

December 8, 2014

To: Jess Negrete, Jess.Negrete@hcd.ca.gov
Cc: Felix Reliford, freliford@ci.milpitas.ca.gov
Steven McHarris, smcharris@ci.milpitas.ca.gov

Re: City of Milpitas Housing Element

Dear Mr. Negrete:

For the past 35 years, the Non-Profit Housing Association of Northern California (NPH) has served as the collective voice of those who support, build and finance affordable housing. We promote the proven methods of the non-profit sector and focus government policy on housing solutions for lower-income people who suffer disproportionately from the housing affordability crisis. On behalf of our members, I respectfully submit the following comments on the City of Milpitas' draft housing element (HE) for your consideration.

A. Housing Needs Assessment

Between 2000 and 2010, the population of the City of Milpitas grew by 6.53%. In contrast, the City *grew the number of jobs by 11% in two years* (2010-2012). Employment growth within the City significantly outpaces residential growth.

Data collected by the UC Davis Center for Regional Change¹ demonstrates the extent of the mismatch between existing low-wage jobs and the housing that is available to these workers. Specifically, UC Davis analyzed the mismatch between the number of low-wage jobs paying \$15,000 per year² versus the number of homes affordable to these workers, which at 30% of income amounts to \$750 per month for rent.

The resulting jobs to housing fit (JHFIT) ratio shows that the City has *9.85 low paying jobs for every affordable home* in the City. *Although 18.7% of jobs within the City pay very-low income wages, only 7.1% of the current housing stock is affordable to these workers.*

¹ UC Davis data and methodology available at <http://bit.ly/1p40cws>

² Data utilized originated from the Longitudinal Employer Household Dynamics (LEHD) Origin-Destination Employment Statistics Dataset (LODES) collected and disseminated by the US Census tracks this data via the Workplace Area Characteristics file. This data can be downloaded here - <http://lehd.ces.census.gov/data/>



The Voice of
Affordable Housing

NON-PROFIT HOUSING ASSOCIATION
OF NORTHERN CALIFORNIA

Assuming that two very-low wage earners reside in a single apartment, fair market rent would be \$1,500, well below the average rent for Santa Clara County pegged at \$2,580 per month as of October 2014. In the past year alone, average rents in the County have increased by 11.3 percent whereas average incomes increased marginally by 1 percent.

Continuing to grow the number of jobs in the City through commercial development without addressing the accompanying housing growth for those new employees exacerbates housing problems not only for the City but also for nearby cities and runs counter to the regional effort to reduce driving.

NPH strongly suggests the City include the following programs in the draft housing element:

- *A program to monitor jobs housing fit (JHF) in the City for renters and homeowners. JHF is defined as the ratio of low-wage jobs (those paying \$1,250 per month or less) to affordable rental (apartments that cost \$750 per month or less) or affordable homes (owner-occupied or vacant for sale housing units at \$150,000 or less).*
- *A program to improve low wage jobs and affordable housing fit currently pegged at 9.85.*

B. RHNA Progress

Based on our review of the City's Annual Progress Reports, it appears that the City's performance during the 2007-2014 planning period fell short of meeting the City's housing need, especially with respect to lower-income households, while significantly exceeding the above moderate income housing production allocation. Performance values shown as % of total RHNA for each affordability level:

- Very low income (0-50% AMI) - 49%
- Low income (51-80% AMI) - 26%
- Moderate (81-120% AMI) - 60%
- Above moderate income (120% AMI+) - 598%

Because of the existing deficit of homes available to those earning less than 80% of the area median income, the shortage of available land, and the continued employment growth in the coming decades³, the City must incentivize and prioritize the production of housing affordable to all income segments, especially within the established Priority Development Area (PDA), key transportation corridors, and publicly owned land.

³ Plan Bay Area projects that the number of jobs in the City will grow by as much as 28% between 2010 and 2040.

