



Michael Rawson  
Director  
Extension 145  
mrawson@pilpca.org

December 3, 2013  
Via E-Mail

Stephen Ronfeldt  
Co-Director Emeritus  
Extension 127  
sronfeldt@pilpca.org

Jess Negrete  
Analyst  
California Department of Housing &  
Community Development  
2020 West El Camino Avenue  
Sacramento, CA 95833

Deborah Collins  
Managing Attorney  
Extension 156  
dcollins@pilpca.org

Craig Castellanet  
Staff Attorney  
Extension 132  
ccastellanet@pilpca.org

Re: Comments on Albany 10-25-13 Draft Housing Element (Current Draft) for  
the 2007-14 Planning Period

Judith Gold  
Staff Attorney  
Extension 111  
jgold@pilpca.org

Dear Mr. Negrete:

Patti Prunhuber  
Staff Attorney  
Extension 125  
pprunhuber@pilpca.org

Bay Area Legal Aid and The Public Interest Law Project submit these comments regarding the City's Current Draft Housing Element on behalf of our clients, Amber Whitson, Betty Stephenson, and the Albany Housing Advocates. Our clients are anxious to have their elected officials finally update the City's obsolete Housing Element, and they are encouraged that the City is finally moving forward. The Current Draft does not adequately address the critical housing needs of the lower income community, however, and requires significant revision.

Lauren Hansen  
Attorney Fellow  
Extension 112  
lhansen@pilpca.org

The Current Draft does not acknowledge the City's carry-over of regional housing needs resulting from its failure to update its housing element for the 1999-2006 planning period. It does not identify and demonstrate that the City has adequate sites available to meet that "carry-over" or its current regional housing needs. It also does not include any adequate sites programs to address the deficiency. The City also failed to identify, analyze or address many constraints to the development of affordable housing – constraints that have long existed and that help explain the City's poor affordable housing track record. Finally, it does not include strong policies and programs to ensure that adequate sites are promptly made available to accommodate the City's allocation of regional housing needs or to remove or mitigate constraints. It is particularly important that the City significantly strengthen the Current Draft since whatever housing element it adopts now will form the basis for its *next* update.

Noah Kirshbaum-Ray  
Legal Assistant  
Extension 110  
nkirshbaum@pilpca.org

- 1. The City failed to encourage public participation of all economic segments of the community or to consider or incorporate comments from the public with respect to the Current Draft.**

The City reports that its Housing Element update has been underway for six years, and that all economic segments of the community have been involved in the

Linda Hill  
Administrator  
Extension 123  
lhill@pilpca.org

process. Completeness Checklist at 2; *see also* Current Draft at 1-5 through 1-7. We respectfully disagree with that assessment.

The City last adopted a Housing Element in 1992; it skipped updating its housing element for subsequent planning periods, including for the 1999-2006 period; and it submitted an incomplete draft element for the 2007-14 period to HCD in July 2009 even though a revised element should have been adopted by June 30, 2009. It then took *no* steps to address HCD's technical assistance *until 2013*. And, then rushed its Current Draft through public hearings, in a piecemeal fashion, in less than a month. Thus, it is misleading to claim that *this* draft element has been underway for six years.

In its haste to submit the Current Draft to HCD, the City put the cart before the horse and reached foregone conclusions which effectively discourage meaningful public participation. For example, an 'incomplete' draft was presented to the Planning and Zoning Commission on September 25, 2013; it lacked any analysis of constraints or identification and analysis of adequate sites ("September 2013 Draft). Yet, it included a chapter on goals, policies and programs that must be *informed* by those missing components. The September Draft also concluded that because existing sites are currently zoned for residential or mixed use development, no rezoning or increase in allowed densities is required to meet the City's regional housing needs. Current Draft at 1-4. Yet, the draft lacked any inventory or analysis of sites against which such conclusion could be measured. The City's foregone conclusions, coupled with a paltry record of ensuring the production of housing that is affordable to the lower income community, is indicative of a lack of commitment to facilitate and encourage the development of affordable housing for all economic segments of the community and for persons with special housing needs.

Despite the City's rushed drafts, our clients and other members of the public submitted written and oral comments at every opportunity. Their input has been largely ignored in the Current Draft. *See, e.g.*, Bay Area Legal Aid and Public Interest Law Project comment letters of September 25, October 9, October 15, and October 21, 2013 (previously provided to HCD); *see also* HCD's Technical Assistance of October 9, 2009 at 9 [suggesting that the City summarize public comments and describe how the element incorporates that input.] Instead, the City Council simply authorized staff to make non-substantive corrections to the Current Draft and forward it to HCD for formal review. Staff then requested an 'expedited' review from HCD, signaling that the City has little intention of revising the draft to address the many concerns raised by the public and its own Planning Commissioners. The Draft Element should be revised to describe and respond to the public's input, and the City should share all subsequent drafts with the public well in advance of any public hearings.

**2. The City has a significant carry-over of unmet regional housing needs for the 1999-2006 planning period.**

We strongly disagree with the City's determination that it has *no* carry-over of unmet regional housing needs for the 1999-2006 planning period. Current Draft at 2-3 through

2-5. Government Code §65584.09 was enacted to promote effective and *timely* implementation of housing elements. It provides that when a jurisdiction “failed to identify or make available adequate sites to accommodate the regional housing need allocated” for the prior planning period, it must zone or rezone “adequate sites” to accommodate the unmet needs within the first year of the next planning period. *See* Govt. C. §65584.09; HCD Memo of June 20, 2007 regarding application of AB 1233.

In its Completeness Checklist, the City indicates that its previous element did not include a rezone program to address a shortfall of adequate sites pursuant to Govt. C. §§65583(c), 65583.2 or 65584.02. Checklist at 1. In fact, Albany did not update its housing element for the 2009-06 planning period at all, so it had no programs much less an “adequate sites” program. Moreover, because it failed to revise its Housing Element, it did not *identify* sites that were available during the last planning period to accommodate its RHNA for 277 units or analyze the *adequacy* of sites. The City cannot unring that bell by claiming *now* that it had adequate sites available *then*. Therefore, the City’s conclusion that it has no “carry-over” obligation from the prior planning period is wrong.

It must be presumed to have a carry-over of 277 units from the 1999-2006 planning period pursuant to §65584.09. Although the City can reduce that allocation by demonstrating that some units meeting the housing needs of specific income categories were *actually constructed*, it cannot reduce the obligation simply by claiming that appropriately zoned sites existed all along.<sup>1</sup> At best, the City can only legitimately reduce its “carry-over” for lower income units by 20 (5 very low and 15 low-income) units that were constructed during the last planning period Creekside Apartments and Villa de Albany. *See* Draft Element at 2-1 through 2-2, Table 2-2. The City’s determination that eight second units were ‘really’ affordable rental units is purely speculative.<sup>2</sup> Likewise, the City’s conclusion that the unrestricted “market-rate” rents at UC Village were affordable to moderate-income households in 1999-2006 is unsupported. *See* Current Draft, Tables 2-2 and 4-1. The UC Village units are “restricted” for students of the University; they are not available to the general public. *See* Current Draft at 3-37. And, the needs analysis of the Current Draft acknowledges that market rents for the units are *not* affordable to a large percentage of students -- the only population that can reside in the village.<sup>3</sup> The

---

<sup>1</sup> Indeed, if adequate sites were appropriately zoned all along, but *none* have been developed for residential use since at least 1999 (much less for affordable housing), one must query whether those sites are feasible for such development.

<sup>2</sup> The City had (and has) no procedure to register and/or monitor the affordability levels of second units that may have been constructed. It also offers no objective evidence to support that eight second units were actually part of the rental housing stock or that the rent levels were affordable to very low, low, and moderate-income households. These units cannot be credited against the City’s carry-over of very low and low income units.

<sup>3</sup> Table 3-28 shows that the median income of UC Village residents is \$38,972, over 33% of residents have incomes below \$25,000, and over 66% of the residents pay more than 35% of their income on rent. Thus, rents that are affordable to households with incomes of between

City cannot, therefore, credit the 8 second units or 237 UC Village units against its carry-over of regional housing needs. Finally, the Draft Element also states that “the *recent* completion of UC Village *at the time of the 2010 Census*” may have been a factor affecting the vacancy rate in 2010. Current Draft at 3-36. This raises another question as to whether the UC Village units “credited” in Table 2-2 were, in fact, constructed during the prior planning period.

Because the City’s regional housing needs for very low income was 64, it has a carry-over obligation of at least 59 very low income units. Its low income RHNA of 33 can be reduced to 18 units. Its moderate-income “carry-over” remains at 77 units. By ignoring its carry-over of at least 154 lower income units, the Current Draft fails to substantially comply with §65584.09.

**3. The City’s Analysis of At-Risk Units should be expanded.**

The City concludes, pursuant to Govt. C. §65583(a)(9), that there are no units in Albany that are at risk of conversion to market rate before 2024. Current Draft at 3-42; *see also* Checklist at 4. It identifies restricted rental and ownership units that are restricted for particular income categories (Creekside development produced by a non-profit developer in 2001 and four Villa de Albany condominiums produced in 2006). To support its conclusion, the element should specify *when* the long-term covenants will expire. It also should describe the basis for the long-term restriction (e.g., applicable funding source(s) and or local policies or ordinances).

