utilities supply capacity, including the availability and access to distribution facilities to accommodate the City's regional housing need for the planning period. (Gov. Code, § 65583.2, subd. (b).)

Water and Sewer Priority: 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.) Local governments are required to immediately deliver the housing element to water and sewer service providers. HCD recommends including a cover memo describing the City's housing element, including the City's housing needs and regional housing need.

Environmental Constraints: The element must describe any known environmental constraints within the City that could impact housing development in the planning period. (Gov. Code, § 65583.2, subd. (b).)

Sites with Zoning for a Variety of Housing Types:

*Emergency Shelters:* The element indicates that there is insufficient capacity to accommodate the identified need for shelters (pg. 4-42). (Gov. Code, § 65583, subd. (a)(4).) If the element cannot demonstrate sufficient capacity to accommodate the identified need, a program to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit to accommodate the remaining capacity must be completed within one year of the adoption of the housing element. In addition, the element should determine whether parking requirements comply with AB 139 (Chapter 335, Statutes of 2019), which limits parking requirements to employee parking and add or modify programs as appropriate. Lastly, the housing element must demonstrate the permit processing, development, and management standards for emergency shelters are objective and encourage and facilitate the development of, or conversion to, emergency shelters.

*Housing for Farmworkers:* The element indicates that temporary farm labor camps are permitted conditionally in the Agriculture District (page 4-47). However, the element must demonstrate the zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone and while the element noted that no records exist on file for this type of use, it must still clarify the City's compliance with Section 17021.6.

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).)*

Land-Use Controls: While the element included a general discussion of land use controls (pgs. 4-9-21), it must still identify all relevant land use controls for zones that accommodate housing controls (i.e., Downtown, Diridon Station, Urban Villages) and analyze the impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land uses. In addition, the analysis should specifically address covered parking and guest parking requirements for multifamily development, height limits of 35 feet in several mixed-use districts, and multifamily development in zones permitting multifamily development that requires a Conditional Use Permit (CUP).

Fees and Exactions: The element must describe all required fees for single-family and multifamily housing development, including impact fees, and analyze their impact as potential constraints on housing supply and affordability. For example, the analysis could identify the total amount of fees and their proportion to the development costs for both single-family and multifamily housing. Further, the element indicates that fees for multifamily projects are significantly greater than those for single-family projects, an uncommon observation not found in other comparable jurisdictions, as indicated on Table 4-13 (pg. 4-38). Excessive fees for multifamily projects have significant impacts on housing affordability and production. The element should include an evaluation of these fees and add programs to address the constraint as appropriate.

Local Processing and Permit Procedures: While the element provides some discussion of processing and permit procedures required for housing developments (pgs. 4-31-35), a complete analysis must evaluate the processing and entitlement procedures by for potential constraints on housing supply, cost, timing, financial feasibility, approval certainty, and ability to achieve maximum densities. Specifically, the element must describe the procedures for a typical single-family and multifamily development by zone (i.e. Downtown, Diridon Station, Urban Villages) and permit type (i.e. Planned Development). As noted in the analysis, examples of processes that could constrain development include the discretionary review of the application for building permits, as the element indicates that a Site Development Permit (H) or Special Use Permit (SUP) is approved at the director-level, but also subjected to weekly public hearings to “ensure that basic health and safety, and general welfare concerns are met” and that “permits may be appealed to the Planning Commission” (pg. 4-31), which could result in impacts to the cost of the project, timing, and certainty for approval. As another example, the element identifies typical approval findings for various permits on Table 4-11 and concludes

that they do not act as constraints on residential development. However, the element should analyze decision-making standards such as uses that are “mutually compatible and aesthetically harmonious,” compatible with the “character of the neighborhood,” and ones that do not “impair the utility or value of property of other persons...” (pg. 4-34) for their impact as potential constraints on housing supply and affordability. Based on the outcomes of a complete analysis, the element must add or modify programs as appropriate.

On/Off-Site Improvements: While the element provides general discussion of on/off-site improvements (pages 4-24-25), it must also identify actual 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.

Zoning, Development Standards, and Fees: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards, and fees on the City’s website and include programs if appropriate.

State Density Bonus Law (SDBL): The City’s current density bonus ordinance should be reviewed for compliance with current state density bonus law (Gov. Code, § 65915) and include a program to modify or update the ordinance as necessary.

