



May 25, 2021

Jessica Lynch, Senior Planner
Department of Community Development and Sustainability
23 Russell Boulevard
Davis, CA 95616

Via email at jlynch@cityofdavis.org

Re: Housing Element Update 2021-2029, draft submitted May 3, 2021

Dear Ms. Lynch and City of Davis Staff,

We are writing to provide comments on the Draft Housing Element released for public comment and submitted to the California Department of Housing and Community Development (HCD) on May 3, 2021.

As you know, Legal Services of Northern California (“LSNC”) is a nonprofit civil legal aid organization providing legal assistance to low income individuals and families throughout Yolo County. LSNC’s mission is to provide quality legal services to empower the poor to identify and defeat the causes and effects of poverty within our community. LSNC has represented tenants in Yolo County since 1967. Last year, we handled more than 900 housing cases, including almost 200 cases for Davis households. Through our work, we gain insight into the struggles of low-income residents in Davis.

We have prepared these comments in partnership with and on behalf of the Sacramento Housing Alliance, a nonprofit coalition that works to ensure that all people in the greater Sacramento region have safe, decent, accessible and affordable housing in healthy neighborhoods supported by equitable public policies and practices.

The draft element adequately addresses many of the statutory requirements. Our comments cover areas where additional changes are needed to comply with the law and provide the most effective strategies to address the critical housing needs facing Davis residents with low incomes. We, along with SHA, are happy to discuss our comments and provide additional input as the City incorporates our suggestions and finalizes the draft.

I. Public Participation

We understand that the City faced significant barriers in fostering public participation from the community during the preparation of the Housing Element due to the COVID-19 pandemic, however, the efforts listed in the Housing Element are all digital, which likely means that key segments of the population were left out of outreach efforts. We are concerned that the City did not make an effort to achieve public participation from all economic segments of the community in the development of the Housing Element. In fact, the draft Housing Element was not made

available for public review until after it was submitted to HCD. The fact that all meetings, workshops, and public notices happened on a website, web platform, or social media site means that populations without reliable internet or computer access could not participate, especially during a time that libraries were not open. It is likely that segments of the population including those with disabilities, some seniors, and residents experiencing homelessness could not participate due to the entirely digital nature of the process.

Further, because the City released the draft Housing Element for public comment and submitted it to HCD on the same day, the City undercut the public's opportunity to participate meaningfully in the development of the Housing Element. (Cal. Gov't Code 65583(c)(7).) The City should describe how it will consider and incorporate comments from the public based on review of the draft Element.

II. Housing Goals, Policies, and Programs

a. The City Should Quantify Objectives and Bolster its Programs.

The Element does not quantify objectives for most of its programs, and some of the listed programs are not actually programs, but rather action steps to create a policy or program. The programs need more description of what the City is committing to do, and the specific steps necessary to complete it with deadlines included. Many of the programs with ongoing timelines actually include specific steps that should have a deadline, including Programs 2.1.2, 2.1.3, 2.3.3, 2.4.2, 4.1.7, and 5.2.2.

The Element should also list quantified objectives for any housing need addressed in the assessment section and propose measureable outcomes. For example, the City's conclusion that there are likely very few persons with developmental disabilities and female-headed households living in Davis because of the lack of affordable housing options should be addressed in programs. (Element, pgs. 139-140, 134-136.) The program should contain specific action steps, not a vague statement that the City will work with housing providers to meet the special housing needs of all of the special housing populations. (Element, p. 215, Program 1.3.1.)

Further, most programs should be revised to include more specific implementation commitments to demonstrate how a beneficial impact will be achieved in the planning period. It is impossible to demonstrate how the programs "will have a beneficial impact" within the planning period without some standard to evaluate outcomes.

b. Preservation of Existing Affordable Housing Units

The Housing Element 2013-2021 included Program 48 to work with owners and tenants facing large-scale eviction or subsidy loss. The objective of the program was to provide information to tenants. The current draft states that despite having this program, Suntime Apartments lost its Section 8 subsidy and converted to market rate.

Suntime Apartments did not lose its subsidy or convert to market rate. The Suntime Section 8 units have been maintained due to the advocacy of our office and other community partners. These units should still be listed in the Affordable Housing Inventory. Their subsidy will expire again in 2025 and the City should include a program to preserve these affordable units.

