

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

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August 15, 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 6th 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 July 1, 2024. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The revised draft element addresses many statutory requirements described in HCD's May 9, 2024 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), 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).)

Disproportionate Housing Needs, Including Displacement Risk: While the element was revised to discuss conclusions from a resident survey, it should also analyze access to transportation and services relative to geographic concentrations of persons experiencing homelessness.

Contributing Factors: Based on the outcomes of a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues, in addition to revising policies and programs as appropriate.

Programs: As noted above, 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, the element should be revised as follows:

- *Place-based Strategies toward Community Revitalization and Actions to Address Displacement Risk*: While the element includes some potentially significant and meaningful actions to Affirmatively Further Fair Housing (AFFH), it should consider additional actions to address displacement risk and place-based strategies toward community revitalization, including addressing disparities in access to environmental quality. For example, the element demonstrates disparities across the City by various factors (e.g., educational outcomes, housing cost burden, and environmental quality). The element must be revised to add or modify goals and actions to overcome identified patterns and trends and promote inclusive and equitable neighborhoods. Programs from other General Plan elements or other plans could be considered as part of the housing element goals and actions (e.g., environmental justice element).
- *Housing Mobility Strategies*: While the element contains a few programs to promote housing mobility such as accessory dwelling units (ADU), it should include additional actions that promote housing choices and affordability throughout the City, including areas of relatively higher resource and income and lesser density, and increase quantified objectives for housing choices and affordability. Additional examples of housing mobility actions include identifying additional multifamily capacity, missing middle housing capacity, City-Owned and public facility sites, and additional conversion of existing spaces within single family residences to ADUs beyond junior accessory dwelling units (JADU). In addition, the element should be revised, as follows:

Policy Actions 1.3-f and 1.7-a (religious sites): The Program should add a quantifiable metric and geographic targeting as appropriate.

Policy Action 1.4-e (alternative housing types): The Program should add geographic targeting as appropriate.

Policy Action 1.4-f (facilitate development): The Program should add geographic targeting as appropriate.

Policy Action 1.4-g (remove barriers to development): The Program should add a quantifiable metric and geographic targeting as appropriate.

Policy Action 1.6-e (accessory dwelling units): The Program should add a quantifiable metric and consider adding a specific commitment to support

housing mobility by going beyond existing state law regarding the maximum number of allowable ADUs.

Policy Actions 2.2-2.3 (affordable housing rehabilitation): The element should ensure actions under Policy 2.2 and 2.3 also have appropriate geographic targeting as necessary (for example, place-based strategies should be focused in areas of higher need as identified as part of the housing stock condition analysis, similar to Policy Action 2.2-a).

Policy Action 3.1-b (transportation infrastructure): The Program should add a quantifiable metric.

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... (Gov. Code, § 65583, subd. (c)(1).)

Sites Inventory: The element must clarify the correct total number of sites and their final realistic capacity calculations. For example, page H-B-11 states that there are 294 sites, Table B-6 states that there are 300 sites, and page H-B-18 states that there are 292 sites total. The element should be revised, as necessary, to ensure calculations are consistent throughout the element and sites inventory and adjust residential capacity calculations as necessary.

Suitability of Nonvacant Sites: While the element was revised to provide support for Floor Area Ratio (FAR) assumptions, the trends described in Table B-7 do not appear to support the 0.78 assumption in the methodology. For example, most of the recent development projects listed in Table B-7 contain FARs of 0.5 or less with only a few above this threshold. The element's methodology should reduce the analysis to only include sites with FARs of 0.5 or less and revise the sites inventory accordingly.

In addition, 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.

Electronic Sites Inventory: For your information, 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 and submit an electronic version of the sites inventory. While the City has submitted an electronic version of the sites inventory, if changes occur, any future re-adopted versions of the element must also submit the electronic version of the sites inventory.

Programs: As noted above, 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 Action 1.1 (HIOZ overlay):* 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-e (Provision of Adequate Sites – Rezoning):* The element must include Policy Actions with specific commitments to establish appropriate development standards to facilitate achieving maximum densities.
3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..land use controls... (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... (Gov. Code, § 65583, subd. (c)(3).)

Land Use Controls: As indicated on page H-3-11, Policy Action 1.4-j (parking) must be revised to specifically remove the garage requirement for multifamily

uses and reduce the parking requirement in the R-5 zone. In addition, the Policy Action must revise the objective and timeframe to do so regardless of the outcomes from the parking feasibility study. Furthermore, for your information, parking requirements generally should be on a sliding scale with higher density zones requiring less parking than lower-density zones. As stated in HCDs prior review, the element must analyze local parking standards for potential constraints (including guest parking requirements) to the cost, supply, affordability, and feasibility of achieving maximum densities for multifamily developments. Please note that Policy Action 1.4-j (parking) to study the feasibility of parking does not substitute the need to analyze parking requirements for potential constraints in the element. The element must add or revise programs as necessary to address identified constraints.

The revised element clarifies that maximum height limits are in affect for multifamily developments that are within a certain distance from R-1 zones, for example, multifamily developments are limited to 1 story or 20 feet if within 50 feet from R-1 zoning districts. HCD understands that limiting multifamily housing to 1 story or 20 feet height limits can be a constraint to development for this housing type. The element must add or revise a Program to revise this development standard to specifically remove this constraint. The City could allow for additional height/feet limits (e.g., 2 stories/24 feet within 50 feet of R-1 zones) or remove the development standard to address the constraint to multifamily housing types.

The element should provide additional information regarding interior side yard setbacks in the R-G, R-3R, R-3P, R-3, R-4, R-5, and particularly the HIOZ zoning districts which depends on the “window types, building height, and the type of room” where windows are located. Additionally, the element should describe and analyze these standards, including approval findings, for potential constraints related to housing developments cost, supply, and affordability of units and housing.

The element notes on page H-1-3 that the City has a “need for units that can accommodate large households” while acknowledging that the set-/step-back development standard for the R-1 and R-2 zoning districts “may affect the size of the unit” (p. H-3-6). To address overcrowding and facilitate a variety of housing types, including larger bedroom types, the element should add or revise a Program to specifically commit to modify the set-/step-back development standard in the R-1 and R-2 zoning districts to allow for larger unit sizes, going beyond commitments already established in Policy Action 1.4-f (unit size incentives).

Lastly, the element should clarify which rezone sites will be affected by alternative development standards that are more restrictive for sites that are within 100 feet from the R-1 zoning district, as explained on page H-B-11. The element could denote these sites in Table B-17. Realistic capacity assumptions must be revised as needed following a complete analysis (e.g., suitability of nonvacant sites analysis, land use controls).

Programs: As noted above, the element requires a complete analysis of potential governmental 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. *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 was not revised to address this requirement. Please see the January 27, 2022, review for more information. In addition, the total conservation/preservation calculations in Table 4-1 must be revised regardless of new changes (i.e., 116 total).

The element will meet the statutory requirements of State Housing Element Law once it has been revised, adopted, submitted to, and reviewed by HCD to comply with the above requirements pursuant to Government Code section 65585.

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 ongoing dedication the City's housing element team provided during the course of our 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 Anthony Errichetto, of our staff, at Anthony.Errichetto@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager