

**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



December 14, 2021

Ted White, Planning & Building Director
Planning & Building Department
City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805

Dear Ted White:

RE: Anaheim's Accessory Dwelling Unit (ADU) Ordinance

The purpose of this letter is to submit written findings on the City of Anaheim's adopted ADU ordinance (Ordinance No. 6483), received by the California Department of Housing and Community Development (HCD) on July 28, 2020. Pursuant to Government Code section 65852.2, subdivision (h), HCD is submitting these written findings. Our findings were facilitated by a telephone conversation on February 8, 2021, with Lisandro Orozco, Associate Planner. HCD finds that the ordinance does not comply with section 65852.2 in several respects, noted below. HCD requests that the City provide a written response to these findings no later than January 13, 2022. HCD will review and consider any written response received from the City before that date in advance of taking further action authorized by Government Code section 65852.2.

The adopted ADU ordinance meets many statutory requirements. However, the ordinance must be revised to comply with State ADU Law (Gov. Code, § 65852.2), as follows:

- *Underlying Use (Residential use)*: In Ordinance No. 6483, Section 1 (*Table 4-B*), Section 2 (*Table 6-B*), and Section 4 (*Table 14-B*) limit ADUs to residential zones, such as single-family and multifamily residential zones. State law requires local agencies to permit ADUs in all areas zoned to allow single-family or multifamily dwelling residential use. This includes other zones that would allow single- and multifamily residential uses, such as the mixed-use and potentially commercial zones. (Gov. Code, § 65852.2, subd. (a)(1).) HCD recommends the City amend its ordinance to clarify this, such as by amending the allowed use tables for those zones, by removing the enumerated zones that exclude areas with legally existing nonconforming uses, or by adding to the tables: "ADUs are not limited to particular zones but allowed anywhere where single-family or multifamily residential uses are allowed."

- *Number of Dwelling Units:* Section 6, Subsection 0.030 (*Number of Units Per Parcel*) states that “no more than one (1) ADU and (1) one Junior Accessory Dwelling Unit (JADU) shall be allowed on a single lot.”
 - While this statement is generally correct, this should be clarified to differentiate between lots with single-family and multifamily residential use. There are differences as to what type of ADU is allowed under subdivisions (a) and (e) of Government Code section 65852.2, as well as differences as to how many ADUs are allowed on a site. Under subdivision (a), an applicant may choose to build one (1) attached, detached, or conversion ADU on a site with a proposed or existing single-family or multi-family dwelling. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii) & (iii)). However, junior accessory dwelling units (JADUs) can only be constructed on a site with a proposed or existing single-family dwelling, and a JADU cannot be constructed on a multifamily site. (Gov. Code, § 65852.22). The City may, for instance, change the end of the sentence: “...a single lot with a single-family dwelling” to correct this statement and conform to state law. (Gov. Code, § 65852.2, subd. (e)(1)(A)).
 - Under subdivisions (e)(1)(C) and (e)(1)(D), an applicant may choose to build not more than two detached ADUs that are located on a lot that has an existing multifamily dwelling or one interior ADU, and up to 25 percent of the number of existing multifamily dwelling units within an existing multifamily dwelling. All interior ADUs; however, must be converted from non-livable space, which is not a requirement under subdivision (a). The City may allow both interior and detached ADUs on the same site under Government Code section 65852.2, subsection (g), but is not required to do so.
- *Development of ADUs and JADUs:* Section 7, Subsection 0.020 (*Prohibition*) states that an accessory living quarter shall not exist on the same lot with either an ADU or JADU. However, a JADU and an ADU are allowed under state law and cannot be prohibited, even when there is an existing accessory living quarter in the primary dwelling. (Gov. Code, § 65852.22.)
- *Maximum Unit Size (Single-Family):* Section 6 (*Table 38-A*) states as a maximum size for attached ADUs: “50% of main dwelling unit or 1,200 square feet (whichever is less).” Ordinances shall not require ADUs to be less than 800 square feet. (Gov. Code, § 65852.2, subd. (c)(2)(C).) To be consistent with state law, HCD recommends removing “whichever is less” from this sentence in Table 38-A and rewording it to: “50% of main dwelling unit or 1,200 square feet (~~whichever is less~~), but in no event less than 800 square feet.”
- *Parking:* Section 6, Subsection 0.080 (*Parking*) states that parking for ADUs and JADUs shall be provided in accordance with Municipal Code section 18.42.030 (Residential Parking Requirements). JADUs may not be required to have parking. The City must modify this provision to clarify. For instance, the City could modify

this to say: “Parking for ADUs shall be in compliance with Government Code section 65852.2.” Under this provision, ADUs shall be required to provide no more than one parking space per unit or bedroom, whichever is less.

