

---

*City of Merced*

**MEMORANDUM**

---

**DATE:** October 14, 2011  
**TO:** Planning Commission  
**FROM:** Julie Nelson, Planner  
**SUBJECT:** Housing Element

---

Subsequent to the preparation of the staff report, the attached letter was received from Central California Legal Services. The letter was sent to the California Department of Housing and Community Development (HCD) regarding their review of the City's Housing Element.

We have been in contact with HCD and should have information prior to the public hearing on October 19, 2011, as to whether any additional changes will be required to meet state requirements. If changes are required, staff will provide them to you at the meeting or earlier if possible.



*Celebrating 45 Years of Service  
to Our Community!*

---

1640 'N' Street, Suite 200, Merced, CA 95340 • Phone: (209) 723-3466 • Fax (209) 723-1315 • Toll Free: (800) 464-3111

October 13, 2011

**VIA FACSIMILE 916-327-2643 and US MAIL**

Brett Arriaga  
Department of Housing and Community Development  
1800 Third Street #430  
Sacramento, CA 94252

***Re: City of Merced Housing Element***

Dear Mr. Arriaga:

Central California Legal Services (CCLS) respectfully submits the following comments regarding the City of Merced's latest revisions to its Housing Element.

On May 18, 2011, the City of Merced submitted its housing element adopted on May 16, 2011 to the Department of Housing and Community Development (HCD) for review pursuant to Government Code Section 65585(h). In August 2011, HCD reported that although most of the statutory requirements had been met, revisions were still necessary to comply with State housing element law. On September 29, 2011, CCLS was invited to meet with the City to discuss the latest revisions made to the Housing Element.

After going over the revisions made by the City, we acknowledge and commend the City on its efforts to meet state compliance. That being said, there are a few areas that remain of concern to CCLS. Accordingly, we ask that the City make additional changes to its revised draft.

**Planned Development (P-D) Processing and Permit Procedures/ Governmental Constraints**

In order to comply with state law, HCD asked the City to revise the housing element to identify standards for multifamily developments and to evaluate impacts on certainty, predictability, timing, and cost of development. As an example, HCD pointed out that sites located in the existing P-D zones require a conditional use permit process (CUP) for approval. However, the impact of the CUP process on timing, approval certainty, cost, and supply of multifamily housing, including any public hearing requirements, was not analyzed.



---

2115 Kern Street, Suite 1, Fresno, CA 93721 • Phone: (559) 570-1200 • Fax: (559) 570-1254 • Toll Free: (800) 675-8001  
208 Main Street, Suite U-1, Visalia, CA 93291 • Phone: (559) 733-8770 • Fax: (559) 635-8096 • Toll Free: (800) 350-3654  
[www.centralcallegal.org](http://www.centralcallegal.org)

Brett Arriaga – Department of Housing and Community Development  
October 12, 2011  
Page 2

Instead of analyzing the impact of the CUP process as HCD requested, the City opted to include a program to “consider eliminating the CUP process and require a Site Plan Review.” (1.1.b on page 9-167) The City does not explain how this decision will be made, what factors will be considered, or if the public will be allowed to participate in the decision. As presented, the City’s plan is vague, ambiguous and arbitrary.

Although the element contains a statement that multi-family design guidelines have been approved to assist developers with the design of their project, the standards were not identified and evaluated for overall impacts on certainty, predictability, timing, and cost of development as requested by HCD. Furthermore, although there may be approved standards for multi-family development, the element does not disclose how the application process to establish a P-D reclassification will create certainty and predictability when the City may “approve, disapprove, modify or attach conditions to a development plan.” (Page 9-125)

Regardless of whether the City wishes to adopt a Site Plan Review process or keep the current CUP process, the City must still provide analysis and evaluate the impact of each. For instance, although the CUP process is initially more costly, will the applicant bear additional cost to prepare for an appeal (hiring consultants to prepare site plan reports, etc.)? Will a streamlined procedure allow for public participation and transparent decision making?

