DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT DIVISION OF HOUSING POLICY DEVELOPMENT

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November 26, 2014

Mr. Harry Freitas, Director Department of Planning, Building, and Code Enforcement City of San Jose 200 E. Santa Clara St. San José. CA 95113

Dear Mr. Freitas:

RE: City of San Jose's 5th Cycle (2015-2023) Draft Housing Element

Thank you for submitting San Jose City's draft housing element received for review on October 3, 2014. Pursuant to Government Code (GC) Section 65585(b), the Department is reporting the results of its review. Our review was facilitated by various communications with Ms. Jenny Nusbaum, Senior Planner; Mr. Michael Brilliot, Planning Division Manager; Mr. Wayne Chen, Director of Policy & Planning; Adam Marcus, Development Officer; and Ms. Vera Todorov, Senior Deputy City Attorney. In addition, the Department received comments from Non-Profit Housing Association of Northern California, Law Foundation of Silicon Valley, Building Industry Association of the Bay Area and Ron Johnson pursuant to GC Section 65585(c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (GC Article 10.6). The enclosed Appendix describes the revisions needed to comply with State housing element law.

To remain on an eight year planning cycle, pursuant to Senate Bill 375 (Chapter 728, Statutes of 2008), the City must adopt its housing element within 120 calendar days from the statutory due date of January 31, 2015 for ABAG localities. If adopted after this date, GC Section 65588(e)(4) requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit our Department's website at: http://www.hcd.ca.gov/hpd/hrc/plan/he/he review adoptionsteps110812.pdf.

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The Department recognizes the City's planning efforts and is committed to expeditiously work with the City to meet statutory requirements, including timelines for adoption of the housing element. The Department appreciates the dedication and hard work of the City's housing element update team. Their investment into developing this and other important policy and planning document is commendable. If you have any questions or need additional technical assistance, please contact Paul McDougall, of our staff, at (916) 263-7420.

Sincerely,

Glen A. Campora

Assistant Deputy Director

n A. Campora

cc: Leslye Corsiglia, Director, Dept. of Housing
Jenny Nusbaum, Senior Planner, Dept. of Planning, Building, Code Enforcement,
Michael Brilliot, Division Manager, Dept. of Planning, Building, Code Enforcement
Adam Marcus, Development Officer, Dept. of Housing
Wayne Chen, Policy & Planning Director, Dept. of Housing

APPENDIX CITY OF SAN JOSE

The following changes would bring San Jose 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 the Department's website at: www.hcd.ca.gov/hpd. Among other resources, the Housing Element section contains the technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at: www.hcd.ca.gov/hpd/housing_element2/index.php and includes the Government Code addressing State housing element law and other resources.

A. Housing Needs, Resources, and Constraints

 Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households (Section 65583(a)(1)).

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 (Section 65583(a)(7)).

Extremely Low-Income Households: While the element quantifies the number of extremely low-income households by tenure (Table III-6), it should also identify the projected housing needs of extremely low-income households and provide an analysis of existing household characteristics such as overpayment, housing situations or relationships to special needs group. The analysis should also address resources and strategies and degree of unmet housing needs in order to revise policies and programs as appropriate. For more information and data, including sample analysis, please contact the Department and see: http://www.hcd.ca.gov/hpd/housing_element2/EHN_extremelylowincome.php.

<u>Persons with Developmental Disabilities</u>: In addition to quantifying the number of persons with developmental disabilities county-wide, the element should include a city estimate and analysis of characteristics to guide policies and programs. For more data, see http://www.dds.ca.gov/FactsStats/Home.cfm.

2. Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).

Realistic Capacity: The element must include an estimate of the number of units that can be accommodated on each site in the inventory. The number of units calculated shall be adjusted as necessary based on the land use controls and site improvements requirements. The element identifies residential capacity on non-residentially zoned sites, For these sites, the element should include discussion that accounts for the likelihood of residential development considering

the zones are intended for non-residential uses. For example, the element could discuss market trends relative to identified sites, performance standards, policies or other incentives improving the likelihood of residential development or assume some proportion of the sites will not be developed with residential uses.