**4. The site inventory fails to identify adequate sites to accommodate the City’s unmet regional housing needs for the 1999-2006 planning period.**

As discussed above, Albany failed to identify or make adequate sites available to accommodate a regional housing need for 277 units for the prior planning period. At best, it has an unmet need of 154 lower income units. Therefore, it was required to zone or rezone sufficient sites to accommodate that unmet need by June 30, 2010 (during the first year of this planning period). Since it failed to update its Housing Element for *this* planning period by June 30, 2009, it failed to meet that deadline. It also has not included a program to zone or rezone adequate sites to accommodate 154 lower income units in the Current Draft. And, the inventory of sites included in the Current Draft does not reflect that the City has sufficient sites to accommodate this unmet need, and certainly not during the remainder of this planning period. We do not concede the “adequacy” of sites identified in the site inventory. Without even considering that factor, however, the inventory of sites identified in Tables 4-3, 4-4, and 4-5 could realistically accommodate only 145 units by the City’s own calculation. One other under-utilized R-2 site might accommodate 2 moderate-income units for a total of 147 units. Current Draft at 4-5;

---

\$56,000 and \$85,960 (*see* Table 4-1, n. 1) can hardly be considered affordable to UC Village residents.

Tables 4-3, 4-4, and 4-5.<sup>4</sup> The sites certainly cannot accommodate the carry-over of 154 lower income units *and* the City's current RHNA of 276 units.

Therefore, the Current Draft does not substantially comply with state law because it fails to identify sufficient sites to accommodate the City's carry-over of regional housing needs allocated for the prior planning period and fails to include a program to zone or rezone sites to accommodate the carry-over.

**5. The site inventory fails to identify adequate sites to accommodate the City's regional housing needs for the 2007-2014 planning period.**

**a. The Current Draft does not support the City's proposed reduction of its RHNA for the current planning period.**

The City's RHNA for the *current* planning period is 276 units (64 very low, 43 low, 52 moderate, and 117 above moderate-income). Current Draft at 4-2. No units have been constructed or approved for very low-income units, but the City attempts to reduce its allocation for low- and moderate-income units by pointing to units that have been constructed or approved since 2007. *See* Table 4-1. The draft does not provide sufficient information to support a credit towards 7 low-income and 176 moderate-income units:

- **423-427 Talbot.** The Current Draft does not specify *when* the 1 low-income unit (and 9 "net" above moderate-income units were 'approved' at 423-427 Talbot and acknowledges that these units have not been constructed although it is now 2013.<sup>5</sup> If the project is proceeding, the Current Draft should specify when it was approved and explain its status, including how many units will actually be produced during the planning period. The City also should explain whether the development is for-sale or rental and confirm whether a regulatory agreement has been recorded that requires one "inclusionary" unit to be deed restricted for low-income. This information is important because the City has ceased enforcement of its inclusionary housing ordinance for rental units in light of the *Palmer* decision.
- **Nine "Second Units".** For the 9 "second units" credited in Table 4-1 (6 as low and 3 as moderate), the City should specify the dates of approval or construction of each unit, the status of construction, explain whether the second units are

---

<sup>4</sup> The "vacant" University Village site identified in Table 4-4 is not counted in the total. As the City acknowledges at page 4-11, the University's development of that site as a market-rate, senior development is pending.

<sup>5</sup> During a meeting before the Planning and Zoning Commission on September 25, 2013, one of the Commissioners indicated that the Talbot project fell through because of the owner's inability to secure financing. If the project fell through, the City cannot count it to reduce its RHNA. Moreover, the July 2009 Draft states that only 6 units were approved. *See* July 2009 Draft, Site Inventory Attachment, Site 3. These discrepancies must be explained.

actually part of the rental housing stock and provide the actual rent levels. Because the City does not currently register or monitor second units, its conclusion that these units contribute to the affordable housing stock for lower income households is based on assumptions not actual data. The City can only count units that were actually constructed for specific income categories against its RHNA allocation.

- **University Village Units.** The specific ‘phase’ of University Village units that are claimed for the prior planning period versus the current planning period (*e.g.*, East or West Village) should be explained to ensure that the units are not double-counted for both planning periods. Further, the University Village units are “market-rate” and should not be credited as affordable to moderate-income households for the same reasons discussed in Section 4 above.

In the absence of a complete analysis as to the above “credited” units, the Current Draft must identify sufficient sites to accommodate 159 lower income units during the current planning period, including 64 very low, 43 low, and 52 moderate-income units.

**b. The City has a shortfall of sites sufficient to accommodate its carry-over and current housing needs for lower income units.**

A major requirement of Housing Element law is the identification of sufficient sites suitable for residential development to accommodate the jurisdiction’s share of the regional housing need at all income levels. Govt. C. §65583.2(a). Sites can only be counted if they can realistically accommodate a portion of the jurisdiction’s housing need at each income level *during* the planning period. Govt. C. §65583.2(c). Although the housing element law establishes default densities that are presumptively appropriate to accommodate lower income housing, density alone is not sufficient to make a site feasible for affordable housing development, and particularly not when applied to small sites and under-utilized sites.

The Current Draft fails to identify sites to accommodate the City’s unmet lower income housing need for the prior and current planning period. The City has a total unmet need of 313 lower income units -- 154 for the prior planning period (including 59 very low, 18 low and 77 moderate-income units) plus 159 for the current planning period (including 64 very-low, 43 low, and 52 moderate). The Current Draft identifies sites the City claims could accommodate a maximum of 147 units towards the City’s lower-income housing needs. *See* Current Draft at 4-5 (one under-utilized R-2 lot that might accommodate 2 moderate-income units); Table 4-3 (4 under-utilized R-3 sites that might accommodate 26 units); Table 4-4 (one vacant “mixed use” site that could accommodate 5 units);<sup>6</sup> and Table 4-5 (9 sites the City claims could accommodate 114 units). Thus, even assuming for the sake of argument that the sites identified by the City are available for development

---

<sup>6</sup> The University Village site described in Table 4-4 is not included in the total of 148. *See* footnote 3 above.

during the planning period, it has a shortfall of sites. It has not identified sufficient sites to accommodate at least 166 lower-income units. Further, it is unlikely that any of the sites identified will be realistically available for development *during* the current planning period, in part due to the City's long delay in revising its element to identify and make those sites available. In addition, all of the sites identified for lower-income housing are small sites; almost all of them are zoned for mixed use; and almost all are "under-utilized".

**c. The site inventory relies almost exclusively on small, under-utilized sites zoned for mixed use that cannot realistically accommodate affordable housing during the planning period.**

Most of the sites identified for lower-income housing are so small that they cannot realistically be developed for affordable housing. The City relies on one under-utilized R-2 site to accommodate 2 moderate-income units (Current Draft at 4-5); four under-utilized R-3 sites (Table 4-3), one vacant "mixed use" site (Table 4-4), and nine under-utilized "mixed use" sites (Table 4-5) to accommodate multi-family, higher density developments.

- **Table 4-3 (Cornell, Stannage, Evelyn and Adams).** These four under-utilized R-3 sites are each less than ¼-acre. The City claims they can accommodate 26 "net" units total, because 8 existing dwelling units (many of them rentals) would need to be removed.<sup>7</sup> The maximum realistic capacity of these sites ranges from 6 to 10 units. Current Draft at 4-7 through 4-10.
- **Table 4-4 (1245 Solano).** This vacant mixed-use site (formerly Site 8 on the July 2009 Draft) is located on the Solano corridor; it is less than 1/5-acre which the City concludes can realistically accommodate only 5 units. Current Draft at 4-13. Further, the realistic capacity stated in the July 2009 Draft was only 4 units. *Compare* Current Draft at 4-13 with July 2009 Draft at 53. This "capacity" discrepancy also should be explained in the Current Draft.
- **Table 4-5 (9 Under-utilized Mixed-Use Sites).** The City identifies 9 under-utilized "mixed use" sites to accommodate a total of 114 units. We also question the accuracy of the "capacity" information provided in the Current Draft.<sup>8</sup> All of

---

<sup>7</sup>The Stannage and Cornell sites were included as Sites 5 and 6 on the July 2009 Draft.

<sup>8</sup> Several of the sites identified on Table 4-5 were identified in the July 2009 draft. For convenience of reference, those sites include: 1451 Solano (identified as Site 7 on the July 2009 Draft ), 934 San Pablo (Site 9), 1061 San Pablo (Site 10), 433 San Pablo (Site 11), 665 San Pablo (Site 12), and 805 San Pablo (Site 13). Three sites have been added since 2009: 611 San Pablo (contractor's office), 1089 San Pablo (recently vacated lock/key business w/cottage), and 398 San Pablo (Kady Carwash and Norge Cleaners). The Current Draft inexplicably attributes a greater capacity to several sites than did the July 2009 Draft. For example, a parking lot located at 934 San Pablo Avenue (Site 9) could reportedly now accommodate 11 units, but in July 2009, it could only accommodate 5 units. The Sizzler parking lot site (Site 12) could accommodate 16 units in

these sites are less than one acre. Only three of them are more than ½ acre – the Goodyear, Sizzler parking lot, and possibly, the Kaady Car Wash/Norge Cleaners site. Three sites are between ¼ and ½ acre (California Bank & Trust, Hertz Rental Car, and Mechanics Bank). The remainder are less than 1/5 acre sites that can accommodate only 3 or 4 units. *See* Table 4-5.

The constraints to affordable housing development that are associated with the small size, current use, and mixed use designation should be analyzed for all of the identified sites.