C. Housing Resources

Low Income Housing Tax Credits (LIHTC) Scoring

Prior to their dissolution in 2011, cities relied on Redevelopment Agencies (RDA) to provide funds for affordable housing production. Since the dissolution of RDA, non-profit housing developers have had to rely on very competitive federal tax credits, namely the Low Income Housing Tax Credit (LIHTC), to finance a housing project affordable to those making less than 80% AMI. In order to qualify to apply for LIHTC, projects must be consistent with site and amenity criteria for public transportation and services/amenities.

Appendix C provides a detailed site inventory anticipated to accommodate the City's allocation of 3,290 units. An analysis of LIHTC viability of the identified opportunity sites shows that only 3 of the parcels⁴ identified score well against the LIHTC criteria. **The maximum feasible number of units that could be built through tax credits is 192 units, significantly below the 3,290 units necessary.**

As such, the City should identify other programs to mitigate its affordable housing need. One such program is prioritizing affordable housing on publicly owned land. By signing of AB 2135: Surplus Land for Affordable Housing (Ting) the Governor strengthened the Right of First Refusal enjoyed by affordable housing when local agencies – including special districts such as transportation authorities – dispose of surplus land. The City should work with the Santa Clara Valley Transportation Authority (VTA) to identify agency owned parcels that may be suitable for redevelopment and prioritize these for housing affordable to those earning 80% AMI or less.

NPH strongly suggests the city include the following programs in the draft housing element:

- *A program to identify all publicly owned parcels and develop a policy to prioritize, require, or incentivize housing affordable to those making 80% AMI or less on public land.*

Financing Tools

The loss of redevelopment funds, as well as the *Palmer* decision, has severely limited the development of affordable housing across the region. Given the high costs of land and the overall market strength in the city not-for-profit developers cannot against market rate developers to acquire land for development. In order to adequately house current and future workers across all income levels, NPH strongly suggests the city include the following programs in the draft housing element:

⁴ The 3 parcels that scored well against LIHTC are as follows: 7027 acre parcel at Sinclair Frontage Rd & Los Coches St.; 2.65 acre parcel at S. Milpitas Bl & Los Coches St.; and 11.54 acre parcel at S Main St & Los Coches St.

- *A program to conduct a non-residential nexus study to lay the groundwork for a future commercial linkage fee.* The commercial linkage fee requires developers to ameliorate some of the housing impacts generated by new commercial development by requiring developers to pay fees for the development of affordable housing. As demonstrated by the cities of Sunnyvale and Mountain View, a well thought through commercial linkage fee does not deter commercial development. In high-development areas like Milpitas, a commercial linkage fee will provide a continuous funding source for the development of affordable housing.
- *A program to conduct a residential nexus study to lay the groundwork for a future housing impact fee.* Many local jurisdictions, such as Mountain View and most recently Emeryville, Daly City and San Jose, have established housing impact fees to ameliorate the loss of RDA. Housing impact fees provide a continuous local funding source for the development of affordable housing.
- *A program to set aside 20% of annually recurring tax increment funds ("boomerang funds") for affordable housing.* The City of Milpitas declined to set-aside one-time former redevelopment "boomerang" funds for affordable housing. By doing so the City failed to take advantage of a match offered by Santa Clara County which would have resulted in close to \$1.9 million for affordable housing. Given the significant dearth of funding for affordable housing and the very high need for affordable homes, the City should include a program to commit 20% of the yearly tax increment funds they receive towards affordable housing.

Thank you for the opportunity to provide comments on the city's housing element. Please feel free to contact me regarding any questions.

