

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 27, 2021

Justina L. Willkom, Community Development Director
Community Development Department
City of Tustin
300 Centennial Way
Tustin, CA 92780

Dear Justina L. Willkom:

RE: Review of the City of Tustin's 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Tustin's (City) draft housing element received for review on July 1, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on August 12, 2021 with you and Senior Planner Erica Demkowicz. In addition, HCD considered comments from the Tustin Planning Partnership and YIMBY Law pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). In particular, the site inventory must demonstrate realistic capacity with further analysis, the constraints section must adequately address a variety of governmental constraints to housing development, and many programs require further information or stronger language and timeframes. The enclosed Appendix describes these and other revisions needed to comply with State Housing Element Law.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2021 for Southern California Association of Governments (SCAG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes

the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at:

http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and

http://opr.ca.gov/docs/Final_6.26.15.pdf.

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

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400.

HCD is committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Colin Cross, of our staff, at (916) 820-1275 or colin.cross@hcd.ca.gov.

Sincerely,



Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX CITY OF TUSTIN

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing (AFFH) in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

The element includes an Assessment of Fair Housing (AFH) that addresses most of the statutory requirements. However, additional information and analysis is needed to address the AFFH requirements in full, including a complete analysis of the element's site inventory and specific, meaningful program actions to address the identified fair housing issues.

Fair Housing Enforcement and Outreach: The element describes the City's capacity for fair housing enforcement and outreach at a local level but must also provide information and analysis regarding enforcement and outreach capacity and trends at a regional level.

Site Inventory: The element contains an analysis of the site inventory that addresses some AFFH requirements. However, the analysis does not fully account for how the sites are identified to improve or exacerbate conditions or whether the sites are isolated by income group. For example, a large portion of the lower-income regional housing needs allocation (RHNA) is concentrated on a few large sites in the Tustin Legacy Specific Plan. The analysis should address whether this concentration meets the obligation for the sites inventory to affirmatively further fair housing.

Goals, Priorities, Metrics, and Milestones: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Most of the goals contained in the element (pp. D-86 – D-88), especially those that are specific to the City, do not appear to facilitate meaningful change or address AFFH requirements. Currently, the element identifies goals drawn from the 2020 Orange County Analysis of Impediments but provides limited information about the City's own goals (p. D-88). Goals and actions included in the AFH should be drawn directly from the analysis and contributing factors. For example, the element identifies lack of supply of affordable housing in high-

opportunity areas as one contributing factor (p. D-86) but includes no program actions that seek to address this.

Goals and actions should include the commitment of other programs in the element, complete with timeframes, responsible parties, and objectives. These should also replace unclear language (e.g., “explore”, “review”, “consider”) with specific, meaningful, and measurable actions. The element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

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

The City has a RHNA of 6,782 housing units, of which 2,770 are for lower-income households. To address this need, the element relies on vacant and nonvacant sites, including sites in various specific plan areas. To demonstrate the adequacy of these sites and strategies to accommodate the City’s RHNA, the element must include complete analyses:

Progress in Meeting the RHNA: The element indicates (p. B-2) that 125 units affordable to extremely low-income households in the Village of Hope project are approved. However, on page A-3, the element describes this project as an emergency and transitional housing project with capacity up to 387 beds (i.e. not units). Please be aware, to count towards progress in meeting the RHNA, the additional approved capacity must meet the Census definition of a unit. The element must clarify whether this additional capacity is for beds or units. In addition, the element must describe the City’s methodology for assigning these units to the extremely low-income groups based on actual or projected sales price or rent level of the units or other mechanisms establishing affordability and demonstrate their availability in the planning period.

Sites Inventory: The element must include an estimate of the number of units that can be accommodated on each site in the inventory. Currently, the element provides these estimates by grouping the sites into their respective specific plan areas and estimating the number of units to be accommodated in each specific plan area. These estimates should instead be made by income category for each individual site.