Further, the affordable housing preservation database lists a significant number of affordable units in Davis with expiring subsidies during the planning period, 2021-2029. The Element states that there are only four units with expiring subsidies. The City should include an effective program to ensure that it knows its affordable housing inventory, the date of expiring subsidies, and include action steps to preserve the units. Examples include reaching out to nonprofit developers and applying for funding in conjunction with nonprofit developers by a specific date.

III. Adequate Sites & Affirmatively Furthering Fair Housing

A. Sites Inventory

1. The City Should Remove Inappropriately Sized Parcels from the Sites Inventory.

The Housing Element must identify and zone enough appropriate sites for the City to accommodate its need for housing over the planning period. (Gov't Code § 65583.) The City of Davis' share of the Regional Housing Needs Allocation ("RHNA") is 930 low and very low-income units. The City must identify sites by parcel number and indicate the number of units that can be realistically accommodated on the site. (Gov't Code § 65583.2, subd. (c).) In order for a jurisdiction to count a site that is less than one half acre or more than 10 acres toward its lower-income RHNA, the housing element must demonstrate "that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units" or provide other evidence that the site can be developed as lower-income housing. (Gov't Code, § 65583.2, subd. (c)(2).)

Also, through our work with the Sacramento Housing Alliance, a local organization that works with developers and jurisdictions to promote the development of affordable housing, we know that lots under two acres are exceedingly difficult to develop, and are not attractive to potential investors or developers. Out of the 3 sites identified for lower-income housing in Table 57 "Vacant and Underutilized Sites," 2 sites (240 G Street and 907 4th Street) are under 1 acre. The City must identify sites that can realistically be developed, and these sites are insufficient.

2. The City Should Use Realistic Density Assumptions.

To accommodate its lower income households, the City identified non-vacant, underutilized sites in the downtown that allow for residential densities up to 30 units per acre that require ground floor retail. The City assumed a 100 percent buildout density. Realistic capacity can either be calculated using the minimum density on the site, or if there is no required minimum density, then capacity can be calculated by evaluating the *typical densities of existing or approved developments at similar affordability levels* and the impact of development standards.

The City uses the density of recently built multifamily housing in the Core Retail Stores land use designation to assume a realistic buildout density of 100 percent. (Element, p. 149.) The three projects it includes as comparisons do not have similar affordability levels, as they are market rate

developments. (See Table 55, p. 150.) It is surprising that the City uses the Trackside proposed development as a basis for comparison. The Trackside development faced significant opposition because it is a four-story development, and after the Old East Davis Neighborhood Association filed a lawsuit to challenge the City's approval of the development, the Yolo County Superior Court determined that the project is not consistent with the City of Davis planning provisions governing the transition between the Core Area and the Old East Davis neighborhood. The Court found the mass and scale of the project to be unreasonable. The City appealed to the Third Appellate District and the case is still pending. The City should analyze the realistic development capacity of the identified lower-income sites, and not assume 100 percent buildout with no data to support such an assumption.

3. The City Should Eliminate Under-utilized, Non-vacant Sites that Are Not Developable.

With the exception of approved projects at Table 56, the City's entire sites inventory for meeting the lower-income RHNA are non-vacant, underutilized sites, most of which were identified in the previous planning period. Housing has not been developed on any of the Core Retail sites identified in the previous planning period, some of which are listed in Table 57 as Sites 1, 3, and 11. Specifically, the previous Element identified Ace Hardware, The Paint Chip, Ace Hardware's rock yard, and businesses around the E Street Plaza as underutilized. The City's Element does not adequately address the development potential of these sites. The City must identify recent development trends in the area and for similar sites, analyze market demand for the existing use and market conditions affecting development potential, analyze any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for residential development, discuss the City's past experience with converting existing uses to higher density residential development, and identify existing or proposed incentives. (Cal. Gov't Code Sec. 65583.2(g).) The Element is also missing information about ownership and lot consolidation. For example, the City identifies Site 1 as accommodating 66 lower income units, but Site 1 consists of 8 separate parcels.

Additionally, the City identifies 1752 Drew Circle, the current site of 96 affordable units called Pacifico, as an underutilized site where 28 moderate units could be built. A covenant on the land requires that most of the units be available to low and very low income households. The City does not identify the covenant or how it can accommodate moderate-income units on a site requiring low and very low income units.