Small sites present particular problems for the development of lower-income housing. HCD requires additional analysis for sites under one acre. “To utilize small sites to accommodate the jurisdiction’s 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.” *See* HCD Building Blocks for Effective Housing Elements, Adequate Sites Inventory and Analysis, Realistic Development Capacity. In its technical assistance review of the July 2009 Draft, HCD suggested that the City explain recent “small lot” residential development trends *including affordability* to evaluate the feasibility of “small lot” development for affordable housing.

In response, the City points to Villa de Albany, Portland Gardens, Albany Gardens, and Creekside Apartments as examples of developments along the San Pablo corridor. Two of those developments (Villa de Albany and Albany Gardens) were on sites that exceeded 30,000 square feet. Each site produced 25 units. Five sites identified on Table 4-5 are smaller by half or more. Only 4 of the 50 units produced at Villa de Albany were affordable condos (2 very low and 2 low) as a result of application of the City’s inclusionary housing policy which it no longer applies to rental developments. None of the units at Albany Gardens are affordable. *See* Current Draft, Table 2-2. Similarly, Portland Gardens produced 12 units on a 10,000 square foot site on San Pablo Avenue, but all of the units are for above-moderate households. Creekside Apartments, developed by a non-profit, includes 16 lower income units (3 very low and 13 low). Current Draft at Table 2-2. However, the City’s 1992 Housing Element states that the Albany portion of this site was 1.2-acres. *See* 1992 Housing Element at 64. Thus, it should have accommodated significantly more units and does not support that *affordable* units can be produced on significantly smaller sites.

Only *two* sites included on Table 4-5 of the Current Draft (Kaady Carwash/Norge Cleaners and Goodyear Automotive Service) are comparable in size to the Villa de Albany and Albany Gardens sites. Current Draft at 4-25. The Kaady Carwash/Norge Cleaners site currently houses two separate and currently operating businesses, and it is not clear whether the site consists of multiple parcels and owners; thus it may need to be

---

July 2009, but 18 now. And, the Goodyear site (Site 11) could accommodate 20 units in July 2009, but 21 according to the Current Draft. *Compare* Current Draft, Table 4-5 to July 2009 Draft at 53. These discrepancies related to “realistic capacity” should be explained in the Current Draft.

consolidated. Further, the Kaady Carwash was very recently renovated to include two new buildings, and there is no indication that it is going out of business any time soon. The City also acknowledges that remediation of a leaking underground storage tank may be required to redevelop this site. Current Draft at 5-30. The Goodyear Automotive Service site also remains an operating business and may also have environmental issues. Current Draft at 4-20, 5-30. These factors affect both the availability of the sites during the planning period and the financial feasibility of producing affordable housing on either site. All other sites located on San Pablo Avenue are smaller – ranging from 5,000 square feet to 25,000 square feet.

In its technical assistance review in 2009, HCD also advised the City to evaluate the extent to which existing uses may impede residential development on many of the sites it proposed then. Currently, all but one site (1089 San Pablo) identified on Table 4-5 still have active businesses. Two of the sites are occupied by banks that have remained in operation for decades – 1451 Solano and 805 San Pablo. The City speculates that because “some banks in the area” are consolidating, these are viable sites. Yet, it offers no specific information that either California Bank & Trust or Mechanics Bank are among them, that either of these banks have any plans to close their doors, or that either bank has an interest in redevelopment. The same is true of Hertz Car Rental, Sizzler Restaurant, a contractor’s office located at 611 San Pablo, and the under-utilized residential uses on Cornell and Stannage. The City offers no information that would indicate a trend towards or an interest in redevelopment of any of these sites. A business previously located at 1089 San Pablo Avenue recently vacated, and the 5,000 square foot site also includes a cottage. The City estimates that this site might accommodate a “net” 3 units. There are for-rent signs posted on the vacated business, however, not for-sale signs. Likewise, a residential development on the surface parking lot located at 934 San Pablo was proposed several years ago that did not proceed due to market conditions. Although this may be a viable site, the City offers no updated information as to the owner’s current interest in pursuing a residential development.

Finally, in its technical assistance review in 2009, HCD instructed the City to estimate the potential residential capacity of “non-vacant” sites considering that not *all* of the sites will redevelop during the planning period. HCD Technical Assistance at 3. Instead, the City attributes 114 units to these sites which assumes that all of them will redevelop during the planning period. Yet, it is now four years into the planning period and none of the sites have redeveloped. Moreover, the City claims that many of these “under-utilized” sites were available for residential development during the prior planning period, including the Hertz rental car, Goodyear automotive, and Sizzler Restaurant sites. See Second Draft, Table 2-4. Yet, again, none of them have been redeveloped going back 14 years to the 1999-2006 planning period. And, the City offers no explanation as to how or why that status quo is now expected to change. There are clearly constraints to the development or redevelopment of these small, under-utilized sites for affordable housing that must be analyzed and mitigated. In addition, all of the sites that are zoned for “mixed use” could be developed exclusively for commercial use. The City must analyze this as a constraint to residential development.

Finally, even assuming unrealistically that *all* of these sites could be developed during the last year of the planning period, they would be insufficient to accommodate the City's past and current regional housing need of 313 lower-income units.

**d. The City must address the shortfall of available sites.**

The Housing Element statute imposes additional site requirements if a jurisdiction has a shortfall of available sites to accommodate its full housing need. Govt. C. §65583.2(h). This includes unaccommodated housing need from a prior planning period for which rezoning is required under §65584.09. Sites relied upon to meet unaccommodated needs must permit multifamily housing by right; have a minimum density of 20 du/acre that enables development of at least 16 units; and at least 50% of the unit shortfall must be accommodated on sites designated for residential use only. *Id.* Under the City's own analysis, only one vacant site (1245 Solano) exists which can, at best, accommodate 5 units. Only three under-utilized sites could conceivably accommodate 16 or more units (Goodyear, Sizzler, Kaady Carwash/Norge Cleaners). However, all of these sites are zoned for "mixed use" which permits commercial development *or* a combination of commercial and residential as opposed to multi-family housing by right. Thus, the City must include a program to rezone sufficient and suitable sites for multi-family development by right to accommodate its deficit as required by §§65583.2(h) and 65584.09.

**6. The City fails to adequately address key governmental and nongovernmental constraints.**

The Housing Element must contain "an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, [...] and for persons with disabilities [...], including land use controls, building codes and their enforcement, site improvements, fees and other exactions required, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the RHNA. Govt. Code § 65583(a)(5). The Element also must include an analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction. Govt. Code § 65583(a)(6). The Current Draft identifies very few constraints to the development of affordable housing and housing for persons with special needs despite a very poor history of producing affordable homes for all economic segments of the community and in contrast to the input of the public and its own Planning and Zoning Commission.

**a. The City identifies very few "governmental constraints" and does not adequately address the constraints that it does acknowledge.**

(1) The City's analysis of land use regulations that impede development is inadequate and its programs to eliminate or mitigate any identified constraints are lacking. The City erroneously concludes that many of its land use regulations affecting

sites that permit multi-family development and development of housing for persons with special needs are adequate to support such developments. We disagree. As explained below, even when the City acknowledges certain constraints, it does not include an adequate analysis and/or programs to eliminate or mitigate such constraints.

**R-3 Zone (permitting multi-family by right).** The Current Draft concludes that most land use regulations for the R-3 zone do not pose a constraint to development. These include Floor Area Ratio (FAR), lot width, lot coverage, height, and front and side setback requirements. Current Draft at 5-4 through 5-6. Yet, the City's Planning and Zoning Commission indicated that height limits of only three stories (36') *are* a constraint. The Commission recommended increasing height limits to four stories. This constraint is not acknowledged and no program is included to address or mitigate the constraint. *See* Current Draft, Chapter 6.

**R-4 (permitting "tower" density with use permit).** The Current Draft identifies the "use permit" applicable to the R-4 zone ("tower" density multi-family) as an inconsistency with other multi-family zones (R-2 and R-3) that permit multi-family residential development by right. Current Draft at 5-6 to 5-7; *see also* Table 5-3 at 5-13. Therefore, the City included a program to permit "tower" developments by right in the R-4 zone. Current Draft at 6-22, Program 4.A. We agree that this potential constraint should be eliminated, however, the real constraint is the lack of sites zoned for R-4. The R-4 zone is already developed (Gateview Towers on Albany Hill), and no other R-4 sites exist. Therefore, the City's program to mitigate the use restriction will not result in the development of affordable housing units during the current planning period.

**SPC (San Pablo) and SC (Solano) zones.** These areas located along the San Pablo and Solano corridors permit mixed-use development. *See* Current Draft at 5-7 through 5-9. Commercial uses and "mixed" commercial/residential uses are permitted. The mixed use designation does not require residential development which poses a constraint to residential development, because all of the sites could be redeveloped as commercial only. In fact, the City's regulations promote commercial development of the sites by prohibiting ground floor residential development on San Pablo and requiring a use permit for ground floor residential on Solano. *Id.* at 5-8. Some Commissioners proposed eliminating the prohibition on ground floor residential in the SPC zone and others suggested requiring residential development. The Current Draft includes two vague and unclear programs regarding the City's mixed use standards. Program 4-C appears to relate only to the vacant University Village site which has a proposal pending to develop an assisted living facility for seniors, coupled with a grocery store. Current Draft at 6-23. An overlay zone applicable only to the University Village site requires residential development. It is not clear whether the City intends to expand the overlay zone to other "selected" sites, and if so, which sites. Further, it is not clear *when* the City would take action because it indicates that the program is "ongoing." A second program indicates only that the City will "evaluate" its mixed use standards to identify ways to incentivize housing development and not until the Fall of 2014. We agree that the mixed use standards should require residential development as a component of any mixed use development, but the City should commit to a specific program to require residential in

mixed use zones, and it should do so promptly and by a date certain. We also agree that the City needs to incentivize the development of *affordable* housing and very soon. A program to simply “evaluate” its mixed use standards late next year will *not* encourage development of affordable housing *during* the planning period.

