



October 28, 2024

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Sent via Email: Clare.Blackwell@hcd.ca.gov

RE: City of Merced's Draft 6th Cycle Housing Element

Dear Ms. Blackwell,

Leadership Counsel for Justice and Accountability ("LCJA") in collaboration with South Merced Residents for Justice write and submit this comment letter regarding the City of Merced's ("City") August 9th, 2024 Draft Housing Element ("Draft"). LCJA works alongside the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. We advocate for policy and practice changes to meet the housing needs of all residents in the City, especially low-income residents and those with special housing needs; we work to overcome fair housing disparities that impact low-income communities.

For the reasons set forth below, which supplements the discussion contained in our June 12, 2024 letter, the Draft is inadequate and must be revised.

I. Lack of Community Engagement

Community engagement and public participation is a critical component of the process and in order for the City to address this requirement, the housing element must describe meaningful, frequent, and ongoing public participation with key stakeholders. Prior to writing the Draft, the City should have conducted outreach to notify the public of the update to the housing element, while emphasizing the importance of the public's participation. The community engagement informs the City of any housing and community development needs and serves as a foundation for the City's Assessment of Fair Housing. (Affirmatively Furthering Fair Housing,

Guidance for All Public Entities and for Housing Elements (April 2021 Update) (“HCD Guidance”), p.21-22.)

The Draft that the City submitted to the California Department of Housing and Community Development (“HCD”) failed to incorporate any meaningful community engagement. Examples included in the Draft were merely outreach conducted to let the community know about upcoming public meetings. These opportunities do not reflect targeted, varied or inclusive engagement. The recommended program solutions that community members have shared in the workshops and the comment letters were not included in the amended Draft.

II. Failure to Conduct a Compliant Assessment of Fair Housing

A. The Draft Must Include an “Assessment of Fair Housing” That Complies with State Law.

The “assessment of housing needs,” or HNA, is a mandatory component of a housing element. (Gov. Code, § 65583(a).) In addition, following “decades of failing to achieve the objective of adequate affordable housing,” the California Legislature in 2019 imposed on all public agencies a mandatory duty to affirmatively further fair housing (“AFFH”). (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221, citing Gov. Code, §8899.50.). As applied to cities and counties, these amendments include a requirement that the HNA include an “assessment of fair housing” (“AFH”), in addition to an analysis of the locality’s household characteristics and housing conditions. (HCD Guidance, p.22.).

An AFH must analyze how relevant factors in the locality “cause, increase, contribute to, maintain, or perpetuate” fair housing issues (HCD Guidance, p.24; *see also* Gov. Code, §§ 65583, subds. (c)(10)(A), (c)(10)(B), 8899.50, subds. (a), (b), (c).) Factors to be analyzed include spatial and temporal patterns and trends, local data and knowledge, as well as policies and practices or other information relevant to fair housing conditions. (HCD Guidance, p.25.). Ultimately, the relevant patterns, trends, conditions, and practices that impact fair housing choice must be evaluated for each one of five required components: “fair housing enforcement and outreach, integration and segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs including displacement risk.” (HCD Guidance, p.24; *see also* Gov. Code, § 65583(c)(10).).

Here, the AFH in the Draft is inadequate for the following reasons.

B. The Draft Housing Element AFH Inadequately Summarizes Fair Housing Enforcement and Outreach Capacity.

As addressed in our June 12, 2024, comment letter, the Draft includes only a brief discussion of the City's fair housing outreach and enforcement capacity. (Leadership Counsel for Justice & Accountability, City of Merced Draft Housing Element Comment Letter, p.5 (June 12, 2024) ("Comment Letter").) Key shortcomings include the absence of any discussion of the limited capacity of Project Sentinel, or of the lack of resources devoted to fair housing enforcement. The Draft as amended does little to address these concerns. Amendments to the Draft do acknowledge the inadequacy of Project Sentinel, referring to the intake and referral program which directs individuals to "other appropriate agencies and outside resources" when Project Sentinel services are "not adequate" (Draft, G5-6.) However, while the Draft's discussion of enforcement and outreach capacity still states, "there are no active or recent fair housing lawsuits, settlements, or legal cases" in Merced, the amended draft now also refers to four pending cases opened by Project Sentinel regarding "eviction practices" and "disability related complaints" without any further discussion. (Draft, G5-5, G5-6.) This summary must be revised to include a discussion of how the acknowledged shortcomings in Project Sentinel's outreach and enforcement capacity impact populations of protected classes in the city, as well as to address any patterns in fair housing issues observable in the pending Project Sentinel cases, to be appropriately informative. (HCD Guidance, p.28 ["The summary should include... additional relevant information about fair housing enforcement, outreach capacity, and resources in the jurisdiction and region affecting groups with other protected characteristics"].)

