



## CITY OF FULLERTON

Community and Economic Development Department

Item No. 2  
January 19, 2022  
6:30 p.m.  
Public Hearing

**TO: Chair Cox and  
Members of the Planning Commission**

### APPLICATION

ZON-2021-0135

### APPELLANT

Alan Gottlieb

### APPLICANT AND PROPERTY OWNER

Raising Cane's Restaurant LLC

### LOCATION

201 West Orangethorpe Avenue

### SUMMARY AND APPLICATIONS REQUESTED

The appellant has requested a continuance to allow time for a meeting between applicant and appellant (Attachment 1). The applicant is in agreement with the continuance.

### RECOMMENDED ACTION

Continue the public hearing to a date certain of March 2, 2022.

**DATED:** January 19, 2022

#### Attachments to Report:

1. Continuance Letter

**THE EDUCATION COMMUNITY**

303 West Commonwealth Avenue, Fullerton, California 92832-1775  
(714) 738-6598 · Fax (714) 738-3110 · Website: [www.cityoffullerton.com](http://www.cityoffullerton.com)

JAN 17 '22 PM 7:53

Alan Gottlieb  
[REDACTED]  
Fullerton, CA 92832-1223  
[REDACTED]

1/17/2022

City Clerk  
City of Fullerton  
303 W. Commonwealth Avenue  
Fullerton, CA 92832  
*By Hand Delivery*

Re: ZA-2021-0135;  
Resolution No. ZA-2021-18;  
Raising Cane's Restaurant, LLC, 201 W. Orangethorpe Avenue, Fullerton, CA

Dear Sir or Madam:

I am the Appellant in the Appeal of Zoning Resolution No. ZA-2021-18 concerning the proposed development of a Raising Cane's Restaurant at 201 W. Orangethorpe Avenue, Fullerton, CA.

This matter is set for hearing before the Planning Commission on January 19, 2022. Last Friday, in a conversation with my representative and representatives of Raising Cane's Restaurant, LLC a discussion occurred in which we believe a meeting between myself and Raising Cane's Restaurant, LLC could result in the resolution of this matter, without hearing, and a dismissal of this Appeal.

Both myself and Raising Cane's Restaurant, LLC would like the opportunity to have that discussion, but there is inadequate time to do so before the hearing scheduled on January 19, 2022. Therefore, I request that the matter be continued to a date certain, namely March 2, 2022. I appreciate your courtesy and cooperation in continuing this matter.

Sincerely,



Alan Gottlieb

cc: heather.allen@cityoffullerton.com,

marice@ [REDACTED],

SMatsler@ [REDACTED]



January 17, 2022

Jose Ayala, Housing Policy Analyst  
Land Use and Planning Unit  
California Department of Housing and Community Development  
2020 West El Camino Avenue  
Sacramento, CA 95833  
Jose.Ayala@hcd.ca.gov  
HousingElements@hcd.ca.gov

Heather Allen, Planning Manager  
Maribeth Tinio, Senior Planner  
Fullerton Planning Commission  
303 W Commonwealth Ave  
Fullerton, CA, 92832  
housinggameplan@cityoffullerton.com

RE: City of Fullerton Draft 6th Cycle Housing Element

Dear Mr. Ayala, Heather Allen, and City of Fullerton City Staff,

Public Law Center (“PLC”) is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Additionally, PLC provides legal assistance to community organizations. Further, the mission of our Housing and Homelessness Prevention Unit includes preserving and expanding affordable housing. Thus, we write on behalf of individuals in need of affordable housing in Orange County to comment on the City of Fullerton (the “City”) Draft 6th Cycle Housing Element (the “Draft”).

Government Code Section 65583 requires that a housing element consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.<sup>1</sup> Additionally, the housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community.<sup>2</sup> Here, the City’s Draft 6th Cycle Housing Element fails to meet all of the statutory requirements, as more fully described below, and should be revised. We especially recommend that the City revise its analysis of special housing needs, analysis of constraints, assessment of fair housing, and site inventory and improve its programs as described.

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<sup>1</sup> Cal. Gov. Code Section 65583.

<sup>2</sup> Cal. Gov. Code Section 65583.

We also encourage the City to make a more meaningful effort to engage the public in the housing element update process.

### **Special Housing Needs**

The housing element must analyze special housing needs, such as those of the elderly; persons with disabilities, including a developmental disability;<sup>3</sup> large families; farmworkers; and families with female heads of households.<sup>4</sup>

#### **Seniors**

The City acknowledges that seniors face challenges with housing affordability, location, construction, and special services but does not analyze whether these needs can be met using existing resources.<sup>5</sup> Beyond just recognizing the common needs of this special population, the City must include a “quantification and qualitative description of the need (including a description of the potential housing problems faced by the special needs groups), a description of any existing resources or programs, and an assessment of unmet needs.”<sup>6</sup> The City lists four low-income senior housing developments which only serve approximately 449 of 1,920 lower-income senior renters.<sup>7</sup> However, the City does not explain how it plans to accommodate the rest of these lower-income senior households. The City also notes that there are “many assisted living facilities which provide both housing and services to seniors” but does not specify describe their affordability or capacity.<sup>8</sup> Further, the City says there are policies to encourage the development of senior housing, it does not describe these policies or explain how they address specific needs.<sup>9</sup> The City must conduct a full analysis of senior housing needs and existing resources, then revise or create programs to meet specific needs.

For example, Policy Action 2.5: Owner-Occupied Housing Rehabilitation will “offer low-interest and no-interest loans and grants to encourage owner-occupied housing rehabilitation,” including “Handicap Modification Grants.”<sup>10</sup> This program could be revised to include specific outreach to lower-income senior residents that need accessibility modifications to their homes. The City could also offer funds to lower-income senior renters to install and remove accessibility devices in rental units.

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<sup>3</sup> “‘Developmental disability’ means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.” Cal. Welfare and Institutions Code Section 4512.

<sup>4</sup> Cal. Gov. Code Section 65583(a)(7).

<sup>5</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-12 (November 2021).

<sup>6</sup> HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Housing Needs: Seniors*, <https://www.hcd.ca.gov/community-development/building-blocks/housing-needs/seniors.shtml> (last visited Jan. 17, 2022).

<sup>7</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-13 (November 2021).

<sup>8</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-13 (November 2021).

<sup>9</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-13 (November 2021).

<sup>10</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-10 (November 2021).



### Large Households

The City identified the number of large households within the jurisdiction and provides the percentage of overall owner and rental households that are classified as large households.<sup>11</sup> While this perspective can be useful, the City should also state how many of the 5,882 large households are renters or owners and how many large households have lower incomes. This information would help the City understand the unique housing needs within this group and create programs that address these needs. For example, knowing the number of large household renters with lower incomes could help create a program that provides rental assistance for affordable apartments with more bedrooms or encourage the City to incentivize affordable housing developers to include larger units to accommodate this population.

The City says the needs of this group can be met through general financial assistance programs to help these households afford large units.<sup>12</sup> However, general affordability programs do not ensure that large households will be served. The City should create a program to provide data on its housing stock by number of bedrooms and affordability and then assist lower-income large households obtain and afford these units.

### Female-Headed Households

The City identifies 5,607 female-headed households, 1,160 of which are below the poverty line.<sup>13</sup> However, the City only recognizes this group's need for affordable housing and fails to recognize other needs such as affordable childcare.<sup>14</sup> To better meet these needs, the City should create programs that encourage and incentivize affordable housing developments that include childcare services and help female-headed households locate affordable units in close proximity to schools and other family services.

### Persons with Disabilities

The City identifies 6,310 people with disabilities in the jurisdiction, how many are employed, and that this group requires accessible units near public facilities and transit.<sup>15</sup> However, the City should identify how many people with disabilities have lower incomes to better assess this group's needs such as affordable accessible units and rental assistance.

While the City mentions the Handicap Modification Grant and identifies two income-restricted housing developments serving people with disabilities, it fails to analyze whether any of this group's needs remain unmet.<sup>16</sup> The City must perform this analysis before it can create an effective program to assist this group.