Non-vacant Sites: For non-vacant sites, the element must demonstrate the potential for redevelopment for each site and provide an analysis that considers the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. The element provides a general description of existing uses (e.g., commercial, industrial) and explains non-vacant or redevelopable parcels were selected based on existing low intensity uses such as surface parking lots, single story buildings, existing floor area ratios well below the maximum allowed, etc. However, to evaluate the extent existing uses impede additional development on identified sites, the element should display how these criteria for low intensity uses relate to the identified sites. For example, the element could list which sites are surface parking lots, single story structures or which sites have a low floor area ratio and what constitutes an existing low floor area ratio. The element could also sample representative sites from the inventory and demonstrate how the existing low intensity criteria apply to the sites. As described above, this analysis should also include discussion of development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. The Department will provide various samples to assist the City (under separate cover).

Environmental Constraints and Infrastructure: The element must describe any known environmental constraints or conditions that could impact residential development, relative to identified sites/capacity in the planning period. For example, this analysis could include a general discussion of the various residential capacity categories (e.g., already entitled, downtown, planned communities, urban villages, etc.) and known conditions potentially impacting development in the planning period.

The element generally mentions collecting taxes to finance improvements of infrastructure systems. However, the analysis must also address whether sufficient total water and sewer capacity is available or planned to accommodate the regional housing need.

For more information on infrastructure and environmental constraints, see http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#environmental.

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Zoning for a Variety of Housing Types (Transitional and Supportive Housing): Transitional and supportive housing must be considered a residential use and subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. The element indicates (page III-25) zoning was amended to expressly treat transitional and supportive housing as residential uses; however, it also appears to explain that supportive housing for seven or more persons is subject to a conditional use permit, different from residential uses. The element should clarify compliance with the requirements described above or include programs to amend zoning as appropriate. For more information, see http://www.hcd.ca.gov/hpd/housing element2/SIA variety.php.

Zoning for a Variety of Housing Types (Employee Housing): The Employee Housing Act (Health and Safety Code Section 17000-17062), specifically Section 17021.5, requires employee housing to be permitted by-right, without a conditional use permit (CUP), in single-family zones for less than six persons. Employee housing generally includes agricultural employees; however, it is not limited to solely agricultural employees. The housing element should demonstrate whether zoning is consistent with Section 17021.5 and include programs to amend zoning as appropriate. For more information, see the Building Blocks' at http://www.hcd.ca.gov/hpd/housing_element2/SHN farmworkers.php.

3. Analyze 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, site improvements, fees and other exactions required of developers, and local processing and permit procedures (Section 65583(a)(5)).

Land Use Controls and Processing and Permit Procedures: As noted throughout the element, the City recently adopted a general plan which includes many innovative concepts, diagrams, polices, programs, etc. Particularly, the element mentions the urban village, plan horizons and job first concepts. While the Department recognizes these and various other important principles of the general plan, the element should explain how these principles, polices, requirements, etc. are implemented, especially for residential development applications throughout the entitlement process. After explaining the mechanics of the general plan and urban village framework, the element should include an analysis of the potential impacts on residential development in terms of costs, supply, timing and approval certainty. The analysis should consider factors such as the availability of land uses and zoning, phasing, infrastructure investment strategies, circulation standards, job first policies and other policies or requirements that may impede the entitlement process. Based on the outcomes of the analysis, the element should include programs to appropriately address identified constraints. For example, the element could include programs to further evaluate the urban village framework as part of the scheduled major update in 2015 and modify the approach as appropriate to better ensure its successful implementation.

Housing for Persons with Disabilities: The element (page IV-7) explains a reasonable accommodation procedure has been adopted (Chapter 20.160). Based on review of this procedure, requests for reasonable accommodation appear subject to additional findings to allow exception to zoning and land use for housing for persons with disabilities. For example, the procedure appears to consider impact on surrounding uses, a typical conditional use permit finding. A key purpose of the reasonable accommodation is to provide a unique exception process, separate from a variance or conditional use permit for example, to promote housing opportunities for persons with disabilities. Subjecting requests to additional findings and particularly those from existing exception processes (e.g., conditional use permit) may act as a constraint and discourage access to housing for persons with disabilities. As a result, the element should analyze these findings as a potential constraint and include programs as appropriate. For more information, including the Department's memo and correspondence from the Attorney General, please see the Building Blocks for Effective Housing Elements at http://www.hcd.ca.gov/hpd/housing element2/CON disabilities.php.

