

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

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September 6, 2023

Michael Cass, Planning Manager
Planning Department
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Dear Michael Cass:

RE: City of Martinez's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Martinez's (City) draft housing element received for review on June 8, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from California Housing Defense Fund, YIMBY Law, East Bay for Everyone, Greenbelt Alliance and David Kellogg pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As a reminder, the City's 6th cycle housing element was due January 31, 2023. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your 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 (January 31, 2023), Program 13 (Adequate Sites) to rezone 529 units to accommodate the regional housing needs allocation (RHNA) and make prior identified sites available for lower-income housing 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 make prior identified sites available or accommodate a shortfall of sites are completed pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the 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 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>.

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 Sohab Mehmood, of our staff, at sohab.mehmod@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF MARTINEZ

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).)*

Outreach: While the element included some information on public engagement and outreach efforts including meeting with service providers and translation services, to address outreach requirements of AB 686 (Chapter 958, Statutes of 2018), the element must describe meaningful, frequent, and ongoing public participation with the community including key stakeholders. The element should describe any specific outreach efforts to organizations that represent special needs populations or members of protected classes. The element could also describe targeted efforts to engage specific communities that are experiencing several fair housing issues.

Integration and Segregation (Race and Income): While the element includes data on race and income, the analysis must analyze trends, patterns, concentrations in specific areas of the City and coincidence with other fair housing components (e.g., access to opportunity, disproportionate housing needs, etc.,).

Racially Concentrated Areas of Affluence (RCAA): The element briefly stated that the City has two census tracts considered an RCAA and it generally corresponds with the City's higher resource areas. However, a complete analysis must also evaluate trends, patterns, concentrations in specific areas of the City and coincidence with other fair housing components. Additionally, 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.

Disparities in Access to Opportunity (Environmental): The element includes some data related to environmental opportunities including a definition of specific data points and briefly stating that one community is considered an SB 535 disadvantaged area (Pg.

158). However, a complete analysis must analyze this data for trends and patterns within these areas and relative to the rest of the City.

Disproportionate Housing Needs: While the element included some general information on housing conditions, persons experiencing homelessness and displacement risks, it should also evaluate those needs, impacts and patterns within the City, such as areas of higher need. For housing conditions, it should discuss any areas of potentially higher needs of rehabilitation and replacement. The element should utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis. For persons experiencing homelessness, while the element described areas of higher concentrations, it should also evaluate access to transportation and services.

Local Data, Knowledge and Other Relevant Factors: The element includes some high-level information on housing choice vouchers and the location of assisted housing projects. However, the element did not discuss how this data relates, supports, or supplements the existing analysis, fair housing conclusions, neighborhoods with concentration of fair housing issues, or contributing factors.

Specifically, the analysis of fair housing indicates a concentration of fair housing issues in the northern portion of the City towards the waterfront area. This area includes higher rates of minority populations, lower incomes, higher proportions of persons with disabilities, census tracts considered high segregation and poverty and an SB 535 disadvantaged community. Conversely, the southern portion of the City is considered an RCAA, moderate to high resource, less diverse, higher incomes, and overall stronger access to opportunities. The element must be revised to include local data, knowledge and other relevant factors that supplement the existing analysis and include more information on neighborhood conditions for these communities. This analysis can help support and formulate stronger and tailored place-based strategies for these areas.

This analysis could consider information that is unique to the City or region, such as governmental and nongovernmental actions, historical land use and zoning practices, development trends, disparities in investment to specific communities (e.g., capital improvement plan), knowledge from City staff, school officials, transportation planners and other local and regional planning documents, state and federal investment, access to opportunity such as parks, open space, active transportation or other indications of quality of life, seeking investment or lack of seeking investment to promote affordability and inclusion or other information that complements the state and federal data to better describe the patterns and trends within the City.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element included a high-level discussion about the location of sites and general impacts, a full analysis must quantify identified sites with respect to location, the number of sites and units by all income groups and how that effects the existing patterns for all components of the assessment of fair housing. Additionally, the element should also discuss any isolation of the Regional Housing Needs Allocation (RHNA) by income group, magnitude of the impact on existing concentrations of socio-economic characteristics and discuss how the sites improve or exacerbate fair housing conditions. The analysis should be supported by local data and knowledge and other relevant factors.