Further, Policy Action 2.5: Owner-Occupied Housing Rehabilitation, which provides the aforementioned Handicap Modification Grants, does not explain how applicants qualify for this assistance or whether lower-income applicants or people with disabilities are prioritized.<sup>17</sup> While Program 4.3: Reasonable Accommodation for Persons with Disabilities mentions that these

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<sup>11</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-13 (November 2021).

<sup>12</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-13 (November 2021).

<sup>13</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-14 (November 2021).

<sup>14</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-13 (November 2021).

<sup>15</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-14 to 15 (November 2021).

<sup>16</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-14 to 17 (November 2021).

<sup>17</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-10 (November 2021).

grants are up to \$4,000 and can be used to accommodate household members with disabilities, the City should consider outreach specifically targeting lower-income households and awarding higher grants for lower-income households with greater need.<sup>18</sup>

For persons with developmental disabilities, the City mentions several Orange County resources, but does not describe how it works to assist its own residents.<sup>19</sup> The City should, if available, identify any of its own resources for persons with developmental disabilities. If none are available, the City should consider a program to help address this group's unmet needs.

#### Farmworkers

The City notes between 158 and 222 residents are employed in agriculture or related industries and concludes that there is no need for farmworker housing since there are no large-scale agricultural operations within the jurisdiction.<sup>20</sup> However, regardless of the absence of agricultural operations, these workers still reside within the City, and while 158 to 222 people may be a small percentage of the population, the City must still ensure this group has access to adequate and affordable housing. Due to their residence in the city and their substantial group size, the City should consider a program that dedicates housing to farmworkers.

#### Program for Special Needs Groups

Policy Action 4.7 is the only program to specifically address the housing needs of special needs groups. However, this program does not commit the City to taking any action and is much too broad to be effective.<sup>21</sup> The City first says that it will consider the needs of special needs groups, but "consider" does not commit the City to any specific action.<sup>22</sup> Next, the program states the City will encourage developers to incorporate specialized housing and investigate regulatory incentives.<sup>23</sup> The program does not describe how the City will encourage developers and an investigation of incentives does not guarantee that any incentives will be offered. Finally, the program covers all special needs groups and does not specify how much in funds it can allocate.<sup>24</sup> Given the program's vague, noncommittal, and broad nature, it cannot guarantee that all special needs groups will have their unmet needs addressed. The City should remove this program and create programs for each individual special needs group to guarantee that their respective housing needs will be met.

#### Emergency Shelters

The housing element shall include the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit.<sup>25</sup> The identified zone or zones shall include sufficient capacity to accommodate the need for

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<sup>18</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-11 (November 2021).

<sup>19</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-15 to 17 (November 2021).

<sup>20</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-18 (November 2021).

<sup>21</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-13 (November 2021).

<sup>22</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-13 (November 2021).

<sup>23</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-13 (November 2021).

<sup>24</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-13 (November 2021).

<sup>25</sup> Cal. Gov. Code Section 65583(a)(4)(A).

emergency shelter.<sup>26</sup> Additionally, each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter.<sup>27</sup>

A local government with an existing ordinance or ordinances that comply with these requirements shall not be required to take additional action to identify zones for emergency shelters.<sup>28</sup> The housing element must only describe how existing ordinances, policies, and standards are consistent with these requirements.<sup>29</sup> However, the City states that shelters are permitted in “certain portions” of the C-M, M-P, and M-G zones, and that the available sites in these zones can more than accommodate its need for shelters.<sup>30</sup> The City attempts to elaborate in “Exhibit B” of Appendix H-B but does not appear to include this exhibit in the Draft.<sup>31</sup> Without this information, it is impossible to determine where emergency shelters are permitted by-right and verify that the City can meet its shelter need. The City must provide this information to ensure that these zones can accommodate enough shelters to meet the City’s need.

#### Assessing Emergency Shelter Need

The need for emergency shelter shall be assessed based on the capacity necessary to accommodate the most recent homeless point-in-time count conducted before the start of the planning period, the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions.<sup>32</sup>

The City uses the most recent point-in-time count to identify 308 unsheltered and 165 sheltered people experiencing homelessness within the jurisdiction but does not consider any of the other factors.<sup>33</sup> While the City identifies several emergency shelters and transitional housing facilities, it does not describe how many beds are utilized on an average monthly basis or the percentage of people using the emergency shelters that move to permanent housing solutions.<sup>34</sup> To meet statutory requirements and to accurately assess how many emergency shelters are actually needed within the jurisdiction, the City must provide this information.

#### Multijurisdictional Agreements

A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.<sup>35</sup> The agreement shall allocate a portion of the new

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<sup>26</sup> Cal. Gov. Code Section 65583(a)(4)(A).

<sup>27</sup> Cal. Gov. Code Section 65583(a)(4)(A).

<sup>28</sup> Cal. Gov. Code Section 65583(a)(4)(D).<sup>29</sup> Cal. Gov. Code Section 65583(a)(4)(D).<sup>30</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-29 and 32 (November 2021).

<sup>29</sup> Cal. Gov. Code Section 65583(a)(4)(D).<sup>30</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-29 and 32 (November 2021).

<sup>30</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-29 and 32 (November 2021).

<sup>31</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-29 (November 2021).

<sup>32</sup> Cal. Gov. Code Section 65583(a)(7).

<sup>33</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-17 (November 2021).

<sup>34</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-17 (November 2021).

<sup>35</sup> Cal. Gov. Code Section 65583(d)(1).

shelter capacity to each jurisdiction as credit toward its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.<sup>36</sup> Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

- How the joint facility will meet the jurisdiction's emergency shelter need.<sup>37</sup>
- The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.<sup>38</sup>
- The amount and source of the funding that the jurisdiction contributes to the facility.<sup>39</sup>

The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.<sup>40</sup>

The City states that it “entered into a Memorandum of Understanding in 2019 to build and operate two year-round shelters with 250 beds” located in Placentia and Buena Park.<sup>41</sup> Although the City contributed \$862,658 to the development of these shelters, it fails to describe how many beds were credited to its emergency shelter need, how the financial contributions aided the facilities, or the source of this funding.<sup>42</sup> Without these details, the City cannot count any of the beds within these facilities towards its capacity.

### **Assisted Housing Developments**

The housing element must include an analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.<sup>43</sup> The jurisdiction must identify and consider the use of all federal, state, and local financing and subsidy programs that can be used to preserve, for lower-income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community.<sup>44</sup> In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program that have not been legally obligated for other purposes and that could be available for use in preserving assisted housing developments.<sup>45</sup>

The City identifies one project, Amerige Villa Apartments, with 101 Section 8 units at risk of conversion from low-income housing.<sup>46</sup> While the City identifies a variety of funding

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<sup>36</sup> Cal. Gov. Code Section 65583(d)(2).

<sup>37</sup> Cal. Gov. Code Section 65583(d)(3)(A).

<sup>38</sup> Cal. Gov. Code Section 65583(d)(3)(B).

<sup>39</sup> Cal. Gov. Code Section 65583(d)(3)(C).

<sup>40</sup> Cal. Gov. Code Section 65583(d)(4).

<sup>41</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-2-18 (November 2021).

<sup>42</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-A-9 (November 2021).

<sup>43</sup> Cal. Gov. Code Section 65583(a)(9).

<sup>44</sup> Cal. Gov. Code Section 65583(a)(9)(D).

<sup>45</sup> Cal. Gov. Code Section 65583(a)(9)(D).

<sup>46</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-C-1 (November 2021).



sources and programs that could be used to preserve these low-income units,<sup>47</sup> the City does not identify the amounts of funds under each available program that have not been legally obligated for other purposes and that could be available for use in preserving assisted housing developments and should include this analysis.<sup>48</sup>

### **Program Preserving Assisted Housing Developments**

The housing element shall include a program to preserve for lower-income households the assisted housing developments identified pursuant to Section 65583(a)(9).<sup>49</sup> The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in Section 65583(a)(9), except where a community has other urgent needs for which alternative funding sources are not available.<sup>50</sup> The program may include strategies that involve local regulation and technical assistance.<sup>51</sup>

The City's Policy Action 4.1: Continued Monitoring and Preservation of Housing Units At-Risk of Converting to Market Rate<sup>52</sup> does not meet the statutory requirements and fails to have concrete actions and definitive timelines. Considering the City is already aware of 101 units at risk of conversion to market rate, the City should not wait to conduct outreach to the owners of this project and should already develop a preservation strategy for these units. The City's program should include these specific details. Additionally, the City does not utilize all available federal, state, and local financing and subsidy programs or explain how there are more urgent needs for these funds and they are not available for preservation efforts.<sup>53</sup>

### **Reducing RHNA By Units Built**

A city may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element.<sup>54</sup> If the city does so, the city shall include a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.<sup>55</sup>

The City identified four approved or pending projects that are expected to produce 20 very low-income units and 870 above moderate-income units.<sup>56</sup> While one of these projects has been approved and three are in the entitlement review process, none of these units were built within the requisite timeframe.<sup>57</sup> Because of this, these City cannot use these units to reduce its need.

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<sup>47</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-C-3 to H-C-4 (November 2021).

<sup>48</sup> Cal. Gov. Code Section 65583(a)(9)(D).

<sup>49</sup> Cal. Gov. Code Section 65583(c)(6).

<sup>50</sup> Cal. Gov. Code Section 65583(c)(6).

<sup>51</sup> Cal. Gov. Code Section 65583(c)(6).

<sup>52</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-10 to H-4-11 (November 2021).

<sup>53</sup> Cal. Gov. Code Section 65583(c)(6).

<sup>54</sup> Cal. Gov. Code Section 65583.1(d).

<sup>55</sup> Cal. Gov. Code Section 65583.1(d).

<sup>56</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-3 (November 2021).

<sup>57</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-3 (November 2021).

Even if these units were eligible toward its RHNA, the City did not describe its methodology for identifying the 20 units as very-low-income. Instead, the Draft merely states that “units are assigned to income levels based on expected market prices or affordability covenants.”<sup>58</sup> The City must explain how it considered market prices or describe the affordability covenants that resulted in the assigned affordability levels or, again, remove these units from its inventory.

### **Site Inventory**

The housing element must include 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.<sup>59</sup>

### **Determining Site Capacity**

Based on the information provided in the site inventory, a city or county shall determine whether each site in the inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period.<sup>60</sup> To determine the number of housing units that can be accommodated on each site when the jurisdiction does not adopt a law or regulation requiring the development of a site at a minimum density, the jurisdiction shall demonstrate how the number of units determined for that site will be accommodated.<sup>61</sup>

The number of units that can be accommodated on each site shall be adjusted as necessary based on the potential and actual governmental constraints upon maintenance, improvement, or development of housing, including land use controls and site improvements; the realistic development capacity for the site; typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction; and the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.<sup>62</sup>

Because the City’s Zoning Code does not specify a minimum density in residential zones, the City must demonstrate how it calculated site capacity.<sup>63</sup> For sites within the Housing Incentive Opportunities Zone, the City assumes “that HIOZ regulations will include a number of multi-family housing types which vary in density to provide a range of options based on parcel size,” but does not explain how parcel size affects site capacity.<sup>64</sup> Policy Action 1.1: Provision of Adequate Sites for Housing Development states that sites rezoned to be included in the Housing Incentive Opportunities Zone overlay will “permit a minimum of 20 dwelling units per acre.”<sup>65</sup> This contradicts the minimum density identified in the Table B-6 inventory of sites within the Housing Incentive Opportunities Zone.<sup>66</sup> Further, the City has not considered any of the other

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<sup>58</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-3 (November 2021).

<sup>59</sup> Cal. Gov. Code Section 65583(a)(3); Cal. Gov. Code Section 65583.2(a).

<sup>60</sup> Cal. Gov. Code Section 65583.2(c).

<sup>61</sup> Cal. Gov. Code Section 65583.2(c)(1).

<sup>62</sup> Cal. Gov. Code Section 65583.2(c)(2).

<sup>63</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-25 (November 2021).

<sup>64</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-5 (November 2021).

<sup>65</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-4 (November 2021).

<sup>66</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-8 (November 2021).

factors listed above. To meet statutory requirements, the City must clarify how it determined capacity for these sites and should include an explanation of how Policy Action 1.1 applies here.

Moreover, the City assumes that “a minimum of 10% of the total units for each parcel would be affordable at the lower-income level, consistent with the draft parameters of the HIOZ program.”<sup>67</sup> However, the City does not describe these provisions of the HIOZ program and Policy Action 1.1 does not include this requirement.<sup>68</sup> The City must revise this section to describe this program or revise Policy Action 1.1 to include this requirement.

For Religious Institution Sites, the City merely states that “the estimated number of potential units for each site is based on a typical density of 30 units/acre.”<sup>69</sup> However, Policy Action 1.1: Provision of Adequate Sites for Housing Development, which will amend the Fullerton Municipal Code to allow properties with religious uses to develop housing and implement development standards and review procedures for these sites, does not specify that it will require a minimum density of 30 units per acre.<sup>70</sup> Additionally, the City has not considered any of the other factors listed above. Without a full analysis of these factors, the City cannot support its capacity assumptions on religious sites and must include this information or remove the sites from its inventory.

### **Site Inventory**

The inventory of land must include the following: (1) a listing of properties by assessor parcel number;<sup>71</sup> (2) the size of each property;<sup>72</sup> (3) the general plan designation and zoning of each property;<sup>73</sup> (4) a description of existing or planned water, sewer, and other dry utilities supply, the availability and access to distribution facilities;<sup>74</sup> (5) whether the utilities are available and accessible to support housing development or if there is an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development;<sup>75</sup> (6) a map that shows the location of the sites included in the inventory;<sup>76</sup> (7) the number of units that can realistically be accommodated on that site;<sup>77</sup> and (8) whether the site is adequate to accommodate lower-income housing, moderate-income housing, or above moderate-income housing.<sup>78</sup>

For sites within the Housing Incentive Opportunities Zone, the City lists several sites that seem to be duplicates. The City must provide more information on these sites to ensure that they are not mistakes or intentionally duplicated. If they are duplicates, the City must remove them

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<sup>67</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-5 (November 2021).

<sup>68</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-3 (November 2021).

<sup>69</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-4 (November 2021).

<sup>70</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-3 (November 2021).

<sup>71</sup> Cal. Gov. Code Section 65583.2(b)(1).

<sup>72</sup> Cal. Gov. Code Section 65583.2(b)(2).

<sup>73</sup> Cal. Gov. Code Section 65583.2(b)(2).

<sup>74</sup> Cal. Gov. Code Section 65583.2(b)(5)(A-B).

<sup>75</sup> Cal. Gov. Code Section 65583.2(b)(5)(A-B).

<sup>76</sup> Cal. Gov. Code Section 65583.2(b)(7).

<sup>77</sup> Cal. Gov. Code Section 65583.2(c).

<sup>78</sup> Cal. Gov. Code Section 65583.2(c).

from its site inventory. Second, in its description of existing and planned utilities, the City briefly describes its sewer system and states that its sewer plan “identifies ultimate capacity requirements and potential deficiencies to be corrected.”<sup>79</sup> Although this report “identified eleven high priority areas with sewer deficiencies,” the City requires developers to connect its structure to the main line and, if necessary, extend the main line.<sup>80</sup> This indicates that there is a deficiency in sewer services and, given this, the City must conduct a more recent analysis of its existing sewer capacity to determine whether it can accommodate additional residential development. Third, the City must provide a map showing the location of sites listed within its inventory. This map should be detailed enough to identify individual sites to facilitate an affirmatively furthering fair housing analysis.

For Religious Institution Sites, the City fails to address utilities, does not provide a map, and does not describe whether the site will accommodate lower-income, moderate-income, or above-moderate-income housing. The City must provide the missing information for both HIOZ and Religious Institution Sites to meet statutory requirements.

### **Lower-Income Sites**

If a jurisdiction designates sites smaller than half an acre, or sites larger than ten acres to accommodate its lower-income housing needs, the sites must satisfy extra criteria.<sup>81</sup> If a site is smaller than half an acre or larger than ten acres, it cannot be deemed adequate to accommodate lower-income housing unless the locality can demonstrate that sites of an equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site.<sup>82</sup> Alternatively, the locality may provide other evidence to HCD that the site is adequate to accommodate lower-income housing.<sup>83</sup>

The City lists numerous sites that are smaller than half an acre but does not attempt to show that the development of sites of this size is feasible. The City must either provide examples of sites of this size that were developed during the prior planning period or other evidence that these sites are adequate to accommodate lower-income housing. Although the City provides two programs on lot consolidation, they are not sufficient to meet these requirements.

