

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

2020 W. El Camino Avenue, Suite 500
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www.hcd.ca.gov



May 12, 2022

James Vanderpool, City Manager
City of Anaheim
200 S. Anaheim Blvd. Suite 733
Anaheim, CA 92805

RE: Anaheim (Grandma's House of Hope) – Written Findings Pursuant to Government Code section 65585, subdivisions (j) and (k)

Dear James Vanderpool:

The California Department of Housing and Community Development (HCD) has offered, and held, two meetings with the City of Anaheim (City) as required under Government Code section 65585, subdivision (k). At the City's request, HCD also held a third meeting with the City. This letter's purpose is to update the City on HCD's findings after these meetings.

Background

On February 4, 2014, the City adopted its 5th cycle housing element, which included Housing Production Strategy 1O (Accommodating Transitional and Supportive Housing). This strategy committed the City to amend its Municipal Code to comply with state laws affecting transitional and supportive housing¹ within one year of adoption of the element. As of this letter's date, the City has not made this amendment.²

On May 3, 2021, HCD issued Anaheim a Letter of Technical Assistance: City of Anaheim Approach to Community Care Facilities and Sober Living Homes (TA Letter). One of the many compliance issues discussed in this letter was the City's unlawful treatment of transitional and supportive housing.³

On October 19, 2021, HCD spoke with Nick Taylor, Senior Planner, and subsequently sent an email to Taylor stating that the City improperly processed an application for transitional housing from Grandma's House of Hope (Grandma's House). The email stated, "The conditional use permit (CUP) requirement is inconsistent with state law, specifically Government Code section 65583, subdivision (c)(3)." The email also

¹ See, e.g., Government Code section 65583, subdivision (c)(3).

² As referenced in HCD's December 14, 2021 NOV, the housing element includes multiple Policy Considerations, Guiding Principles, Housing Strategy Areas, and Housing Production Strategies that the City has failed to implement as demonstrated by its denial of the Grandma's House of Hope project application.

³ TA Letter at p. 4. The TA Letter is attached, and its contents are incorporated into this letter.

provided a copy of Municipal Code section 18.04.030 demonstrating the City's inconsistency with state law.

On October 26, 2021, Anaheim's City Council voted unanimously to deny Grandma's House's appeal of the Planning Commission's denial of the transitional housing project.⁴

On December 14, 2021, HCD issued a Notice of Violation (NOV) to the City. The NOV is attached, and its contents are incorporated into this letter. HCD's NOV requested the City provide a specific plan for corrective action, including (1) a description of amendments to the City's Municipal Code bringing its processes for transitional and supportive housing into compliance with state law without discriminatory actions and with a timeline for adoption, and (2) allowing Grandma's House to move forward with its plans at 626 North West Street and 945 West Pioneer Drive without further delay.

On January 28, 2022, the City sent HCD a letter responding to the NOV. Anaheim disputed HCD's findings that the City had failed to implement goals, policies, and program actions in its 5th cycle housing element and asked HCD to reconsider these findings. However, the letter did not address HCD's findings that Anaheim's permitting requirements violated state law, and Anaheim did not agree to change its Municipal Code to comply with state law and did not include the corrective action plan that HCD requested in the NOV.

HCD met with the City on March 7 and 28, 2022. These meetings satisfied the requirements of Government Code section 65585, subdivision (k), which specifies that HCD offer to meet twice with a city before the California Office of the Attorney General (AG) files a civil action related to housing element compliance.⁵ At Anaheim officials' request, HCD met with the City again on May 10, 2022.

During these meetings, Anaheim conditionally proposed using its 6th cycle housing element process to amend its Municipal Code to eliminate its current CUP requirements for transitional and supportive housing. But the City said it would not implement this amendment until spring 2023 at the earliest and could not confirm that the City Council would approve any such proposed amendment.⁶ In addition, the City proposed unusual

⁴ City of Anaheim, Resolution No. 2021-100.

⁵ This requirement to offer two meetings does not apply to HCD's enforcement of other violations of state laws listed in subdivision (j). This letter summarizes some, but not all, of the topics that the City and HCD discussed in these March 2022 meetings.

⁶ HCD has separately provided guidance to the City about its draft 6th cycle housing element. Certification of a housing element is a separate process involving a variety of issues to determine if overall a housing element substantially complies with state law. As part of that process, HCD may advise Anaheim on a program the City may propose to bring its transitional and supportive housing zoning provisions into compliance. But a compliance program in the 6th cycle housing element to make Municipal Code amendments that should already have been completed during the 5th cycle, or at the very least promptly after receiving HCD's TA letter or NOV, does not relieve Anaheim of its obligations to immediately redress the violations discussed in this letter.

nullification conditions on its proposed Municipal Code amendment, which HCD suggested the City remove.

