DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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April 7, 2023

Justin Murphy, City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA, 94025

Dear Justin Murphy:

RE: City of Menlo Park's 6th Cycle (2023-2031) Adopted Housing Element

Thank you for submitting the City of Menlo Park's (City) housing element which was adopted February 3, 2023 and received for review on February 8, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Carolyn Ordonez, Campaign for Fair Housing Elements, YIMBY Law, Housing Leadership Council of San Mateo, Menlo Together, Lynne Bramlett, Public Advocates and the Public Interest Law Project, and TransForm pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many statutory requirements described in HCD's October 21, 2022 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Article 10.6 of the Gov. Code), see enclosed Appendix. The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

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 make prior identified sites available or accommodate the regional housing needs allocation shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). 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 these rezones are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision

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 dedication the housing element team provided throughout the housing element 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 Hillary Prasad, of our staff, at Hillary.Prasad@hcd.ca.gov.

Sincerely,

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX
CITY OF MENLO PARK

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. 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).)*

   Racial/Ethnic Areas of Concentration of Affluence (RCAA): While the element was revised to state where the RCAA is geographically located within the City, it must provide an analysis. The analysis should incorporate local data and knowledge and other relevant factors such as past zoning and investment and add or modify programs as appropriate to promote housing mobility and place-based strategies for community revitalization.

   Disproportionate Housing Needs Including Displacement: While the element was revised to provide information on cost burden and displacement, it t should also describe and analyze disproportionate housing needs for persons experiencing homelessness, including impacts on protected characteristics and patterns or areas of higher need relative to access to transportation and services.

   Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues and add or modify programs as appropriate.

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

Progress in Meeting the Regional Housing Needs Allocation (RHNA): While the element was revised to address affordability, additional information is needed regarding availability of the new units during the planning period, particularly for the Willow Village project. Specifically, while the element discusses the status of the Willow Village and anticipated timing for issuing building permits, it should also discuss any barriers to development, phasing and anticipated build out horizons to demonstrate the units can be available in the planning period. The element may utilize past build out trends to facilitate this analysis. In addition, the element references Program H1.H to monitor progress. However, the program must be revised to include specific commitments to annually monitor production and affordability of pipeline projects and if necessary, evaluate whether build out will occur as anticipated in the sites inventory at least twice in the planning period. The Program should also commit to identify additional sites by specific dates if necessary.

Small and Large Sites: The element should be revised to demonstrate that sites of equivalent size and affordability were successfully developed during the prior planning period. While the element mentions a history of lot consolidation, examples must be provided to support assumptions and relate those trends to the identified sites. The element must also describe lot consolidation incentives or provide programs as appropriate. While the element describes assumptions for the development of large sites, it should provide examples to support those assumptions such as previous projects with parceling or other methods to develop affordable units on sites larger than 10 acres.

Suitability of Nonvacant Sites: While the element includes a description of existing uses, it must also demonstrate the potential for additional development in the planning period. In addition, the element must analyze the extent that existing uses may impede additional residential development. The element should provide past experiences of similar developments on religious institution sites and commercial sites with remaining buildings. In addition, the element should clarify whether the entire parking lots are assumed to be developed, or only the City-Owned portion. Finally, Public commenters have pointed to various issues that may impact the potential for redevelopment in the planning period. These comments should be addressed, and programs (e.g., increasing allowable densities) should be added or modified as appropriate.

In addition, for your information, the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, which triggers requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period. While the resolution of adoption includes findings, any changes to the analysis should be reflected in future re-adoption of the element, if necessary.

City-Owned Sites: The element must include additional discussion on each of the City-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 (i). The element should clarify whether any of the other City-Owned sites are considered for redevelopment. Lastly, while the element includes Program H4.G to comply with Surplus Lands Act, it must clarify whether the City commits to developing all of the City-Owned sites listed in the inventory or include a commitment to ensure at least the number of units assumed in the inventory will be developed between the identified sites.

Federally-Owned Sites and School Sites: While the element was revised to include some additional information on federally-owned sites, it should also include additional information on feasibility of development of the USGS and post office sites including time of the sale and whether the post office is likely to be redeveloped during the planning period. In addition, the element should analyze the feasibility of the VA development occurring during the planning period, and the disposition process and timing. The element must also ensure the school site will comply with Surplus Lands Act and whether the school district's plan is likely to move forward during the planning period. Lastly, 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 (i). The element must provide additional support and describe whether the City has contacted the owners regarding feasibility of development on these sites and whether they will be available during the planning period.

Environmental Constraints: While the element was revised to describe hazardous materials, it must describe other conditions that could impact housing development in the planning period such as easements, shape, compatibility and other relevant factors.

Electronic Sites Inventory: Although the City has submitted electronic sites inventory as described in the prior review, if any changes occur, the City should submit revisions as part of any future re-adoption or submittal. Please see HCD's housing element webpage at https://www.hcd.ca.gov/planning-and-community-development/housing-elements for additional information.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element states that the number of allowed beds is a constraint, it must describe the permit processing, all development, and management standards of the Homeless Overlay that allows emergency shelters by-right. The element should provide an analysis of proximity to transportation and services for these sites (other than the VA center), hazardous conditions, and any conditions inappropriate for human habitability. The element should describe whether any of the 26 parcels included in the overlay are feasible to develop with an emergency shelter. Lastly, program H3.G must commit to addressing all constraints, in addition to the bed requirement by a specific date.