4. The City Cannot use Student Bed Leases to Satisfy its RHNA Obligation for Very Low and Low Income Units and Should Remove Program 2.8.1.

A jurisdiction authorized to permit a particular residential development may take RHNA credit for new units approved, permitted, and/or built since the start date of the RHNA projection period. For the City to count the units towards its low and very low obligation, the City must identify the methodology for how it knows the unit will be affordable by identifying the sales price, rental price, or housing subsidy.

The Housing Element counts a total of 115 units from two projects toward its low and very low housing obligation that consist entirely of bed leases for students. The Project 2555 and Nishi developments only have by-bed units, which are intended for and marketed exclusively toward students. As the draft Housing Element states, they are “generally unsuitable for Davis’ non-student population.” (Element, p. 76). Nishi’s affordable beds are all expected to be in shared rooms and the tenants must prove their student status, according to the regulatory agreement. If the developer cannot find qualifying student households after a diligent effort, the developer can pay the difference between the affordable and market rent into the housing fund.

The by-the-bed leases marketed to students should not be used to satisfy the City’s RHNA for lower income households and the City should remove program 2.8.1, which asks HCD to approve a methodology for conversion of affordable bed rentals into affordable RHNA credit. Low income households that have a Housing Choice Voucher (HCV) that allows them to rent a unit in the community that is then subsidized by the local housing authority, cannot use the HCV in a by bed lease. Even the lowest quoted rent in the November 8, 2019 letter from Ashley Feeney to HCD, attached to the Draft Housing Element, is above the rent limits set for a fair market rent set by the Department of Housing and Urban Development that sets the rent limits for where HCVs can be used. (HUD User, FY 2021 Fair Market Rent Documentation System, available at https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2021_code/2021summary.odn). Only the shared rooms are rented at a rate that an HCV could be approved for, but shared rooms are not eligible tenancies for a Housing Choice Voucher program. (24 CFR § 982.618). Thus, bed leases are not available to low income families with a HCV.

Further, bed leases are “unsuitable” for large families. (Element, p. 131.) There are an estimated 1,020 large families in Davis. The rent for these units is cost-prohibitive for families, as set forth in the preceding paragraph.

The Bed Leases are therefore not actually units that help meet the region’s housing need for low and very low income housing. They do not affirmatively further fair housing, and instead, create housing that is unavailable to families with children and low-income non-students. Therefore, they should not be counted towards the lower-income RHNA.

5. The City relies too heavily on Accessory Dwelling Units to meet its low and very low income housing obligation.

In order to address a portion of the adequate sites requirement by counting ADUs, housing element law requires an estimate of the potential number of second units to be developed in the planning period based on an analysis that considers: (1) the number of second units developed in the prior planning period, (2) community need for these housing units, (3) the resources and/or incentives available that will encourage the development of second-units, and (4) other relevant factors as determined by HCD. (Government Code §65883.1) The housing element must also include an analysis of anticipated affordability of ADUs. (Government Code §65883.1)

The City relies heavily on ADUs to meet its obligation to plan for low and very low income housing with an anticipated 204 units out of 930. Table 59 shows that the City relies on ADUs for 37% of its low income housing obligation. The projected numbers are five times higher than the

production of ADUs in prior years. While we understand that the ADU ordinance is changing, we fear this over reliance on ADUs will mean that the City plans less for other kinds of affordable housing, particularly deed restricted affordable housing. Once an ADU is built, there is no requirement that it be rented to a tenant and can often be used instead to house family, guests, rent on AirBNB, etc. Further, we know from the City's previous ADU survey in 2013 that less than half of the ADUs were rented (24 of 52) and only 5 were rented at very low income rents. The survey failed to inquire about the income of tenants, or if the tenants were related to the owner. Units provided free of charge to people who know the homeowner are not actually available at an affordable rent because these units are not available to the public at large and are not actually offered for rent.

The City has not created a program to monitor the accessory dwelling units to ensure they are affordable to and occupied by lower income households. Instead of relying on ADUs to meet its obligation to identify adequate sites for the low income category, the City should identify parcels that are developable within the planning period.

We also have concerns about the methodology used by the Sacramento Area Council of Governments and relied on by the City to support that 69% of all ADUs in the City will be affordable to lower income households. The SACOG survey included only five units in Yolo County, with rents from \$975 to \$1550. The only ADU in the survey located in Davis rents for \$1500. This rental rate is above the maximum rent affordable to lower income households, as set forth in the SACOG analysis. (SACOG ADU Affordability Analysis, p. 3.) Without further analysis, the City should not be permitted to count ADUs to accommodate its lower income RHNA.