The City also did not provide a satisfactory explanation why it has not already amended its Municipal Code to bring it into compliance. The City could have done this in 2014, as it committed to do in its 5th cycle housing element. And the City could have promptly amended its Municipal Code in 2021 or early 2022 after HCD advised that the City was in violation of state law.

The City also stated that it would not reconsider its denial of the Grandma's House project.

Anaheim Has Violated and Continues to Violate State Law

Having considered, among other things, the City's responses in its letter and the three meetings, HCD finds that the City has violated and is continuing to violate state law through its permit policies for transitional and supportive housing and by its denial of the Grandma's House project. The City has violated:

- the Housing Element Law⁷ by: (1) requiring CUPs for transitional and supportive housing projects that are not required for other single-family dwellings in the same zone, (2) denying the Grandma's House project, and (3) failing to implement goals, policies, and programs in the City's 5th cycle housing element;
- the Land Use Discrimination Law⁸ with the purpose and effect of discriminating against persons with disabilities and persons with very low or low incomes by: (1) requiring CUPs for transitional and supportive housing projects that are not required for other single family dwellings in the same zone, (2) failing to amend its Municipal Code to remove this requirement, and (3) denying the Grandma's House project despite Planning Commission staff's recommendation to approve it and based on a record that shows the City unlawfully discriminated because the project is designed to house women with disabilities who had experienced homelessness;
- state law's affirmatively furthering fair housing provisions⁹ by failing to promote and affirmatively further housing opportunities for persons with disabilities and persons with very low or low incomes; and
- the Housing Accountability Act by denying a housing project without meeting the City's burden of establishing by a preponderance of the evidence one of the

⁷ Gov. Code, § 65580 et seq.

⁸ Gov. Code, § 65008.

⁹ See, e.g., Gov. Code §§ 8899.50, subd. (b); 65583, subs. (a)(5), (7), (c)(1), (5), (10)(A).

exceptions for this allowed by Government Code section 65589.5, subdivisions (d) and (j).

In light of Anaheim's failure to comply with HCD's requests that it abate all these violations, HCD is assessing what actions it will take, which may include referring this matter to the AG to bring a civil action to remedy these violations. If the City wants to continue meeting to discuss bringing it into compliance with state law, we are willing to continue our meetings, with the understanding that the meetings would not waive or forestall HCD's authority to refer this matter to the AG or the AG's authority to file a civil action.

If you wish to schedule another meeting or have any questions about this letter, please contact Robin Huntley at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosures

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December 14, 2021

James Vanderpool, City Manager
City of Anaheim
200 S. Anaheim Blvd. Suite 733
Anaheim, CA 92805

Dear James Vanderpool:

RE: Notice of Violation: City of Anaheim Notice of Violations of Housing Element Law and Anti-Discrimination in Land Use

The California Department of Housing and Community Development (HCD) has reviewed the City of Anaheim's (City) processing and denial of the application from Grandma's House of Hope for transitional housing at 626 North West Street and 945 West Pioneer Drive, Dev2021-00122 (Project).

Under Government Code section 65585, HCD must review any action or failure to act that it determines to be inconsistent with either an adopted housing element or Government Code section 65583; further, HCD must issue written findings to the locality as a result of this review. (Gov. Code, § 65585, subd. (i).) If necessary, HCD must notify a locality when that locality takes actions that are in violation of Government Code sections 65008 and 65583 (Gov. Code, § 65585, subd. (j)) and may refer such violations to the Office of the Attorney General. (Gov. Code, § 65585, subds. (i)(1), (j).)

HCD finds that the City has failed to implement goals, policies, and program actions included in its adopted 5th cycle housing element and failed to act consistent with Government Code sections 65008 and 65583 in applying standards to the approval of the Project that are not applied to other residential dwellings of the same type in the same zone, and in failure to update municipal codes per prior housing element commitments and statutory requirements. These failures violate State Housing Element Law. (Gov. Code, § 65580 et seq.) Further, the City's 6th cycle planning period began on October 15, 2021. As of the date of this letter, the City has not adopted a 6th cycle housing element in compliance with State Housing Element Law.

The City has 30 days to respond to this letter. (Gov. Code, § 65585, subds. (i)(1)(A).) HCD requests that the City provide a written response to these findings no later than January 13, 2022, including, at a minimum, a specific plan for corrective action, including (1) a description of amendments to the City's municipal code bringing its processes for transitional and supportive housing into compliance with state law without discriminatory

actions and a timeline for adoption, and (2) allowing Grandma's House of Hope to move forward with its plans at 626 North West Street and 945 West Pioneer Drive without further delay.

HCD will review and consider the City's written response, if any, before taking any action authorized by Government Code section 65585, subdivisions (i)(1)(B), or (j). If the City does not respond by this deadline with, at minimum, a timeline for corrective action, HCD may refer the violations to the Office of the Attorney General. (Gov. Code, § 65585, subds. (i)(1), (j).)

