

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

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May 18, 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 March 22, 2022. Pursuant to Government Code section 65585, subdivision (h), 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 May 9, 2022 with you and Irma Huitron, Assistant Director of Planning.

The adopted housing element addresses most statutory requirements described in HCD's January 12, 2022 letter; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

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).)*

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... (Gov. Code, § 65583, subd. (c)(5).)

Strategies, Actions, Metrics and Milestones: The element is revised to include further description of certain program actions. These are not adequate to meet the requirement for specific, meaningful, and transformative affirmatively furthering fair housing (AFFH) actions. Many new program actions, such as Programs 1.8 (Partnerships with Nonprofit Organizations) and 2.5 (Affirmatively Furthering Fair Housing), are limited to outreach. While HCD applauds targeted and proactive outreach activities, these alone are not adequate to satisfy the

requirements for meaningful and transformative programs. Other programs, such as 1.4 (Voluntary Workforce Housing), 3.1 (Condominium Conversions) and 3.5 (Rental Assistance) are pre-existing policy commitments that do not constitute new and transformative actions. Still others, such as 1.17 (Public Improvement Financing) and 3.10 (Housing Rehabilitation), include exploratory goals rather than a specific commitment. AFFH program actions should provide specific policy commitments, go beyond compliance with State law, address fair housing topics beyond outreach, and respond to the identified contributing factors. HCD can provide samples and other guidance under separate cover.

AFFH program actions must also provide meaningful metrics and milestones for measuring progress towards identified fair housing goals during the planning period; the element is not revised to include such metrics and milestones. Examples include, but are not limited to, a program to incentivize voucher use in high-opportunity areas which commits to objectives for the number of households assisted, or a program to establish anti-displacement policies which targets a decrease in the percentage of households that are considered vulnerable according to the Urban Displacement Project. HCD can provide samples under separate cover.

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).)*

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).)

Realistic Capacity: The element is revised to include updated estimates of realistic capacity. However, many of these estimates are internally inconsistent and/or make inaccurate calculations. For example, the element claims that the Tustin Legacy Specific Plan (TLSP) is “anticipated to provide capacity of 555 units over approximately 40 acres in Neighborhood D North (40 units/acre)” (p. B-20). However, this calculation does not work out to 40 du/ac; 555 units across

40 acres would only achieve a density of approximately 14 units/acre. Based on our conversation, HCD understands that these calculations may include acreage that will not be used for housing, and that the sites are expected to achieve densities in line with the sample projects from Table B-4. The element should be revised to clarify and confirm the densities assumed for each site, and to provide accurate calculations of capacity. Based on the outcomes of this analysis, the element may need to add or modify programs.

Zoning for a Variety of Housing Types (Employee Housing): The element is revised to include Program 2.7 (Farmworker Housing), which commits to compliance with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. However, the element incorrectly paraphrases the Act, stating that the City will allow “farmworker housing to be developed within areas that allow agricultural use” (p. IV-25). 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. Program 2.7 should be revised to ensure compliance with the Employee Housing Act.

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). (Gov. Code, § 65583, subd. (a)(5).)*

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).)

Permit Processing and Procedures: Program 1.5 is revised to commit to amending the zoning code “to allow apartments three or more by-right” (p. IV-10). However, this language is limited, and does not clarify the applicable zone(s).

Based on our conversation with the City, HCD understands that the City intends to remove the Conditional Use Permit (CUP) for residential uses City-wide. Program 1.5 should be revised to commit specifically to the removal of this CUP for all zones.

Design Review: The element is revised to provide more information about the City's design review process, including a list of the design review "responsibilities" of the Community Development Department. However, the element does not analyze this process as a potential constraint. For example, the element does not address the fact that design review appears to apply to every single development proposal; nor does it discuss the subjective nature of the "responsibilities" listed. The element must also describe and analyze the Conditions of Approval and Guiding Principles as found in Tustin City Code Section 9272, many of which contain subjective language and may pose a constraint to housing development. The element should be revised to analyze the design review process as a potential constraint, including analysis of the process' impact on factors such as supply, affordability, timing, and developer certainty. Programs should be added and modified as appropriate.

Housing for Persons with Disabilities: The element is revised to describe the City's reasonable accommodation procedure in further detail. These revisions reveal that the City requires an applicant for reasonable accommodation to provide "confirmation that the property is the primary residence of the disabled person" (p. II-37). This requirement may pose a constraint to housing for persons with disabilities. The element should analyze the requirement for consistency with HUD/DOJ guidance and add or modify programs as appropriate.

Local Ordinances: The element is revised to provide more information about the City's inclusionary housing ordinance. This discussion should also describe what percent of units are required to be affordable and analyze the requirement as a potential constraint. In addition, although the element describes the policy as voluntary, it appears to be mandatory for housing development, as it is triggered "when the developer makes the voluntary election to request the discretionary and valuable benefit of adding residential units" (p. II-35). The element should clarify what specifically triggers the inclusionary requirements, and analyze this as a potential constraint, as it may disincentivize the addition of residential units to mixed-use properties. Finally, the in-lieu fees provided appear high and may pose a constraint, and the element does not clarify whether these fees are per-unit. The element must be revised to provide specific analysis of these potential constraints and add or modify programs as appropriate.

Programs: As noted above, 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.

4. *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 is revised to analyze the special housing needs of persons with disabilities. However, the element must still quantify the number of persons with developmental disabilities and add or modify programs as appropriate based on the outcomes of a complete analysis.

5. *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 is revised to update the assessment of risk for at-risk units and commit to new program actions related to tenant noticing. However, the element still 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.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted to comply with the above requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), Program 1.1 (Residential Development – Available Sites) to rezone to accommodate the regional housing needs allocation (RHNA) must 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. During the housing element revision process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and a link must be emailed to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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:

<https://www.opr.ca.gov/planning/general-plan/guidelines.html>

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. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

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,



Paul McDougall
Senior Program Manager