Policy Action 1.3: Facilitate Infill Development states that the City will “encourage the construction of housing affordable to extremely-low-, very-low, low-, and moderate-income households through a menu of regulatory incentives.”<sup>84</sup> While the City lists several examples of incentives, it does not actually commit itself to providing specific incentives.<sup>85</sup> The City could revise this program to address the development of smaller sites by committing to specific incentives and explaining how they will promote the development of small sites.

Policy Action 1.10: Lot Consolidation and Small Lot Subdivision states that the City will evaluate an ordinance regarding small lot subdivisions and that a planned infill is intended to

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<sup>79</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-43 (November 2021).

<sup>80</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-43 (November 2021).

<sup>81</sup> Cal. Gov. Code Section 65583.2(c).

<sup>82</sup> Cal. Gov. Code Section 65583.2(c)(2).

<sup>83</sup> Cal. Gov. Code Section 65583.2(c)(2).

<sup>84</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-5 (November 2021).

<sup>85</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-5 (November 2021).



provide development standards for vacant and underutilized sites.<sup>86</sup> However, the City fails to identify this ordinance, describe the ordinance, and explain how specific development standards will promote lot consolidation. The City must revise this program to meet statutory requirements or remove these smaller sites from its inventory.

The City also lists several sites that are larger than 10 acres but does not attempt to demonstrate that sites of a similar size were successfully developed during the prior planning period, nor a provision of any other kind of evidence that the development of these sites would be feasible. The City must do one of these two things or remove these sites from its inventory.

### **Nonvacant Sites**

If a jurisdiction designates a site that is nonvacant, it must describe the existing use of the property.<sup>87</sup>

The City provides insufficient descriptions of the existing uses of its sites. Descriptions such as "commercial and services," "public facilities," and "industrial" are far too vague to facilitate an analysis of the likelihood that the existing use will be discontinued within the planning period. The City must provide more specific descriptions of its sites to meet statutory requirements and allow an analysis of the likelihood that the site's existing use will be discontinued.

### **Nonvacant Sites Methodology**

The jurisdiction shall specify the additional development potential for each site within the planning period and explain the methodology used to determine the development potential.<sup>88</sup> The methodology shall consider multiple factors, including: (1) the extent to which existing uses may constitute an impediment to additional residential development; (2) the jurisdiction's past experience with converting existing uses to higher density residential development; (3) the current market demand for the existing use; (4) 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; (5) development trends; (6) market conditions; and (7) regulatory or other incentives or standards to encourage additional residential development on these sites.<sup>89</sup>

The City has not described any methodology for determining the development potential of nonvacant sites and must do so to accurately determine the capacity of these sites, demonstrate that the existing uses will not constitute an impediment to additional residential development, and meet statutory requirements.<sup>90</sup>

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<sup>86</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-8 (November 2021).

<sup>87</sup> Cal. Gov. Code Section 65583.2(b)(3).

<sup>88</sup> Cal. Gov. Code Section 65583.2(g)(1).

<sup>89</sup> Cal. Gov. Code Section 65583.2(g)(1).

<sup>90</sup> Cal. Gov. Code Section 65583.2(g).

### **Accessory Dwelling Units**

A jurisdiction may count an ADU for purposes of identifying adequate sites for housing.<sup>91</sup> The number of ADUs identified is based on the number of ADUs developed in the prior housing element planning period, whether or not the units are permitted by right; the need for these units in the community; the resources or incentives available for their development; and any other relevant factors determined by HCD.<sup>92</sup> To estimate the number of ADUs that will be developed in the planning period, a jurisdiction must generally use a three-part approach addressing (1) development trends, (2) anticipated affordability, and (3) resources and incentives.<sup>93</sup>

### **Development Trends**

When assessing development trends, a jurisdiction must consider the number of ADUs developed in the prior housing element planning period, whether or not the units are permitted by right;<sup>94</sup> the need for these units in the community;<sup>95</sup> the availability of ADUs and JADUs that will be part of the rental stock, rather than used as offices or guest houses;<sup>96</sup> and more recent trends.<sup>97</sup> Alternatively, HCD Staff has stated that the following two approaches would be accepted without further analysis or incentives: (1) average ADU applications from the beginning of the 5th Cycle to 2017, multiplied by five; or (2) average ADU applications from 2018, multiplied by eight. If jurisdictions anticipate a higher ADU production, HCD will require more analysis and incentives to show the higher production can be met.

It is unclear whether the City conducted its own analysis of these factors or whether it utilized one of HCD's formulas. The City merely states that it received 67 applications for ADUs in the first eight months of 2021 and, without further analysis, expects to produce 800 ADUs within the planning period.<sup>98</sup> To justify this estimate and meet statutory requirements, the City must explain how it made this estimate and ensure its ADU program can incentivize the creation of enough ADUs to meet this estimate.

### **Resources and Incentives**

The housing element must include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households.<sup>99</sup>

The City created Policy Action 1.9: Accessory Dwelling Units to address the production and review of ADUs, but it is vague and does not commit the City to taking any action.<sup>100</sup> First, the program states the City will “partner with OCCOG and surrounding jurisdictions in support

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<sup>91</sup> Cal. Gov. Code § 65852.2(m); Cal. Gov. Code § 65583.1(a).

<sup>92</sup> Cal. Gov. Code Section 65583.1(a).

<sup>93</sup> HCD, ADU Handbook, 19 (December 2020).

<sup>94</sup> Cal. Gov. Code § 65583.1(a); HCD, ADU Handbook, 19 (December 2020).

<sup>95</sup> Cal. Gov. Code § 65583.1(a).

<sup>96</sup> HCD, Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADUs), *Requisite Analysis*, <https://hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/accessory-dwelling-units.shtml> (last visited Mar. 21, 2021).

<sup>97</sup> HCD, ADU Handbook, 19 (December 2020).

<sup>98</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-B-3 (November 2021).

<sup>99</sup> HCD, ADU Handbook, 19 (December 2020); Cal. Gov. Code § 65583.1(a); Cal. Health and Safety Code § 50504.5.

<sup>100</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

of creating ‘pre-approved’ ADU Plans” but does not commit the City to actually adopting these plans and providing them to ADU applicants.<sup>101</sup> Second, the City will “explore additional incentives and/or program components” to support ADUs.<sup>102</sup> However, the word “explore” does not commit the City to implementing any incentives and the program does not specify what these possible incentives are or how they will encourage ADU production.<sup>103</sup> Third, the City will maintain a program to monitor the development and affordability of ADUs but does not commit the City to any action if it is not meeting its estimates.<sup>104</sup> Fourth, the City will conduct a mid-cycle review of ADU production to evaluate whether the City is meeting its production estimates but, again, does not explain what the City will do if it finds it is not meeting its estimates.<sup>105</sup> Due to the City’s high estimates of ADU production, the City must revise this program to include language that will commit the City to more frequent and regular reviews of their ADU production, to more specific actions, and to include more incentives such as:

- Reducing or eliminating building permit/development fees;<sup>106</sup>
- Expediting procedures;<sup>107</sup>
- Providing incentives for affordability;<sup>108</sup>
- Providing financial assistance for the construction and preservation of ADUs;<sup>109</sup> and
- Amnesty programs (SB 13).

### **Constraints and Programs Addressing Constraints**

The housing element shall include a program to 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.<sup>110</sup> 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.<sup>111</sup>

### **Governmental Constraints**

The housing element must contain 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 Section 65583(c)(1),<sup>112</sup> and for persons with

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<sup>101</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

<sup>102</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

<sup>103</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

<sup>104</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

<sup>105</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

<sup>106</sup> SCAG, Accessory Dwelling Units (ADUs), SCAG Housing Element Digital Workshop, 6 (August 27, 2020).

