

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

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July 28, 2023

Todd Cusimano, City Manager
City of Mill Valley
26 Corte Madera Avenue
Mill Valley, CA 94941

Dear Todd Cusimano:

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

Thank you for submitting the City of Mill Valley's (City) housing element, which was adopted May 15, 2023 and received for review on May 31, 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. Our review was facilitated by a telephone conversation on July 18, 2023 with yourself, Planning and Building Department Director Patrick Kelly, and City Council Member Urban Carmel. In addition, HCD considered comments from Marin Environmental Housing Collaborative; Mill Valley Force For Racial Equity and Empowerment; Fair Housing Advocates of Northern California; Friends of Hauke Park; Simin Batroff, Melissa Williamson, Doug Berry, Ryan Jones, Dane Hulquist, Pete Emlad, Gillian Emblad, Cherie Whitmore, Rod Eshelman, Leslie Shiner, Craig Collins, Keith Feldman, Brian McCarthy, Mike Shapiro, Pei Chin Chiang, Regina Filippi, Eleonore Fallant, Hans Fellant, Barabara Lenehan, Ann Manheimer, Maria Scott, David Scott, Gail Katz, Peggy Mathers, Lisa Edson, Paula Weaver, David Kennedy, Elena McClain, Mary Beth Culler, David Wygant, Joy Wygant, Dan Leach, Kate McGerity, Rodi Broullon, Daphne de Marneffe, Mark Breitbard, Ladonna Wood, Paul Whitehead, Denise Jones, Bryan Jones, Eric Bindelglass, Gabrielle Tierney, Geoffrey MacDonald, Carlos Montalvan, Carolyn Heyder, Richard Felton, Dave Biggio, Anna Biggio, Gabriel Ngarangad, Susie Ngarangad, Bill Promes, Regina Rohe, Terrence Becker, Grant Morris, Tom Conneely, and Toni Brayer pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses most statutory requirements described in HCD's November 21, 2022 letter; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). Please see the enclosed Appendix for more information.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (February 15, 2023), Programs 5 (Mixed use Zoning in Commercial Districts), 9 (Adaptive Re-Use of Commercial Buildings), 20 (Rezoning to Accommodate Regional Housing Needs Allocation (RHNA)/Housing Overlay Zone), 21 (Update Zoning Code Consistent with Land Use Element), and 24 (Zoning Updates to Reflect State Law) must 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. 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.

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>.

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 Affordable Housing and Sustainable Communities program, 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.

HCD appreciates the assistance and hard work Senior Planner Danielle Staude provided throughout the course of the housing element review. HCD is committed to assist the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Reid Miller, of our staff, at Reid.Miller@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 CITY OF MILL VALLEY

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))*

Integration and Segregation: While the adopted element was revised to provide a more thorough analysis of segregation and integration patterns by race and familial status at the local level and regional level, it must still discuss and analyze the data for trends over time for familial status.

Access to Opportunity: While the adopted element was revised to provide local and regional analysis for environmental health, as well as local trends and patterns for economic opportunities throughout the City, it must still discuss and analyze the data for trends over time for environmental health.

Contributing Factors: While the element was revised to provide a conditional contributing factor relating to concentrated areas of affluence, it does not appear to have prioritized contributing factors as requested in HCD's November 21, 2022 review. The element should be revised to prioritize these factors to better formulate policies and programs and carry out meaningful actions to affirmatively further fair housing (AFFH).

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).)*

Realistic Capacity: While the element was revised to give a general analysis and lists some recent projects in Tables C.2 and C.3, characteristics of these project sites should be more clearly linked to the criteria provided on Page 7 of Appendix C, and to

the sites in the inventory in order to demonstrate that selected sites will develop at a similar capacity. Additionally, the analysis must still clarify how the estimated number of units for each site was adjusted based on the land use controls and site improvements and typical densities of existing or approved residential developments *at a similar affordability level* in that jurisdiction.

Senate Bill 9 (Statutes of 2021) Projections: While the element has been revised to include an inventory of SB 9 sites, and clarified that all sites projected as SB 9 lot splits are vacant single-family zoned sites, Program 8 (Junior/Accessory Dwelling Units (JADU/ADU) and Duplexes) should be revised to include clear and specific actions with quantifiable objectives sufficient to facilitate SB 9 lot split development in accordance with the estimations in the sites inventory.