C. The Draft Housing Element AFH Inadequately Analyzes Integration and Segregation.

To comply with the requirements of the Housing Element Law, the AFH must analyze patterns and trends of segregation and integration related to protected characteristics. (HCD Guidance p.30; *see also* Gov. Code, § 65583(c)(10).) The analysis must discuss the degrees of segregation and integration with respect to race and ethnicity, income, familial status, and persons with disabilities, and should also address areas of ongoing and concentrated segregation. (Gov. Code, §§ 8899.50, 65583(c)(10).) As with the other required components, the AFH must compare patterns at both the local and county or regional level. (HCD Guidance, p.24; *see also* Gov. Code, § 65583, subds. (c)(9), (c)(10).) Further, local data and knowledge should be employed to the analysis of integration and segregation related to protected characteristics, and any other relevant factors should be discussed. (HCD Guidance, p.24-25.)

Our previous comments emphasized that, while the Draft includes population data for race and ethnicity, disability, familial status, tenure, and income in tabular form as well as from the AFFH Data Viewer map layers, these data reflect a range of sources that is too narrow to support meaningful conclusions. (Comment Letter, p.6.) For instance, in addition to the potential for inaccuracy due to the use of the AFFH Data Viewer without incorporation of additional resources such as the CalEnviroScreen, the population tables included in the Draft as amended

only cite to 5-Year American Community Survey sources. (Draft, G5.7.) However, HCD Guidance emphasizes that, at minimum, the AFH should at least compare trends between the most recent 5-Year American Community Survey and the prior decennial census. (HCD Guidance, p.24.) Further, the AFH is inadequate due to a critical lack of *analysis* of these data in light of local knowledge and other relevant factors. For instance, the Regional Assessment of Fair Housing notes the history of racially exclusionary practices and redlining in the broader region. (Merced County Multi-Jurisdictional Housing Element, 5-52.) However, the City's Draft makes no effort to draw any comparison between these regional patterns and local conditions, nor does it analyze their contemporary impact on populations across protected characteristics. The Draft must be revised to "holistically evaluate the patterns and practices" related to segregation so that it can be used to "better identify and prioritize contributing factors to fair housing issues." (HCD Guidance, p.30.)

We also note that the discussion of segregation is undermined by reliance on "anecdotal" evidence used to "confirm" the assumption that, though census data indicates that "the northern portion of District 1 is characterized as having high white segregation," this may not be accurate because the census tract extends beyond city limits. (G5-7.) It is improper to rely on the City's admittedly anecdotal impression to reject or minimize conclusions derived from legitimate data sources. If the City questions the accuracy of available data, it must rely on other statistically-sound methods to refine that data. Absent such refinement, the City must draw conclusions from the data as presented.

D. The Draft AFH Inadequately Analyzes Racially or Ethnically Concentrated Areas of Poverty and Racially Concentrated Areas of Affluence.

The AFH must include an analysis of Racially or Ethnically Concentrated Areas of Poverty ("R/ECAPs") which discusses the incidence of concentrated areas of poverty and segregation within the locality, as well as within the region. (HCD Guidance, p.32; *see also* Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c).) Both the local and regional description are crucial, because any "difference between the locality and the region is an essential part" of evaluating policies based on the priority of fair housing issues. (HCD Guidance, p.33.)

In contrast to these requirements, the Draft merely identifies the presence of three areas of high segregation and poverty within the city and describes the districts where the areas are located. (Draft, G5-17.) This is insufficient. To appropriately assess the fair housing implications of the identified R/ECAPs, the Draft must be revised to include an analysis of municipal R/ECAP trends and patterns as they compare to R/ECAP trends and patterns across the region. In addition, the Draft must acknowledge that past policies and practices in the region have resulted in exclusionary development patterns and disparities in investment. (Merced County

Multi-Jurisdictional Housing Element, 5-52.) Therefore, this component should be revised to reflect trends in R/ECAP conditions over time. Similar deficiencies in the analysis for Racially Concentrated Areas of Affluence should also be corrected.