State Housing Element Law Specifies Requirements Regarding the Approval of Transitional and Supportive Housing

State Housing Element Law includes specific directives to protect and promote transitional and supportive housing: "Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential *dwelling*s of the *same type* in the *same zone*." (Gov. Code, § 65583, subd. (c)(3), emphasis added.) This does not mean that transitional and supportive housing must be allowed by right in all residential zones. However, it does mean that if transitional or supportive housing is located in a single-family home, for instance, the city cannot require a use permit for the transitional or supportive housing unless it also generally requires a use permit for all other single-family homes in the same zone. This rule applies regardless of the number of occupants. The City cannot, for instance, require a use permit for transitional and supportive housing with 6 or more occupants unless it requires such a use permit for single-family homes in the same zone generally.

The protections for transitional and supportive housing in section 65583 are not new. They were added to State Housing Element Law in Senate Bill (SB) 2 (Stats. 2007, Ch. 633, § 3). HCD has assisted jurisdictions throughout the state regarding these changes to the law through technical assistance memos dated May 7, 2008; April 10, 2013; and April 24, 2014.¹ In addition, HCD provides guidance in the housing element portion of its website, the *Building Blocks*.²

HCD notes that the City's impermissible actions, described below, may in part result from the City's misapprehension of the applicable law here. If that is the case, then this matter can be easily rectified by allowing Grandma's House of Hope to move forward with its plans at 626 North West Street and 945 West Pioneer Drive without further delay.

HCD observes that the City appears to confuse the general requirements for transitional and supportive housing under Government Code section 65583 with other requirements

¹ Available at: <https://hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>

² Available at: <https://hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/zoning-for-variety-housing-types.shtml>

that apply to licensed care facilities regulated under the Health and Safety Code (see, e.g., Health & Safety Code, § 1568.0831). The Health and Safety Code places certain restrictions on the local regulation of such “residential care facilities” through land use controls based on occupancy numbers. Local jurisdictions may differentiate between licensed “residential care facilities” that provide care for six or fewer persons and those that provide care for seven or more persons. (See Health & Safety Code, § 1568.0831.) That distinction is unique to the Health and Safety Code and to licensed residential care facilities. State Housing Element Law provides its own protections for “transitional and supportive housing” in Government Code section 65582 and 65583. The provisions in the Health and Safety Code for “residential care facilities” in no way limit or define the protections in the Government Code for transitional and supportive housing. The City appears to be operating under this misapprehension, however, and believes that transitional and supportive housing may be regulated by the number of occupants in the dwelling.³ That is not the case.

In sum, the City cannot create obstacles to transitional and supportive housing in residential zones not applicable to other dwellings of the same type in the RS-1 zoning district. Since occupying and using a single-family dwelling in the RS-1 zone does not require application for a conditional use permit (CUP) regardless of the number of occupants, transitional and supportive housing that occupies single-family dwellings cannot be compelled to apply for a CUP.

Grandma’s House of Hope Is Transitional Housing and a Permitted Use

Grandma’s House of Hope’s proposal for operations falls within the definition of transitional housing as the application defined the proposal as a transitional home targeting “[female] adults with a mental health disability, many of whom may have been living unsheltered on the streets during the COVID 19 pandemic. 72 percent of these individuals are over the age of 40 and need support in recovering from trauma.”⁴

Government Code section 65582, subdivision (j), defines transitional housing as, “buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.” Grandma’s House of Hope proposed a transitional housing arrangement for 12-18 months, after which the participants would have gained the skills needed to live independently⁵.

³ Anaheim Municipal Code section 18.04.030, Table A-4.

⁴ Grandma’s House of Hope, Letter of Operation, Revised October 12, 2021 also referenced on the October 26, 2021 City Council Agenda Staff Report, page 2.

⁵ October 26, 2021 City Council Agenda Report, page 2.

Grandma’s House of Hope Was Incorrectly Processed as Requiring a CUP and Impermissibly Denied a Permit

Grandma’s House of Hope’s application was incorrectly processed as requiring a CUP. This was impermissible as noted above, as more requirements cannot be placed on transitional and supportive housing than are placed on dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (c)(3).) Under Municipal Code section 18.04.030, Table A-4, a single-family residence within the RS-1 zoning district is a permitted use by right. The proposed location for Grandma’s House of Hope⁶ is within the RS-1 zoning district and the dwelling type is a single-family residence. Therefore, Grandma’s House of Hope, as transitional housing, qualifies as a permitted use by-right.

Nonetheless, the City required Grandma’s House of Hope to submit to a CUP process. On August 30, 2021, the City’s Planning Commission denied the issuance of CUP No. 2021-06106. On appeal, on October 26, 2021, the City Council denied Grandma’s House of Hope’s appeal and denied the project. These actions violated Government Code section 65583.