<sup>107</sup> SCAG, Accessory Dwelling Units (ADUs), SCAG Housing Element Digital Workshop, 6 (August 27, 2020).<sup>108</sup>

SCAG, Accessory Dwelling Units (ADUs), SCAG Housing Element Digital Workshop, 6 (August 27, 2020).

<sup>108</sup> SCAG, Accessory Dwelling Units (ADUs), SCAG Housing Element Digital Workshop, 6 (August 27, 2020).

<sup>109</sup> SCAG, Accessory Dwelling Units (ADUs), SCAG Housing Element Digital Workshop, 6 (August 27, 2020).

<sup>110</sup> Cal. Gov. Code Section 65583(c)(3).

<sup>111</sup> Cal. Gov. Code Section 65583(c)(3).

<sup>112</sup> “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.” Cal. Gov. Code Section 65583(c)(1).

disabilities,<sup>113</sup> including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development.<sup>114</sup>

#### Land Use Controls

In addressing land use controls, the City discusses its General Plan and Zoning Code but generally fails to analyze how these planning tools could constrain the development of housing.

Within the General Plan, residential uses are permitted under five residential and three mixed use designations with various levels of permitted densities.<sup>115</sup> The City notes that “certain densities are needed to make a housing project economically feasible” and that densities of 30 dwelling units per acre are required to accommodate the construction of affordable housing.<sup>116</sup> This means that affordable housing is only feasible in areas with High Density, Downtown Mixed Use, Neighborhood Center Mixed Use, or Urban Center Mixed Use designations.<sup>117</sup> However, the City does not analyze how these limited land use designations with adequate densities constrain the development of affordable housing and must do so. For example, the City could describe how much of the jurisdiction allows these uses and assess the number of opportunities for affordable housing within these areas.

Similarly, the City identifies six zones that permit residential development and describes the permissible densities within these zones.<sup>118</sup> Considering the City’s land use controls do not specify minimum or maximum densities within residential zones and that the 30 dwelling units per acre is required to accommodate affordable housing, affordable housing is only feasible within zones R-4 and R-5.<sup>119</sup> Although zones R-G, R-3R, R-3, and R-3P allow multi-family uses, none of these zones seem to allow densities of 30 dwelling units per acre or more.<sup>120</sup> Because only two of six residential zones allow for densities that can accommodate affordable housing, the City must explain how its zoning code is not considered a constraint on the development of housing and specifically affordable housing. For example, the City could explain how much of the City is zoned as R-4 and R-5 and determine how many opportunities there are for affordable housing throughout the community.

Further, the City notes that residential developments within zones R-G, R-3R, R-3, R-3P, and R-4 require between 1 ¼ and 2 garage spaces per unit, based on the number of bedrooms and

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<sup>113</sup> “‘Developmental disability’ means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.” Cal. Welfare and Institutions Code Section 4512; Cal. Gov. Code Section 65583(a)(7).

<sup>114</sup> Cal. Gov. Code Section 65583(a)(5).

<sup>115</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-24 (November 2021).

<sup>116</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-24 (November 2021).

<sup>117</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-24 (November 2021).

<sup>118</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-25 to 30 (November 2021).

<sup>119</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-25 to 27 (November 2021).

<sup>120</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-27 (November 2021).



in addition to open guest parking.<sup>121</sup> Only the R-5 zone allows for open parking spaces rather than garage spaces.<sup>122</sup> While the City acknowledges that “the requirement for spaces within a garage may be a constraint, as it means that garages must be factored into the cost of the project,” it must analyze how this requirement further reduces the chances that affordable housing will be developed in the majority of its residential zones.<sup>123</sup>

After taking the City’s land use designations, zoning code, permissible densities, and parking requirements into account, the development of affordable housing is feasible within the R-4 and R-5 zones but is most likely to occur in the R-5 zone. Despite these limitations, the City generally states that “the City has analyzed the impacts that the development standards including maximum lot coverage and FAR, minimum unit sizes, parking requirements, and maximum building height have on the ability for a project to achieve maximum permitted densities” and that, “based on an analysis of recently constructed and approved projects in Fullerton, . . . these development standards and their cumulative effects do not negatively impact the supply and affordability of housing.”<sup>124</sup>

Given the severely limited areas that are feasible for affordable housing, the lack of an inclusionary housing requirement, and only one incentive for affordable housing, the City’s density bonus, the City must re-analyze the individual and cumulative effects of its land use controls on its ability to make adequate provision for its housing need for all economic segments of the community.<sup>125</sup>

#### Building Codes and Their Enforcement

The City states that it has adopted the 2019 California Building Code and that it “amends the Code as needed to further define requirements based on the unique local conditions.”<sup>126</sup> However, the City should describe any amendments it made to its building code and analyze whether they pose a significant constraint on the development or maintenance of housing.<sup>127</sup> Additionally, the City states that code enforcement is done both “proactively and on a complaint basis,” but does not explain how it does so.<sup>128</sup> The exact meaning of this should be explained in order to determine whether this method of code enforcement poses a constraint to housing.

#### Fees and Other Exactions

The City asserts that development and permit fees are required to “cover administrative processing costs associated with development” and “ensure quality development and the provision of adequate services” but acknowledges that development fees are often reflected in

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<sup>121</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-30 (November 2021).

<sup>122</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-30 (November 2021).

<sup>123</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-30 (November 2021).

<sup>124</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-30 (November 2021).

<sup>125</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-36 and 31 (November 2021); Cal. Gov. Code Section 65583.

<sup>126</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-37 (November 2021).

<sup>127</sup> HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Codes and Enforcement of Onsite/Offsite Improvement Standards*, <https://hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml> (last visited Jan. 10, 2022).

<sup>128</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-37 (November 2021).

the price of housing, affecting the affordability of housing.<sup>129</sup> However, the City does not specifically state whether it considers fees a constraint to the development of housing.

Although the City identifies the typical fees for a single-family dwelling and per unit of a multi-family dwelling, it fails to analyze the impacts of these fees, explain how they have been established, or identify any possible changes to fees when developers include affordable units.<sup>130</sup> The City should include these analyses to better determine whether fees are constraints to the development of housing and develop programs to address any possible constraints.

#### Local Processing and Permit Procedures

The City acknowledges that “delays in development and building permit processing can lead to considerable holding costs that may affect the price of housing” and notes that “requirements and process for development review are based on the complexity of the project and the type of entitlement.”<sup>131</sup> However, the City only describes procedures for multifamily projects and site plan review while merely stating that “residential projects in the R-1 (single-family) and R-2 (two-family) zones are exempt from discretionary review.”<sup>132</sup> The City does not describe or analyze the permits required for residential development or the total permit and entitlement process for a typical single-family unit.<sup>133</sup> The City must provide this information and analyses to evaluate whether any of these procedures constrain the development of housing.

Policy Action 1.2: Expedited Permit Processing for Extremely-Low, Very-Low-, Low-, and Moderate-Income Housing Developments states that the City will “continue to monitor entitlement and plan check procedures for affordable housing developments to determine if procedures could be streamlined to reduce time and cost.”<sup>134</sup> This program also references “a Minor Exception process as a means of providing flexibility in residential development standards, improving feasibility and reducing development costs.”<sup>135</sup> These descriptions imply that the City did not thoroughly analyze its local processing and permit procedures which may actually constrain the development of affordable housing. The City must describe and analyze these processes, determine whether they constrain the development of housing, and explain how Policy Action 1.2 will mitigate the constraint.

Policy Action 1.8: Review and Revise Multi-Family Development Standards states that “development standards such as off-street parking requirements may impact the feasibility of residential development, especially the development of multi-family units.”<sup>136</sup> However, the City did not identify or analyze these standards here and must do so to determine whether the

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<sup>129</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-37 (November 2021).

<sup>130</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-38 (November 2021); HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Codes and Enforcement of Onsite/Offsite Improvement Standards*, <https://hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml> (last visited Jan. 10, 2022).

<sup>131</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-38 (November 2021).

<sup>132</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-38 (November 2021).

<sup>133</sup> HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Codes and Enforcement of Onsite/Offsite Improvement Standards*, <https://hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml> (last visited Jan. 10, 2022).

<sup>134</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-4 (November 2021).

<sup>135</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-4 (November 2021).