Zoning for Lower: Pursuant to Government Code section 65583.2, subdivision (c)(3)(A) and (B), the element must identify sites with zoning and densities appropriate to encourage and facilitate the development of housing for lower-income households based on factors such as market demand, financial feasibility and development experience within zones. For communities with densities that meet specific standards (at least 30 units per acre for Tustin), this analysis is not required (Gov. Code, § 65583.2, subd. (c)(3)(B).). The element states that while some sites to accommodate the lower-income RHNA have a maximum density of 25 units per acre based on the general plan, higher densities including 30 units per acre are allowed as long as the maximum units allocated in the specific plan has not been reached. However, on page

B-13 the element states that no minimum nor maximum densities are specified in the general plan and specific plan areas. The element must clarify what densities are allowed on these sites and what approvals are required to reach at least 30 units per acre. In addition, the element should specify what the remaining housing unit allotments are in these specific plans and whether the capacity and zoning appropriate to accommodate the lower income can be achieved within the remaining allotment and describe requirements such as phasing or timing requirements that impact development in the planning period. In particular, it is unclear what mechanism would allow a development to exceed the stated maximum general plan density of 25 units per acre. Please note that if the base allowable density does not allow for 30 units per acre, then the element will need to analyze the zoning for appropriateness to accommodate the lower-income RHNA per the above.

Realistic Capacity: The element provides various density assumptions for the sites in the inventory, including several high assumptions that exceed 40 dwelling units per acre. The element must provide support for these conclusions by demonstrating how the City arrived at these assumptions for realistic capacity. This should be based on and adjusted for land-use controls and site improvements; typical densities of existing or approved residential developments at a similar affordability level in the City; and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities; among other factors. This analysis should describe in detail the zoning and development standards applicable for each of the specific plan areas being utilized and the underlying zoning, and how those inform the realistic capacity assumptions.

For sites zoned for nonresidential uses (e.g., commercial and mixed-use zones), the element must describe how the estimated number of residential units for each site was determined. This analysis must adjust for the likelihood of nonresidential development in any zones that allow a mix of uses. For example, the element could describe the underlying zoning for sites in the relevant specific plan areas, whether 100% nonresidential development is allowed in these zones, and any relevant programs or policies the City is undertaking to facilitate residential development in nonresidential zones.

Suitability of Nonvacant Sites: The element must include an analysis demonstrating the potential for redevelopment of nonvacant sites. To address this requirement, the element describes in general the existing use of each nonvacant site. This alone is not adequate to demonstrate the potential for redevelopment in the planning period. The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. The analysis shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the City's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. For example, the element could consider indicators such as age and condition of the existing structure, presence of expiring leases, expressed

developer interest, low improvement to land value ratio, and other factors. The element should describe and support (through development trends) the thresholds used to identify sites for redevelopment.

In addition, a portion of Site 15 includes a 0.77-acre parcel owned by Caltrans. This site does not appear to be on the State's listing for excess properties. The element must demonstrate that Caltrans has identified this property as surplus or otherwise made it available for the development of housing within the planning period.

Large and Small Sites: Several sites consist of large parcels, including Site 1 (39.87 acres), Site 2 (50 acres), Site 10 (16.47 acres). Sites larger than 10 acres in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing (Gov. Code, § 65583.2, subd. (c)(2)(A)). Please note, because the inventory has not yet estimated the number of units by income category for each site, it is unclear whether Site 10 is intended to accommodate the lower-income RHNA. This analysis could describe the implementation of the various specific plans relied on in the inventory or provide information on subdivision or other methods that will be used to facilitate housing development on these sites.

Additionally, many sites (including 4, 5, 6, 7, 9, 11, 12, 13, 14 and 15) consist of aggregated small parcels. For parcels anticipated to be consolidated, the element must demonstrate the potential for lot consolidation. For example, the analysis could describe the City's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for redevelopment, recent trends of lot consolidation, and/or information on the owners of each aggregated site. For parcels anticipated to develop individually, the element must describe existing and proposed policies or incentives the City will offer to facilitate development of small sites. Please note sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing (Gov. Code, § 65583.2, subd. (c)(2)(A)).