#### **Affordable Housing for the Extremely Low and Very Low Income Families**

Still of concern to CCLS is the lack of priority given to provide affordable housing to the segment of the population that is extremely and very low income. For instance, the element mentions the P-D zoning as a help to provide affordable housing, but it lacks an analysis and evaluation to support this conclusion when it requires that in return for allowing the design flexibility, it will require the developer to provide benefits to the community such as higher architectural standards, increased landscape areas, extra public improvements, etc.

This lack of priority is apparent in several areas of the element even though the City admits there are more and more families who are falling within this category due to the high unemployment rate, high foreclosure rate, large population of farmworkers, and many people working minimum wage jobs. CCLS would like to see a firm commitment from the City to diligently seek out ways to better provide affordable housing for this segment of the community.

#### **Inadequate Effort to Encourage Public Participation**

CCLS is also concerned that the City has still not adequately provided a meaningful opportunity for public participation in developing and revising the housing element pursuant to Government Code §65583(c)(8).

Breft Arriaga – Department of Housing and Community Development  
October 13, 2011  
Page 3

The issue of public participation was raised in HCD's August 16, 2011 letter regarding its review of the City's Housing Element. In its letter, HCD stated that "the public participation process, including the consideration of public comments, is *critical* to identifying and addressing housing needs throughout the community." (Emphasis added.)

The City did hold a meeting on September 29, 2011 to discuss its revisions. However, it does not appear that a "diligent effort by the [City] to achieve public participation of all economic segments of the community in the development of the housing element" was made. Government Code §65583 (c)(8). Furthermore, the element does not describe such an effort, which is also required by this code section. It may be that this is the reason that only CCLS and one other person came to the meeting.

CCLS is concerned that not only does the City fail to achieve public participation of all economic segments of the community, its own Planning Commissioners and City Councilmembers do not have knowledge about what the Housing Element is, what the legal requirements are, and what the City's draft entails. CCLS attended a Planning Commission meeting on March 23, 2011. At the meeting, one of the Planning Commissioners stated, on the record, that he had no knowledge of what the Housing Element was. Therefore, both the public and the City's own officials have not been given an opportunity to learn and participate in the housing element process. Contrary to intent of the legislature in enacting Government Code section 65583, there are a few individuals who know what is in the element and make the actual decisions of what will be in the element. CCLS would like to see the City make a firm commitment to educating and engaging not only all economic segments of the public, but its elected and appointed officials on the Housing Element.

#### **Housing for Agricultural Employees**

In its August 16, 2011 letter, HCD asked the City to indicate whether its zone permitting agricultural uses are consistent with Health and Safety Code 17021.6. In response, the City stated that they will be amending the zoning ordinance to comply with Health and Safety Code 17021.6 (Item 1.1.d on page 9-168), in addition to other housing related zoning ordinances, in order to comply with state law. The City states that the timeline for doing so is June 2012, and then the City will review conformity with the law on an annual basis thereafter. However, the City has not provided a reason why it requires eight months in order to amend an ordinance that does not comply with state law. There is no reason why the City cannot amend the ordinance immediately.

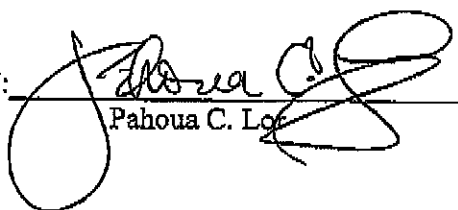
Brett Arriaga - Department of Housing and Community Development  
October 13, 2011  
Page 4

In conclusion, we appreciate the opportunity to comment on the housing element and remain willing to work with the City to bring its housing element into compliance with state law.

Thank you for your attention.

Very truly yours,

CENTRAL CALIFORNIA LEGAL SERVICES

BY:   
Pahoua C. Lopez

cc: Julie Nelson, Planner