In addition, the SACOG's survey did not consider fair housing implications. The goals of affirmatively further fair housing are not obtained through identifying hundreds of ADUs that are only available if the tenant is either related to or a friend of the existing homeowner. Instead, this trend perpetuates patterns of segregation and constrains the City's ability to comply with its duty to affirmatively further fair housing.

B. Affirmatively Furthering Fair Housing

Each jurisdiction must take steps to "Affirmatively Further Fair Housing" (AFFH) in its housing element. The purpose of this requirement is to undo patterns of segregation and create opportunity for communities of color and other protected classes. The draft Housing Element includes a robust analysis of patterns of segregation. By both metrics used to measure segregation, the Housing Element lays out data that Davis has become significantly more segregated since 2010. (Element, p. 95-97).

While there is a robust analysis in the draft showing a need for work in the area of fair housing, the Housing Element goes on to state that Davis does not need to consider how to affirmatively further fair housing because all areas of the city are high opportunity areas. The sites for affordable housing, however, are clustered in the areas in and around downtown, which are the neighborhoods identified as areas of less opportunity within the city. Multiple planned projects are located in the one area identified as a Racially and Ethnically Concentrated Area of Poverty (RECAP). The

amount of planned development in these lower opportunity areas underscore the need to make sure sites are scattered throughout the entire city. The City should capitalize on the momentum generated by its excellent analysis of housing disparities by allowing the analysis to inform its planning.

The City should identify sites in areas where there are few planned projects or sites in the sites inventory. There are only 3 planned projects west of downtown and no identified sites. The City should consider whether there are any opportunities for expansion or identify any underutilized sites in the western half of the city.

IV. Constraints on Housing

A. Nongovernmental Constraints

1. Availability of Financing

As described in HCD’s Building Blocks, the housing element should consider whether housing financing, including private financing and government assistance programs are generally available in the community. The Element generally describes low interest rates for borrowing, concludes private financing is generally available, and identifies the need for more funding for affordable housing. However, it does not address whether financing is available for underserved populations nor does it describe if there are any mortgage deficit areas or underserved groups. A more thorough analysis is needed to both ensure the City can Affirmatively Further Fair Housing and identify strategies and policies that could address the lack of financing, predatory lending patterns, or historic racial inequities in lending.

2. Land Use Controls

Parking Standards

The City concludes its parking standards do not hinder the availability or affordability of housing and indicates affordable multifamily developments have received parking reductions but does not provide any information about how those reductions are allowed. In addition, the Element notes that the standards do not provide adequate parking and the City requires alternative transportation plans to address this need. However, the Element does not describe the requirements of those plans nor their impact on cost and timing for developments.

Growth Management

The Element does not provide sufficient information or analyses of the impact of Measure J/R and its extension to 2030. Specific information required includes:

- 1) Describe the Infill Exemptions, how much land is covered, and ensure the land inventory explicitly identifies sites that would be exempt;
- 2) The Element indicates that encouraging infill results in more complicated projects that result in greater City and community benefits, but does not describe how those complications impact costs and affordability;

- 3) The Element acknowledges Measure J adds to cost and time for development review process but indicates it is speculative that it will limit housing supply or affordability. Yet, there is no evidence or analysis to support that conclusion. While the Element indicates the cost of putting on an election may be less than dealing with a referendum, it does not consider the risk factor of an uncertain outcome of an election on the feasibility of development;
- 4) The Element describes general costs for elections but should describe what those costs cover and whether they include both technical election related expenses and the expenses of carrying out a campaign to support development. The Element also claims the costs are minimal relative to other development expenses, but does not address the fact that the election costs remain a cumulative expense and nonetheless adds to the overall cost of development;
- 5) The Element should consider the impact of the units lost through elections and clarify how many proposed residential units were impacted by a failed election. For example, 850 units, including 153 affordable, were lost in DISC, but does not indicate if other elections including potential residential units;
- 6) The conclusion on page 177 that while Measure J added costs and extends processing times and is used to halt projects, it is only a constraint if the City lacks sufficient infill sites. The Element also indicates Measure J places limits on the City's ability to rely on rezoning and annexation to meet the RHNA. More evidence is needed to justify this conclusion, especially because the Element identifies a need for rezoning to meet the RHNA.