Adequate Sites Alternatives: The City appears to be relying on preservation of 517 units to accommodate a portion of the City's RHNA (p. B-3). The City may substitute up to 25 percent of its adequate sites requirement by income group by counting existing units preserved through the provision of "committed assistance" to that income category's households at affordable housing costs or affordable rents. (Gov. Code, § 65583.1, subd. (c).) However, the housing element must demonstrate compliance with all the statutory requirements. This includes, but is not limited to, identification of the specific funding sources that will provide committed assistance to the units whose affordability the City seeks to preserve. Please note, preservation of moderate-income

units cannot be counted towards the RHNA obligation. Please review and complete the Adequate Sites Alternative Checklist at https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/adequate-sites-alternatives/docs/adequate_site_alt_checklist.pdf.

Accessory Dwelling Units (ADU): The element assumes 100 ADUs will be constructed during the planning period but does not demonstrate how the City calculated that assumption. The element's analysis and programs do not support the assumption that 100 ADUs will be constructed during the planning period. Specifically, in addition to other methods, HCD accepts the use of trends in ADU construction since January 2018 to estimate new production. Based on past production between 2018 to 2020, the City is averaging about 6 ADUs per year. To support assumptions for ADUs in the planning period, the element could reduce the number of ADUs assumed per year or reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if ADU assumptions for the number of units and affordability are not met. Additionally, the element credits 12 ADUs permitted in 2021 towards the RHNA but does not clarify the income level or timeframe of those ADUs. These units must be permitted since the beginning of the RHNA projection period (June 30, 2021) in order to be credited towards the RHNA for the 6th Cycle.

Suitability and Availability of Infrastructure: The element must demonstrate sufficient existing or planned water, sewer, and other dry utilities supply capacity, including the availability and access to distribution facilities to accommodate the City's regional housing need for the planning period. To address this requirement, the element provides a table (p. B-12) listing the availability of infrastructure for sites in the inventory, where sites from the Tustin Legacy Specific Plan are labeled as having "some [infrastructure] planned as part of Master Planned Community". This alone is not adequate information to demonstrate the suitability and availability of infrastructure. The element should provide more information regarding the planned infrastructure for the Tustin Legacy Specific Plan. Further, the element should confirm that the infrastructure available for all sites in the inventory includes water, sewer, and dry utilities.

For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. HCD recommends including a cover memo describing the City's housing element, including the City's housing needs and regional housing need. For additional information and sample cover memo, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/priority-for-water-sewer.shtml>.

Environmental Constraints: Per comments from third party stakeholders, HCD understands that some of the sites within the Tustin Legacy Specific Plan may have contamination or need for environmental hazard mitigation. The element must describe and analyze environmental constraints that may impede the development of housing within the planning period on these sites.

Sites with Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element does not identify a zone in which emergency shelters are a permitted use. The element must identify a zone(s) where emergency shelters are permitted without a conditional use permit (CUP) or other discretionary action and with sufficient capacity to accommodate the identified need for shelters. (Gov. Code, § 65583, subd. (a)(4).) If the element cannot demonstrate compliance with the statutory requirements, a program to amend the zoning ordinance to meet the statutory requirements must be completed within one year of the adoption of the housing element. See Finding C1 below for more information regarding a program for compliance.
 - *Transitional & Supportive Housing:* The element does not adequately address requirements for transitional housing and supportive housing. Pursuant to Senate Bill 2 (Chapter 633, Statutes of 2007), transitional and supportive housing must be permitted as a residential use in all zones and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. The element must demonstrate consistency with these statutory requirements and include a program as appropriate.
 - *Housing for Farmworkers:* The element must identify sufficient sites to accommodate the need for farmworker housing and include an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for agricultural employees, permanent and seasonal. For example, the analysis could describe zoning available to accommodate various housing types, such as manufactured homes, apartments, boarding houses, or single-room occupancy units, to address the needs of farmworkers. In addition, the element must demonstrate the City's zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone.
 - *Manufactured Housing:* The element must address how and where manufactured housing is allowed, including whether a CUP or other discretionary action is required.
3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities*

as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (a)(5).)