Lastly, while the element does not include a complete analysis of sites relative to fair housing conditions, it does appear that the City's sites and RHNA may be concentrated in areas with a higher prevalence of fair housing issues. Based on a complete analysis, the element may need to add or modify programs to create inclusive and equitable communities e.g., through place-based strategies for community revitalization and conservation and increasing housing opportunities and affordability in higher opportunity/income areas.

Contributing Factors: Upon a complete AFFH analysis, the element must assess and prioritize contributing factors to fair housing issues and add or modify programs as appropriate.

2. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

The element includes data and a general discussion of housing challenges faced by special needs households. However, the element must be revised to include an analysis of the existing needs and resources for each special need group including persons with disabilities including developmental disabilities, large households, female-headed households and extremely low-income (ELI) households. For example, the element should discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

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

Realistic Capacity:

- *Likelihood of Residential on Sites with Existing Zoning* – The element appears to have identified sites in areas where the existing zoning allows 100 percent nonresidential uses (e.g., commercial) and as a result should account for the likelihood of 100 percent nonresidential development. To demonstrate the likelihood for residential development in these zones, the element could describe recent residential and nonresidential trends such as the occurrence of 100 percent nonresidential uses, any performance standards mandating a specified portion of residential and any factors, policies or programs increasing the potential for residential development.
- *Likelihood of Residential on Sites with Proposed Overlay Zones* – The element has identified sites in several zones utilizing an overlay. In lieu of providing an

analysis, the element commits to mandating residential in overlay zones that will be implementing the rezone requirements, pursuant to Government code section 65583(c)). However, it appears that other uses are still allowed under the base zoning and as a result, the calculation of capacity should account for the likelihood of uses occurring according to the base zoning. For example, the element could examine market conditions and trends related to uses under the base zoning. Alternatively, the element could propose requiring minimum residential densities regardless of the allowed densities under the base densities.

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). The City may need to adjust its rezoning strategy, if the underlying zoning for sites that will be rezoned 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.*

Suitability of Nonvacant Sites: The element identified various criteria utilized to demonstrate redevelopment potential, including development trends, owner interest, existing uses, building age, etc., First, the element applied objective criteria to several sites including building age, improvement to land value and sites with unrealized development capacity. However, Appendix B indicates that not all factors were applied to certain sites. For sites that did not meet the objective criteria, the element should include additional information to demonstrate the redevelopment potential on these sites. Second, the element indicated that the City considered owner interest in identifying sites and that sites with owner interest were likely to redevelop (p. 105). The element should expand on this discussion including the degree of owner interest, outreach methods to obtain this information, and also relate the criteria to the actual sites. Third, to support these assumptions, the element included an analysis of development trends through local (Table 57) and regional pipeline projects (Table 62). However, the element needs to clearly relate these examples to the criteria utilized in the nonvacant methodology. To clearly relate project examples to the methodology, the element could include a table listing out project examples with the same characteristics utilized in the methodology. The examples should also include information about existing uses, location, and affordability. Based on a complete analysis, the element may need to add or strengthen programs to encourage and facilitate the redevelopment of these sites.

In addition, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. The element must demonstrate existing uses are not an impediment to additional residential development (Gov. Code, § 65583.2, subd. (g)(2)). Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Site Size: Sites larger than ten acres in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites of equivalent size with affordability were successfully developed during the prior planning period or other evidence demonstrates the suitability of these sites. The element identified several sites at less than a half-acre to accommodate the lower-income RHNA. The analysis indicated that these sites were identified due to their potential for lot consolidation based on common ownership. However, the analysis should also describe the City's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for redevelopment, recent trends of lot consolidation, and information on the owners of each aggregated site. Additionally, the element must also provide specific examples with the densities, affordability and, if applicable, circumstances leading to consolidation. The element should relate these examples to the sites identified to accommodate the RHNA for lower-income households to demonstrate that these sites can adequately accommodate the City's lower-income housing need.