In addition, Section 10, Subsection 0.0702, states that spaces shall be separated from any garage spaces for the main dwelling unit by a wall or other permanent barrier. This exceeds state standards as it is viewed as excessive and burdensome for the creation of an ADU. HCD recommends removing this language. (Gov. Code, § 65852.2, subd. (a)(1)(D)(x).)

- **Building Separation:** Section 6 (*Table 38-A*) requires a detached ADU to have a minimum separation of 10 feet between the main dwelling unit and the detached ADU. This statement should be clarified to comply with state law. Although this may be a requirement for newly constructed ADUs, *where feasible*, an ADU of at least 800 square feet that is at least 16 feet in height with a setback of no more than four feet from the side and rear lot lines shall be permitted. Further, ADUs converted from existing structures may not be limited in this way and are not impacted by local agency development standards. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii) and (c)(2)(C).)
- **Number of Bedrooms:** Section 6 (*Table 38-A*) and Section 10, Subsection 0.070 appear to limit ADUs to two bedrooms. This raises concerns about limiting occupancy based on familial status. Limiting the number of bedrooms within an ADU—well beyond the limits imposed by the building code—may limit housing available to larger households. HCD’s research indicates that the number of persons in households may vary based on specific characteristics that are protected under state and federal fair housing laws, such as familial status (presence of children until the age of 18), married/non-married households, and race or ethnicity. Limiting the number of bedrooms might unintentionally constrain housing choice for these groups of people and cause a discriminatory effect under California Code of Regulations, title 2, section 12060. Note that a local agency shall not establish by ordinance a maximum square footage requirement for either an attached or detached ADU that is less than either 850 square feet or 1,000 square feet for an ADU that provides more than one bedroom. The City should revise this limitation and include language such as “two or more bedrooms.” (Gov. Code, § 65852.2, subd. (c)(2)(B)(ii).)
- **Lot Coverage:** Section 6 (*Table 38-A*) states that standards of the underlying zone shall apply. State ADU Law describes the scope of regulations that may be imposed on an ADU (Gov. Code, § 65852.2, subd. (a)(5)) and specifies that no lot coverage, floor area ratio, open space, or minimum lot size may be applied to preclude the construction of an ADU of at least 800 square foot that is at least 16 feet in height with four-foot side and rear yard setbacks. (Gov. Code, § 65852.2, subd. (c)(2)(C).) The City must modify its ADU ordinance to clarify this exemption from local development standards.

- *Review Process*: Section 6, Subsection 0.090 applies the City's normal historic review process to ADUs. This is not allowed for new ADUs or additions to the main dwelling unit, unless the review process is ministerial, based on objective standards, with no hearing or discretionary review. The City may provide for mitigation and application of standards to protect historic resources, but while the standards applied to historic structures may be more protective, the processes must be consistent with State ADU Law. The City must modify its ordinance to clarify that the process is ministerial and the City shall act on the application to create an ADU or JADU within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. (Gov. Code, § 65852.2, subd. (a)(3).)
- *Other Statewide Permissible ADUs (Subdivision (e))*: The ordinance provides for only a few of the categories of ADUs listed in Government Code section 65852.2, subdivision (e). ADUs may not be denied on the basis of local development standards or zoning clearances; may not be limited to residential and mixed-use zones; and may not be subject to height, lot size, lot coverage, unit size, architectural review, landscape or parking requirements. The four categories of ADUs under subdivision (e) are:
 - One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single-family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.
 - One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.
 - Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.
 - Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.
- *Converted Detached Accessory Structures*: Section 6 (*Table 38-A*) does not consider converted detached accessory structures. (See page 12.) In addition, the "Detached" column in the table would only apply to new ADUs because no development standards are applicable for ADUs converted from an existing structure. These converted structures also do not have square footage limitations. The "Detached" column should therefore be revised and renamed to "New

Detached” or the ordinance needs to be revised in another way to provide clarity on this point. (Gov. Code, § 65852.2, subd. (e).)