Permit Processing

The Element notes that most affordable housing is built in areas with Planned Development zoning, which while creating flexibility, is also highly discretionary. The Element should describe the impact costs and timing of development.

Design Review

We appreciate the Element includes a program to develop objective design standards. However, the Element should also evaluate the impact of requiring noticing and the public hearing requirement if opposition to the development occurs.

The Element should also describe the impact on cost, timing and affordability of housing resulting from exceptions from program 1.2.5 for superior planning and design.

Fees

The Element indicates the City does not offer fee waivers but provides financial assistance to affordable housing developments that demonstrate the need for this assistance. Given the Element acknowledges fees in Davis are higher than surrounding communities, the Element should provide more information about the requirements to receive financial assistance and the frequency this assistance has been provided.

Code Enforcement

The Element indicates that enforcement is complaint based but there is no evaluation about the success or impact on housing conditions using this approach. Anecdotally, we know that many Code Enforcement complaints of substandard housing conditions made by tenants do not result in physical inspections. We appreciate the City included Program 5.1.2 to inspect a sample of affordable housing units, however, a higher priority should be to inspect unregulated rental housing to ensure it is being properly maintained. Regulated affordable housing is monitored by multiple government agencies to ensure it is being maintained in a sound condition.

Further, the City has not assessed housing conditions since conducting a “windshield survey” in 2008. The Element says there is not a need to survey because the City has a rental inspection program. However, the inspection program is limited to single-family rental properties of 1 to 4 units, and only a sample of all such units are inspected each year.
(<https://www.cityofdavis.org/city-hall/city-manager-s-office/rental-resources-program>.)

Affordable Housing Ordinance

While the City includes a program to evaluate the ordinance, it has established an interim ordinance requiring a 15% affordable requirement that may be met by units, bedrooms or beds. The Element should evaluate the impact of allowing bedrooms or beds to meet the affordable housing requirement, especially on the need for affordable family housing and from a fair housing lens.

Housing for persons with disabilities

The Element should more thoroughly analyze the impacts of applying the standards and findings (Page 199-200) for reasonable accommodation and describe the number and outcomes of requests for reasonable accommodation. The Element should also describe any definition of family. While the Element includes Program 1.3.1 to work with housing providers to meet the special housing needs of individuals with disabilities and developmental disabilities (among others), the program does not commit to specific actions nor include objectives for the number of units that could be encouraged to support households with disabilities. The timeframe is listed as ongoing, but it is unclear whether specific zoning standards or incentives must be developed or adopted in order to implement the intent of this program. Program 1.3.3, to continue to support the incorporation of accessibility features in new development, should more explicitly describe how it encourages incorporating accessibility features and whether the Universal Access Ordinance needs revision to be more effective.

Zoning for a Variety of Housing Types (Government Code Section 65583(a)(4); (c)(1) and 65583.2(c))

The Element indicates that apartments are only a permitted use in the R-3, R-HD, RC and MU zones and Single Family units are allowed as a permitted use in those same zones. Given the identified need for multifamily housing and the shortfall of sites to address the lower income

RHNA, the Element should analyze the impact of allowing single-family uses in all zones where multifamily housing is a permitted use.

The City should evaluate the impact of not allowing group care homes (with more than 6 people) or Single Room Occupancy Units in any zone without a CUP.

The Element must provide more specific information about the sites available in the Element to address the need for emergency shelters. The Element acknowledges the limited supply of land available for emergency shelter by right and includes Program 2.7.7 to allow shelters by right in an additional zone or zones, but provides no information about how the City will ensure the zones are adequate, relative to access to transportation and services, for example.

Programs 2.7.4- 2.7.7 should all be adopted sooner than 2025. Addressing the need for emergency shelters, low barrier navigation centers and housing for transitional and supportive housing is critical and should be prioritized.

Conclusion

We appreciate the hard work the City, its staff, and its project contractors have put into the Housing Element update process. Specifically, the City had a robust community engagement strategy that included reaching out to internet-savvy community members and stakeholders. We hope to work with the City to ensure the Housing Element meets the legal requirements and furthers the City's goals. If you have any follow up questions or wish to discuss this matter, we can be reached at the contact information below.

Very truly yours,

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Housing and Community Development (HCD)