

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

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January 12, 2022

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

Dear Justina L. Willkom:

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

Thank you for submitting the City of Tustin's (City) housing element adopted October 5, 2021 and received for review on October 14, 2021. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted housing element addresses some statutory requirements described in HCD's August 27, 2021 review; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code), as listed in the enclosed Appendix. The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted to comply with the listed requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Outreach to lower-income and special needs groups during the public participation continues to be important throughout the housing element revision 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 criterion. 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. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

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.

HCD is committed to assist 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 colin.cross@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall". The signature is stylized and somewhat cursive.

Paul McDougall
Senior Program Manager

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 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))*

Strategies and Actions: The element is revised to include a matrix demonstrating the connection between contributing factors and affirmatively furthering fair housing (AFFH) programs (pp. D-93-96). However, the element relies solely on programs which are not transformative, meaningful, or specific. For example, some of these actions simply involve coming into compliance with state law. The element must be revised to include programs that go beyond status quo actions and include quantifiable objectives and concrete actions. Programs 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).)*

Progress in Meeting the Regional Housing Needs Allocation (RHNA): The element is revised to describe the 125 homes in the Village of Hope project as units, rather than beds. However, it appears that these do not meet the Census definition of a unit, due to their shared eating facilities. Please be aware that to be credited towards the RHNA, the additional approved capacity must meet the Census definition of a unit. The element should adjust the inventory as appropriate.

Zoning for Lower-Income Households: The element is revised to clarify that the Specific Plan land use designations for original sites 1-16 do not have density limitations, and therefore satisfy the City's default density of 30 du/ac. However, the adopted element adds two new sites, both of which have the Planned Community Commercial/Business land use designation, which is not described. The element

must clarify what densities are allowed on these sites, what approvals are required to reach at least 30 units per acre, and any relevant action the City may be taking to ensure the viability of these sites for residential development.

Realistic Capacity: The adopted element is revised to add three examples of large-scale development nearby, including a single development located in Tustin at 32 du/ac. However, the element still does not identify the City's capacity assumptions or provide support for the capacity methodology. For example, the element has been revised to assume 430 units for Site 1 (Tustin Legacy Specific Plan (TLSP) Neighborhood D–North) [p. B-12] but does not explain the trends and factors used to determine this capacity. The element should describe the factors that led to this assumption and should relate the assumptions to trends in residential development. A full analysis should address the differences in density between the sample projects located outside of Tustin and the sample project located in Tustin, and whether the City has potential constraints to development that may hinder its ability to achieve higher densities. For more information, please refer to HCD's prior review.

In addition, this analysis must still adjust for the likelihood of nonresidential development in any zones that allow a mix of uses. The element does add some information regarding mixed-use projects and residential projects near specific plan areas (pp. B-17-18) but relate these examples to the capacity assumptions. This analysis is especially important for the added Sites 17 (Enderle Center) and 18 (Market Place), which are located in the Planned Community Commercial / Business district and may require rezoning to allow residential uses. For more information, please refer to HCD's prior review.

Suitability of Nonvacant Sites: The element does not address HCD's findings regarding the suitability of nonvacant sites and the Caltrans-owned Site 15. Furthermore, the additional Sites 17 (Enderle Center) and 18 (Market Place) require analysis demonstrating potential for redevelopment within the planning period. Please see HCD's prior review.

Small and Large Sites: The element does not provide any additional description of the City's lot consolidation capacity as required. Please see HCD's prior review. Additionally, the element includes a new Site 18 (Market Place) which totals 48.65 acres, but must still provide evidence to HCD that the site is adequate to accommodate lower-income housing, including but not limited to an analysis of the site's potential for redevelopment and any steps that may need to be taken to facilitate residential development (e.g., development of a specific plan, lot splits, etc.). The element should adjust program actions as appropriate.

Infrastructure: The element is revised to clarify sufficient planned infrastructure for the TLSP area (p. B-18). However, the element does not describe infrastructure capacity for other Specific Plan areas or for the new Sites 17 (Enderle Center) and 18 (Market Place). The element must be revised to address this requirement for all sites in the inventory.

Environmental Constraints: The adopted element addresses environmental hazards within the TLSP very generally, stating “the presence of continued remediation activities on the Tustin Legacy site will not significantly impair the site’s ability to support the number of residential units anticipated” (p. B-18). This is not adequate to address this requirement. A full analysis should address what the actual hazards are, describe the remediation activities and provide their status and timeline, clarify whether these hazards are located within the TLSP neighborhoods identified for the RHNA, and fully examine their impact on identified sites.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element is revised to state that emergency shelters are “permitted, and are presently in operation, in parts of the Tustin Legacy Specific Plan” (p. B-18). This is not adequate to satisfy this requirement. A full analysis must identify a zone in which emergency shelters are permitted without discretionary action, demonstrate the suitability of this zone for such uses, and demonstrate that emergency shelters are subject only to development standards that comply with Government Code Sec. 65583(a)(4). Please see HCD’s prior review.
 - *Farmworkers / Employee Housing Act:* The adopted element claims because there are no agricultural activities in Tustin, “it is therefore concluded that no farmworker housing is required” (p. B-18). This does not address HCD’s finding regarding the Employee Housing Act. Please see HCD’s prior review.
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 is revised to address parking requirements. However, the element adds a cumulative analysis of land use controls (p. II-49) which does not address the ability to achieve maximum densities as is required. Please see HCD’s prior review.

Fees and Exactions: The element is revised to include a table of planning fees (pp. II-41-45). However, these fees are not contextualized or analyzed, and the table is labeled “FY 08-09”; it is not clear whether these are the current fees. The element should ensure a current fee table is included and provide analysis.

In addition, the element is revised to provide an estimate of the total cost of fees for a typical multifamily project (p. II-37). However, this discussion does not provide a sense for fees as a proportion of development costs, and does not provide an estimate of total fees for a typical single-family development. Please see HCD's prior review.

Local Processing and Permit Procedures: The element is not revised to address this finding. Please see HCD's prior review.

Design Review: The element is revised to provide some information on the design review process; however, it must still describe and analyze decision-making criteria and/or approval findings. Additionally, the element provides contradictory information regarding whether a Planning Commission hearing is needed, stating both that "The Design Review application does not necessarily require a public hearing or Planning Commission approval" (p. II-48) and that "... in the R-2 or R-3 zones formal Design Review is required and approval by the Planning Commission" (p. II-49). The element should clearly describe the process for design review as it pertains to the various zones and any other relevant factors.

The revised element also reveals several potential constraints. For example, a Major conditional use permit (CUP) is required in addition to design review for new apartments of three or more units; the element does not clarify whether this applies to all zones and it does not analyze the requirement as a potential constraint. Furthermore, the element notes that an additional CUP is required if a proposal deviates from parking requirements. The element must analyze these requirements as potential constraints and should include programs to address and mitigate or remove the constraints as appropriate.

Housing for Persons with Disabilities: The adopted element includes expanded discussion of the City's reasonable accommodation process (pp. II-32-3). However, the element still does not profile or analyze the approval findings for this process. In addition, revisions to the element indicate a fee is required for a complete application, which, according to the planning fee schedule (p. II-42), may be several hundred dollars or more; the element also notes that "a deed restriction is recorded against the property to ensure compliance with conditions of approval, potential removal of the accommodation, and use restrictions" (p. II-33). These potential constraints should be specifically addressed in the element's analysis of the City's reasonable accommodation procedure and the element should commit to modifying its reasonable accommodation ordinance to remove the fee via a program action.

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. With revisions, the element mentions an inclusionary ordinance for the Red Hill Avenue and Downtown Commercial Core Specific Plan areas (p. II-50), but does not provide any detail or analysis. The element must be revised to provide specific analysis and programs should be added or modified if necessary.

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 adopted element is revised to state that the City has not received development applications at densities below those identified in the element for Specific Plan areas, but it must also provide this information for the rest of the City. The element is not revised to address the requirement regarding the length of time between receiving approval for a housing development and the submittal of an application for building permits. Please see HCD's prior review.

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).)*

The element must quantify the number of persons with developmental disabilities and analyze the special housing needs of persons with disabilities more generally.

6. *Analyze existing assisted housing developments that are eligible to change to nonlow-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 adopted element does not address this requirement. The City's response-to-comments document, submitted alongside the element, claims that it does not apply because at-risk units are no longer being credited towards the RHNA. The element must include this analysis regardless of utilization to accommodate the RHNA. Please see HCD's prior review.

B. 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).)

The adopted element is revised to address most of HCD's comments regarding specific actions, timeline for implementation, objectives, and responsible agency. However, Program 1.19 (Fees, Exactions, and Permit Procedures) should still be modified to include a specific commitment. Please see HCD's prior review.

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 was 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 is revised to include the by-right provisions found in Government Code 65583.2(h) & (i) (pp. IV-2-3). However, Program 1.1 (Residential Development–Available Sites) appears only to apply these provisions to “reuse sites”, or sites used in previous inventories. Program actions must be revised to ensure that these provisions apply to all sites being rezoned to accommodate a shortfall in the RHNA during the planning period. Please see HCD's prior review.

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).)*

The element is revised to add the words “extremely low-income (ELI)” to several programs, but does not include an explicit ELI program or make any other specific amendments to the existing programs. This is not adequate to satisfy the requirement. The element must include a program containing a specific commitment that seeks to assist in development for ELI households. The program(s) could commit the City to adopting priority processing; granting fee waivers or deferrals; modifying development standards; granting concessions and incentives for housing developments; assisting, supporting, or pursuing funding applications; and/or proactively working with housing developers to identify development opportunities.

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 add or modify programs to address and remove or mitigate any identified constraints.

5. *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.

C. 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).)

The adopted element does not address this finding. The City's response-to-comments document claims that quantified objectives for rehabilitation and conservation are not required because those actions are "not proposed to meet the RHNA target"; this is inaccurate. Quantified objectives should estimate the number of units likely to be constructed, rehabilitated, or conserved/preserved by income level during the planning period based on programmatic actions and housing needs. Please see HCD's prior review to meet this statutory requirement.