Height restrictions of three stories generally apply in the SPC and SC zones, except for some sites where the maximum height is only 20 feet to permit a 45-degree light plane. *Id.* at 5-9. The Commission suggested increasing height limits in the SC and SPC zones to four stories, and to five stories in an overlay zone located at the intersection of San Pablo and Solano (Commercial Node Overlay Zone). *Id.* There are no programs to increase height limits in the SPC and SC zones or the Commercial Node Overlay Zone. We agree that the City should identify height limits as a constraint and include a program to increase height limits. We further urge the City to promptly develop an “affordable housing overlay zone,” however, which would permit increased heights to incentivize the development of lower income units.

Although there are no minimum lot size or lot coverage requirements in the SPC and SC zones, rear setback requirements reduce the number of units that can be produced. For example, rear setback requirements of 15 feet apply to sites located in the Planned Residential/Commercial Overlay Zone and the Residential Commercial Transition Overlay Zone, including the carwash site identified in the City’s inventory of sites and other sites on San Pablo that adjoin Kains Street. Current Draft at 5-9 through 5-10. The Current Draft concludes, without explanation, that these setback requirements do not affect the feasibility of development. *Id.* at 5-10.<sup>9</sup>

The Planning and Zoning Commission made some specific recommendations regarding land use regulations and standards applicable to the SC and SPC Zones, including that the City eliminate its bar on the development of ground floor residential units in the SPC zone, increase height limits, reduce rear setback requirements in the SPC zone, and reduce parking restrictions in residential and mixed use zones, including the SC and SPC zones. These are actions the City should include in its programs, and they should be taken by a date certain in the very near future.

**Open Space Restrictions.** The Current Draft concludes that an open space requirement of 200 square feet per unit does not pose a constraint to development because balconies and patios contribute to meeting the requirement. Current Draft at 5-10. The City did not analyze the financial impact of its open space requirements and the ability of affordable housing developers to meet the requirements. Likewise, although some commissioners suggested that roof gardens should count towards open space requirements, the City includes no programs to address this suggestion.

**Parking Restrictions.** The Current Draft identifies parking as one of the primary constraints to residential development throughout the City – impacting both the cost of

---

<sup>9</sup> The Current Draft also indicates that rear setbacks of 15 feet in the R-2 and R-3 zones could be reduced, but does not identify those setbacks as a constraint. Current Draft at 5-6.

developing new housing and the ability of developers to achieve the maximum FAR or density of a site. *See* Current Draft at 5-10 through 5-12. Albany voters passed Measure D in 1978 to require two on-site parking spaces per unit for all new units. Measure D also restricts tandem parking. The City appropriately proposes a program to eliminate or reduce these parking constraints and to permit more flexible parking restrictions on developments depending on size, zoning, and proximity to public transit. *Id.* at 5-11. Unfortunately, the programs included in the Current Draft call only for the City to seek funds to commence a parking study, “begin” a public discussion to replace parking standards, and to develop a ballot measure to address the problem. Current Draft at 6-24 through 6-25 (Programs 4.F and 4.G). This is little different from the program proposed in the City’s 1992 Housing Element that has not been implemented for 21 years. Because the City acknowledges that parking restrictions are a major constraint to residential development in all districts, we question the necessity of a formal parking study at this late date with a “vision” of developing a ballot measure at some unknown future date. These programs promise further delay in remedying the problem. Elimination of parking constraints should be given a much higher priority, including a date certain to actually place an initiative on the ballot in 2014 to remove the 2-parking space and tandem parking restrictions. Some commissioners also encouraged the City to consider permitting parking below grade limitations, but no programs are included in the Current Draft to address this suggestion.

(2) The Current Draft does not adequately address constraints that impede the development of a variety of housing types and housing for persons with special needs.

**Single-Family, 2-Family, and Multi-Family Housing.** The City permits by right development of single family homes in the R-2, R-3, RHD, SC, and SPC zones. The Current Draft also includes a program to permit the development of second units “by right” in the R-2 and R-3 zones. Current Draft at 6-22 (Program 4.B). Given the City’s lack of sufficient sites to accommodate housing for lower income populations, permitting the development of single-family homes in the R-2, R-3, SC, and SPC zones and expanding the zones where second units are permitted should be analyzed as a constraint to multi-family development. These standards tend to promote “under-utilization” of sites that are needed for larger, multi-family developments.

**Manufactured/Mobile Homes.** The City permits manufactured homes in the R-1, R-2, R-3, RHD, SC, and SPC zones. As with single-family, 2-family homes, and second units, the City should evaluate whether sites located in the R-2, R-3, SC, and SPC zone are more suitable for larger multi-family developments and whether permitting single, manufactured homes on larger sites is a constraint to multi-family development on larger sites. It also should evaluate whether limiting such developments to one manufactured home per site in the R-1 zone, instead of permitting two homes that would be consistent with a single-family home and a second unit, is a constraint as suggested by some of its Commissioners. *See* Current Draft at 5/15.

**Rooming/Boarding Homes.** The City indicates at page 5-18 of the Current Draft that boarding homes are permitted in all residential areas. That is inconsistent with Table

5-3 which states that boarding homes are only permitted in the R-3 zone. Current Draft at 5-13. Moreover, the City's definition of "family" appears to limit the number of "unrelated" occupants in rooming and boarding homes as well as other group homes by defining "family housing" as two or more persons in a single housekeeping unit including servants and up to four boarders. Current Draft at 5-19. Further, the City indicates that it will continue its "Shared Housing" program which permits the renting of rooms in single-family homes. Current Draft at 6-15 (Program 3.C). Yet, that program limits such rentals to up to 4 rooms. The City also should define "Shared Housing" and indicate whether the program, in fact, applies to all residential districts or is limited to the R-3 district as are "rooming/boarding homes." Finally, there is no indication that other dwellings in the R-3 zone are subjected to the same limitation. The City concludes that its definition of family need not be amended, but this restriction should be analyzed as a constraint to the development of housing for all economic segments of the population, as well as an impediment to fair housing opportunities for persons with disabilities, seniors, and other protected classes.

**Residential Care Facilities.** The Current Element states that the City permits by right development of "small" residential care facilities of six or fewer persons in all residential zones. The City should explain what occupancy limits apply to other dwellings in its residential zones, and if it differs from the occupancy limits for small residential care facilities, this restriction should be identified and addressed as a constraint to affordable and fair housing opportunities. The Current Element further provides that the City permits large RCFE's of seven or more persons in all residential zones, but requires a conditional use permit. This differs from the "by-right" residential uses permitted for dwelling types in the R-1, R-2, R-3, SC and SPC zones. It should be analyzed and removed as a constraint to the development of housing for persons with special needs, including persons with disabilities and seniors.

**Emergency Shelters.** Albany identifies a need to accommodate at least 70 homeless residents. The needs section of its Current Draft concludes that "[w]ithin the City of Albany, emergency, transitional, and permanent housing options are very limited at this time." Current Draft at 3-26. In fact, the City has no emergency shelters, transitional housing or SRO's within its borders. *Id.* Approximately 60-70 of its residents without homes live in self-made shelters at the Albany Bulb but are faced with imminent displacement in favor of the City's pursuit of an East Bay Regional Park development with the state. *Id.*

The City's longstanding failure to comply with state planning laws has impeded the development of any emergency shelter, transitional or supportive housing. It currently permits emergency shelters only in the SPC zone with a use permit. Pursuant to SB 2, the Current Draft includes a program to permit emergency shelters "by right" in the Commercial Mixed Use (CMX) zone. Current Draft at 6-18 (Program 3.G). The CMX zone is located on the far west side of Albany, along the railroad tracks and close to Highway 80. The Current Element acknowledges that "[f]looding problems are most commonly associated with the area along the railroad tracks, where culverts may constrain water flow." *Id.* at 5-29. Yet, the City failed to analyze the impact of locating

homeless shelter(s) in a known flood zone. The CMX zone also is a predominately commercial and light industry district which may pose environmental constraints. The City should review and analyze the State's Department of Toxic Substances data to identify any known environmental hazards in the CMX zone, as it did with respect to sites identified on Table 4-5. The City also acknowledges that there may be infrastructure needs, including water and sewer services, with the conversion of commercial sites to residential use. *Id.* at 5-28. Yet, it failed to analyze the extent to which water and sewer needs may pose a constraint to developing shelters in the CMX zone. We urge the City to promptly permit emergency shelters, by right, in the SPC zone until it adequately analyzes, and if appropriate, removes constraints to the development of emergency shelters in the CMX zone. With the exception of a Target store located on a remote area of East Shore, there are no public services, grocery stores, or the like located in the CMX zone. Public transportation also is very limited; the only bus line identified by the City as serving this area is AC Transit Bus 25, but it does not serve sites located along East Shore, and two of the 'potential' emergency shelter sites are located on East Shore. Conversely, the SPC zone is a major transit corridor connecting to a number of AC transit buses, BART, public and medical services, shopping plazas, and grocery stores. It is a far more suitable district for locating emergency shelters than the CMX zone. City staff indicated during public meetings regarding the City's homeless population that the primary constraint to permitting shelters "by right" in the SPC zone is community opposition. Programs to address that opposition are far more appropriate than restricting "by right" development of homeless shelters to an unsuitable area. *See also* discussion below in Section 7 related to the City's proposed "temporary" homeless assistance program.