- *Exterior Access (Single-Family)*: Section 6, Subsection 0.0701 states that exterior stairs and doors shall not be visible from any public right-of-way, excluding alleys. This is unduly burdensome and beyond the standards of State ADU Law. The ordinance may provide that exterior stairs and doors should be located to limit visibility from any public right-of-way, excluding alleys, where feasible. Further, note that ADUs are allowed to add 150 square feet beyond the physical dimensions of the existing accessory structure to accommodate for egress and ingress. (Gov. Code, § 65852.2, subds. (e)(1)(A)(i) and (a)(2).)
- *Utilities (JADU)*: Section 6, Subsection 0.0601 (*Utility Services*) states that the ADU or JADU may be metered separately from the main dwelling unit for gas, electricity, communications, water, and sewer services. This section should be revised to recognize the distinctions in law between ADUs and JADUs. A JADU shall not be considered a separate or new dwelling unit for purposes of providing service for water, sewer, or power, including a connection fee. This subsection could, for instance, be corrected by deleting “or Junior Accessory Dwelling Unit” from the statement. (Gov. Code, § 65852.22, subd. (e).)

The date on this letter shall serve as the start of the 30-day period for the local agency to respond to the findings before HCD takes any other action authorized pursuant to Government Code section 65852.2, subdivision (h). Please note that failure to comply with section 65852.2, subdivision (h), may lead to a referral to the Attorney General’s Office.

HCD appreciates the City’s efforts provided in the preparation and adoption of the ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Molivann Phlong, of our staff, at (916) 776-7569 or at Molivann.Phlong@hcd.ca.gov.

Sincerely,



Melinda Coy
Senior Housing Accountability Manager

**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



December 14, 2021

Ted White, Director
Planning & Building Department
City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805

Dear Ted White:

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

Thank you for submitting the City of Anaheim's (City) draft housing element received for review on October 15, 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 conversation on December 14, 2021 with you, Bianca Alcock, Code Enforcement Supervisor; Joanne Hwang, Senior Planner; Niki Wetzel, Deputy Director of Planning Services; and Consultants Dave Barquist and Molly Mendoza from Kimley-Horn & Associates. In addition, HCD considered comments from Jake Petrosino; The Public Law Center; People for Housing Orange County; The Kennedy Commission; Pat Davis of Housing is a Human Right Orange County; David Duran of People's Homeless Taskforce Orange County; Grandma's House of Hope; California Consortium of Addiction Programs and Professionals, Fred Sigala Jr., and Barry Ross of St. Joseph Heritage Health 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). 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.

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

Ted White, Director

Page 2

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. 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. 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 County 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 appreciates the hard work and dedication the City's housing element team provided during the review. We are 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 Reid Miller, of our staff, at Reid.Miller@hcd.ca.gov

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul McDougall', with a stylized flourish at the end.

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX A CITY OF ANAHEIM

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. 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).)

Housing for Special Needs Populations: As part of the review of programs in the past cycle, the element must also provide an evaluation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness). Programs should be revised as appropriate to reflect the results of this evaluation.

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: While the element briefly describes fair housing services with Fair Housing Council of Orange County, it generally does not address this requirement. The element must include information on past or current fair housing complaints, findings, lawsuits, or judgements related to enforcement actions regarding fair housing. In addition, the element must discuss compliance with existing fair housing laws and regulations. This is particularly important given HCD's past correspondence related to potential violations of Federal and State fair housing law. For further information, the City should review HCD's correspondence. For more information and guidance on this analysis, please visit pages 28-30 of the HCD's AFFH guidance memo: https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf.

Assessment of Fair Housing: The element reports and maps data on some components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity) but it must also analyze the information such as evaluating patterns, trends, conditions and circumstances, coincidence with other components of the assessment of fair housing and the effectiveness of past and current strategies to promote inclusive and equitable communities. This analysis should be complemented by local data and knowledge, including input from commenters, and other relevant factors as described below.

Integration and Segregation: As noted above, the element must include analysis of integration and segregation, particularly for race, disability, familial status and income.