E. The Draft Housing Element Lacks the Minimum Specificity Required of the Access to Opportunity Analysis.

The AFH must adequately analyze any significant disparities in access to opportunities. (Gov. Code, §§ 65583, subd. (c)(10), 8899.50, subds. (a), (b), (c).) The access to opportunity component itself comprises several place-based characteristics which are critical to residents' quality of life. The required variables of this analysis are education, transportation, economic development, environment, and should include other factors. (HCD Guidance, p. 35.) Other factors may include opportunities relating to recreation, access to healthful food, and neighborhood safety. (HCD Guidance, p.34.) Analysis of access to these variables must be conducted along the same spatial and temporal dimensions as each of the other Housing Element components, and should be conducted for each protected class, with specific analysis of the unique housing and community development needs and barriers of people with disabilities. (HCD Guidance, p.36.)

Our discussion regarding the limited depth of discussion of each of these variables made in our prior comment letter is still applicable to the Draft as amended. It appears that the only revision made to this portion of the Draft is the change in the Access to Quality Education subsection, which includes edited language describing the percentages of students classified as English learners and as eligible for free or reduced-price meals in the Merced City School District. (Draft Housing Element, G5-25.) While the various data describing conditions related to transportation, education, economic outcomes, and a healthy and safe housing environment are presented, the Draft still fails to meaningfully analyze these data. The Draft should be further amended so that the access to opportunity analysis includes consideration of whether patterns of disparate access to transit, education, economic opportunities, and healthy and safe housing are present across protected characteristics, how these disparities are aggregated geographically within the city in comparison to the region, and how these patterns and trends compare to broader segregation patterns and R/ECAPs. (HCD Guidance, p.35.) Furthermore, this section must be revised so that it makes the required analysis of patterns and trends regarding each of these variables faced by populations with one or more disabilities. (HCD Guidance, p.36.)

F. The Draft Housing Element Does Not Assess Disproportionate Housing Needs Across Protected Characteristics.

Factors that must be addressed by a housing element's disproportionate housing needs component are cost and severe cost burden, overcrowding, substandard housing, and

homelessness. (HCD Guidance, p.39.) However, merely summarizing the statistics related to these “housing problems” is not sufficient for a compliant assessment of disproportionate housing needs. Rather, for the purposes of the AFH, a locality’s disproportionate housing need describes a “condition in which there are significant disparities in the proportion of members of a protected class experiencing a category of housing need when compared to the proportion of members of any other relevant groups, or the total population experiencing that category of housing need.” (HCD Guidance, p.39.) Therefore, disproportionate housing needs analysis must reflect patterns and trends in these factors across populations representing all protected characteristics, so as to offer meaningful comparisons of proportions across relevant groups and with the population at large. (*Id.*)

As amended, the Draft has not resolved the concerns expressed in our previous comments regarding the limited data sources referenced, and the failure of the section to identify whether disparate housing needs impact populations of protected classes. (Comment Letter, p.11). Also, while the Regional Affirmatively Furthering Fair Housing Analysis identifies historical and ongoing regional conditions of substandard housing faced by farmworkers,¹ this section lacks any discussion of disproportionate risks of cost burden, overcrowding, homelessness, or displacement on farmworker populations in the City of Merced. In addition, the Draft has not been revised to reflect our concerns regarding disaster related displacement. The AFH discussion of displacement risks must be updated to reflect the potential impacts of disasters on protected classes in the city, especially in light of the recent history of flooding.²

III. FAILURE TO AFFIRMATIVELY FURTHER FAIR HOUSING, COMPLY WITH STATE AND FEDERAL FAIR HOUSING LAWS, AND DISPARATE IMPACT.

A. The Draft Fails to Affirmatively Further Fair Housing and Reinforces and Perpetuates Segregated Housing Patterns in Violation of State and Federal Law.

Cities in California have a mandatory duty to affirmatively further fair housing. (Gov. Code, § 8899.50.) This duty requires cities to “do more than simply refrain from housing discrimination.” (*Martinez*, 90 Cal.App.5th at 220.) Rather, the AFFH duty includes “a mandate to take the type of actions that undo historic patterns of segregation and other types of

¹“Migrants today confront multiple social, environmental, and access issues, including affordable, safe, and sanitary housing.” (Merced County Association of Governments, Merced County Multi-Jurisdictional Housing Element (2024-2032) Public Review Draft, p. 5-52 (May 13, 2024).)