Land-Use Controls: The element must identify and analyze all relevant land-use controls impacts as potential constraints on a variety of housing types (e.g., multifamily rental housing, mobilehomes, transitional housing). The analysis must also evaluate the cumulative impacts of land-use controls on the cost and supply of housing, including the ability to achieve maximum densities. In particular, the element should list allowable densities in each zone, in addition to the development standards already provided (p. II-24). The element should also analyze the requirement for two covered spaces in all residential zones, particularly the multi-family zones, as a potential constraint. The analysis should describe past or current efforts to remove identified governmental constraints, and the element should include programs to address or remove the identified constraints.

Fees and Exaction: The element must describe all required fees for single family and multifamily housing development and analyze their impact as potential constraints on housing supply and affordability. The element currently identifies impact fees but does not provide information about planning fees and does not analyze either. The analysis should identify the total amount of fees and their proportion to the development costs for both single family and multifamily housing.

Local Processing and Permit Procedures: The element must describe and analyze the City's permit processing and approval procedures by zone and housing type (e.g., multifamily rental housing, mobilehomes, housing for agricultural employees, supportive housing). The analysis must evaluate the processing and permit procedures' impacts as potential constraints on housing supply and affordability. For example, the analysis should consider processing and approval procedures and time for typical single- and multifamily developments, including type of permit, level of review, approval findings and any discretionary approval procedures. In particular, the element should clarify how and where multifamily development is allowed and what the process and timing look like for a typical multi-family development, among other details.

Design Review: The element must describe and analyze the City's design review guidelines and process, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply and affordability. For example, the analysis could describe required findings and discuss whether objective standards and guidelines improve development certainty and mitigate cost impacts. The element

must demonstrate this process is not a constraint or it must include a program to address this permitting requirement, as appropriate.

Constraints on Housing for Persons with Disabilities: The element must demonstrate that the City has a reasonable accommodation procedure for providing exception in zoning and land use. While the element makes reference to reasonable accommodation for persons with disabilities, it does not provide any information on the City's reasonable accommodation procedure. The element should describe the City's reasonable accommodation procedure, including how requests are made and processed, and any approval findings.

In addition, the element details that residential care facilities serving six or fewer persons are permitted in all residential zones. However, residential care facilities serving seven or more persons require a CUP. The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty.

Local Ordinances: The element must specifically analyze any locally adopted ordinances such as inclusionary ordinances or short-term rental ordinances that directly impact the cost and supply of residential development. The analysis should demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters. If the City does not have such ordinances, the element should confirm this.

4. *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, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)*

The element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. This analysis must address any related constraints on housing development and programs should be added as appropriate. Additionally, the element must identify any local efforts to address nongovernmental constraints that create a gap in the jurisdiction's ability to meet the RHNA by income category.

5. *Analyze any special housing needs such as elderly; persons with disabilities, including*

a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)

While the element quantifies the number of some special need populations, it must also quantify the number of persons with disabilities, large households, and female-headed households. In addition, the element must analyze the special housing needs of these populations. For a complete analysis of each population group, the element should discuss challenges faced by the population, the existing resources to meet those needs (e.g., availability senior housing units, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

6. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element identifies four properties at risk of conversion to market rate. While the element addresses some of these requirements, it does not estimate the costs of replacement versus preservation, identify entities with the capacity to oversee preservation, or identify specific funding sources that could be used to preserve the affordability. The element must provide this analysis for the at-risk units identified.

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Several programs contained in the element lack one or more of these components. Programs to be revised include the following:

- 1.2a (Objective Design Standards): Modify timeframe to reflect completion date for objective design standards.
- 2.1c (Emergency, Transitional, and Supportive Housing): Specify timeframe for expansion by 125 beds.

- 2.3a (Senior Housing): Modify to include further details regarding how senior units will be preserved.
- 2.4a (Housing for Persons with Disabilities): Add timeframe for implementation of outreach program and completion of related educational materials.
- 2.4b (Housing for Persons with Disabilities): Accelerate timeframe to ensure beneficial impact within the planning period.