In addition, the element should include a specific analysis of the housing and community development needs of persons with disabilities, including incorporating public comments. The analysis should consider the unique needs and barriers faced by persons with disabilities and whether persons with disabilities are able to access housing choices and services in an integrated community-based setting. Examples include accessibility features for housing, transportation, education, jobs, and other types of community elements to enable fair housing choices. For more information, please see HCD's guidance at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

Racial/Ethnic Areas of Concentration of Poverty (R/ECAP) and Areas of Affluence (RCAA): The element states that a R/ECAP does not exist, however, HCD notes the City does have areas of High Segregation and Poverty according to TCAC/HCD Opportunity maps. In addition, the element identifies concentrated area of affluence. As a result, the element should include specific analysis of these areas, as described above, to better formulate appropriate goals and actions.

Disparities in Access to Opportunity: As noted above, the element must include analysis of disparities in access to opportunity. This analysis must address access to education and economic opportunities.

Disproportionate Housing Need including Displacement Risk: The element generally does not address this requirement for patterns and trends within the City. The analysis must address disproportionate housing needs related to overpayment, overcrowding, housing conditions, homelessness and displacement risk and include analysis as described above.

Sites Inventory: While the element provides information regarding the placement of sites relative to race, income, and disparities in access to opportunity (composite level), additional analysis is required. For example, the element, for all components of the assessment of fair housing, should address the number of units by income group, magnitude of impact on local patterns, any isolation of the RHNA by income group and address the concentrations of sites in key areas and corridors.

Local Data and Knowledge, and Other Relevant Factors: The element generally does not address these requirements. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with

local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element should analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Contributing Factors: The element should re-assess and prioritize contributing factors upon completion of analysis and make revisions as appropriate.

Goals, Actions, Metrics, and Milestones: The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics, and milestones as appropriate and must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Extremely Low-income (ELI) Households: Given the unique and disproportionate needs of ELI households, the element must include analysis to better formulate policies and programs. For example, the element should analyze tenure, cost burden and other household characteristics then examine the availability of resources to determine gaps in housing needs. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housingneeds/extremely-low-income-housing-needs.shtml>.

3. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Housing Conditions: The element identifies the age of the housing stock. However, it must include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>.

Housing Costs: The element includes some figures on rents and home values from the American Community Survey, however, the element should include current information on rents and sales prices to reflect market conditions. To assist in addressing this requirement, the City may utilize data Southern California Association of Governments (SCAG) Local Housing Data available at <https://scag.ca.gov/local-housing-data>.

4. *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 toward the RHNA: The City's Regional Housing Needs Allocation (RHNA) may be reduced by the number of new units pending, approved or built since July 1, 2021. The element lists "pipeline projects" (Table B-2) but it must also demonstrate their affordability and availability in the planning period. For example, the element lists the Stadium District Sub Area A project with 466 units affordable to lower-income households, 310 affordable to moderate-income and a total of 5,175 units but provides no information on how affordability was determined or how these units will be available in the planning period. The element must demonstrate affordability based on anticipated or actual sales prices and rents or other mechanisms ensuring affordability (e.g., deed restrictions, development agreements) and demonstrate availability particularly for larger projects (e.g., more than 500 units).

Parcel Listing: The parcel listing lists the existing uses for nonvacant sites. However, these descriptions are generic (e.g., commercial, industrial) and should be sufficiently detailed to facilitate an analysis that the use will likely discontinue in the planning period. In addition, the element lists a few parcels with existing residential uses. Capacity on these sites should account for the existing number of units.

Realistic Capacity: The element (p. B-13) mentions an assumption of 80 percent of maximum allowable densities to calculate residential capacity on identified sites and states that this is a "conservative" estimate. However, the element should include additional and clear supporting information based on typical densities of existing or approved residential developments at a similar affordability level. For example, the element could list other recent projects, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus.

In addition, the element appears to assume residential development on sites with zoning that allow 100 percent nonresidential uses. While the element mentions overlays and incentives for residential development, it must still account for the likelihood of nonresidential uses. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculation, policies and program accordingly. The element should include analysis based on factors such as development trends, performance standards or other relevant factors. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#zoning>.

City-Owned Sites: The element must include additional discussion of the City-Owned sites identified to accommodate the RHNA. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses, any known conditions that preclude development in the planning period and

the potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, the housing element must include a description of whether there are any plans to dispose of the properties during the planning period and how the jurisdiction will comply with the Surplus Land Act Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5. This analysis should also address, where appropriate, “pipeline projects” as listed in Table B-2.