² Victor Patton, Here’s How Merced Was Hit by an ‘Insane Amount’ of Flood Water and What Happens Now, *MERCED SUN STAR* (Jan. 18, 2023), <https://www.mercedsunstar.com/news/weather-news/article271315592.html#storylink=cpy>.

discrimination and afford access to opportunity that has long been denied.” (*Id.* at 288 quoting 80 Fed. Reg. 42274 (July 16, 2015).)

Further, cities fail to meet this duty when their actions are inconsistent with mandatory requirements under the state Housing Element Law. (*Id.* at 221 [finding that the adoption of a zoning overlay inconsistent with Housing Element law density requirements violated the § 8899.50 duty to administer “programs and activities relating to housing and community development in a manner to affirmatively further fair housing”].) HCD Guidance requires that a locality must include an AFH in each housing element’s assessment of housing needs. (HCD Guidance, p.22.) Thus, to meet the duty of affirmatively furthering fair housing, a locality must comply with the mandatory requirements of the Housing Element Law by including an adequate AFH in the housing needs assessment.

As discussed above, the Draft as amended continues to lack an AFH that meets the standards required pursuant to HCD Guidance and state law. Generally, the analysis lacks depth and particularity, where data are presented without a discussion of trends and patterns across the spatial and temporal dimensions required. Additionally, there is a lack of diversity among the sources of data referenced across the AFH components, including a general lack of local knowledge and data that would serve to supplement the high-level federal resources cited. Further, the AFH is missing critical, required aspects, including a specific discussion of disparities in access to the opportunity variables for persons with disabilities. Until the Draft is revised to correct these deficiencies, it is not compliant with the requirements of California’s Housing Element Law. Consequently, consistent with *Martinez*, failure to meet the standards of the Housing Element Law also constitutes a failure to comply with the duty to AFFH under Government Code § 8899.50.

In addition, the inadequacy of the AFH is inconsistent with both state and federal housing discrimination laws. In *Martinez*, the court held that when a violation of the Housing Element Law also results in a discriminatory effect, such that it imposes a disparate impact on protected classes, the violation of the Housing Element Law also constitutes a violation of the affordable housing anti-discrimination statute codified in Government Code § 65008 (*Martinez*, 90 Cal.App.5th at 281.) The court found that the standard for determining whether a city’s violation of law amounted to a disparate impact under § 65008 was the same analysis required for violations of the California Fair Employment and Housing Act. (*Id.* at 281 [“the standards used to prove a discriminatory effect for a housing discrimination claim under the FEHA also apply to a discrimination claim under section 65008, subdivision (b)(1)(C).”].) Thus, the relevant standard is “whether (1) the violations of the Housing Element Law perpetuates or predictably results in a disparate impact on low income housing development” and whether the violation reinforces or perpetuates “segregated housing patterns, based on membership in a protected class.” (*Id.*, citing Cal. Code Regs., tit. 2, § 12060(b) [internal quotation marks omitted].)

Here, the AFH component of the housing needs assessment included in City's Draft Housing Element fails to conform to the requirements laid out in Government Code § 65583 as articulated by HCD Guidance. Because compliance with the requirements of § 65583 is intended to meet the AFFH duty under § 8899.50, this violation is necessarily inconsistent with the goals of AB 686 to address affordability disparities in access to housing opportunities and to replace segregated living patterns with integrated ones. (HCD Guidance, p.15.) The connections between the AFH and affordability discrimination and segregation are particularly strong here, because of how the AFH is intended to "consider the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation" and "disparities in access to opportunity" so that it is clear what "action or program" it would take to "not only address, but overcome and undo, the identified fair housing issues." (HCD Guidance, p.24-25.)

For the reasons identified in this and our previous comment letter,³ the City's AFH does not appropriately consider the elements and factors that cause, maintain, or perpetuate segregation. Therefore, it cannot function as the AFH is intended to: as a guide for the City in overcoming and undoing these existing disparities, which resulted from years of disinvestment in disadvantaged communities and low-income neighborhoods. Thus, the inadequacy of the AFH is not only in violation of the requirements of the Housing Element Law, but also serves to perpetuate segregated housing patterns reflecting protected characteristics. As a result, it is unlawfully discriminatory under both § 65008 and the FEHA.