California’s Planning and Zoning Law Prohibits Discrimination

California’s Planning and Zoning Law (Gov. Code, § 65000 et seq.) prohibits discrimination in land use and planning.⁷ In particular, Government Code section 65008 deems any action taken by a city or county to be null and void if such action denies an individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in the state due to discrimination based on protected characteristic. (Gov. Code, § 65008, subd. (a).) The law further provides that no city shall enact or administer its laws so as to “prohibit or discriminate against any residential development ... because of the method of financing” or because “the development ... is intended for occupancy by a person in a protected class, including persons with disabilities and persons and families of very low, low, or moderate income.” (Gov. Code, § 65008, subd. (b).) Likewise, no city may impose requirements on a residential use by persons in a protected class, including persons with disabilities and persons of very low, low, moderate, or middle income, other than those generally imposed upon other residential uses. (*Id.*, subd. (d)(2)(A).)

In its review of this project, the Council applied extraordinary scrutiny not applied for any other home and other occupants of single-family homes in the city. HCD is concerned that the City’s actions—in imposing barriers to transitional and supportive housing in violation of section 65583, seemingly based on protected characteristics—may also have violated

⁶ 626 North West Street and 945 West Pioneer Drive, Anaheim, CA

⁷ While not the subject of this letter per se, HCD reminds the City of its related obligation under state law to affirmatively further fair housing. (Gov. Code, § 8899.50.) The City has a statutory duty to “administer its 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.” (Gov. Code, § 8899.50, subd. (b).)

Government Code section 65008. In subjecting transitional housing to heightened scrutiny in violation of the Government Code, and based on the use and occupants of the home, the City may have discriminated against homeless women with disabilities based on their protected characteristics, method of financing, and/or intended occupancy in violation of Government Code section 65008, subdivision (b).

Denial of Grandma's House of Hope Fails to Implement Housing Element Goals, Policies, and Programs and Highlights Failure to Update Municipal Code per Housing Element Commitments and Statutory Requirements

Finally, denial of the Grandma's House of Hope project failed to implement multiple Goals, Policies, and Programs of the City's housing element, adopted on February 4, 2014, including:

- Policy Consideration 5.0: "...Specifically, consideration of homelessness, needs of residents with special needs, housing access, affordability issues, and rental and for-sale housing opportunities can be best addressed at the local level through target policies and programs sponsored and/or administered by the City." (Page 4-3.)
- Policy Consideration 7.0: "...Additionally, the need for housing suitable for special needs groups is not always fulfilled by the housing options currently available. Providing policies and programs to increase available housing for all segments of the population will help ensure that current residents and those who work in Anaheim have the opportunity to remain in Anaheim." (Page 4-4.)
- Guiding Principle B: The availability of a range of housing choices for a variety of incomes in Anaheim contributes to a balanced community and community investment. (Page 4-4.)
- Guiding Principle C: Persons with special housing needs should have access to a variety of housing choices that are integrated within the community. (Page 4-4.)
- Housing Strategy Area, Housing Production: Establishes policy actions for the production of a range of rental and for-sale housing units in the City. (Page 4-5.)
- Housing Strategy Area, Affordable Housing Opportunity: Establishes policy actions for the establishment of affordable housing opportunity for all segments of Anaheim's populations. (Page 4-5.)
- Housing Production Strategy 1D – Encourage the Development of Housing for Extremely-Low Income Households: "...Specific emphasis shall be placed on the provision of extremely low income households by encouraging the development of transitional living facilities, permanent special needs housing, and senior housing..." (Pages 4-8 – 4-9.)
- Housing Production Strategy 1E – Encourage the Development of Housing for Special Needs Households: "...The City shall continue to utilize available incentives to encourage and support the development of rental housing for special needs families within future affordable housing projects...The City will coordinate

with local developers and non-profit entities specializing in housing for Special Needs residents to meet existing and future housing needs...” (page 4-9.)

- Housing Production Strategy 1L – Development of Emergency Shelters/Transitional and Supportive Housing in Compliance with SB-2: “The City is in full compliance with the provisions of SB-2, establishing provisions that permit the development of emergency shelters and transitional/supportive housing “by-right” in certain locations. The City understands the importance of addressing the needs of the temporary and chronically homeless. To further address this issue, it will work collaboratively with service providers, advocacy groups and other entities to define any challenges in providing for the temporary and long-term needs of Anaheim’s homeless...” (Page 4-13.)
- Housing Production Strategy 1O – Accommodating Transitional and Supportive Housing: “...the City will amend the Municipal Code in accordance with Government Code Section 65583(a)(5) to consider transitional housing and supportive housing as a residential use of property, subject only to those development standards that apply to other residential dwellings of the same type in the same zone...” (Page 4-15.) This final obligation was to be accomplished within one year of housing element adoption. The housing element was adopted on February 4, 2014, and the City’s municipal code continues to violate the Government Code nearly eight years later, specifically Government Code section 65583, subdivision (c)(3).