**Transitional and Supportive Housing and SRO's.** The Current Element acknowledges that its Housing Element does not comply with state law because it fails to define and/or designate land use categories for transitional and supportive housing and SRO's. The City appropriately includes programs to define and permit development of such housing types. Current Element at 5-17 through 5-18; 6-14 (Program 3.A), 6-16 (Program 3.E); 6-24 (Program 4.E). However, the City also indicates that it may establish review and approval procedures for such housing. To promote fair housing opportunities and encourage the prompt development of housing for all economic segments of the community, the City should permit "by right" development of transitional housing, supportive housing, and SRO's in all residential zones – all of which serve special housing needs. Likewise, its programs to "encourage" the inclusion of accessible units and to "support" the construction and rehabilitation of housing for persons with developmental disabilities on an "ongoing" basis must be strengthened. They offer no specific "action" that the City will take or a specific timeline that any program will be implemented.

(3) The City's analysis does not adequately address the impact of permit and processing procedures or fees and exactions on the development of affordable housing. The Current Draft describes the City's permit and processing procedures and summarizes many of the fees and exactions imposed on residential development. It does not, however, provide a "constraints" analysis with respect to its procedures and fees.

Although it acknowledges that processing timelines are considerably longer for multi-family developments than single-family homes (*i.e.*, 270 days versus 30-75 days), it does not consider its timelines to be a constraint to multi-family development. *See* Current Draft at Table 5-25 and Table 5-5. Likewise, the City acknowledges that typical fees for a *single-family* home total about \$15,000. *Id.* at 5-25, Table 5-6. It offers no analysis of the fees and exactions imposed on multi-family development. Just as the City compared the number of units produced on recent multi-family developments in the SPC zone to potential development of some of its “opportunity” sites, the Current Element should analyze the total fees and costs associated with the developments identified on Table 2-2 of the Housing Element and describe the amount of time spent processing those developments from initial proposal to issuance of building permits. It should then evaluate whether the fees and costs and permit process contributed to the predominately “market-rate” rents and/or sale prices of those developments. The City includes a “fee incentive” program that only commits to “exploring” whether reduced fees on a “case-by-case” basis and an expedited permit process would incentivize the development of affordable housing. Current Draft at 6-26 (Program 4.H). We encourage the City to commit to actually reducing and deferring fees and to expedite the permit processing for affordable housing developments in order to actually promote and support such developments.

**b. The City’s constraints analysis also fails to adequately address non-governmental constraints to the development of affordable housing.**

(1) The Current Draft does not adequately analyze community opposition as a constraint to affordable housing development. As explained more fully in our letter to the Planning and Zoning Commission dated October 15, 2013 (previously provided to you), the Current Draft does not adequately analyze or address community resistance to the development of affordable housing and housing for persons with special needs. The City’s only discussion of community opposition is under the public opinion section in which the City largely speculates as to the causes of NIMBYism.<sup>10</sup> Its speculation is not substantiated and tends to validate opposition to the development of affordable housing rather than promote acceptance. The City’s only suggestion for removing this constraint is to acknowledge that “acceptance can be improved by increasing public awareness of the many excellent examples of affordable housing that have been built...” Yet, the City offers no concrete programs to aid in such an effort.<sup>11</sup> It includes a very generalized program to “develop” a public information campaign on an “ongoing” basis to inform residents, businesses, and commercial property owners about the City’s housing programs. Current Draft at 6-9 (Program 2.E). Yet, it includes no “community

---

<sup>10</sup> Current Draft at 5-32.

<sup>11</sup> Community opposition can be a profound non-governmental constraint on affordable housing; HCD has identified several effects, including making it “[d]ifficult to develop much needed housing...creat[ing] division in the community...[i]ncreas[ing] time for project completion...[p]rojects becom[ing] economically infeasible for developers...[and] [c]ommunity housing goals and household needs go[ing] unmet. HCD, from NIMBY to YIMBY: Strategies and Techniques to Garner Community Support for Affordable Housing Development at 14 (Dec. 2006).

education” program aimed at encouraging acceptance of affordable housing and housing for persons with special needs. *See* Current Draft, Ch. 6.

(2) The Current Draft identifies the limited availability of funds to support the development of affordable housing as a constraint, but neglects to adequately address the constraint. It is true that redevelopment agencies were dissolved by the Legislature in 2012 and that Albany’s “unspent” low and moderate income housing fund of approximately \$700,000 was swept to other taxing entities. However, the City, as one of those taxing entities, has and will receive an increased share of “tax increment” (now referred to as property tax revenue) going forward as explained in our letter dated October 15, 2013. This ‘redirected’ property tax revenue is commonly referred to as “boomerang” funds. We are encouraged that the City has included a program to explore the use of “boomerang” funds to assist in the development of affordable and transitional housing for extremely low income households. As our clients previously recommended, however, we strongly encourage the City to actually adopt a policy (not just explore one) that requires the City to allocate all “boomerang” funds (past and future) for such purposes. Current Draft at 6-20 (Program 3.J).

There are additional actions the City can take to address financial constraints to the development of affordable housing. We encourage it to include a program to create an affordable housing trust fund; adopt guidelines that prioritize the use of such funds for housing for extremely low income households where the need is greatest; and to identify permanent sources of funds that can be deposited into an affordable housing trust fund. Such sources might include an affordable housing fee (much like the “art in public places” and school fees currently imposed by the City). It also might include in-lieu fees stemming from the City’s inclusionary housing program, and commercial linkage fees in which commercial developers are charged fees to assist in the development of housing to accommodate the needs of their workers.

(3) The City should analyze and address its repeated failures to timely update its Housing Element as a constraint to the development of affordable housing. City staff have pointed to lack of resources, fiscal problems, and a failure to prioritize the development of affordable housing as reasons for the City’s failure to comply with Housing Element laws. The production and preservation of affordable housing starts with a timely, complete Housing Element that substantially complies with state law. Given that the City has not adopted a Housing Element since 1992, it should include concrete policies and programs to ensure that the City prioritizes and actively promotes the development of affordable housing in the future, including a specific workplan and timeline for implementing a Housing Element for the current planning period, and a workplan and timeline for preparation of the housing element for the next planning period. That workplan and timeline should include diligent efforts to include all segments of the population in the drafting of the new element well in advance of its due date.

**7. The City's goals, policies, and programs are insufficient to substantially comply with state law.**

State law requires that a Housing Element contain: "A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing." Gov't. Code §65583(b). There should be a corresponding goal and policy in the Housing Element for *each* housing need, resource inadequacy and constraint identified in the Housing Element. In addition, there must be a quantified objective for each housing need identified.

As discussed above, the Current Draft fails to include an "adequate sites" program to zone or rezone sufficient sites to accommodate the City's unmet regional housing needs for the past and current planning periods as required by Govt. C. §§65583.2(h) and 65584.09. Because the City fails to acknowledge its "carry-over" of unmet needs from the last planning period, it also fails to include that need in its quantified objectives. Current Draft at 60-30. The draft must be revised to include an adequate sites program for the last planning period; an adequate sites program for the current planning period; and to revise its quantified objectives to include unmet RHNA needs for the last planning period. *See* Sections 2, 4, and 5 above.

The Current Draft also fails to identify many constraints to the development of affordable housing, and therefore, neglects to include programs to remove or mitigate those constraints. We identified specific constraints in Section 6 above that have not yet been analyzed and suggested specific additional programs that should be included in a revised draft to remove or mitigate each constraint. We also identified the deficiencies of several "constraints" programs included in the Current Draft. *See* Section 5 above.