Constraints on Housing for Persons with Disabilities:

*Reasonable Accommodation*: While the element briefly described the reasonable accommodation process (pg. 4-39), it must fully evaluate the City’s written procedures and processes, including approval findings, for potential constraints on housing for persons with disabilities and consistency with current Department of Housing and Urban Development’s (HUD) guidance on reasonable accommodation procedures. This is especially significant because public comment identified the City’s Reasonable Accommodation procedures, particularly for mobilehomes, as existing constraints on housing.

*Group Homes for Seven or More*: Group homes for seven or more persons appears to be excluded from several zones allowing residential uses (pgs. 4-16; 4-40) and subject to a conditional use permit (CUP). Zoning should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations such as the number of persons, population types and licenses, or higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. The element should include specific analysis of these and any other constraints, including their enforcement, for impacts on housing for persons with disabilities and add or modify programs as appropriate.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to*

*remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)*

Approval Times and Requests Lesser Densities: The element must include an analysis of requests to develop housing at densities below those identified in the sites inventory and address any hinderances on the jurisdiction's ability to accommodate RHNA by income category and include programs as appropriate.

6. *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 Needs Households: While the element includes some data, a general discussion of housing challenges faced by special needs households, and proposed programs, it must still provide an analysis of the existing needs and resources for each special need group including seniors, female-headed households, large households, extremely low-income (ELI) households, and persons with disabilities. 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, community services, etc.) and an assessment of any gaps in resources. Local officials, special needs service providers, or City social and health service providers may be able to assist with information to complete the analysis. The element may need to add or revise programs and policies based on the outcomes of a complete analysis.

Farmworkers: While the element provided some data on the student migrant farmworker population and regional analysis utilizing USDA data (pgs. 68-69), it must still quantify the number of seasonal and permanent farmworkers in the City.

Persons with Disabilities: While the element provides percentages for the total number of persons with disabilities (pgs. 59-60), it must specifically quantify the total number of persons with disabilities.

7. *Analyze the opportunities for energy conservation with respect to residential development. (Gov. Code, § 65583(a)(8).)*

The element must include an analysis of energy conservation opportunities in residential development. The analysis should facilitate the adoption of housing element policies and programs. For example, programs could provide incentives to promote higher density housing along transit, encourage green building techniques and materials in new construction and remodels, promote energy audits and participation in utility conservation programs, and facilitate energy conserving retrofits upon resale of homes.

8. *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).).

The element states the City has a portfolio of 1,826 affordable housing units that may be at-risk to conversion to market rate. However, it appears as if this listing of projects may be incomplete. Pursuant to information provided to HCD from the California Housing Partnership, the following developments may also be at risk of conversion during the next 10 years: Villa Savannah Apartments (138 assisted units located on 4501 Renaissance Drive), Country Hills (62 assisted units located on 124 Rancho Drive), Conrad House (4 assisted units located on 1797 Conrad Avenue), Henry Street (5 assisted units located on 349 South Henry Avenue), San Jose Gardens (162 assisted units located on 4668 Albany Drive), Mayfair Golden Manor (210 assisted units on 2627 Madden Avenue), Capitol Manor (33 assisted units located on 175 North Capital Avenue), Homebase Homes (24 assisted units located on 1033 Lick Avenue), Milagro (15 assisted units located on 2850 Rose Avenue), unknown (4 assisted units located on 1713 Ross Circle), unknown (4 assisted units located on 1726 Ross Circle), unknown (4 assisted units located on 1731 Ross Circle), Donna (4 assisted units located on 1794 Donna Lane), Barker (4 assisted units located on 3825 Barker Drive, 4 assisted units located on 5668 Hoffman Court, 4 assisted units located on 5684 Hoffman Court, and Casa Camino (4 assisted units located on 96 South 10<sup>th</sup> Street).

In addition, while the element lists an inventory of at-risk units utilizing federal and state funding, the element must also analyze deed-restricted affordable housing units using local governmental assistance such as density bonus or inclusionary program that are at-risk of converting to market-rate within the next ten years. The element must also identify qualified entities that could assist with maintaining affordability.

### **C. 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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (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. The element must provide quantified objectives where appropriate, and all programs should be evaluated to ensure provision of discrete timing (e.g., month and year) to account for how the action will occur as well as to ensure a beneficial impact

throughout the planning period. The element may include aspirational and complex programs with actions and timelines beyond the planning period (“ongoing,” “research” “create a study...”). However, these programs should be ancillary and denoted in some manner. As an example, Program N-7 (External Infrastructure Funding to Create Complete, High-Quality Living Environments) commits the City to “prioritize” investments in lower-income neighborhoods but does not describe how it will engage in such actions. As another example, Program S-24 (Targeted Fair Housing Outreach and Enforcement) commits the City to increasing fair housing education, monitoring, and enforcement in target neighborhoods from 2023-2031, but does not identify which areas are to be prioritized nor does it include metrics to measure the impact(s) of targeted fair housing outreach and enforcement.