Suitability of Nonvacant Sites: The element must include a methodology demonstrating the additional development potential on nonvacant sites. The element lists a few recent examples of development on nonvacant sites. However, the element provides no analysis of those examples and the relationship to identified sites. Specifically, the analysis must consider factors including the extent to which existing uses may constitute an impediment to additional residential development, 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.

In addition, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element 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 regional housing need allocation.

Finally, if element utilizes sites with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).

Accessory Dwelling Units (ADUs): The element projects 756 ADUs over the planning period or approximately 84 ADUs per year over the eight-year planning period. This assumption is based on doubling the average of number of ADUs over the last three years (4 units in 2018, 32 units in 2019 and 90 in 2020). However, the element must include analysis to support doubling the recent average. For example, the element could include information from 2021 on permitted ADUs. Based on the outcomes of this analysis, the element should add or modify programs.

Availability of Infrastructure: The element describes the Urban Water Management Plan and that the City maintains the local sewer system (p. B-4). However, it must also clarify whether sufficient total water and sewer capacity (existing and planned) can accommodate the RHNA and include programs if necessary. In addition, 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. The element must demonstrate compliance with this requirement and include a program if necessary.

Environmental Constraints: While the element generally describes a few environmental conditions within the City, it must relate those conditions to identified sites and describe any other known environmental or other constraints that could impact housing development on identified sites in the planning period.

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/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.

Zoning for a Variety of Housing Types:

- *Emergency Shelters*: The element states emergency shelters are defined in the zoning code, but it should also clearly identify where emergency shelters are permitted without discretionary action. The analysis should discuss available acreage, including typical parcel sizes and the presence of reuse opportunities, proximity to transportation and services and any conditions inappropriate for human habitability. In addition, the element should identify and analyze development standards, including parking requirements for consistency with statutory requirements. This is particularly important given the element notes (p. A-13) that revising spacing requirements (in the prior planning period) was not necessary. For your information, parking requirements should be only sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
- *Single Room Occupancy (SRO) Units*: based on the information provided in Table 3-4, SRO units are not allowed in any zones throughout the City. As a result, the element should include a program to amend zoning to encourage and facilitate SRO units.
- *Employee Housing*: The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) or add or modify programs. Specifically, 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.
- *ADUs*: After reviewing of the City's ordinance, HCD discovered a few areas which were not consistent with State ADU Law. Please see the enclosure for additional information. As a result, the element should modify Program 1S as appropriate.

5. *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... (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. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address multifamily parking requirements. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Processing and Permit Procedures: While the element includes information about the City's application process, it should also describe the processing times for entitlements and procedures for a typical single family and multifamily development. The analysis should address the approval body, the number of public hearing if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing, and approval certainty.

Building Codes: The element must describe and analyze any local amendments to the building code for impacts on housing supply and affordability.

Fees and Exaction: While the element lists various planning fees, it must specifically analyze the fees for conditional use permits and include programs to address identified constraints as appropriate. In addition, the element should include a cumulative analysis of all fees (e.g., planning and impact) for typical single family and multifamily development.

Zoning, Development Standards and Fees: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City's website and add a program to address these requirements, if necessary.

Other Local Ordinances: The element must analyze any locally adopted ordinances that directly impacts the cost and supply or residential development (e.g., inclusionary requirements, short term rentals, growth controls).

Constraints on Housing for Persons with Disabilities:

- *Definition of Family:* The element describes the City's definition of "Single Housekeeping Unit" which appears to have multiple restrictions that may act as constraints on housing for persons with disabilities. For example, restrictions requiring single written lease or membership being determined by the residents could act as constraints. The element should include specific analysis of any potential constraint, including considering public comment and add or modify programs as appropriate.
- *Group Homes:* The City's zoning code appears to isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors. Examples include community care facilities and sober living homes. Zoning should simply implement a barrier-free definition of family instead of subjecting,

potentially persons with disabilities, to special regulations. These housing types in many cases are subject to a conditional use permit, potentially subjecting housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. The element should include specific analysis of these and any other constraints, including their enforcement and considering public comments, for impacts on housing for persons with disabilities and add or modify programs as appropriate.