We also note that this perpetuation of segregated housing patterns is inconsistent with federal law. The court in *Martinez* recognized that the same violation of the Housing Element Law that supported the plaintiff's state anti-discrimination claims was sufficient to allege that the violation amounted to a "practice" that "perpetuates segregated housing patterns" under the federal Fair Housing Act. (*Martinez*, 90 Cal.App.5th at 263.) As a result, revisions to the AFH must be prioritized by the City to ensure compliance not only with the state's Housing Element Law, but also with the duty to AFFH under §8899.50, such that the City does not discriminate against affordable housing under § 65008, and to address housing desegregation requirements under both the FEHA and FHA.

Finally, while we appreciate the inclusion of specific commitments intended to comply with the duty to AFFH, these commitments are wholly inadequate to meet the mandate to undo the segregated housing patterns recognized in the Draft. (See G7-18 [Affirmatively Furthering Fair Housing Action Matrix], G5-17 ["In the city of Merced, there are three areas of high segregation and poverty, located in District 1 and District 2 (Figure G5-11). Areas of high segregation and poverty generally overlap with areas that are predominantly Hispanic/Latino and

³ Leadership Counsel for Justice & Accountability, City of Merced Draft Housing Element Comment Letter, pp. 5-13 (June 12, 2024).

areas with high rates of overcrowding and overpayment by renters.”].) In the Section IV, *infra*, we detail additional actions and programs that the City must implement to meet its duty to affirmatively further fair housing.

B. The Draft, If Finalized And Implemented, Would Constitute Disparate Impact Discrimination.

Under state law, no person may be “unlawfully denied full and equal access to the benefits of...any program or activity that is...funded directly by the state, or receives any financial assistance from the state” on the basis of any protected characteristic. (Gov. Code, § 11135(a).) The characteristics protected by law include “sex, race, color” and “mental disability” as well as “physical disability,” with these terms sharing the definitions applied under Section 12926. (Gov. Code, § 11135(c).) A violation occurs when an entity which receives any state financial support carries out any activity that is discriminatory, regardless of whether the discriminatory activity is directly funded. (*Comm. for Immigrant Rights v. County of Sonoma* (2009) 644 F. Supp. 2d 1177,1207.) Further, as under Federal antidiscrimination law, even facially neutral acts can amount to prohibited discrimination under Section 11135 when they result in a disparate impact on a protected class. (*Darensburg v. Metro. Transp. Comm’n* (2009) 611 F. Supp. 2d 994, 1042, [“As under Title VI, a prima facie case of disparate impact discrimination under section 11135 requires a plaintiff to show: (1) the occurrence of certain outwardly neutral practices; and (2) a significantly adverse or disproportionate impact on minorities produced by the defendant’s facially neutral acts or practices.”].)

For the reasons stated above, the City’s failure to plan in a manner consistent with the duty to AFFH is also a violation of the prohibition against discrimination established by Section 11135 and, to the extent that the City receives federal funding, also under Title II of the Americans with Disabilities Act, and Title VI of the Civil Rights Act. The enumerated shortcomings of the AFH included in the Draft demonstrate that the City’s activities related to planning for housing and community development deny residents access to the full range of benefits contemplated by the housing element law. For instance, the AFH clearly fails to function to “address the housing needs of persons with disabilities” because it lacks the required discussion of disparities in access to opportunities and does not analyze the housing and community development needs of persons with disabilities. (HCD Guidance, p.37.)

IV. Community-Identified Programs and Policies That Will Result in A Beneficial Impact and AFFH.

Without a complete assessment of fair housing, the City missed a critical component of the housing element — a summary of fair housing issues is an essential step to informing and prioritizing contributing factors and, eventually, identifying and incorporating beneficial goals

and actions. The City's amended Draft failed to identify programs that will result in a beneficial impact to the community; we worked alongside residents who have added the following community-identified programs and policies. We outline actions that address issues impacting low-income communities, existing homeowners, and future homeowners. We urge the City to incorporate the following programs into its Draft to promote housing stability and habitability, address low housing stock, and mitigate housing barriers that exist for households with special needs such as persons with disabilities, elderly, large households, single-parent households, farmworkers, and people experiencing homelessness.

Rent Registry Program to Address Uninhabitability Issues and Increase Housing Stock:

The City of Merced will establish a Rent Registry program by July 2025 that will ensure all landlords and rental properties within the City of Merced are registered with the City. The Rent Registry program will identify vacant rental homes for the purpose of incentivizing landlords to rent vacant units or sell vacant homes to increase home stock and homeownership. The program will also serve as a direct route for tenants to report negligent landlords and uninhabitable rental units.