<u>Fees</u>: The element describes various entitlement, construction and impact fees and development taxes, however, it must include a cumulative analysis of fees for cost impacts on typical single family and multifamily development. The analysis should also consider fees charged by organizations outside of the City such as a school district. To address this requirement, the element could utilize an approach similar to the Bay Area Cost of Development Survey or sample analyses at http://www.hcd.ca.gov/hpd/housing_element2/CON_fees.php.

<u>Site Improvements</u>: While the element notes residential development may be subject to on- and off- site improvements, it should identify the actual standards and requirements (e.g., 36 foot minimum street width) and analyze potential impacts on the cost and supply of housing.

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 (Section 65583(c)).

Programs must include: (1) specific actions the local government will take during the planning period; (2) timelines that result in beneficial impacts within the planning period; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. This is particularly important to demonstrate actions will have a beneficial impact in the planning period. Many programs (Appendix D: Implementation Work Plan) have "on-going" timelines and should include discrete timelines for implementation such as by year, quarter, date, within two years, etc. Programs that should be revised include 1, 5, 15, 16, 17, 18, 19, 22, 25, 26, 30, 34, 35, 36 and 45.

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 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 (Section 65583(c)(1)).

As noted in Finding A2, the element requires analysis and therefore, the adequacy of sites and zoning have not been 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 Department understands the City is diligently working to prepare several Urban Villages prior to the beginning of the planning period, some of which appear necessary to accommodate the *total* regional housing need. Given the complexity of these plans and potential uncertainty with timing and adoption,, the element should include a program to adopt and implement the urban village plans to allow residential development to occur early in the planning period.

 The housing element shall contain programs which address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing (Section 65583(c)(3)).

As noted in Finding A3, the element requires analysis of potential governmental constraints. Depending upon analysis results, the City may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, as noted on page IV-1, data is being gathered to examine parking use in transit rich neighborhoods and the City will conduct an analysis once the data is available. The element could include a program to reflect these planned efforts and commit to revise parking requirements as appropriate.

4. The housing element shall include programs to conserve and improve the condition of the existing affordable housing stock (Section 65583(c)(4)).

The element notes the negative impacts of direct and indirect displacement of lower and moderate income households and includes several programs to conserve opportunities for affordable housing (e.g., Programs 25, 34 and 35). However, most of these programs appear to narrowly address the issue of potential displacement. Given the eight year planning period, prominence of the displacement issue, and potential for new strategies and resources in the future, these programs could be expanded to consider additional opportunities. For example, Program 35 appears limited to tenant relocation benefits and Program 34 is limited to rent control and rental rights, but, these programs could be expanded to consider other or additional strategies and resources to address the issue.

5. The housing program shall promote equal housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin or color (Section 65583(c)(5)).

The element must include implementation actions to promote equal housing opportunities. At minimum, the element must include actions that clarify how and when fair housing information and resources will be disseminated or available throughout the community and processes to address or refer fair housing complaints. For more information see the Department's Building Blocks at http://www.hcd.ca.gov/hpd/housing_element2/PRO_eho.php.

 The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (8) of subdivision (a) (Section 65583(c)(6)).

While the element includes a policy to support state and federal regulations (Policy 2.13) and a program (Program 8) to generally preserve existing deed restricted multifamily homes, it should include specific and proactive actions. For example, the program should at least ensure compliance with noticing requirements, include tenant education and assistance component, consider pursuing funding within some certain timeframe upon noticing and proactively coordinate with non-profits. For more information and sample programs, see the Building Blocks at http://www.hcd.ca.gov/hpd/housing_element2/PRO atrisk,php.

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C. General Plan Consistency

Include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals (Section 65583(c)(7)).

The element explains how internal consistency within the general plan is achieved as part of the housing element update, but it should also describe how internal consistency will be maintained during the planning period. The element could include a program to conduct an internal consistency review as part of its annual general plan implementation report required under Government Code Section 65400. This annual report can also assist future updates of the housing element.

D. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort (Section 65583(c)(8)).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the period between this draft element and the adoption of the final housing element, the City must 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.