Consequences of Lack of Compliance with State Housing Element Law

Housing availability is a critical issue with statewide implications, and most housing decisions occur at the local level. Housing elements are essential to developing a blueprint for growth and are a vital tool to address California’s prolonged housing crisis. As such, state law has established clear penalties for local jurisdictions that fail to comply with State Housing Element Law.

First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation,
- Local Housing Trust Fund Program,
- Infill Infrastructure Grant Program,
- SB 1 Caltrans Sustainable Communities Grants, and
- Affordable Housing and Sustainable Communities Program.

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of State Housing Element Law. Further, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. Government Code section 65585, subdivision (l)(1),

establishes a minimum fine of \$10,000 per month and up to \$100,000 per month. If a jurisdiction continues to remain noncompliant, a court can multiply the penalties up to a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

In addition to these legal remedies available in the courts, under the Housing Accountability Act (Gov. Code § 65589.5, subd. (d)), jurisdictions without a substantially compliant housing element cannot use inconsistency with zoning and general plan standards as reasons for denial of a housing project for very low-, low-, or moderate-income households.⁸

Conclusion

Under Government Code section 65585, subdivision (i), HCD must give the City a reasonable time, no longer than 30 days, to respond to these findings. HCD provides the City until January 13, 2022 to provide a written response to these findings before taking any of the actions authorized by section 65585, including, but not limited to, referral to the California Office of the Attorney General.

As stated above, the City's response should include, at a minimum, a specific plan for corrective action, including (1) a description of amendments to the City's municipal code bringing its processes for transitional and supportive housing into compliance with state law without discriminatory actions and a timeline for adoption, and (2) allowing Grandma's House of Hope to move forward with its plans at 626 North West Street and 945 West Pioneer Drive without further delay.

If you have any questions or would like to discuss the content of this letter, please contact Robin Huntley of our staff at Robin.Huntley@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁸ For purposes of the Housing Accountability Act, housing for very low-, low-, or moderate-income households is defined as having at least 20% of units set aside for low-income residents or 100% of units set aside for moderate- or middle-income residents (Gov. Code § 65589.5, subd. (h)(3)).

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May 3, 2021

Niki Wetzel, Deputy Director
Planning and Services Division
Planning and Building Department
City of Anaheim
200 S. Anaheim Boulevard, Suite 162
Anaheim, CA 92805

RE: City of Anaheim Approach to Community Care Facilities and Sober Living Homes – Letter of Technical Assistance

Dear Niki Wetzel:

The California Department of Housing and Community Development (HCD) has reviewed the City of Anaheim's (City's) land-use regulations set out in Municipal Code sections 18.16.058 (Community Care Facilities-Unlicensed (Small) and Sober Living Homes (Small)) and 18.38.123 (Community Care Facilities-Unlicensed and Sober Living Homes) (Municipal Code) as well as the City's proposed Zoning Code Amendment 2021-00176 (DEV2021-00027) (Zoning Code Amendment) pursuant to Government Code sections 65585 and 65008, the latter of which prohibits discrimination in land use.

In support of its review, HCD held a call with City staff on March 23, 2021, to discuss HCD's concerns that the City's Municipal Code and its proposed Zoning Code Amendment potentially conflict with statutory prohibitions on discrimination in land use (Gov. Code, § 65580) by imposing separate, more onerous requirements on housing for a protected class, limiting the use and enjoyment of their homes, and jeopardizing the financial feasibility of group homes, which the City refers to as "community care facilities-unlicensed" and "sober living homes." During the call, City staff requested a letter of technical assistance to assist and inform its City Council regarding the potential impacts their decisions have surrounding these issues. HCD provides the following technical assistance pursuant to that request.

Background Information: California's Planning and Zoning Law Prohibits Discrimination.

California's Planning and Zoning Law (Gov. Code, § 65000 et al.) prohibits jurisdictions from engaging in discriminatory land use and planning activities. Specifically, Government Code section 65008, subdivision (a), deems any action taken by a city or

county to be null and void if such action denies to an individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in the state due to illegal discrimination. Under the law, it is illegal to discriminate based on protected class such as race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability (including individuals in recovery for drug or alcohol abuse, whether or not they are actively seeking recovery assistance), veteran or military status, or genetic information.

The law further recites multiple categories of actions that are determined to be discriminatory, including:

- Enactment or administration of ordinances pursuant to any law that prohibits or discriminates against a protected class (Gov. Code, § 65008, subd. (b)(1)(B));
- Enactment or administration of ordinances pursuant to any law that prohibits or discriminates against residential developments because they are “intended for occupancy by persons and families of very low, low, or moderate income, ... or persons and families of middle income” (Gov. Code, § 65008, subds. (a)(3) and (b)(1)(C)); and
- Imposition of different requirements on a residential use by a protected class or by persons of very low, low, moderate, or middle income, other than those generally imposed upon other residential uses. (Gov. Code, § 65008, subd. (d)(2)(A).)