Sites with Zoning for a Variety of Housing Types (Emergency Shelters): For your information, Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Any future draft submittals of the housing element will 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 adopted element was revised analyze land use controls cumulatively with other land use controls, it does not adequately address the role of land use controls independently. The analysis should specifically address requirements related to parking, heights, lot coverage and limits on allowable densities. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Constraints on Housing for Persons with Disabilities: While the element was revised on page 19 of Appendix F to describe the reasonable accommodation process and decision-making criteria such as approval findings, it does not adequately analyze potential constraints on housing for persons with disabilities. For example, findings 5 and 6 appear to be vague and subjective standards that could constitute a constraint on housing for persons with disabilities, and program actions should be added to remove these requirements. Additionally, while the element has been revised to provide actions in Program 31 (Homeless and other Housing Support Assistance) to expand zoning allowances for group homes of six or fewer, and to allow group homes of seven or more in single-family zones with a conditional use permit, these actions

would still add additional barriers to development for group larger group homes that would not be applied to those with six or fewer residents. As noted in HCD's prior review, 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. The element should include specific analysis of these and any other constraints, including their enforcement and add or modify programs as appropriate.

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 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).)*

To address the program requirements of Government Code section 65583, subd. (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 (e.g. numeric objectives); and (4) identification of responsible agencies and officials. Programs to be revised include the following:

Program 14 (Affordable Housing Development Assistance): While the program was revised to provide specific actions, it should also be revised to include quantifiable objectives.

Program 17 (Section 8 Rental Assistance): While the program was revised to provide specific actions, it should also be revised to include quantifiable objectives.

Program 27 (Fair Housing Programs): While the programs was revised to state that it will update the City's reasonable accommodation procedures, it should be revised further to specify the change to these procedures. Additionally, the program should be revised to provide quantifiable objectives.

Program 30(Universal Design/Visibility/Adaptable Design): The program was not revised to include quantifiable objectives.

Program 35 (Community Education and Outreach): The program was not revised to include quantifiable objectives.

Program 37 (Mill Valley Housing Advisory Committee): While the program was revised to provide specific actions, it should also be revised to include quantifiable numeric objectives.

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:

Program 20 (Rezoning to Accommodate Regional Housing Needs Allocation (RHNA)/Housing Overlay Zoning Districts):

As noted in the prior review, the element includes various actions that appear intended to address a shortfall of sites to accommodate the RHNA. For any program intended to address a shortfall of sites at appropriate densities to accommodate the RHNA for lower-income households, the program must meet all requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, these programs should identify the shortfall, minimum acreage to be rezoned and anticipated allowable densities. Program 20 must be revised to meet these requirements.

In addition, please be aware, the recent California appellate decision in *Martinez v. City of Clovis* found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). If applicable, The City may need to adjust Program 20 if the underlying zoning for sites that will be rezoned using the "Opportunity Site Zoning Overlay" allows minimum densities less than 20 dwelling units per acre. (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64).

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.

Program 11 (Inclusionary Housing Regulations): While the program has been revised to give examples of actions the City might take if they are not meeting their RHNA targets, it does not commit to specific actions to remove constraints. The City must make more concrete commitments to address potential constraints in its inclusionary ordinance policy and add alternative forms of compliance as necessary to comply with state law.

Program 12 (General Financial Resources (Local Impact Fees and/or Taxes)): The program continues to need revisions to include more concrete actions to be taken by the City as a result of its evaluation of the Single-Family Impact Fee.

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 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).)*

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. In addition, while the element has revised programs and actions to enhance housing mobility, provide new housing choices and affordability in high opportunity areas, and include place-based strategies that promote more inclusive communities and accessible communities, as well as displacement protection, the element must still include quantifiable metrics and milestones for targeting meaningful change and evaluating progress on programs, actions, and fair housing results. For example, while Table 4.2 has been revised to list actions that appear to promote housing mobility and improve new housing opportunities throughout the City for existing residents and the broader region, it does not provide anticipated numerical outcomes that could be used to measure a program action's success throughout the planning period. This is particularly important in demonstrating the availability of units affordable to lower income in the western portion of the City where multifamily development is more challenging due to geographical and environmental constraints.