Lastly, while the element did not indicate that the City identified sites larger than ten acres to accommodate the RHNA, it appears that the inventory includes sites larger than ten acres to address the lower-income RHNA. If necessary, the element must include a specific analysis including evaluating past trends or other relevant information to demonstrate the suitability and feasibility of developing of these sites. Based on a complete analysis, the element may need to add or modify programs to facilitate development affordable to lower-income households on small and large sites accommodating the RHNA.

Publicly-Identified Sites: The element identifies several publicly-owned sites to accommodate a portion of the RHNA including the school district and City-Owned sites. The element must include an analysis addressing general plan designations, allowable densities, support for residential capacity assumptions, existing uses, and any known conditions that preclude development in the planning period. For example, while the element indicated that it generally applied the criteria utilized in the nonvacant sites methodology, it must include a specific discussion identifying existing uses, outreach with owners and any barriers to development. Additionally, while the element included programs to outreach and coordinate with the school district, the element should discuss whether the City conducted any outreach to the school district prior to identifying these sites for the RHNA.

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

Availability of Infrastructure: The element indicated that the City's RHNA exceeds the population growth and available water capacity. The element states that the City would require supply beyond what was planned. Further the element included Program 28 (Planning for Water Resources) committing to change the growth rate and coordinating with the water district. However, the element must include significant commitments

beyond coordination and changing the growth rate to providing adequate water capacity during the planning period. Program commitments could include water conservation in the existing and new housing stock.

Environmental Constraints: While the element generally describes potential environmental constraints, it must still describe any other known environmental or other conditions that could impact housing development on identified sites in the planning period (e.g., shape, contamination, easements, conditions, compatibility).

Sites Inventory Electronic Form: Please note, pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element included an analysis of various standards and sites in the M-SC/LI zone, it must demonstrate the adequacy of the zone especially since this zone is dedicated to commercial and light industrial uses. While the element included a high-level statement that sites in these zones are near existing services and transit, it must analyze the suitability, including any conditions inappropriate for human habitability. Additionally, while the element stated that this zone allows for emergency shelters by-right, it must specifically indicate whether it allows emergency shelters without any discretion.

For your information, as of March 31, 2023, AB 2339 (2022) is now applicable to the City. AB 2339 (2022) specifies how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. While the element has addressed most requirements under this provision, it must address whether the City's definition of emergency shelters includes other interim interventions, including but not limited to, navigation centers, bridge housing, and respite or recuperative care, pursuant to Government Code section 65583, subdivision (a)(4). Based on a complete analysis, the element may need to add or modify programs to comply with state law.

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

Land Use Controls:

- *Downtown Core* - The element indicates that the Downtown core includes projects to comply with the historic overlay zone. The element must include an

analysis identifying all applicable land use controls including development standards, allowable densities, zoning, and any other relevant requirements. The analysis should evaluate these requirements for impacts on achieving maximum densities, cost, feasibility, and supply (number of units) of housing.