Sincerely,

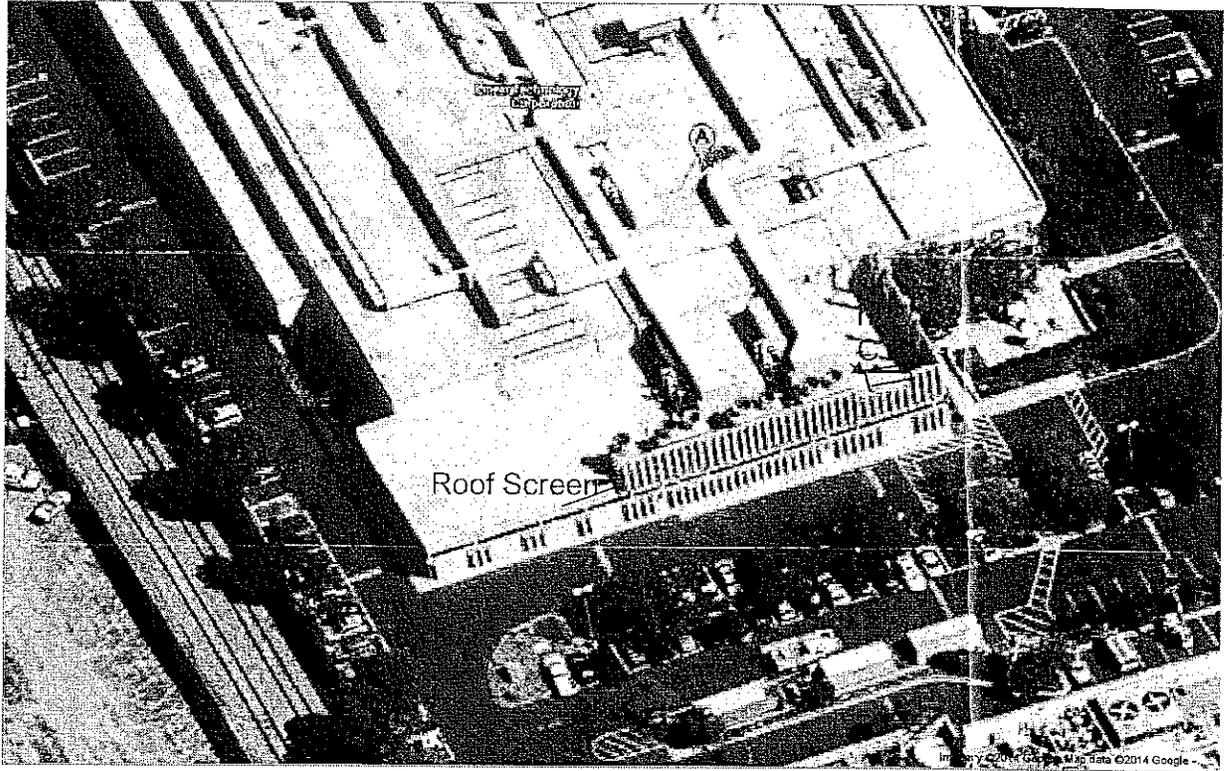


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Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



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December 5, 2014

SENT VIA E-MAIL: jess.negrete@hcd.ca.gov

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Re: Comments on Milpitas's Draft Housing Element

Dear Mr. Negrete:

Public Interest Law Firm and Fair Housing Law Project (programs of the Law Foundation of Silicon Valley)¹ write to provide written comments regarding the City of Milpitas's ("City") Draft 2015-2023 Housing Element ("Housing Element") on behalf of low-income residents of Milpitas. Our review of the City's Housing Element concludes that the City is failing to meet its obligations under the Housing Element. The Housing Element fails to do a sufficient analysis of the prior Housing Element, fails to identify adequate sites, and does not include specific programs. Moreover, the City has taken affirmative steps through the Housing Element to discourage including programs in its Housing Element that would promote the development of affordable housing.

Public Participation

We are dismayed that the City has failed to seriously consider comments provided by the Law Foundation and other advocacy groups during the public participation process. The comments specifically encourage the City to consider a program to permanently fund of affordable housing, such as housing impact fees, and to amend the programs to include anti-displacement policies. The Planning Commission did engage with advocates, and instructed City Staff to amend the Housing Element to include specific programs that would permanently fund affordable housing, such as considering impact fees. However, the City Council instructed staff to remove those specific programs, and to remove any references to any programs that would consider funding

¹ PILF's mission is to protect the human rights of individuals and groups in Silicon Valley who are underrepresented in the civil justice system. PILF accomplishes its mission by leveraging the skills and resources of pro bono attorneys to provide high-quality representation in class action and impact litigation, advocacy in state and local government, and litigation support to local legal services programs. One of PILF's five litigation and advocacy priorities is to preserve affordable housing.