<sup>136</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).



development of housing is actually constrained. If they are determined to be constraints, the City must revise Policy Action 1.8 to do more than “review existing requirements and revise, as appropriate, during preparation of the Housing Incentive Opportunity Zone.”<sup>137</sup> Policy Action 1.8 should clearly describe how these requirements will be revised and explain how those revisions will lessen constraints on development.

Policy Action 1.11: Streamlined Permit Review explains that Building Types and Frontage Types are utilized “to ensure a quality development compatible with its surroundings” and “accommodate more context appropriate compact development and/or smaller lot subdivisions.”<sup>138</sup> The City states that it “will evaluate this ordinance to determine effectiveness, update as necessary and promote to developers to utilize to further small lot subdivisions, where appropriate.”<sup>139</sup> In its Draft, the City must describe and analyze these standards and determine whether they constrain the development of housing. If they do constrain development, the City must revise Policy Action 1.11 to identify specific actions it will take to mitigate this constraint and explain how these actions will do so.

### Site Improvements

Although the City describes multiple required site improvements, it generally claims that these improvements “do not unduly hinder housing development” without explaining how it arrived at this conclusion.<sup>140</sup> The City must do more than explain how these improvements benefit its residents and consider the cost of these improvements and the impact on housing costs. The City should specifically consider how such requirements constrain the development of affordable housing and determine how it could mitigate these effects.

### Housing for Persons with Disabilities

While the City generally does not constrain the development of housing for persons with disabilities, the City only permits large group homes subject to a conditional use permit.<sup>141</sup> The City should analyze how this requirement constrains the development of licensed, residential care facilities with more than six residents or group homes that will be providing services onsite.<sup>142</sup>

### Nongovernmental Constraints

The housing element must also analyze potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including price of land, cost of construction, availability of financing, requests to develop housing at densities below those anticipated in the analysis required by Section 65583.2(c), 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

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<sup>137</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-7 (November 2021).

<sup>138</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-8 (November 2021).

<sup>139</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-4-8 (November 2021).

<sup>140</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-44 (November 2021).

<sup>141</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-34 (November 2021).

<sup>142</sup> HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Constraints for People with Disabilities*, <https://hcd.ca.gov/community-development/building-blocks/constraints/constraints-for-people-with-disabilities.shtml> (last visited Jan. 10, 2022).

share of the RHNA.<sup>143</sup> 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.<sup>144</sup>

The City estimates both the cost of land and cost of construction but fails to describe the source of these estimates, how these costs influence the price of housing, or whether it considers these costs constraints to the development of housing.<sup>145</sup> Additionally, the City completely fails to analyze the availability of financing and its impact on the development of housing, merely stating that "mortgage interest rates have a large influence over the affordability of housing" and "higher interest rates increase a homebuyer's monthly payment and decrease the range of housing that a household can afford."<sup>146</sup> Further, the City does not analyze requests to develop housing at densities below those anticipated in the analysis required by Section 65583.2(c), or the length of time between receiving approval for a housing development and submittal of an application for building permits.<sup>147</sup>

To meet statutory requirements, the City must actually conduct an analysis of nongovernmental constraints on the development of housing and create programs and policies that will operate to minimize the impact of these costs on housing, particularly affordable housing.

### **Programs**

The housing element must include programs that allow the jurisdiction to achieve its stated housing goals and objectives. Programs must set forth a schedule of actions during the planning period, each with a timeline for implementation.<sup>148</sup> The jurisdiction 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.<sup>149</sup> The jurisdiction may do so through the administration of land use and development controls, the provision of regulatory concessions and incentives, the utilization of appropriate federal and state financing and subsidy programs when available, and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law.<sup>150</sup>

To make adequate provision for the housing needs of all economic segments of the community, the program shall address housing issues such as inadequate site inventories, meeting lower-income housing needs, removing constraints, maintaining affordable housing, promoting affirmatively furthering fair housing, preserving assisted housing developments, encouraging accessory dwelling units, and facilitating public participation. To make these programs most effective, HCD recommends jurisdictions include the following: definite time

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<sup>143</sup> Cal. Gov. Code Section 65583(a)(6).<sup>144</sup> Cal. Gov. Code Section 65583(a)(6).

<sup>144</sup> Cal. Gov. Code Section 65583(a)(6).

<sup>145</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-44 to 45 (November 2021).

<sup>146</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-3-45 (November 2021).

<sup>147</sup> Cal. Gov. Code Section 65583(a)(6).<sup>148</sup> Cal. Gov. Code Section 65583(c).

<sup>148</sup> Cal. Gov. Code Section 65583(c).

<sup>149</sup> Cal. Gov. Code Section 65583(c).

<sup>150</sup> Cal. Gov. Code Section 65583(c).



frames for implementation; an identification of agencies and officials responsible for implementation; a description of the local government's specific role in program implementation; a description of the specific action steps to implement the program; proposed measurable outcomes; demonstration of a firm commitment to implement the program; and an identification of specific funding sources, where appropriate.<sup>151</sup>

### **Affirmatively Furthering Fair Housing**

California law requires that public agencies administer all "programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing."<sup>152</sup> To affirmatively further fair housing, a public agency must do the following:

[Take] meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.<sup>153</sup>

Meaningful action means taking significant action that is designed and reasonably expected to achieve a material positive change that affirmatively furthers fair housing.<sup>154</sup>

Housing elements must incorporate the obligation to affirmatively further fair housing in the following aspects: (1) outreach, (2) assessment of fair housing, (3) site inventory, (4) identification and prioritization of contributing factors, and (5) goals, policies, and actions. Each section is addressed below.<sup>155</sup>

As discussed more fully below, the City has largely failed to comply with its duty to affirmatively further fair housing and its Draft is woefully inadequate with regards to this requirement under Housing Element law. We recommend that City review HCD's Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements (April

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<sup>151</sup> HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Program Overview and Quantified Objectives*, <https://hcd.ca.gov/community-development/building-blocks/program-requirements/program-overview.shtml> (last visited Apr. 4, 2021).

<sup>152</sup> Cal. Gov. Code Section 8899.50(b).

<sup>153</sup> Cal. Gov. Code Section 8899.50(a)(1).

<sup>154</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 66 (April 2021); Affirmatively Furthering Fair Housing, 80 Fed. Reg. at 42354. Although the Department of Housing and Urban Development does not enforce this federal AFFH rule, California law has adopted the federal rule. This means that the federal AFFH rule can inform how to interpret the obligation to affirmatively further fair housing in California law.

<sup>155</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 21 (April 2021).

2021) available at [https://www.hcd.ca.gov/community-development/affh/docs/affh\\_document\\_final\\_4-27-2021.pdf](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf) and revise its Draft to comply with State law and HCD's Guidance.

### Outreach

Beyond preexisting outreach requirements, jurisdictions must include a summary of their fair housing outreach capacity.<sup>156</sup> Jurisdictions “must describe meaningful, frequent, and ongoing public participation with key stakeholders.”<sup>157</sup> Among others, key stakeholders may include the following groups:

- advocacy groups (local, regional, and state level),
- community members who are lower income,
- persons and households with special needs,
- members of protected classes,
- representative advocacy organizations and other similarly situated parties,
- fair housing agencies,
- independent living centers, and
- homeless service agencies.<sup>158</sup>

Moreover, jurisdictions must include each of the following components:

- a description of outreach activities intended to reach a broad audience;
- a list of organizations contacted and consulted and for what purpose;
- a summary of comments and how the comments were considered and incorporated;
- and a summary of “issues that contributed to lack of participation in the housing element process by all economic segments, particularly people with protected characteristics, if that proves to be the case.”<sup>159</sup>

As described more fully in the section entitled Public Participation, the City has not met its outreach obligations under its duty to affirmatively further fair housing. The City must conduct additional outreach to key stakeholders, particularly those with an interest in fair housing issues, community members who have lower-income and members who have protected characteristics, as well as organizations who represent or provided services to these groups. The City must then incorporate their feedback into its Draft and provide a summary of their feedback and how it was addressed. The City's outreach should be meaningful, frequent, and ongoing.

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<sup>156</sup> Cal. Gov. Code Section 65583(c)(10)(A)(i).