Proposed Zoning Code Amendment 2021-00176 (DEV2021-00027) Potentially Discriminates

Recitals in the draft Ordinance for Zoning Code Amendment 2021-00176 include statements that are potentially concerning. The recital notes “continuous resident complaints regarding quasi-residential facilities expressing concerns such as overcrowding, parking, noise, and loitering”; the need to “preserve the character of single-family residential neighborhoods”; and the desire to “provide an accommodation for disabled persons that is reasonable and actually bears some resemblance to the opportunities afforded non-disabled individuals”. The proposed solution to these recited concerns is to regulate Community Care Facilities-Unlicensed and Sober Living Homes, and to require additional distancing requirements between Community Care Facilities-Unlicensed and Sober Living Homes as well as impose additional distancing requirements from residential uses that are deemed “quasi-residential”. The City considers the following residential uses to be quasi-residential:

- Community Care Facilities, regardless of size, both licensed and unlicensed
- Sober Living Homes, regardless of size
- Senior Living Facilities, regardless of size
- Transitional Housing (Large)

- Supportive Housing (Large)
- Short-Term Rental Units (although these are not the subject of these regulations, their impacts are cited as part of the justification for these regulations).

The proposed Zoning Code Amendment is problematic for the following reasons:

- 1) These restrictions lump together various living arrangements for regulation, such as large, licensed community care facilities, with residential homes occupied by individuals or groups of individuals, based only on protected characteristic without explanation, analysis, or data to justify doing so. In fact, the only characteristic that they appear to have in common is that they are occupied by persons with disabilities, a fact that is concerning.
- 2) There are no similar restrictions on non-disabled persons. (Gov. Code, § 65008, subd. (d)(2)(A).)
- 3) Regulation of cars, traffic, noise, loitering, and overcrowding can be administered directly through the City's existing laws. This approach applies universally and does not discriminate against persons with disabilities or persons or families with very low, low, moderate, or middle household incomes.
 - a. Population density can be regulated by reference to floor space and facilities.
 - b. Noise and morality can be regulated by enforcement of police power ordinances and criminal statutes.
 - c. Traffic and parking can be regulated by limitations on the number of cars (and applied evenly to all households) and by off-street parking requirements.¹
- 4) Citywide implementation of distancing requirements threatens the capacity to facilitate a sufficient number of facilities to meet the special needs of the City's residents who require residing in Community Care Facilities and Sober Living Homes.

Existing requirements for Sober Living and Community Care Facilities severely restrict the sites in which they can be located. However, Community Care Facilities may not be located within 300 feet of another Community Care Facility or 800 feet of a Sober Living Home. Sober Living Homes may not be located within 800 feet of another Sober Living Home. (Municipal Code § 18.38.123.020.0205.) Proposed amendments would further, substantially restrict the locations for such residences. In particular, it would extend these kinds of restrictions to preclude Sober Living and Community Care Facilities near senior living facilities, transitional housing, supportive housing, and short-term rentals.

¹ As the Supreme Court explained in *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133: "In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users."

The draft Zoning Code Amendment cites records from the California Department of Social Services dated May 28, 2020, that “show more than 100 state-licensed community care facilities for adults and the elderly are located in the City and that the City is home to 15 licensed and/or certified alcoholism and drug abuse recovery or treatment facilities providing 205 beds.” Since Anaheim’s population is roughly 350,000 persons, and the City’s housing element cites 26,240 persons with disabilities currently residing in the City (2011 ACS, S1810), existing facilities appear to fall short of meeting the need. The Zoning Code Amendment creates additional barriers for persons with disabilities to obtain housing.

The City should treat Group Homes as comparable to any other residence to satisfy the goal to accommodate and integrate persons with disabilities in all communities. The proposed Zoning Code Amendment is an excessive regulation that fails to achieve the expressed intent of “restrict[ing] residential zones to specified types of uses deemed compatible” or “preserv[ing] the character of single-family residential neighborhoods”.

- 5) Transitional and supportive housing regardless of size are by law “residential uses,” not quasi-residential, and may only be subject to the restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (c)(3).) Under state law, for instance, if the transitional or supportive housing is located in a single-family home, the city cannot require a use permit for the transitional or supportive housing unless it also generally requires a use permit for all other single-family homes. Likewise, unless all single-family homes are subject to an operator’s permit, such a permit cannot be required for transitional and supportive housing.²
- 6) Community Care Facilities and Sober Living Homes with current distancing less than the proposed requirement are “grandfathered in” only under limited circumstances.
- 7) Under certain circumstances, the grandfathered distancing exemption can be revoked, thus reducing the City’s ability to provide much needed housing and undermining the purpose of grandfathering.
- 8) Persons residing in Community Care Facilities and Sober Living Homes are disabled and generally lower income. Implementing constraints to providing these types of housing opportunities could have the effect of increasing the City’s homeless population and thwarting efforts to house the homeless.