The mission of FHLP is to ensure that all people may freely choose a place to live without regard to their race, color, religion, sex, age, national origin, sexual preference, marital status, source of income, operation of a licensed day care, disability, or whether they have children in their family.

for affordable housing. In fact, the only change we recognized between the draft initially made public and the one submitted to HCD was the removal of this paragraph from Program D1² – “Advocate for policies and legislation at the State and Federal level that increase the funding available to support the development and preservation of affordable housing”:

“NOTE: Following the loss of Redevelopment Agencies in California, jurisdictions throughout the State are facing increased challenges with respect to funding the development and preservation of affordable housing. Many cities already have, or are considering, adopting various programs that can be used to create or preserve affordable housing, including inclusionary zoning requirements, housing impact fees, and commercial linkage fees. Although these programs are not required by HCD for Housing Element certification, implementing one or more of these programs would provide a more robust set of housing policies and programs in the City of Milpitas. These local mechanisms are particularly vital to the City as it builds out more than 6,000 market rate units without any codified mechanism in place to capture part of this value for the benefit of low income residents of Milpitas.”

Review & Revise

The draft Housing Element does not adequately analyze the progress and outcomes from the prior Housing Element. The draft Housing Element states that the number of housing units built exceeded the RHNA, but the City did not meet its obligations for very-low-, low-, and moderate-income households.³ In fact, the City developed 637.1% of its RHNA for above moderate families but only 36.7% of its RHNA for very low income families, 10.5% of its RHNA for low-income families, and 39.5% of its RHNA for moderate income families.⁴ Further, although the City enumerated the number of affordable units built, the City does not describe where they were built. As discussed in the Sites Analysis, the City may be including the South Main Senior lifestyles property towards the current and past RHNA allocations for very low income families.

The HCD building blocks require an analysis of the effectiveness of each element. Specifically, HCD requires “For each program, the analysis should compare significant differences between what was projected or planned in the earlier element and what was achieved. Analyze the differences to determine where the previous housing element met, exceeded, or fell short of what was anticipated.”⁵ There is no analysis as to why the City failed to meet its affordable housing obligations for low-income individuals and performed so poorly during the past planning period.⁶ The City needs to engage in an analysis in order to adequately update its program to address this shortfall.

² Draft Housing Element, p. 98.

³ Draft Housing Element, p. 6.

⁴ *Id.*

⁵ Government Code Section 65588, HCD Review and Revise, http://www.hcd.ca.gov/hpd/housing_element2/GS_reviewandrevise.php.

⁶ *Id.*

Potential Governmental and Non-Governmental Restraints

The draft Housing Element fails to address the following restraints:

- **Land-use controls:** The City must analyze land-use controls, such as zoning and growth controls, as potential government constraints.⁷ A housing element must identify and “analyze the impact of the growth management or controls process and procedure on the cost and affordability of housing. Even if the growth control ordinance allows the community to meet its entire RHNA, the ordinance may still be a constraint that requires mitigation because of increased processing costs or timing delays.”⁸ Currently, Milpitas’ hillside area is zoned for low and very low density, some areas as low as 0.1 units per acre.⁹ This is a land use control that would hinder the development of multi-family housing and should be identified as a governmental constraint to the development of affordable housing.

- **Affordable Housing:** The City is required to identify potential and actual constraints to the development of housing for low-income families.¹⁰ The City has identified the use of development agreements as the main source of achieving a 20% affordable housing goal.¹¹ However, the City has clearly failed to meet this affordable housing goal, although there has been significant residential development in the City. Therefore, the use of development agreements and the lack of a permanent source of affordable housing must be identified as a potential governmental constraint.

- **Boomerang Funds:** The City of Milpitas declined to set-aside former redevelopment “boomerang” funds for affordable housing.¹² However, this is not addressed as a constraint to the development of affordable housing. The Housing Element should analyze the city’s decision to not set aside boomerang funds as a constraint to the development of affordable housing.