<sup>157</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 21 (April 2021).

<sup>158</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 21–22 (April 2021).

<sup>159</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 22 (April 2021).

### Assessment of Fair Housing

A fair housing assessment needs to have a summary of fair housing enforcement and capacity.<sup>160</sup> In addition, the assessment must analyze these five areas: (1) fair housing enforcement and outreach capacity; (2) integration and segregation patterns and trends related to people with protected characteristics; (3) racially or ethnically concentrated areas of poverty (R/ECAPs) or racially concentrated areas of affluence (RCAAs); (4) disparities in access to opportunity for people with protected characteristics, including persons with disabilities; and (5) disproportionate housing needs within the jurisdiction, including displacement risk.<sup>161</sup> Furthermore, each of these analyses must include local and regional patterns and trends, local data and knowledge, and other relevant factors.<sup>162</sup> The analyses should each arrive at conclusions and have a summary of fair housing issues.<sup>163</sup>

*Fair Housing Enforcement and Outreach Capacity.* The City does not describe its fair housing enforcement and outreach capacity and must do so.

*Segregation and Integration.* “At minimum, the analysis must discuss levels of segregation and integration for race and ethnicity, income, familial status, persons with disabilities, and identify the groups that experience the highest levels of segregation.”<sup>164</sup> The City provides two maps and minimal analysis related to concentrations of ethnic and racial minorities and concentrations of individuals with disabilities.<sup>165</sup> The City simply ignores other protected characteristics and does not provide any meaningful analysis for the little data it does include.

*R/ECAPs and RCAAs.* Jurisdictions must identify R/ECAPs and RCAAs.<sup>166</sup> “The analysis must be conducted at a regional and a local level where the incidence of concentrated areas of poverty is discussed relative to the region and within the locality. Importantly, this regional comparison should discuss the incidence of racial concentrations in areas of affluence.”<sup>167</sup> The references that there are no R/ECAPs within its jurisdiction but does little to analyze any connections that may exist between concentrations of low-income residents and concentration of ethnic and racial minorities. The City simply fails to do any analysis of RCAAs and must update its draft to include this analysis.

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<sup>160</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 62 (April 2021).

<sup>161</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 27–28, 62 (April 2021).

<sup>162</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 62 (April 2021).

<sup>163</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 62 (April 2021).

<sup>164</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 31 (April 2021).

<sup>165</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-E-2 to H-E-3, Exhibits E-1, E-3 (November 2021).

<sup>166</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 32–34 (April 2021).

<sup>167</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 32 (April 2021).

*Disparities in Access to Opportunity.* The City “must . . . individually address access to education, transportation, economic prosperity, areas with low rates of violent crime, parks and recreation areas, environmentally healthy neighborhoods and other important opportunities.”<sup>168</sup> The City simply references TCAC Opportunity data and does no analysis of disparities in access to “education, transportation, economic prosperity, areas with low rates of violent crime, parks and recreation areas, environmentally healthy neighborhoods and other important opportunities.” The City must do a more thorough analysis of disparities in access to opportunity and address the specifically required elements outlined in HCD’s Guidance.

*Disproportionate Housing Needs, Including Displacement.* Jurisdictions must analyze both disproportionate housing needs and displacement.<sup>169</sup> “[C]ategories of housing need are based on such factors as cost burden and severe cost burden, overcrowding, homelessness, and substandard housing conditions.”<sup>170</sup> The City does not actually address disproportionate housing needs and must do so. Additionally, the City states that since its “housing site inventory consists primarily of underutilized sites occupied by non-residential uses,” “the risk of displacing existing residents is considered low.”<sup>171</sup> However, the City fails to address the general risk of displacement of residents that may be caused by increased development in their neighborhoods as well as the risk of displacement of the 100 units at risk of conversion from low-income housing.

*Conclusion and Summary of Fair Housing Issues.* Since the City has failed to do an adequate assessment of fair housing, it has also failed to provide proper conclusions and summaries of fair housing issues and should include these when it does a more thorough assessment of fair housing.

### Site Inventory

A jurisdiction’s site inventory must be consistent with the jurisdiction’s obligation to affirmatively further fair housing.<sup>172</sup> “Sites must be identified and evaluated relative to the full scope of the assessment of fair housing.”<sup>173</sup> The jurisdiction should consider the following during its site inventory analysis:

- how identified sites better integrate the community;
- how identified sites exacerbate segregation;
- whether the jurisdiction concentrated the RHNA by income group in certain areas of the community;
- whether local data and knowledge uncover patterns of segregation and integration; and

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<sup>168</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 48 (April 2021).

<sup>169</sup> Cal. Gov. Code Section 65583(c)(10)(ii).

<sup>170</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 39 (April 2021).

<sup>171</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-E-3 (November 2021).

<sup>172</sup> Cal. Gov. Code § 65583.2(a); HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 45 (April 2021).

<sup>173</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 3, 45 (April 2021).

- how other relevant factors can contribute to the analysis.<sup>174</sup>

The identified sites must attempt to improve conditions related to integration and segregation patterns and trends related to people with protected characteristics; racially or ethnically concentrated areas of poverty or affluence; disparities in access to opportunity for people with protected characteristics, including persons with disabilities; and disproportionate housing needs within the jurisdiction, including displacement risk.<sup>175</sup> Moreover, the jurisdiction must map the number of units at identified sites and include the sites' assumed affordability.<sup>176</sup> The jurisdiction should also address whether it groups sites near areas of concentrated affluence or areas of concentrated poverty.<sup>177</sup>

The City has failed to provide any analysis of its site inventory as it relates to fair housing and has not provided the required map of identified sites with the number of units and assumed affordability. The City must conduct this analysis and provide the required information and map.

#### Identification and Prioritization of Contributing Factors

As a result of a jurisdiction's assessment of fair housing, the jurisdiction must identify and prioritize significant contributing factors to fair housing issues.<sup>178</sup> The jurisdiction must explain how it prioritized contributing factors.<sup>179</sup> "A fair housing contributing factor means a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues."<sup>180</sup> The jurisdiction must follow these steps:

- (1) identify fair housing issues and significant contributing factors;
- (2) prioritize contributing factors, giving highest priority to those factors that
  - (a) deny fair housing choice or access to opportunity or
  - (b) negatively impact fair housing or civil rights compliance; and
- (3) discuss strategic approaches to inform and strongly connect these contributing factors to goals and actions.<sup>181</sup>

The City includes a list of 45 contributing factors identified in the County-wide Analysis of Impediments but does not identify which of these factors are actually relevant to the City and the

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<sup>174</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 45–46 (April 2021).

<sup>175</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 46, 63 (April 2021); Cal. Gov. Code Section 65583(c)(10)(A)(ii).

<sup>176</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 46, 63 (April 2021).

<sup>177</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 48 (April 2021).

<sup>178</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 49 (April 2021); Cal. Gov. Code Section 65583(c)(10)(A)(iii).

<sup>179</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 51 (April 2021).

<sup>180</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 49 (April 2021).

<sup>181</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 49 (April 2021).



City does not prioritize the contributing factors it identifies.<sup>182</sup> The County-wide list of contributing factors does not satisfy the statutory requirements and the City must identify the contributing factors that are specific to its own fair housing issues after the City has done a complete and meaningful assessment of fair housing. Once the City identifies the contributing factors relevant to its own fair housing issues, it must prioritize these factors.