² Note that some Community Care Facilities, Sober Living Homes, and Senior Living Facilities may also qualify as Transitional or Supportive Housing. The City’s ordinance should recognize this and acknowledge that when they do so, the rules for transitional and supportive housing would control under Government Code section 65583.

- 9) The City’s obligation is to provide equal opportunities in housing to persons with disabilities as are provided to those without disabilities, not to merely provide opportunities that “bear some resemblance” to the opportunities offered to non-disabled persons. (Gov. Code, § 65008, subd. (d)(2)(A).)

Existing Municipal Code Sections 18.16.058 and 18.38.123 Potentially Discriminate

HCD is concerned about Municipal Code sections 18.16.058 and 18.38.123. Although the requirements seek to address the “adverse impacts” of various group homes arrangements, these kinds of ordinances—calling out protected classes for specific regulatory action based on concerns of this nature—can result in significant barriers to housing for persons with disabilities in a way that a more generalized regulatory response, targeting actions or impacts rather than persons, would not.³

Existing Municipal Code is problematic for the following reasons:

- 1) *Municipal Code requires a discriminatory permitting process for Community Care Facilities and Sober Living Homes. (Municipal Code section 18.16.058)*

The Municipal Code requires an onerous permit and registration process for Community Care Homes and Sober Living Homes—including registration with the Orange County Sheriff’s Department and compliance with “certification” guidelines crafted for those who are being monitored through the criminal justice system. This onerous and intrusive permit process is not applied in a non-discriminatory manner to all residential uses, and, as such, is a violation of Government Code section 65008, subdivision (d)(2). The City should treat Community Care Facilities and Sober Living Homes as comparable to any other residence to satisfy the goal to accommodate and integrate persons with disabilities in all communities. The Fair Housing Act (FHA) also prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled.⁴ Government Code section 65008, subdivision (d)(2)(A), prohibits imposition of different requirements on a residence intended for occupancy by a protected class or by persons of very low, low, moderate, or middle income, other than those generally imposed upon other residences.

³ See, e.g., Brian J. Connolly and Dwight H. Merriam, Planning and Zoning for Group Homes: Local Government Obligations.

⁴ See, e.g., United States Department of Justice and United States Department of Housing and Urban Development, Joint Statement: Local Land Use Laws and Practices and the Application of the Fair Housing Act (November 10, 2016) (“Joint Statement”), p. 4 (“A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Fair Housing Act because it treats persons with disabilities differently based on their disability”); see also *Oconomowoc Residential Programs, Inc. v. City of Milwaukee* (7th Cir. 2002) 300 F.3d 775, 783.

2) *The Municipal Code applies to both existing and future Community Care Facilities and Sober Living Homes. (Municipal Code section 18.16.058.040.090)*

The Municipal Code requires facilities existing prior to the effective date of regulations to apply for the Operator's Registration or Operator's Permit within 180 days of the effective date of the regulations. It is questionable whether the retroactive application of the ordinance in this manner is constitutional. The courts have instructed, "If the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid"⁵ and "The rights of users of property as those rights existed at the time of adoption of a zoning ordinance are well recognized and have always been protected."⁶ For this reason, zoning ordinances typically exempt existing uses from new zoning regulations.

3) *The Municipal Code requires a 24-hour house manager. (Municipal Code section 18.38.123.020.0203)*

The Municipal Code requires Community Care Facilities and Sober Living Homes to have a house manager reside on site or any number of persons acting as a house manager who are present at the facility on a 24-hour basis or who will be available 24-hours per day, seven days per week to physically respond within 45 minutes. Residents are frequently persons of very low- or low-income and are disabled. The house manager requirement creates a financial hardship on the residents as the additional costs create an additional expense for the residents.

The requirement to have a house manager effectively mandates an "institutional" arrangement that is not "on par with" housing policies for those who are not disabled in conflict with the FHA.⁷ It is hugely intrusive in that it interferes with the residents' freedom to live with persons of their choice, and adds significant additional expense, both problematic under notions of fair housing. (Gov. Code, § 65008.)

4) *The Municipal Code limits occupancy to residents who are handicapped. (Municipal Code section 18.16.058.040.0401.02)*

Under the Municipal Code, an Operator's Registration and an Operator's Permit application shall be denied or revoked for multiple reasons, including accepting residents, other than a housing manager or staff, who are not handicapped as defined in the FHA and FEHA.

⁵ *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 551-552.

⁶ *Edmonds v. Los Angeles County* (1953) 40 Cal.2d 642, 651.

⁷ *Oconomowoc Residential Programs, supra*, 300 F.3d at p. 783.