Non-Government Constraints:

- **Economic Displacement & Rent Burden:** We are greatly concerned with the displacement of low-income residents from the City of Milpitas. There has been a 41% increase in rent in Milpitas since 2005 and 44% of Milpitas renters face a rent burden.¹³ With no policies protecting low-income residents from rent increases or displacement, many low-income residents are being forced out of the City. We believe that this is a pressing issue

⁷ Government Code, Section 65583(a), “Land-Use Controls, available at http://www.hcd.ca.gov/hpd/housing_element2/CON_landuse.php).

⁸ Id.

⁹ Draft Housing Element, p. 69.

¹⁰ Government Code Section 65583(a)(6).

¹¹ Draft Housing Element, p. 76.

¹² Hepler, Lauren, “Who’s Footing the Bill for Silicon Valley’s Housing?”, Silicon Valley Business Journal, June 14, 2014. Available at:

<http://www.bizjournals.com/sanjose/news/2014/06/17/whos-footing-the-bill-for-silicon-valleys-housing.html?page=al>

¹³ Draft Housing Element, p. 29 and p. 33.

that is only superficially addressed in the Housing Element. The Housing Element should do a deeper analysis of the economic displacement and recommend policies that will prevent displacement of low-income residents.

At-Risk Units

The City must do more to describe efforts to preserve at-risk units during the planning period. The inventory of affordable housing units lists several housing developments without expiration dates and does not identify the type of subsidy, such as whether the units are part of the BMR program, LIHTC, or have some other subsidy, as required by the statute.¹⁴

As to the units that the City has identified as at-risk, the City fails to comply with the regulations as there is little detail about the City's effort to engage with qualified entities who might preserve the at-risk units or the City's efforts to potential funding.¹⁵ Specifically, the HCD building blocks require the City to "consider the use of all federal, state, and local financing and subsidy programs," identify the amounts of funding for each program, and which funding will be targeted for the preservation efforts.¹⁶ The City only states the City does not have enough funding to support preservation and only lists general funding sources without describing how such funding could be used to support the preservation of the at-risk units at SunnyHills apartment or what the City will do to try to get such funding.¹⁷ Further, the City's analysis fails to include specific actions that the City will take to engage with entities willing to preserve the housing or efforts to encourage getting federal grants, low-income tax credits, or funding through the Housing Trust. HCD should require the City to detail preservation efforts, and describe more specific funding sources and specific plans to reach out to entities who may be interested in the preservation of Sunny Hills.

Sites Inventory and Analysis

The City is including 56 very-low income units to be built at South Main Senior Lifestyles towards its RHNA obligation for the next planning period.¹⁸ However, it seems that the same property, South Main Senior Lifestyles, is included and counted in the current Housing Element towards the RHNA obligation for the 2007-2014.¹⁹ As the City has not specified the sites that were used to meet its RHNA obligations during the current planning period in the draft Housing Element, it is unclear whether the South Main Senior Lifestyles is being counted for both planning periods. HCD should require that the City clarify whether the very low-income units at South Main Senior Lifestyles re being counted towards the current or future RHNA obligation.

As a general matter, the sites inventory and analysis in the draft Housing Element is inadequate. The draft Housing Element is missing a comprehensive analysis of the sites as required by HCD.

¹⁴ Gov't Code Sec. 65583(a)(9)

¹⁵ Gov't Section 65583(a)(9)(d).

¹⁶ (HCD, Identification and Analysis of Developments At-Risk of Conversion http://www.hcd.ca.gov/hpd/housing_element2/EHN_atrisk.php).

¹⁷ Draft Housing Element, p. 35.

¹⁸ Draft Housing Element, 117.

¹⁹ Milpitas Housing Element 2007-2014, p. 7-70, available at http://www.hcd.ca.gov/hpd/housing_element2/GS_reviewandrevise.php.