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 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:

Availability of Zoning (Program P-1): The element indicates that certain sites will need to be rezoned to allow for residential uses and the appropriate densities to accommodate the RHNA. However, it is unclear from the sites inventory which sites are expected to be rezoned and timing for when those rezones will occur. In addition while the element does include Program P-1 (Align Zoning with the General Plan) to complete this rezoning upon adoption of the housing element, please note that if zoning is not in place by the beginning of the planning period (January 31, 2023), for sites that are expected to accommodate the City’s lower-income RHNA, programs must commit to housing element rezone requirements pursuant to Government Code section 65583.2 (h) and (i). Specifically, the program must identify acreage, allowable densities, and anticipated units to be rezoned and must commit to:

- permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a CUP, planned unit development permit, or other discretionary review or approval;
- accommodate a minimum of 16 units per site;

- require a minimum density of 20 units per acre; and
- At least 50 percent of the lower-income need must be accommodated on sites designated for residential use only or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites:
  - allow 100 percent residential use, and
  - require residential use occupy 50 percent to the total floor area of a mixed-use project.

In addition, as you are aware, pursuant to SB 940 (statutes of 2020), the City from certain provisions of the Housing Crisis Act (Government code section 66300) relating to lowering the intensity of land use in order to allow for the City to proceed with general plan and zoning consistency efforts. These provisions sunset upon the due date of the housing element (January 31, 2023).

Urban Villages: The element includes many complex and challenging strategies, notably its Urban Villages, that are essential to the City’s approach in addressing its housing needs. However, several uncertainties or potentially changing circumstances surround the beneficial impact of the programs in the planning period which should be addressed in the element. As an example, the City identifies some existing constraints to the Urban Villages strategy, including costs to prepare plans and “unplanned” Urban Village areas (pgs. 4-10-11). While the element does contain Program P-37 (CEQA Analysis for Urban Villages) to commit the City to identify funding and conducting program-level CEQA analysis for Urban Villages by 2027, the timeline for implementation is too late in the planning period. As another example, the element could include a program to conduct an in-depth mid-term evaluation of actions that incentivize or remove constraints on Urban Villages, including effectiveness, and commit to making adjustments within a specified time period. Finally, the element could describe its progress in completing the Urban Village Plan updates outlined in Project 4 (Five Wounds Urban Village Plans Update) and Project 5 (Consolidated Light Rail Station Urban Village Plan) of its Local Early Action Plan (LEAP) grant.

Program R-6 (Mobilehome Park General Plan Designation for Remaining 56 Mobilehome Parks): Given the importance of this housing type in addressing a variety of housing needs and its impacts on potentially displaced residents, implementation of Program R-6 should be revised to occur earlier in the planning period than 2026.

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 and B5, 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. *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))*

*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).)*

Strategies, Actions, Metrics, and Milestones: To facilitate meaningful change and achieve beneficial impact during the planning period, programs must have specific commitments, metrics or numerical targets, geographic targeting, and definitive timelines such as deadlines, dates, or benchmarks for implementation. While the element has included many meaningful and significant policies and actions that address the identified fair housing issues, programs, or actions should be modified with definitive metrics and timelines, as follows:

- *Metrics*: The element must revise its fair housing policies and actions to include metrics or numerical targets toward significant and meaningful AFFH outcomes. Additionally, where appropriate, metrics should be targeting impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed).
- *Milestones*: The element included some general timelines for AFFH programs, but the element should be revised to include discrete timelines for implementation throughout the planning period.

#### **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 estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

**APPENDIX B  
CITY OF SAN JOSÉ**

HCD received and considered public comments from the following organizations:

- Business and Housing Network
- Campaign for Fair Housing Elements/YIMBY Law
- Eddie Falcocchia
- Elizabeth Agramont Justiniano
- Law Foundation of Silicon Valley
- League of Women Voters of San Jose/Santa Clara
- Northern California Carpenters Union
- National Coalition for a Right to Counsel
- Partnership for the Bay's Future
- Sacred Heart Housing Action Committee
- Race Equity Action Leadership (REAL) Coalition
- Santa Clara Valley Transportation Authority
- South Bay YIMBY
- SPUR
- SVA Home
- TransForm
- West Valley Community Services
- Various organizations in a joint letter dated August 21, 2022