

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

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May 9, 2024

Sunayana Thomas, Director  
Community and Economic Development Department  
City of Fullerton  
303 West Commonwealth Ave.  
Fullerton, CA 92832

Dear Sunayana Thomas:

**RE: City of Fullerton's 6<sup>th</sup> Cycle (2021-2029) Revised Draft Housing Element**

Thank you for submitting the City of Fullerton's (City) revised draft housing element received for review on March 25, 2024. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from People for Housing OC and Sam Andreano pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that did not adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until rezones to make prior identified sites or accommodate a shortfall of sites are completed pursuant to Government Code sections 65583, subdivision (c)(1)(A) and 65583.2, subdivision (c). As this year has passed and Policy Action 1.1 has not been completed, the housing element is out of compliance and will remain out of compliance until the rezoning have been completed.

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. Please be aware, any revisions to the element must be posted on the local government's website and to email a link 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.

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 Affordable Housing and Sustainable Communities program, 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 appreciates the hard work and dedication the City's housing element team provided during the update and review. We are 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 Jose Ayala, of our staff, at [Jose.Ayala@hcd.ca.gov](mailto:Jose.Ayala@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF FULLERTON

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

### **A. Review and Revision**

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)*

While the element provides brief descriptions of housing achievements, it must still evaluate the cumulative effectiveness of programs in addressing special housing needs. Please see HCD's prior review for additional information.

### **B. 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).)*

Enforcement and Outreach: While the element discusses the City's referral process for fair housing complaints, it should also discuss how the City complies with fair housing laws. For more information on fair housing laws, please see HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance (starting on page 29) at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

Racially Concentrated Area of Affluence (RCAA): While the element briefly mentions the presence of presence of RCAAs, it should also include a specific analysis of patterns and trends for RCAAs within the City. The analysis should at least address trends, conditions, comparisons to other neighborhoods, effectiveness or absence of past strategies, local data and knowledge and other relevant factors related to equitable quality of life. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within the City.

Disproportionate Housing Needs, Including Displacement Risk: The element includes some general information on persons experiencing homelessness and housing conditions but should also evaluate patterns and trends, including areas of higher need. For persons experiencing homelessness, the element should examine disproportionate impacts on people with protected characteristics and services available and patterns of need or areas with higher concentrations of persons experiencing homelessness, including access to transportation and services. For housing conditions, the element should discuss areas of the City that have a higher number of units in need of rehabilitation and replacement. The element should utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

Local Data and Knowledge: The analysis of fair housing should utilize local data and knowledge to better understand any local patterns or differences or lack of differences from neighborhood to neighborhood. Local data and knowledge and other relevant factors should be incorporated into all of the fair housing analysis components. Examples of local data and knowledge include City officials, service providers, neighborhood representatives, past studies, assessments and plans and other relevant knowledge.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues and make revisions to policies and programs as appropriate.

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).)*

Sites Inventory: While the element identifies sites with different realistic capacity assumptions, the inventory (Table B-12) identifies all sites with a density of 20 dwelling units per acre. The element should reconcile this information with the information provided on Table B-7 to provide an accurate representation of each site's capacity assumption.

Suitability of Nonvacant Sites: The element now discusses indicators of redevelopment potential, various existing uses and redevelopment trends but should also consider additional indicators such as condition and viability of the existing structure, expressed developer or property owner interest in housing development, existing number of stories and other factors. Further, the element assumes an existing floor area ratio of one as an indicator of redevelopment potential, but trends do not appear to support this assumption. The element should either provide analysis to support this assumption or adjust the ratio. In addition, the element must analyze site assessor parcel number 072-242-15 per HCD's January 27, 2022 review. Finally, the element must still evaluate the extent existing uses impede additional development such as analysis of existing leases, contracts or other conditions that would perpetuate the existing use or prevent redevelopment. This analysis may be conducted on a planning area, corridor, or other area where conditions and circumstance are similar.

For your information, since the housing element relies upon nonvacant sites to accommodate more than 50 percent of the Regional Housing Needs Allocation (RHNA) for lower-income households, it must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Environmental Constraints: While the element provides an analysis on most environmental constraints, the element should also describe the impact of the Airport Impact Zone, if any, on residential development and any other known conditions that preclude development in the planning period (e.g., shape, access, easements, property conditions).

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element provides some information on how it complies with emergency shelter requirements, it must still address separation requirements such as distance to parks and residential property and add or modify programs to address identified constraints. Further, Policy Action 4.4-g (Homelessness Prevention and Housing) should address compliance with AB 2339 and identified constraints, including amending the definition of emergency shelters, clarifying shelters will be permitted without discretionary action, addressing spacing requirements and amending parking requirements limited to the number spaces sufficient for employees.
  - *Accessory Dwelling Units (ADU):* The element should clarify if the City has updated the ADU ordinance based on recent changes to State ADU Law and add or modify programs to amend the ordinance to comply with these changes.
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... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: While the element now adds Policy Action 1.4-j to eliminate the garage requirement for parking, should provide additional analysis on the total parking requirements and guest parking requirements for projects in the multiple-family

residential zones. Further, the analysis should address height limits for all multifamily zones, including single-family step back requirements, and evaluate impacts on housing supply (number of units) and ability to achieve maximum densities.

Constraints on Housing for Persons with Disabilities: While the element adds Policy Action 4.6-e to address group homes for seven or more persons, the element should also clarify how non-senior residential care facilities are permitted, whether the open space requirements for large group homes are a constraint to development and should add or modify programs to address identified constraint. Further, the element should analyze the definition of family for impacts on housing for persons with disabilities and add a program to modify the definition.

### **C. Housing Programs**

1. *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 B2, 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:

- *Policy Actions 1.1-e (Provision of Adequate Sites - Rezoning):* The Policy Action should go beyond reviewing development standards and commit to revise development standards to facilitate achieving maximum densities. In addition, please be aware, the recent California appellate decision in *Martinez v. City of Clovis* found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The City may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities less than 20 dwelling units per acre. *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.
- *Policy Action 1.1-f (Provision of Adequate Sites – Publicly Owned Sites):* As noted in the prior review, the Policy Action should include a schedule of actions to facilitate development on sites identified (e.g., sites described on p. H-B-4). In

addition, the Policy Action should commit to comply with all requirements pursuant to the Surplus Land Act, commencing with Government Code section 54220. Please see HCD's January 27, 2022 review for more information.

2. *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 B3, 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.

In addition, Policy Action 4.6-e (Housing for Persons with Special Needs – Group Homes) must replace or modify the conditional use permit (CUP) to address the constraint and specifically commit to allow group homes for seven or more persons in all zones allowing residential uses similar to other residential uses of the same type in the same zone (regardless of licensing).

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

As noted in Finding B1, the element requires a complete fair housing analysis. Depending upon the results of that analysis, the City may need to revise or add programs. In addition, goals and actions must have specific commitment, metrics or numeric targets, geographic targeting, and milestones and must address, as appropriate, housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization, and displacement protection.

4. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households... (Gov. Code, § 65583, subd. (c)(7).)*

Policy Action 1.9 (Accessory Dwelling Units) should commit to additional actions, if necessary, based on the review of production and affordability, at least twice in the planning period. Further, additional actions should include rezoning as an option if assumptions are significantly unmet.

**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).)*

The element did not address this requirement. Please see the January 27, 2022 review for more information.