Specific Actions, Objectives and Timelines:

- The City will create a community stakeholder group composed of two to three tenants from each district, CBOs, legal aid organizations and small landlords. The community stakeholder group will be responsible for creating a Rent Registry Program that includes outreach and education for tenants and landlords (targeting small landlords); aligning the rent registry program with the housing issues that community members identify; clear information gathered; complementary policies; compliance incentives; long-term maintenance; and education materials and products by February 2025.
- The City will host at least two public hearings for the program at City Council between April and June of 2025.
- The City will adopt and establish a Rent Registry program by July 1st 2025.
- The City will identify vacant rental properties by the end of October 2025.
- The City will begin sending out fees to vacant rental property owners whose property is still on the market by November 2025 to incentivize lowering rent rate or sell homes to promote homeownership and increase housing stock.
- The City will host at least one follow-up informational meeting in North, Central, and South Merced in December 2025. The City will host semi-annual Know Your Rights workshops beginning January 2026 for tenants and landlords.

Primary Responsible Departments: Department of Development Services

Funding Source: Annual Registration Fee, Fees from vacant units, City's Affordable Housing Fund, HCD's Local Housing Trust Fund (LHTF) Program.

AFFH: Systematic Code Enforcement is considered a meaningful action to AFFH according to HCD's AFFH Guideline for Housing Element. This program would maintain housing stock by addressing critical habitability issues and prevent displacement which addresses the significant disparities in housing needs and access to opportunities. This program will target R/ECAPs in the City of Merced and turn segregated communities into revitalized, integrated healthy communities.

Rent Stabilization and Just Cause Ordinance to Protect Tenants from Displacement: The City of Merced will implement a Rent Stabilization and Just Cause Ordinance by December 2025 to protect tenants from exorbitant rent increases by creating a schedule for reasonable and gradual rent increases, while ensuring that landlords receive a fair return on their investment. It will include protection of tenants who are exempt from AB 1482 (2019). Additionally, this will preserve the affordability of existing housing and increase affordable housing stock in high resource areas.

Specific Actions, Objectives and Timelines:

- The City will establish a stakeholder workgroup that consists of tenants from every district, CBOs, City staff, small landlords and legal aid organizations, to develop a rent stabilization and just cause ordinance draft by the end of Spring 2025.
- The stakeholder workgroup will meet monthly to develop a draft of the ordinance and set a rent cap or limit, develop just cause protections, and a rent board that consists of a diverse stakeholder group.
- The stakeholder workgroup will submit the draft ordinance to the city council by September 2025.
- The City will hold at least two public hearings prior to the adoption of the Rent Stabilization and Just Cause Ordinance by December 2025.

Primary Responsible Departments: Department of Development Services

Funding: The City's Affordable Housing Fund, HCD's Local Housing Trust Fund (LHTF) Program.

AFFH: Rent Stabilization and Just Cause protections limit rent increases and are considered an example of a Local fair Housing Law according to HCD's AFFH guidance. Rent stabilization and just cause protections are also a strategy to protect existing residents from displacement. By placing reasonable and gradual rent increases throughout the city, low-income households will be able to find affordable housing in high resourced areas that otherwise would not have naturally occurring affordable housing.

Housing Rehabilitation Program for Homeowners to Prevent Displacement: The City of Merced must amend the existing Housing Rehabilitation program by September 2025 to provide financial assistance for rehabilitation of owner occupied homes, as well as rental units serving special needs populations including but not limited to all low-income families, farmworkers, seniors, persons with disabilities, etc.

Specific Actions, Objectives and Timelines:

- The City will set aside 5% of its annual general fund revenue for home rehabilitation and weatherization grants and rehabilitation grants.
- The City will host two community meetings per district to get resident feedback on the need for rehabilitation services by June 2025.
- Outreach and promotional efforts will occur in R/ECAP, targeting households who on average have extremely low to very low income, households of undocumented residents, homes with substandard living conditions, and households with special needs. All material will be made available in a variety of languages representative of Merced including, but not limited to, Spanish, Hmong, and Punjabi.
- This program will prioritize rehabilitation for households with special needs, homes with damages that pose a serious health risk, and homes with damages that are likely to be exacerbated by weather and climate change.
- The City will host two to three workshops at different days of the week and times every quarter to inform the public of available services, funding availability, and application assistance beginning in October 2025
- The City will provide annual and quarterly reports describing how many homeowners were assisted with revitalization, how many local residents were employed, a description of outreach efforts including the location where they took place, and the amount of funding allocated from the general fund.
- The City's Department of Development Services will offer the following assistance to homeowners in a variety of languages representative of the City of Merced:
 - Technical assistance - Guide applicants through the application process and offer technical support throughout the length of the program.
 - Referral assistance - Connect applicants to resources and services based on the level of repair needed.
 - Financial assistance - Offer rehabilitation grants to homeowners with no fees or interest.
 - Temporary Housing - The City will provide Emergency Housing Vouchers for rehabilitation efforts that require the residents to vacate their homes.