In addition, Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf.

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

   Land Use Controls: While the element was revised to remove the conditional use permit (CUP) for multifamily uses in the R4 zone, it should describe whether three stories are allowed without a use permit in the R-3, R3A, R3-C, C-2B, and R-MU zones where height limits are 35 feet or less. The element should also analyze the land use controls including landscaping, parking, and floor area ration (FAR) requirements in the R-3 zone and whether the development standards facilitate achieving maximum allowable densities. The element should also describe and analyze densities and development standards that are allowed in the Affordable Housing Overlay. In addition, the element must describe and analyze the X Conditional Development District approval findings and whether they pose a constraint. Lastly, the element should add programs as appropriate to address any identified constraints.

   Density Bonus: While the element generally indicates the City's ordinance complies with State Density Bonus Law, it should describe the ordinance to support this conclusion and add or modify programs as appropriate. For example, the element could discuss the procedures, various levels of benefits (e.g., density, concessions and incentives, parking reductions), non-discretionary actions and burden of proof.

   Fees and Exaction: 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. While the element lists some standard fees in Table 5-4, it must list typical fees including, but not limited to, zone changes, general plan amendments, variances, site plans, specific plans, affordable housing in lieu fee, lot line adjustment, and other environmental fees. Based on the outcomes of the analysis, the element should include programs to address identified constraints.

   Local Processing and Permit Procedures: The element should clarify whether the typical processing time for approval in Table 5-8 is for both single- and multifamily developments. In addition, while the element states where in the City code findings for a CUP are located, the element should also describe and analyze the process and approval for a CUP. In addition, the element should analyze whether the listed findings for architectural control review are a constraint and add a program as appropriate.

   Constraints on Housing for Persons with Disabilities: The element must include an analysis of zoning, development standards, building codes, and process and permit procedures as potential constraints on housing for persons with disabilities. In addition, while the element includes Program H3.A (Reasonable Accommodation) to remove the reasonable accommodation fee, the element must describe the findings and approval procedures and modify the program as appropriate. Lastly, Program H3.G (Zoning

Amendments for Special Needs) should also commit to amend permit procedures to allow group homes for seven or more persons with objectivity to facilitate approval certainty and similar to other residential uses of the same form.

4. *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).).*

   While the element was revised to include expiration dates on most at-risk properties, it must also identify public and nonprofit corporations known to the City to have the legal and managerial capacity to acquire and manage at-risk units (Qualified Entities). HCD will send a list of qualified entities under separate cover.

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).)*

   To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Programs to be revised include the following:

   - *Program H2.C (Assist in Implementing Housing Rehabilitation Programs)*: The program should be revised to include proactive outreach.
   - *Program H3.E (Continue Support for Countywide Homeless Programs)*: The program was not revised. The program should describe what the City is doing to implement the results of the check-in meetings. The program should also include timing of implementing the resulting actions.
   - *Program H3.H (Inclusionary Accessible Units)*: While the program was revised, it should describe actions the City will take to encourage the units and whether incentives will be provided.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing,*

*mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (*Gov. Code, § *65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Shortfall of Adequate Sites: While program H4.K (Rezone for Lower-Income Shortfall), the program cited the wrong government code. The program must commit to identify sites with appropriate zoning to accommodate the regional housing need within the planning period. The program should identify the shortfall by income group, acreage, allowable densities, appropriate development standards and meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i), including but not limited to permitting multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. In addition, the element must clarify whether programs H4.I (Create New Opportunities for Mixed-Use Development), H4.J (Increase Residential Density), H4.L (Modify El Camino Real/Downtown Specific Plan), and H4.T (Residential Overlay) are needed to meet the City's RHNA, and if so, address the requirements above. Lastly, timing of the rezone program states "within one year of housing element adoption", this should be revised to be completed within the first year of the planning period.

Program H4.G (Prioritize Affordable Housing on City-Owned Parking Lots Downtown): While the program was revised to commit to the Surplus Lands Act requirements, it does not commit to develop all sites. The program must either commit to develop all parking lot sites or commit to develop the total number of units assumed in the inventory on the City-Owned sites.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

   As noted in Finding A3, the element requires a complete analysis of potential governmental 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 H4.M (Update Parking Requirements and Design Standards) should clarify what parking requirements will be reduced and ensure updates will result in addressing constraints on development.

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 requires a complete Affirmatively Furthering Fair Housing (AFFH) analysis. The element must be revised to add goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics, and milestones as appropriate and must address housing mobility enhancement, new housing choices and affordability in higher opportunity or relatively higher-income areas, place-based strategies for community preservation and revitalization and displacement protection. While some programs include metrics and milestones, additional programs that AFFH should also include them as well. In addition, geographic targets should be more focused and include high and highest opportunity areas or areas of higher income when appropriate.

C. 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).)

While the element was revised to include quantified objectives, it should include specific rehabilitation and conservation objectives by income group for extremely-low income and very low-income households instead of aggregating objectives.