In addition, Chapter 6 of the Current Draft should be revised to address the following general comments:

a. **The policies and programs in the Current Draft do not match up with the stated goals and quantified objectives.** One of the City's quantified objectives is to conserve existing affordable units, including second units, Creekside Apartments, inclusionary zoning units, and UC Village units. Current Draft at 6-30. Yet, it includes no policy or program to conserve Creekside Apartments. Similarly, it includes a "policy" to sustain student housing at UC Village, but it includes no program to implement that policy. *See* Current Draft at 6-2 (Policy 1.4); compare programs in Chapter 6. Further, the City includes a policy to conserve rental housing by limiting the conversion of apartments to condominiums. Yet, it includes no program to implement the policy. It also failed to evaluate the effects of the "condo conversion" program contained in its 1992 Housing Element, and specifically, to analyze the extent to which apartments have converted to condominiums. The City should include a program to evaluate and address its condominium conversion policies and to modify a policy that permits condominium conversions if that policy has contributed to the loss of rental units. Chapter 6 is replete with similar examples. It also could include a program to incentivize the development of affordable rental housing by creating a rental housing zoning overlay. In essence, such a

policy would be comparable to a “super-density bonus” policy. The City should review each goal and quantified objective and ensure that Chapter 6 includes policies and programs that are necessary to actually achieve the goals and objectives.

b. **The policies and programs in the Current Draft do not match up with each other.** For each of five goals, the City identifies a series of policies, but in many cases it fails to include any program to carry out the policy. For example, the City’s goal of providing housing opportunities for persons with special needs includes a series of policies – many of which have no program associated with them. For example, the Current Draft includes policies to permit residents to age in place, encourage universal design, and provide for group housing and residential care homes. Yet, the draft contains no program to modify or adopt regulations that would facilitate aging in place or encourage universal design. In its 1992 Housing Element, each policy was followed by a specific program or programs to implement the policy. The Current Draft should be revised to do the same thing or to specify in each policy which program is intended to implement the policy.

c. **Several of the policies and programs are internally inconsistent.** Policy 1.5 provides that the City will *maintain* regulations that restrict the “bulk limits” on development of single-family homes and cottages, yet Program 4.B calls for the City to increase height limits for second units. Policy 4.2 calls for the City to maintain the FARs and other regulatory standards imposed on residential development in commercial zones. Yet, Programs 4.C and 4.D indicate that the City will evaluate and possibly change its mixed use development standards. Policy 3.7 calls for the City to assist in the development of emergency shelters, permanent housing, and to provide supportive services for persons that are homeless. Yet, Program 3.G would restrict the development of emergency shelters, by right, to only one zone that appears to be entirely unsuitable for emergency shelters. Likewise, Program 3.I provides for an “immediate” homeless outreach program and limited financial assistance to homeless residents, *but only* through December 2013 rather than throughout the planning period. Thus, the program does not assist persons that are homeless; rather it assists the City in its quest to evict 60 to 70 persons from the Albany Bulb so that the City and State can proceed with a park development. The City should carefully review its policies and programs for consistency and ensure that those policies are complementary of one another rather than contradictory.

d. **The City’s programs must be strengthened to specify concrete *actions* the City will take during the current planning period to encourage and promote the development of housing that meets the needs of all economic segments of the community.** Housing element law requires an actual “action” plan to identify adequate sites, remove constraints, and carry out the City’s goals and policies. Many of its programs provide for the City to “study”, “explore,” “support”, “encourage”, or generally “continue” vague policies or programs that have failed in the past to meet critical housing needs and/or that lack any real commitment to seriously address critical housing needs. See, e.g., Programs 1.B, 1.D, 1.E, 2.E, 2.H, 3.A, 3.B, 3.C, 3.D, 3.E, 4.F, 4.G. The City

also should significantly expand its programs to promote and support the development of lower income housing.

e. **The timeline for implementation of the City's housing element programs is deficient.** The Current Draft provides that the City will implement 13 programs on an "ongoing" basis. *See* Programs 1.A, 1.D, 1.E, 2.E, 2.H, 3.A, 3.B, 3.C, 3.D, 3.H, 4.C, 5.A, 5.B. Implementing a program on an ongoing basis may be acceptable if an *actual* program exists and does not require revision. Yet, many of the City's "ongoing" programs don't actually exist or call for the City to take "action" to make them exist. *See, e.g.,* Program 2.E which calls for the City to actually create a public campaign program. The City sets no deadline to develop the program, and instead claims that it will implement the non-existent program on an "ongoing" basis. All of these programs should be reviewed to specify a date by which the City will create the program, wherever appropriate, before the City can commit to implementing it on an "ongoing" basis. Similarly, five programs state that the City will implement them on an "annual" basis. Programs 1.B, 2.F, 2.F, 2.J, 3.F. Several of these programs are tied to the receipt and/or distribution of funds which may only be available on an annual basis. Nonetheless, each program should specify the "annual date" by which the program will be carried out. Moreover, as part of a public informational or outreach program, each program should include an *action* to notify the public and/or eligible recipients of the availability of funds. Fourteen programs indicate a "seasonal time frame" by which the City will initiate or carry out a particular program. *See* Programs 1.C, 2.A, 2.B, 2.C, 2.D, 2.I, 3.E, 3.G, 3.J, 4.A, 4.B, 4.D, 4.E, 4.F. A seasonal time frame does not indicate whether a program will be implemented at the beginning or end of the season. For example, the City indicates that it will implement Programs 3.3 and 3.G during the Fall 2013. Yet, it is now December. Accordingly, the City should substitute specific dates by which it will carry out these programs. More importantly, given that this is the last year of the planning period, the City cannot wait until "Fall 2014" to implement many of its programs. The City proposes to delay implementation of *half* of these programs for nearly another year which ensures that adequate sites and incentives will not be in place before the planning period ends. The City's longstanding delay in updating its Housing Element should not result in additional delay that would essentially enable it to "skip" yet another planning period. The City must prioritize affordable housing and fair housing opportunities by including a prompt, date-specific schedule by which it will act.

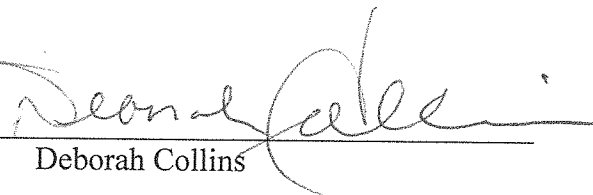
Thank you for your consideration. We look forward to discussing our comments with you, and please contact me with any questions. Our clients' goals are to ensure that Albany's long-awaited revision of its Housing Element substantially complies with state law and fully addresses the critical housing needs of our clients and the community. We hope to work with you and the City towards that end.

Very truly yours,

Naomi Young  
David Levin  
BAY AREA LEGAL AID

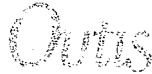
Deborah Collins  
Lauren Hansen  
PUBLIC INTEREST LAW PROJECT

BY:

  
Deborah Collins

cc (by e-mail):

Jeff Bond, Planning and Zoning Department  
Anne Hersch, City Planner  
Barbara Kautz, Goldfarb & Lipman  
Juliet Cox, Goldfarb & Lipman



LAW OFFICES OF ROBERT R. OUTIS  
a professional corporation

December 16, 2013

CITY OF ALBANY

DEC 17 2013

COMMUNITY DEVELOPMENT  
DEPARTMENT

VIA U.S. MAIL AND EMAIL

Mr. Jess Negrete, Analyst  
California Department of Housing and Community Development  
2020 West El Camino Avenue  
Sacramento CA 95833

City of Albany  
Current Draft of Housing Element for 2007-2014 Planning Period

Dear Mr. Negrete:

As a long-time Albany resident who has maintained a solo law practice on Solano Avenue in Albany and north Berkeley since January 1984, I write to express certain concerns, both as a resident and as a local attorney, about the City of Albany's failure to plan for and to promote the development of housing. That failing of course has the most significant impact on those least able to afford even modest shelter within the Albany market.

In the interest of full disclosure, I note that I am a member of the board of directors and an officer of Albany Housing Advocates, a nonprofit public benefit corporation. AHA is represented in matters related to the City's noncompliance with its Housing Element obligations and its decision to evict approximately 60 homeless individuals from an old city-owned landfill that juts out into the San Francisco Bay. While some of my views may be shared by other AHA members, the words below were prepared solely by me, and I purport to speak for no one but myself.

*1. The City Council Has a History of Resisting Its Housing Element Obligations.* As you know, the City of Albany did not develop, submit or obtain HCD approval of a Housing Element for the 1999-2006 planning period. This was followed by years of avoidance of its responsibilities during the planning period that ends next year. A review of City Council minutes and documents submitted to the Council shows that this occurred knowingly.

For example, at the Council meeting of July 6, 2009, staff advised the Council of the June 30, 2009 submission deadline. The minutes of that meeting state:

"Under State law, Bay Area municipalities must complete the preparation of the new housing element by June 30, 2009...Staff has met with State representatives and does not anticipate significant consequences, as long as the City continues to work in good faith to complete the Housing Element." (See Exhibit A, Agenda Item 8-3, page 9)

*Jess Negrete, HCD, December 16, 2013, page 2*

The City's failure to submit an arguably complete draft Housing Element for an additional period of more than three years may suggest a failure to work in good faith to satisfy that obligation. In this connection it is worth noting that the minutes of the July 6, 2009 Council meeting also contain the following statement of a council member, who now serves as mayor:

“Council Member Thomsen expressed concern about the unrealistic mandates set by the State and that the City [sic, must] maintain its sense of community...The City needs to hang on to its goals and should work with the League of California Cities regarding these issues.” (*See id.* at page 10)

In response to that observation, the Council approved at its next meeting and without discussion a letter to the League of California Cities authored by Council Member Thomsen asking the League to lobby against Housing Element requirements. (*See* Exhibit B, Agenda Item 4-11, pages 2-4, and Exhibit C) The Council was of course free to do just that, but this did not entitle it to ignore its existing obligations for an additional period of more than three years.

City officials have asserted that inadequate funds and resulting staff reductions rendered it unable to satisfy this State mandate in a timely manner, but the truth is that (and to paraphrase Mayor Thomsen) the Council hung on to its goals and assigned a low priority to Government Code compliance.

For example, during the current planning period, the City had no difficulty finding \$650,000 to fund a “public engagement” process to establish community priorities for the future use of the Albany waterfront where Golden Gate Fields racetrack and ancillary facilities are now located.