### Goals, Policies, and Actions

Jurisdictions must provide goals, policies, and a schedule of actions during the planning period to affirmatively further fair housing.<sup>183</sup> These goals, policies and actions must be based on the jurisdiction's identification and prioritization of contributing factors.<sup>184</sup> The jurisdiction's actions may address, but are not limited to, the following areas:

- mobility enhancement,
- new housing choices and affordability in high opportunity areas,
- place-based strategies for preservation and revitalization,
- displacement protection, and
- other program areas.<sup>185</sup>

The jurisdiction's actions must be meaningful and sufficient to overcome identified patterns of segregation and to affirmatively further fair housing.<sup>186</sup> Accordingly, actions must commit to specific deliverables, measurable metrics, or specific objectives.<sup>187</sup> Actions must also have definitive deadlines, dates, or benchmarks for implementation.<sup>188</sup> In contrast, "programs that 'explore' or 'consider' on an 'ongoing' basis are inadequate . . . ."<sup>189</sup> Moreover, adequate actions must be "in addition to combatting discrimination" and "well beyond a continuation of past actions."<sup>190</sup>

Since the City has not conducted adequate fair housing outreach, has not performed a complete and thorough assessment of fair housing and of its site inventory as it relates to fair housing, and has not properly identified and prioritized contributing factors, it is impossible for the City to identify goals and policies to affirmatively further fair housing, as required by State law. As such, the City should revise its assessment of fair housing in accordance with State law and HCD's Guidance, and then develop meaningful goals and policies as required. Additionally, the goals and strategies provided by the City do not meet the requirements as they do not contain

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<sup>182</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-E-3 to H-E-4 (November 2021).

<sup>183</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 51 (April 2021).; Cal. Gov. Section 65583(c)(10)(A)(iv)–(v).

<sup>184</sup> Cal. Gov. Section 65583(c)(10)(A)(iv)–(v); AFFH Guidance Memo 63 (April 2021).

<sup>185</sup> Cal. Gov. Section 65583(c)(10)(A)(iv)–(v); AFFH Guidance Memo 63 (April 2021).

<sup>186</sup> Cal. Gov. Section 8899.50(a)(1), (b); AFFH Guidance Memo 51–53 (April 2021).

<sup>187</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 52 (April 2021).

<sup>188</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 52 (April 2021).

<sup>189</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 52 (April 2021).

<sup>190</sup> Cal. Gov. Code Section 8899.50(a); HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 52 (April 2021).

specific commitments to actions or definitive timelines.<sup>191</sup> The City’s goals are generally to continue past actions or to “consider” or “explore” options, rather than concrete actions that will result in actual, meaningful benefits during the planning period.

### **Public Participation**

The housing element shall include a program that demonstrates a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.<sup>192</sup> The HCD recommends that the local government describe who was invited to participate, who actually participated, general comments received, and how comments were incorporated into the housing element.<sup>193</sup>

Under AB 686, the housing element must also include a summary of fair housing outreach and capacity, and a description of meaningful, frequent, and ongoing community participation, consultation, and coordination that is integrated with broader stakeholder outreach.<sup>194</sup> Examples of stakeholders that should be included are: community-based and other organizations that represented protected class members, public housing authorities, housing and community development providers, lower-income community members, households that include persons in protected classes, fair housing agencies, independent living centers, regional centers, homeless services agencies, and churches and community service organizations that serve ethnic and linguistic minorities.<sup>195</sup> Cities should hold in-person meetings across the jurisdiction to ensure outreach is accessible to different communities and consider varying work hours and hold meetings at different times of the day and different days of the week.<sup>196</sup> Additionally, jurisdictions make drafts of the housing element available to the public for review and comment with ample time before submission to HCD.<sup>197</sup>

The City identifies four “layers” to its public participation: Housing Game Plan Project Champions, community-at-large, development stakeholders, and policy makers. The table below illustrates the timeline of public participation opportunities offered by the City:

October 12, 2020	Market-rate developer virtual interview session <ul style="list-style-type: none"><li>• Red Oak</li><li>• City Ventures</li></ul>	
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<sup>191</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-E-5 to H-E-6 (November 2021).

<sup>192</sup> Cal. Gov. Code Section 65583(c)(9).

<sup>193</sup> HCD, Building Blocks: A Comprehensive Housing-Element Guide, *Public Participation*, <https://hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml> (last visited Mar. 17, 2021).

<sup>194</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 10 (April 2021).

<sup>195</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 11 (April 2021).

<sup>196</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 10 (April 2021).

<sup>197</sup> HCD, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, 10 (April 2021).

	<ul style="list-style-type: none"> <li>• Warmington</li> </ul>	
October 13, 2020	Market-rate developer virtual interview session <ul style="list-style-type: none"> <li>• Brandywine</li> <li>• Intracorp</li> <li>• Melia Homes</li> <li>• Province Group</li> </ul>	
October 15, 2020	Housing Game Plan Project Champion: Speaker Series	
October 22, 2020	Housing Game Plan Project Champion: Speaker Series	
October 27, 2020	Affordable developer virtual interview session <ul style="list-style-type: none"> <li>• Jamboree Housing</li> <li>• Related</li> </ul>	
October 29, 2020	Housing Game Plan Project Champion: Speaker Series	
November 5, 2020	Housing Game Plan Project Champion: Speaker Series	
November 19, 2020	Housing Game Plan Project Champion: Kennedy Commission Presentation	
December 17, 2020	Housing Game Plan Project Champion: “Working Session”	
February 4 to April 6, 2021	Online survey <ul style="list-style-type: none"> <li>• Provided in English and Spanish</li> <li>• Advertised on social media and a cable TV channel</li> <li>• 458 English and 27 Spanish responses</li> <li>• Collected 175 email addresses</li> </ul>	
February 17, 2021	Planning Commission meeting	<ul style="list-style-type: none"> <li>• First public meeting</li> </ul>
March 2, 2021	City Council study session	<ul style="list-style-type: none"> <li>• Second public meeting</li> </ul>
March 18, 2021	Housing Game Plan Project Champion: United Way Presentation	

April 2021	Housing Game Plan Project Champion: “on-own housing policy prioritization exercise”	
April 26, 2021	Introduction to Housing Game Plan with CSUF Center for Health Neighborhoods	
October 7, 2021	Housing Element Community Workshop	<ul style="list-style-type: none"> <li>• Third public meeting</li> <li>• Approximately 31 weeks since last public meeting</li> </ul>
November 30, 2021	Draft Housing Element published and submitted to HCD	<ul style="list-style-type: none"> <li>• Approximately 6 weeks since last public meeting</li> <li>• No time given for public review and comment before submitting to HCD</li> </ul>
December 8, 2021	Planning Commission study session	<ul style="list-style-type: none"> <li>• Fourth public meeting</li> <li>• Only 1 week after the Draft was published and submitted to HCD</li> </ul>

First, although the City met with developers and several individuals that were chosen to represent lower-income and special needs households, it does not summarize these meetings or explain how these meetings affected the Draft.

Second, the City only provided the general public three opportunities to provide input before submitting a draft to HCD.<sup>198</sup> Two of these opportunities were at Planning Commission and City Council meetings where comments are limited to email submissions or time-limited verbal comments. The City should have provided more opportunities for the public to engage with the City in more varied and interactive settings rather than few truncated meetings.

Third, the City published its Draft for public review and submitted it on the same day. This means the public was not given any time to provide input, severely diminishing the impact of any feedback that will be received. The City should have allowed the public at least 30 days to review and provide comments on the Draft. Then the City should have taken a reasonable amount of time to revise its Draft before submitting to HCD.

Fourth, although the City apparently intends to discuss the Draft at a January Planning Commission meeting and a February City Council meeting, a few future public participation opportunities do not negate the severe lack of public input before a Draft was submitted to HCD.

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<sup>198</sup> City of Fullerton, 2021–2029 Housing Element Draft, H-D-5 (November 2021).

Because of this, the City should be required to engage with the public much more frequently and provide summaries of this engagement.

Fifth, the City should have summarized the content of these meetings, described all comments received from the public, and explained how these comments were addressed in the Draft.

In light of these concerns, the City's public participation efforts failed to engage all economic segments of the community and it should be required to take more meaningful steps to achieve this before submitting subsequent drafts.

### **Conclusion**

The housing element process is an opportunity for jurisdictions to meet the needs of California's residents, including needs for housing that is accessible to seniors, families, and workers and the needs of extremely-low-, very-low-, and low-income families for affordable housing. The City's current Draft fails to properly take advantage of this opportunity and meet the housing needs of these important residents. We encourage HCD to find the current Draft inadequate and look forward to working with HCD and the City to ensure that the housing needs of Fullerton's most vulnerable residents are met through this process.

Sincerely,

**THE PUBLIC LAW CENTER, BY:**



Richard Walker, Housing and Homelessness Prevention Unit, Senior Staff Attorney  
Alexis Mondares, Housing and Homelessness Prevention Unit, Staff Attorney