- *Heights* – The element indicates that the City generally limits heights to two stories or 25 feet except in some zones and with use permit approval (p. 47). The element also appears to include several zones that permit 30 to 35 du/ac (Table 44) including the Central Residential Medium, Central Medium High and Residential Very High zones but are potentially limited to developing at two stories. First, the element must reconcile this information and clearly indicate the allowable heights and stories within each zone. Second, the element must clarify when a use permit is required. For your information, requiring projects to obtain a use permit to achieve heights and stories that should otherwise be allowed given the maximum densities is generally considered a constraint. Based on a complete analysis, the element may need to add or modify programs committing to increase height requirements and removing requirements for projects to obtain discretionary permits to achieve certain heights.
- *Parking* – The element indicates that generally, multifamily projects are required to provide 2.25 spaces per unit and requires one space to be covered. Projects in the Downtown overlay zone are required to provide one covered space per studio and 1.5 spaces per one-bedroom unit. The element also includes Program 11, committing to studying and evaluating reduced parking scenarios. However, requiring smaller bedroom types (e.g., studio and one-bedrooms) to provide more than one space per unit and requiring covered parking is generally considered a constraint. Additionally, given the City’s other land use controls including lot coverage and heights, these parking requirements could likely constrain a projects ability to achieve maximum densities. The element must include or modify a program committing to reducing parking requirements for smaller bedroom types (e.g., one space for studio and one-bedroom units) and removing the covered parking space requirements.
- *Cumulative Impact* - The element must analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land use controls. In addition to the analysis noted above, the element should also evaluate any minimum unit size, minimum open space, and lot coverage requirements for impacts on supply, housing choice, affordability, and ability to achieve maximum densities and include programs to address identified constraints.

Local Processing and Permit Procedures: The element indicates that multifamily housing is required to obtain a conditional use permit (CUP) in several zones that are intended to permit multifamily (Table 48 and p. 59) and make findings related to impact on surrounding uses. While the element included Program 11, committing to adopting objective standards, it should clarify whether the adoption of objective standards will remove the CUP requirements for multifamily housing in these zones. If so, the element

should affirmatively state that commitment. For your information, subjecting multifamily housing to a CUP in zones where multifamily housing is already allowed is considered a constraint. Based on a complete analysis, the element may need to add or modify programs addressing constraints on multifamily housing.

Finally, the element should address public comments on this revised draft submittal and discuss compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

Codes and Enforcement: The element should clarify whether the City has made any local amendments to state building codes and if so, analyze impacts on the cost and supply of housing.

B. Housing Programs

1. *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 A3, 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 4 (Accessory Dwelling Units (ADUs)): This Program commits to various actions to facilitate the development of ADUs including monitoring the development of ADUs and implementing additional incentives, if needed. However, given the City's reliance on ADUs, the element must include a commitment to adjusting projected assumptions if the number of units and affordability do not actualize during the planning period. Specifically, the degree of additional actions should be in stride with the degree of the gap in production and affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then the element must commit to amending the housing element, identifying additional sites, and rezoning within a timely manner (e.g., within six months).

Program 11 (Compliance with State Law): The element referenced Program 11 to address compliance with state law to allow and permits manufactured housing in the

same manner and in the same zone as a conventional or stick-built structures are permitted (Government Code Section 65852.3). However, no corresponding action was found in this or any programs. The element should be revised to address these requirements.

Program 13 (Adequate Sites): The City will be establishing overlay zones to accommodate a shortfall to address the RHNA. The element should also commit committing to incentives (Beyond State Density Bonus Law) that facilitate and encourage sites to develop at the densities and intended uses as identified in the inventory.

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

As noted in Finding(s) A4, 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.

3. *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).)*

Goals, Priorities, Metrics, and Milestones: 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. Additionally, programs must be significant and meaningful to overcome fair housing issues and identified patterns and trends. While the element includes some programs to address AFFH, the element will need to be revised with significant strategies to promote place-based initiatives for community revitalization and conservation on the north side of the City and increase housing choices and affordability in areas designated as an RCAA, higher opportunity and higher-income generally on the southern portions of the City. These actions must have specific commitment, metrics, and milestones as appropriate. Additionally, quantified metrics that target beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed).

C. Consistency with General Plan

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

While the element described how consistency was achieved, it must discuss how it will be maintained throughout the planning period. For example, to maintain internal consistency, the element could include a program to conduct an internal consistency review of the general plan as part of the annual general plan implementation report required by Government Code section 65400. The annual report can also assist future updates of the housing element. For additional information and a sample program, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/analysis-consistency-general-plan.shtml>.