If the future closure of the racetrack were not viewed as reasonably likely, there would have been no need for such an expenditure. But there is in fact a significant potential for its closure. Approximately two years ago, the owner of the racetrack property actively lobbied the University of California and Lawrence Berkeley National Laboratory to select the racetrack property as the site of a second national laboratory campus. That effort failed, but it shows that the owner of the racetrack actively seeks an alternative use of the property. Indeed, it should do so given years of declining interest in horseracing. The difficulties of maintaining a racetrack in an urban area are well illustrated by a recent *New York Times* article concerning the closure of Hollywood Park in Southern California. It can be found at:

<http://www.nytimes.com/2013/12/15/sports/a-last-hurrah-for-hollywood-park.html>

But does the City consider housing as a potential use of the Waterfront property in its draft Housing Element? Of course not, for to do so would, among other things, be inconsistent with local goals for that property as established through the recent \$650,000 public engagement process.

2. *The City Has Failed to Execute on a Significant Opportunity for Affordable Housing.* In addition to its resistance to meeting its Housing Element obligations, the City has failed to execute on at least one significant opportunity for the development of affordable housing. In this regard, the

*Jess Negrete, HCD, December 16, 2013, page 3*

minutes of the July 6, 2009 Council meeting also contain the following assurance by a then dominant member of the Council, who had also served as Mayor:

“Council Member Lieber ... noted that Albany would get affordable housing through the UC Village project.” (Exhibit A, Agenda Item 8-3, page 10)

That statement has proven to be false. Just this past week the City’s Planning and Zoning Commission unanimously approved tentative subdivision maps for a large scale retail and senior housing project on University of California property located along San Pablo Avenue. This is the project to which Mr. Lieber referred in his July 2009 comments. Notwithstanding his assurance, the approved development proposals make no provision for affordable housing for seniors or anyone else.

As you know, a municipality does not have the unconstrained ability to require affordable housing as part of a development project. But the City had no obligation to approve this project, and indeed, the absence of a valid Housing Element and General Plan likely precludes it from doing so as a matter of law. But this disappointing outcome comes as no surprise given the City’s history of subordinating the development of housing to its homegrown goals and objectives.

3. *The City’s Current Draft Housing Element Includes Result-Oriented Number Crunching.* In Table 2-2 of its recently submitted draft Housing Element, the City claims credit for the construction of 237 student housing units at the UC Village during its noncompliant 1999-2006 planning period. With no apparent embarrassment the City touts this net increase, but Table 3-22 shows that a *negative* 356 housing permits were issued for UC Village in the preceding year. The accompanying discussion, at page 3-30, confirms that a “negative housing permit” refers to the demolition of a housing unit. It states:

“As noted in Table 3-22, most of the housing growth between 2000 and 2010 was related to the reconstruction of UC Village. Demolition started in 1998. At the time of the 2000 Census, 356 units had recently been removed but reconstruction had not yet started.”

Thus, the City seeks credit for an increase of 237 student housing units during its noncompliant 1999-2006 period even though this represents less than two-thirds of the housing units that were demolished by the University in the immediately preceding year.

The lack of candor evidenced by this selective use of numbers is compounded when the City states on page 3-30 of the draft that there was a net increase of 412 units housing units at UC Village for the period from 2000-2010. Had the City been interested in a more forthright and meaningful characterization of this reconstruction process, it would have noted that the net increase in housing units at UC Village during the reconstruction period that began in 1998 and ended in or shortly after 2008 was a mere 56 units (demolitions and reconstruction, as shown in Table 3-22 for that period, were as follows:  $-356 + 391 - 196 + 42 - 149 + 324$ , the sum of which is 56).

\* \* \* \* \*

*Jess Negrete, HCD, December 16, 2013, page 4*

I do not purport to be expert on pertinent Government Code requirements, so I will leave to you the task of determining the significance of the resistance, failure and result-oriented number crunching described above. But it is apparent to me that at a minimum the City's submission, coming late in the seventh year of an eight-year planning period, requires careful scrutiny if not an outright rejection because of its untimeliness and the history that preceded it.

Thank you for your efforts to assure that all local governments, including the City of Albany, give more than mere lip service to satisfying their obligation to plan thoroughly and effectively for their fair share of the State's housing needs.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Outis', with a long horizontal flourish extending to the right.

Robert R. Outis

Attachments: Exhibits A, B and C (for convenience Exhibits A and B contain only the first, last and other pertinent pages of the minutes set forth there)

c: ✓ Jeff Bond, Albany Community Development Director  
Anne Hersch, Albany City Planner  
Board of Directors, Albany Housing Advocates  
Deborah Collins, Esq.  
Naomi Young, Esq.

DEC 17 2013

COMMUNITY DEVELOPMENT  
DEPARTMENT

NOTE: These minutes are subject to Council  
approval and are not verbatim; however,  
tapes are available for public review.

**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION,**  
**COMMUNITY CENTER, 1249 MARIN AVENUE**  
**MONDAY, JULY 6, 2009**

---

**Council Member Wile will be teleconferencing from 2085 Payette Court, Dorrington, California.**

**7:30 p.m.**

Mayor Atkinson, who led the Pledge of Allegiance to the Flag, called the regular meeting of the Albany City Council to order on the above date.

**ROLL CALL**

Present: Council Members Lieber, Thomsen, Wile & Mayor Atkinson  
Absent: Council Member Javandel (Excused)

**STAFF PRESENT**

Beth Pollard, City Administrator; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Jeff Bond, Planning Manager; Rich Cunningham, Public Works Manager; Randy Leptien, City Engineer; Charlie Adams, Finance Director; Kim Denton, City Treasurer; Penelope Leach, Recreation & Community Services Director; Marc McGinn, Fire Chief; Mike McQuiston, Police Chief.

- 3. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY**
- 4. CONSENT CALENDAR**

(Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion. By approval of the Consent Calendar, the staff recommendations will be adopted unless otherwise modified by the City Council. There will be no separate discussion on these items unless a Council Member or a member of the audience requests removal of the items from the Consent Calendar.)

*Exhibit A*  
*4 pages*

**8-1. Proposition 40 Funds State of California 2002 Resources Board**

Occasional meetings of other commissions and committees could be accommodated if there is sufficient advance notice and they can be fit into the staffing schedule.

Mayor Atkinson asked if a plan was in the future for working with Albany High School and staff responded yes it is looking at cable casting athletic and other events.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Lieber to adopt the following policy: 1) Cable cast all Waterfront Committee meetings. 2) Cable cast all Planning & Zoning Commission meetings, or select meetings of general or specific interest. 3) Adopt the Social & Economic Justice Commission recommendation of allowing other commissions/committees to request cable casts of its meetings.

**VOTE ON THE MOTION:**

AYES: Council Members Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

**8-3. Review of Draft 2009 Housing Element of the General Plan**

(File #420-30)

The Planning Manager reported that the Planning & Zoning Commission is recommending that the City Council authorize staff to send the draft 2009 Housing Element of the General Plan to the State of California Department of Housing and Community Development for review and comment.

In summary, the 2009 Housing Element must include four main elements: 1) Review of the previous Housing Element. 2) Assessment of housing needs. 3) Inventory of Potential sites for housing development. 4) Analysis of City regulatory framework related to developing housing.

The City of Albany's current Housing Element was approved in 1992, as part of the comprehensive update to the City's General Plan. Since that time, draft updates have been prepared and reviewed by the State. The recent updates, however, have not been formally adopted by the City nor approved by the State.

Under State law, Bay Area municipalities must complete the preparation of the new housing element by June 30, 2009. The process includes compliance with CEQA requirements and review of a draft Housing Element by the State. The City of Albany, like other Bay Area cities, will not meet the statutory deadline. Staff has met with State representatives and does not anticipate significant consequences, as long as the City continues to work in good faith to complete the Housing Element.

The following people spoke: Dell Price, Albany resident; Rolfe Bell, Albany resident.

A summary of comments is as follows: Congratulated staff in getting to this point and stated that she does support mixed uses but expressed concern about development with existing businesses and associated costs. Urged the City to deal with more substance and the relationship with the existing Housing Element. Expressed concern that Albany could not come up with the expected 50% affordable housing.

**8-3. Review of Draft 2009 Housing Element of the General Plan**

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Wile to authorize staff to send the draft 2009 Housing Element of the General Plan to the State of California Department of Housing and Community Development for review and comment.

**ON THE QUESTION:**

Council Member Lieber stated for clarification there would be no displacement of any business/property and noted that Albany would get affordable housing through the UC Village project.

Council Member Thomsen expressed concern about the unrealistic mandates set by the State and that the City maintain its sense of community. Thanked staff and the Planning & Zoning Commission for the work done and does support preserving existing housing. The City needs to hang on to its goals and should work with the League of California Cities regarding these issues.

**VOTE ON THE MOTION:**

AYES: Council Members Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

**8-4. Ordinance No. 09-09 – Cumulative Remedies**

(File #100-95)

The City Treasurer reported that submitted for Council review is an amendment to the Business License Ordinance regarding persons operating a business in Albany without first having obtained a business license. The current Ordinance requires the exclusive enforcement tool of charging people with a misdemeanor and there are no fines associated with this citation. Adopting Ordinance No. 09-09 would provide for administrative citations and would set citation fees for first, second and third offenses within one year.

The proposed Ordinance would allow the City Treasurer to issue an administrative citation to any person(s) operating a business in Albany of any type who has not obtained a business license. The fine for the first violation is \$100, \$200 for the second violation within one year and \$500 for each additional violation within one year.