HCD calls for analysis of “[t]he condition or age of existing uses and the potential for such uses to be discontinued and replaced with housing (within the planning period)” for each site that a city plans to include as underutilized.²⁰ The description of the sites are limited to one chart and do not have sufficient detail; they do not describe what specific business or retailers are on the site, nor any efforts to reach out to business owners about their interest in redevelopment. There is no map for each specific site, nor any pictures showing the existing use or future planned use. There is no indication that the extant businesses are blighted, outdated or have any plans to move. The vast majority of the sites are not vacant, and there is no analysis as to why redevelopment could potentially occur on the sites.

The sites inventory contains no “explanation of the methodology to determine development potential considering factors, including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions and regulatory or other incentives to encourage additional residential development.”²¹ In other words, there is no explanation as to why the sites, most of which have existing commercial uses, have the potential to be developed into high-density residential use within the next planning period.

In general, the City assumes that every single unit developed on higher density parcels will be affordable to low- and very low-income households. This is a highly unrealistic assumption given the difficulty of developing such housing and the current market’s strong emphasis on market-rate housing. The City should do a deeper of analysis of what sites could be suitable for affordable housing financing and how such financing could be secured

As to listed sites (Table C-2), many are very small parcels that are less than an acre (some as small as 0.21 acres)). These parcels are unlikely to actually support affordable housing, despite the high current allowable densities for these sites (41-60 dwelling units per acre). Milpitas has no program for lot-consolidation that would facilitate the consolidation of smaller parcels. Because the sites will only allow for the development of a small number of units, it is unclear whether these sites could realistically support the development of housing affordable to lower-income households.

As HCD states . . .

. . . while it may be possible to build housing on a small lot, the nature and conditions (i.e., development standards) necessary to construct the units often render the provision of affordable housing infeasible. For example, assisted housing developments utilizing State or federal financial resources typically

²⁰ HCD, Analysis of Non-vacant and Underutilized Sites
http://hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#nonvacant/

²¹ Government Section 65583(c) and (c)7.

include 50-80 units. To utilize small sites to accommodate the jurisdictions share of the regional housing need for lower-income households, the element must consider the impact of constraints associated with small lot development on the ability of a developer to produce housing affordable to lower-income households.²²

These small parcels are unlikely to support affordable housing and the City must provide justification for their inclusion. Moreover, it is unlikely that they will be eligible for competitive financing, like low income housing tax credits. HCD should require that the City to a deeper analysis of the opportunity sites, including a detailed description of what parcels could be developed into affordable housing *and* how such financing could be secured.

Qualified Objectives and Housing Programs

The City needs to revise its Qualified Objectives and Housing Programs to include more specific actions or timelines. The programs in the draft Housing Element lack specific actions or timelines for implantation as required. Nearly all the programs have an “ongoing timeline.” The Housing Element must be revised to include specific program with specification actions during a specific timeline.

Many of the programs offered in the draft Housing Element are exactly the same as the prior planning period. The housing programs do not include any programs to address Milpitas’ poor performance in meeting its RHNA obligations for very-low, low, and moderate income families during the past planning period. As many of the programs are the same, it is unlikely that Milpitas will meet its RHNA obligations for very-low, low, and moderate income families during the 2015-2023 planning period.

Moreover, HCD requires that the Housing Element include programs to assist in the development of housing for extremely low, very low, and moderate income households.²³ The City must update its housing programs to include *specific* programs that will promote the development of affordable housing, in order to demonstration that it will meet its RHNA obligations during the next planning period. HCD should require the City to consider programs that would promote the development of affordable housing, and more specifically, support a permanent source of affordable housing, such as a nexus study to look at housing mitigation or commercial linkage fees. Moreover, the City most include programs to address constraints, such as updating zoning for hillside areas, taking more specific actions to preserve at-risk units, and developing programs to prevent the displacement of low-income families from the City.

²² (HCD, Analysis of Sites and Zoning, avail. at http://hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#capacity).

²³ Government Code Section 65583(c)(2).

We would be happy to speak with you to discuss these comments further. If you have any questions, please feel free to contact Nadia Aziz at (408) 280-2453.

Sincerely,

/s/

Nadia Aziz, Senior Attorney
Fair Housing Law Project

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