- *Transitional and Supportive Housing*: The element mentions definitions of transitional and supportive housing, but it should also describe and analyze how the City permits these uses. For example, the element should describe what definitions are utilized, including for target population, which zones permit these uses, permit types and whether the uses are subject to any special regulations. This is particularly important since these uses should not be subject to special regulations and the element seems to indicate a conditional use permit is required. The element must add or modify programs based on the outcomes of this analysis.

6. *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).)*

Requests for Lower Density, Permit Times, and Efforts to Address Nongovernmental Constraints: The element must analyze (1) requests to develop housing at densities below those identified in the inventory, (2) the length of time between receiving approval for a housing development and submittal of an application for building permits, and (3) any local efforts to address or mitigate nongovernmental constraints such as reduced fees, financing for affordable housing or expedited processes. The analysis should address any hinderances on the construction of a locality's share of the regional housing need and programs should be added or modified as appropriate.

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 have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines and specific commitment. For example, many programs use terms such as “evaluate” or “explore” which are not specific commitment to a tangible housing outcome in the planning period. Examples of programs that should be revised with discrete timelines include Programs 1I (Housing Co-located with Religious and Community Facilities) and 1S (Accessory Dwelling Units). Examples of programs to revised with specific commitment include:

- *Program 1E (Encourage the Development of housing for ELI Households):* The Program mentions a number of tools and investigation of incentives but should also commit toward actions that result in development such as proactive outreach on an annual basis, establishing incentives by a date certain, supporting funding applications and adopting land use policies.
- *Program 1G (Platinum Triangle Master Land Use Plan):* The Program should commit to how the City will encourage housing affordable to lower-income households in the Platinum Triangle and take steps beyond exploring incentives. This Program was essential to compliance in the prior planning period and based on information in the element (p. A-7), no development affordable to lower-income households occurred and as a result, the Program should include additional actions to encourage housing affordable to lower-income households.
- *Program 1Q (Promote Opportunity Sites):* The Program should include action beyond re-evaluating if the program is not effective in meeting its goals.
- *Program 1S (ADUs):* The Program should go beyond exploring incentives and commit to establish incentives by a date early in the planning period. In addition, the Program should commit to when the City will update its ADU ordinance and monitoring should be more frequent (e.g., every other year) with specific commitment to implement alternative actions within a specified time (e.g., six months) if ADUs are not permitted consistent with assumptions in the element.
- *Program 2E (Residential Uses Not Defined as Single Housekeeping Unit):* The Program should take steps beyond reviewing state law to ensure actual outcomes in the planning period.
- *Program 3A (Efficient Use of Energy Resources):* The Program should take steps beyond investigating the feasibility of incentives and strategies.
- *Program 5A (Supportive Housing and Low Barrier Navigation Centers):* The Program should go beyond reviewing zoning code and make a specific commitment to amend zoning.
- *State Density Bonus Law:* As noted on page 3-35, the element should include a program to amend the City’s density bonus ordinance in compliance with state law.

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 B4, 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:

- Adequate Sites: The element includes various actions that appear intended to address a shortfall of sites to accommodate the RHNA. For any program intended to address a shortfall of sites at appropriate densities to accommodate the RHNA for lower-income households, the program must meet all requirements pursuant to Government Code sections 65583.2, subdivisions (h) and (i). In addition, these programs should identify the shortfall, minimum acreage to be rezoned and anticipated allowable densities. Examples of programs that may require revising include Programs 1H (Center City Corridors Specific Plan), 1J (Residential Opportunities Overlay Zone) and 1R (Multifamily Rezoning in High Resource Areas).
- City-Owned Sites: The element should include a program with a schedule of actions to facilitate development on City-Owned sites, including complying with the Surplus Land Act, as noted in Finding B4. Actions could include a schedule for requests for proposals, rezoning, incentives, funding and expediting processing. This Program should seek to maximize these important resources for lower-income households, including ELI households.
- Replacement Housing Requirements: If nonvacant sites are identified with residential uses, the housing element must include a program to provide replacement housing. (Gov. Code, § 65583.2, subd. (g)(3).) The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c)(3).

3. *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 B5 and B6, the element requires a complete analysis of potential governmental and non-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. *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 B1, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis. In addition, most programs lack milestones and metrics to target meaningful AFFH outcomes in the planning period and should be revised as appropriate.