Mayor Atkinson asked if anyone would like to speak and the following person spoke: Rolfe Bell, Albany resident; Clay Larson, Albany resident.

A summary of the comments is as follows: Spoke about other city ordinances and asked the Council to be aware of nuances in the Ordinance. Supported revenue based business license stating that the license based on revenue rather than the number of employees is more lucrative and fairer.

Council Member Lieber introduced Ordinance No. 09-09 – An Ordinance of the Albany City Council Amending Section 5-1.24 Cumulative Remedies of the Albany Municipal Code.

**10. ADJOURNMENT**

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

---

MARGE ATKINSON  
MAYOR

ATTEST:

---

JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK

*These minutes were  
obtained from the City's  
website & are described  
as "Approved Minutes".*

*McIntosh*

DEC 17 2013

COMMUNITY DEVELOPMENT  
DEPARTMENT

NOTE: These minutes are subject to Council approval and are not verbatim; however, tapes are available for public review.

**MINUTES OF THE ALBANY CITY COUNCIL  
IN REGULAR SESSION,  
COMMUNITY CENTER, 1249 MARIN AVENUE  
MONDAY, JULY 20, 2009**

---

**6:30 p.m.**

**EXECUTIVE SESSION**

**OPPORTUNITY FOR THE PUBLIC TO SPEAK ON EXECUTIVE SESSION ITEMS**

City Council convenes in the Council Chamber and then adjourns to Executive Session to discuss Public Employee Performance Evaluation pursuant to Government Code Section 54957:

Beth Pollard

City Administrator

To discuss litigation pursuant to Government Code Section 54956.9:

City of Albany v. Alten Construction, Inc.

**7:30 p.m.**

Mayor Atkinson, who led the Pledge of Allegiance to the Flag, called the regular meeting of the Albany City Council to order on the above date.

**ROLL CALL**

Present: Council Members Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Jeff Bond, Planning

*Exhibit B  
5 pages*

Manager; Nicole Almaguer, Environmental Specialist; Aleida Chavez, Transportation Planner; Rich Cunningham, Public Works Manager.

**3. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY**

Mayor Atkinson reported the Council gave the City Administrator her evaluation and regarding the litigation instruction was given to the City Attorney.

**4. CONSENT CALENDAR**

(Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion. By approval of the Consent Calendar, the staff recommendations will be adopted unless otherwise modified by the City Council. There will be no separate discussion on these items unless a Council Member or a member of the audience requests removal of the items from the Consent Calendar.)

**4-1.** Minutes, July 6, 2009.

Staff recommendation: Approve.

**4-2.** a. Ratification of City of Albany net payroll in the amount of \$187,753.12; taxes, benefits & withholdings in the amount of \$152,245.69. Total payroll in the amount of \$339,998.81. Payroll period: 07/02/09.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$57,576.67; taxes, benefits & withholdings in the amount of \$40,474.22. Total payroll in the amount of \$. Payroll period: 07/02/09.

Staff recommendation: Ratify.

**4-3.** a. Ratification of bills, claims and demands against the City of Albany in the amount of \$32,92.81. Period: 07/01/09.  
(File #300-40)

Staff recommendation: Ratify.

**4-4.** Ordinances:

a. Ordinance 09-09 – An Ordinance of the Albany City Council Amending Section 5-1.24 Cumulative Remedies of the Albany Municipal Code.

b. Ordinance No. 09-010 – An Ordinance of the Albany City Council Amending Section 1-12 Recovery of Attorney's Fees of the Albany Municipal Code.  
(File #100-95)

**4. CONSENT CALENDAR**

Staff recommendation: Approve Ordinance 09-09 & 09-010 for Second Reading-Pass-to-Print. Waive reading of entire Ordinances.

- 4-5.** Resolution No. 09-38 – A Resolution of the Albany City Council Requesting the Federal Government to Update Studies on Potential Health Effects of Radio Frequency Wireless Emissions in Light of Proliferation of Wireless Use.  
(File #560-85)

Council Member Lieber recommendation: Approve Resolution No. 09-38.

- 4-6.** Sewer System Management Plan (SSMP).  
(File #1030-20)

Staff recommendation: Authorize the City Administrator to execute an agreement with Bartle Wells Associates in an amount not to exceed \$19,500 for development of a financial plan for the SSMP.

- 4-7.** Memorandum of Understanding with University Village to provide crossing guards for Ocean View Elementary School.  
(File #600-40)

Staff recommendation: Authorize the City Administrator to enter into a Memorandum of Understanding with University Village in Albany for the Albany Police Department to manage crossing guard services for children in the vicinity of Albany Unified School District's Ocean View School.

- 4-8.** Letter of support for the Wayfinding Project proposal being submitted by the Western Contra Costa Transportation Advisory Committee (WCCTAC) for a Safe Routes to Transit (SR2T) grant request.  
(File #345-50)

Staff recommendation: Support WCCTAC's grant application to the SR2T Cycle III for the development of a uniform wayfinding signage system that include points of interest in the City of Albany and neighboring communities in Contra Costa County.

- 4-9.** AB 1234 Reporting on EOC Finance & Disaster Cost Recovery Class that the City Treasurer attended.  
(File #640-15)

Staff recommendation: Information only.

**4. CONSENT CALENDAR**

- 4-10.** Contract C09-1: Creek Monitoring Contract in an amount of \$27,000 (From Codornices Creek Account) with Far West Engineering to provide monitoring per requirements of permitting agencies for Codornices Creek Restoration.  
(File #6009-30)

Staff recommendation: Approve Contract C09-1.

- 4-11.** Letter to League of California Cities opposing unfunded mandates and housing allocation requirements.  
(File #610-80)

Recommendation: Authorize the Mayor to sign and send letter to the League of California Cities urging it to oppose any existing or potential unfunded mandates, and to support a more realistic approach to the housing allocation requirements mandated upon cities.

- 4-12.** 2009 Paving Project.  
(File #600-10)

Staff recommendation: Approve Resolution No. 09-39 – A Resolution of the Albany City Council Approving Plans, Finding Project to be Categorically Exempt Under CEQA, Calling for Bids and Authorizing the City Administrator to award a Contract for Contract No. C09-11, 2009 Paving Project for an Amount Not to Exceed \$818,000.

Mayor Atkinson asked if anyone would like to remove an item from the Consent Calendar for discussion. Council Member Javandel asked to remove Item 4-1.

**4-1. Minutes, July 6, 2009.**

Council Member Javandel noted that his vote on the Consent Calendar would include an abstention for the Minutes of July 6, 2009, as he was not present at the meeting.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Thomsen to approve the Consent Calendar, as submitted.

AYES: Council Members Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: None

Motion carried and so ordered.

**5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS**

Mayor Atkinson read a statement regarding the comments made under Good of the City at the July 6<sup>th</sup> meeting regarding an incident between the Williams Family and

**9. OTHER BUSINESS, REPORTS ON MEETINGS ATTENDED, ANNOUNCEMENT OF EVENTS/FUTURE AGENDA ITEMS.**

**10. ADJOURNMENT**

10:50 p.m. – there being no further business before the City Council it was moved and seconded to adjourn the meeting in memory of Nancy Peterson and Richard Cross and a moment of silence was observed.

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

---

MARGE ATKINSON  
MAYOR

ATTEST:

---

JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK

*These minutes were  
obtained from the City's  
website + are described  
as "Approved Minutes".*

A handwritten signature in black ink, appearing to be 'M. O. R.', located below the handwritten note.

DEC 17 2013

COMMUNITY DEVELOPMENT  
DEPARTMENT

DRAFT

Dear President and Members of the Board of Directors:

We are writing to ask that the League once again revisit and formulate a lobbying effort toward the legislature, governor, and the public on the topic of state mandates. Currently, our budget, and most likely, that of numerous other cities is being impacted by state mandates. At our July 6, 2009 meeting, we were confronted with the consequences of two mandates.

The first mandate involved an unfunded state mandate regarding sewer overflow plans that had been passed through from the Environmental Protection Agency. While we all want clean water, we have been proactive in our sewer management system. As a result of the mandate, the staff was requesting a financial consultant, whose lead staff person regularly receives \$215 per hour for services; other personnel fees range downward to \$95 per hour, and expenses are charged at cost plus 10 percent. These fees appear to be the going rate, even in these tough economic times when most cities are making deep budget cuts. Thus our first request is that the League again strenuously lobby for no unfunded mandates.

The second mandate involved the housing element of our general plan. The state in its wisdom decided how many units should be built in each region, and in our case the Association of Bay Area Governments was required to decide how much was "fair" for each city. In the case of Albany that was 276 units for our 1 ½ square miles of mostly developed land, this in spite of the fact that new units already built are sitting idle. Of course, some cities are in even more dire straits with numerous foreclosures. The mandate is for seven years, which is too long a period without review. If there had been review, the poor economy, the huge number of foreclosures, and the lack of ready credit could have been taken into account so that a reasonable, rather than unreasonable, number of units could have been solicited. Thus we believe that mandates that are imposed must be reviewed at least every two years and should sunset within a specified number of years.

The Albany City Council urges the League to oppose any existing or potential unfunded mandates, and to support a more realistic approach to the housing allocation requirements mandated upon cities.

Sincerely,

Marge Atkinson  
Mayor

Exhibit C  
- 1 page