Primary Responsible Departments: Department of Development Services.

Funding: The City's Affordable Housing Fund, CalHome Program, ESG, CDBG.

AFFH: The Housing Rehabilitation Program is considered a meaningful action to AFFH according to HCD's AFFH Guideline for Housing Element. This program would maintain housing stock and prevent displacement which addresses the significant disparities in housing needs and access to opportunities. This program would be considered a displacement mitigation strategy and can be considered a place based strategy by addressing the dilapidated housing in disadvantaged communities with high rates of low-income households.

Utility and Appliance Assistance to Remove Housing Barriers: The City of Merced will establish a Utility and Appliance Assistance program that provides financial assistance on a continuous basis meaning that the financial aid is provided without interruption, is ongoing and available consistently over time, rather than being offered in limited periods or with breaks in between; essentially, the funding will be accessible as needed for past due utility bills, deposits for utilities, and assistance getting free or reduced priced appliances. This program is intended to assist all low income households and special needs populations.

Specific Actions, Objectives and Timelines:

- The City will adopt a Utility and Appliance Assistance program by June 2025.
- The City will host three community workshops every quarter for the first year, and then semi-annually thereafter, in North, Central, and South Merced to inform the public of how to apply for the program, assist community members in applying for Utility Financial Assistance program for past due bills and deposits, and assist community members in applying the Appliance Assistance program for free or reduced cost appliances.

Primary Responsible Departments: Department of Development Services.

Funding: Community Development Block Grant (CDBG) Program, HOME Investment Partnerships (HOME) Program, Housing Trust Fund (HTF) Program, Emergency Solutions Grant (ESG) Program, and Housing Opportunities for Persons With AIDS (HOPWA) Program.

AFFH: The Utility and Appliance Assistance program allows the City of Merced to transform R/ECAPs into areas of opportunity. One example cited in HCD's AFFH Guideline for Housing Element is affordable energy. Affordable energy can be achieved by providing financial assistance to low income families with past due bills and with deposits for utilities more than once as well as allowing low-income families to replace older appliances with new energy efficient appliances.

Right to Counsel Ordinance to Maintain Household and Neighborhood Stability: The City of Merced will establish a Right to Counsel Ordinance by June 2025 that will ensure all tenants,

including those in low income single family homes and mobile homes, have access to education on tenant rights, legal counsel, and attorney representation in court when facing an at fault or no fault eviction, or a lawsuit on behalf of a landlord.

Specific Actions, Objectives and Timelines:

- By March 2025, the City attorney will present a Right to Counsel Ordinance to the City Council.
- The City will hold at least two public hearings prior to establishing the Right to Counsel Program by June 2025.
- The RTC program will include the following:
- Outreach and education campaign
 - A city-wide, multi-language public awareness and targeted outreach campaign.
 - Public education workshops and mobile clinics, in multiple languages, on tenant and landlord rights and responsibilities.
- Legal aid
 - Legal assistance for low-income tenants encountering legal issues. This includes but is not limited to being served with a notice from their landlord (e.g. 3-day notice, notice of rent increase, etc.).
- Direct legal representation
 - Legal representation in court for low-income tenants facing eviction.
 - Staff present at the Merced County courthouse on eviction court days to provide legal aid and representation.
 - The City can release an RFP to private law firms or legal aid organizations for legal representation.
- Evaluation
 - A comprehensive annual evaluation of the RTC program by City staff to determine its effectiveness.

Primary Responsible Departments: Department of Development Services.

Funding: General Fund, Affordable Housing Fund, State Bar of California's Legal Services Trust Fund, HUD's Eviction Protection Grant Program.