Additionally, all programs should be evaluated to ensure meaningful and specific actions and objectives. Programs containing unclear language (e.g., “Evaluate”; “Consider”; “Encourage”; etc.) should be amended to include more specific and measurable actions. These include Programs 1.1b (Residential Development – Available Sites), 1.5 (Zoning Code Streamlining Program), 1.6 (Mobile Home Programs), 1.9 (Partnerships with Non-profit Organizations), 1.14 (Adaptive Reuse of Historic Resources to Facilitate Affordable Housing Production), 1.19 (Fees, Exactions and Permit Procedures), 2.1b (Emergency, Transitional, and Supportive Housing), 2.1c, 2.1d, 2.4b (Housing for Persons with Disabilities), 3.2b (Home Ownership Assistance), and 3.8a (Membership of CalCHA).

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Program 1.1a (Tustin Legacy Specific Plan Implementation): The program commits to rezoning sites to accommodate the City’s RHNA but does not include the by-right provisions found in statute (Gov. Code 65583.2(c), subd. (h) & (i).) The program must commit to:

- permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a CUP, planned unit development permit, or other discretionary review or approval.
- accommodate a minimum of 16 units per site;
- require a minimum density of 20 units per acre; and

- at least 50 percent of the lower-income need must be accommodated on sites designated for residential use only or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites:
 - allow 100 percent residential use, and
 - require residential use occupy 50 percent of the total floor area of a mixed-use project.

Program 3.7 (Preservation of Assisted Housing): As stated above, the element appears to rely on the preservation of four housing projects to accommodate a portion of the RHNA for lower-income households pursuant to Government Code section 65583.1, subdivision (c). The element must include a program that commits the City to provide committed assistance through a legally enforceable agreement by the end of the third year of the housing-element planning period. The dollar amount or related in-kind services of the committed assistance must be substantial enough to make the targeted units available for occupancy within two years of the execution date of the agreement. In addition, the program must commit to report the status of the committed assistance program in the annual progress report no later than the fourth year of the planning period. If the City does not enter into an enforceable agreement of committed assistance for all the units initially identified by the end of the third year of the planning period, the local government must adopt an amendment to its housing element, no later than the end of the fourth year of the planning period, identifying additional adequate sites sufficient to accommodate the number of units for which committed assistance was not provided.

Program 2.1a (Emergency, Transitional and Supportive Housing): Specify the changes being made to comply with Assembly Bill 2162 (Chapter 753, Statutes of 2018) and all other statutory provisions regarding emergency shelters, supportive housing, and transitional housing, including the requirements under Senate Bill 2 (Chapter 633, Statutes of 2007). Please be aware, actions to adopt zoning that accommodates emergency shelters without discretionary action must be completed within one year of adoption of the element. In addition, actions to amend the zoning ordinance to comply with State law should also take place within one year of adoption.

3. *The housing element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

While the programs describe various actions to assist in the development of housing, the element must include a program specifically to meet the needs of extremely low-income households.

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

As noted in Findings A3 and A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

3. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element does not contain programs that satisfy the AFFH requirements for specific and meaningful actions to overcome fair housing issues. Based on a complete analysis, the element must add or revise programs.

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

Include quantified objectives estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period. This requirement could be addressed by utilizing a matrix like the one illustrated below:

Income	New Construction	Rehabilitation	Conservation/ Preservation
Extremely Low-			
Very Low-			
Low-			
Moderate-			
Above Moderate-			
TOTAL			

While the element demonstrates progress towards these objectives from the previous housing element cycle (p. A-7), it must also provide quantified objectives for the 6th cycle.

E. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(8).)

While the element includes a general summary of the public participation process (Appendix E), it must also summarize the public comments and describe how they were considered and incorporated into the element.

In addition, HCD understands the City made the element available to the public concurrent with its submittal to HCD. By not providing an opportunity for the public to review and comment on a draft of the element in advance of submission, the City has not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD's ability to consider public comments in the course of its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD's review. The City must proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.