AFFH: Right to Counsel is a place-based strategy under HCD's AFFH Guidelines for Housing Element. Right to Counsel would ensure that residents in South Merced and in other areas within the City of Merced that are low-income tenants have access to an attorney when facing at fault or no fault evictions, and that tenants have guidance regarding their rights. This policy and program would hold landlords accountable for abuse, discrimination, and any ill-intended actions purposefully inflicted on tenants.

First Time Homebuyer Program to Promote Homeownership: The City of Merced will amend the First Time Homebuyer Program by December 2025 to ensure that all low-income residents are able to get Financial Assistance and resources to buy a home for the first time (if they have not purchased or owned a home in the last 5 years). Credit and financial budgeting workshops would be required to qualify for financial assistance or a reduced rate.

Specific Actions, Objectives and Timelines:

- The City should amend the First Time Homebuyer Program to expand eligibility to households with low credit.
- The City should conduct outreach every quarter in R/ECAPs, particularly in District 1 and District 2.⁴
- The City should host a quarterly series of workshops for the application process.
- The program should ensure there are no predatory loans: low APR, reasonable terms for length of loan, and no hidden fees.
- The City must include Credit and Financial Budgeting workshops for residents to qualify for Financial Assistance or reduced rate.
- The program must ensure that there are no credit requirements that are considered for eligibility.

Primary Responsible Departments: Department of Development Services

Funding: CalHome, City's Affordable Housing Fund, Community Development Block Grant (CDBG) Program, HOME Investment Partnerships (HOME) Program, Housing Trust Fund (HTF) Program, Emergency Solutions Grant (ESG) Program, and Housing Opportunities for Persons With AIDS (HOPWA) Program.

AFFH: The First Time Homebuyer Program will allow residents that have not been a homeowner in the past 5 years and/or residents with lower credit to get financial assistance to purchase a home for the first time and address the homeownership gap. These program suggestions would allow the City to incorporate racial and equity inclusion into existing programs further developing pathways to homeownership for people in lower resource areas. This program is a Housing Mobility Strategy since its focus is on improving access to housing by removing barriers like the cost of purchasing a home with low credit or as a low-income family.

Permanent Rental Assistance Program to Prevent Housing Displacement: The City will provide financial assistance to low-income households that are unable to pay rent or have past due payments. Financial assistance must be on a continuous basis and regardless of immigration status. It must be established by June 2025. This would provide rental assistance to households

⁴ Draft Element at pp. G5-21

that may not have stable income, including but not limited to field-workers, the elderly, disabled persons, etc.

Specific Actions, Objectives and Timelines:

- The City will establish a Community Oversight Committee that determines program details and drafts an initial plan based on community input by March 2025.
- The Community Oversight Committee will present an initial plan to the City Council for it to be adopted by June 2025 prior to the budget hearings to guarantee funding sources.
- The City will host application workshops every quarter to assist households with Rental assistance applications and get status updates on the application process.
- The City will share semi-annual reports on progress, challenges, and successes. Report shared with oversight committee; request committee/council for direction on amending the program.

Primary Responsible Departments: Department of Development Services

Funding: General Fund, Affordable Housing Fund, Merced County Human Services Agency, Merced City and County Continuum of Care, CDBG, HOME

AFFH: AFFH requires jurisdictions to take meaningful actions, beyond combating discrimination, to eliminate and overcome legacies of segregation to foster inclusive communities free from barriers that restrict their access to opportunities based on their protected characteristics. A Permanent Rental Assistance program would address the significant disparities in housing needs. It is a place-based strategy that can help tenants living in unaffordable housing who are at risk of experiencing homelessness, stay housed. The program will also assist special needs populations such as undocumented residents. By providing a permanent rental assistance program for low-income individuals and households regardless of immigration status, California residents that live within the City of Merced would be one step closer to reaching the vision of living, working, and playing in healthy communities of opportunity. This program is also a place-based strategy that uses geographical and demographic data to influence investment decisions.

V. Conclusion

Thank you for the consideration of our supplemental comments. Leadership Counsel for Justice and Accountability is thankful for the opportunity to continue collaborating with the California Department of Housing and Community Development and the City of Merced on the 6th Cycle Housing Element to ensure the housing and community development needs of all residents in the City are met for the next 8 years. We welcome the opportunity to continue to do so. Fair housing is a critical component for quality of life, and residents who fall under the

protected classes deserve access to fair housing and protections. The City of Merced must take responsibility and action to ensure individuals and families of all income levels throughout the City are living in safe, equitable, and healthy housing.

Respectfully,

South Merced Residents for Justice

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