In limiting residence in this way, the Municipal Code impermissibly discriminates on the bases of familial status. (See Gov. Code, § 12955, subd. (l).) The Municipal Code prohibits any residents that are not “handicapped,” which means that Community Care Facilities and Sober Living Homes designed for families are effectively prohibited in the City because these requirements would prevent families, including non-disabled spouses and small children, from residing in the residence. In the context of a Sober Living Home, this prohibition would also effectively preclude sober living arrangements for nursing mothers, mothers of infants or small children, and parents endeavoring to reunify with children after recovery. This restriction effectively mandates an “institutional” arrangement that is not “on par with” housing policies for those who are not disabled in conflict with the FHA.⁸

- 5) *Sober Living Homes require residents to be actively participating in legitimate recovery program. (Municipal Code sections 18.16.058.040.0401.04 and 18.38.123.020.0210.01)*

The Municipal Code contains a requirement for active participation of all residents in a legitimate recovery program located off-site and cites an Operator’s Registration and an Operator’s Permit application shall be denied or revoked for failing to take measures to remove any resident of a Sober Living Home who is not actively participating in a legitimate recovery program from contact with all other sober residents.

Disability rights laws apply not only to individuals with histories of drug addiction or alcoholism who are currently participating in recovery programs, but also those who have completed those programs or who are “erroneously regarded as using drugs when in fact they are not.”⁹ Additionally, state or local zoning and land use ordinances may not, consistent with the FHA, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate.¹⁰

By precluding persons who are not currently participating in established recovery programs, the Municipal Code discriminates based upon disability. Further, the enforcement of such a provision may unconstitutionally intrude into the privacy interests of disabled persons if it forces residents to provide records to the City as part of its land-use enforcement efforts.¹¹

⁸ *Oconomowoc Residential Programs, supra*, 300 F.3d at p. 783.

⁹ *Hernandez v. Hughes Missile System Co.* (9th Cir. 2004) 362 F.3d 564, 568.

¹⁰ Joint Statement, *supra* note 4, p. 13.

¹¹ See, e.g., Cal. Const. art. 1, § 1.

6) *Other regulations imposing different requirements on Community Care Facilities and Sober Living Homes than are imposed on other residential uses.*

- All facilities shall have a good neighbor policy, which directs residents to be considerate of neighbors, including refraining from engaging in excessively loud, profane, or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. (Municipal Code § 18.38.123.020.0209.03)
- All garages, driveways, and/or assigned parking spaces associated with the facility shall be available for the parking of vehicles at all times. (Municipal Code § 18.38.123.020.0204.01)
- The facility shall not be located in an Accessory Dwelling Unit unless the primary dwelling unit is used for the same purpose. Residents of all units on a parcel will be combined to determine the total number of residents. (Municipal Code § 18.38.123.0201 and 0202)
- Existing, as well as proposed separation requirements. Existing requirements state Sober Living Homes shall not be located within 800 feet of other Sober Living Homes or Alcoholism or Drug Abuse Recovery or Treatment Facilities. Proposed amendments are address earlier in this correspondence. (Municipal Code § 18.38.123.020.0205)

None of the requirements outlined above apply universally to all residential uses in the City. The requirements were crafted explicitly to target a specific population— persons with disabilities and most likely persons with low-incomes. These populations are legally protected from such actions.

7) *Other regulations imposing different requirements on Sober Living Homes than are imposed on other residential uses.*

- A Sober Living Home shall have a visitation policy that precludes any visitors who are under the influence of any drug or alcohol. (Municipal Code § 18.38.123.020.0210.02)
- A Sober Living Home shall have a controlled substance policy, which, at a minimum, states the prohibition of the use of any alcohol or any non-prescription drugs at the facility or by any resident either on- or off-site. (Municipal Code § 18.38.123.020.0210.03)

None of the requirements outlined above apply universally to all residential uses in the City. The requirements were crafted explicitly to target a specific population – persons with disabilities and most likely persons with low-incomes. These populations are legally protected from such actions.

Community Care Facilities and Sober Living Home requirements may conflict with housing element policies and programs

HCD reminds the City that its decisions and actions must align with, and not contradict, the policies, principles, and strategies included in its current 5th cycle housing element. Community Care Facilities and Sober Living Home requirements may conflict with or fail to implement multiple provisions of the City's general plan housing element, including:

- Policy Consideration 5.0: Affordable Housing Opportunities for Anaheim Residents
- Policy Consideration 7.0: Housing Availability and Affordability
- Guiding Principle B: The availability of a range of housing choices for a variety of incomes in Anaheim contributes to a balanced community and community investment.
- Guiding Principle C: Persons with special housing needs should have access to a variety of housing choices that are integrated within the community.
- Housing Production Strategy 1D: Encourage the Development of Housing for Extremely-Low-Income Households
- Housing Production Strategy 1E: Encourage the Development of Housing for Special Needs Households
- Housing Quality and Design Strategy 3B: Monitoring of Adopted Reasonable Accommodation Procedures
- Affordable Housing Opportunity Strategy 5A: Local Support of Regional Fair Housing Efforts

Additionally, HCD reminds the City that its housing element update for the 6th cycle planning period is due October 15, 2021. While multiple laws require the element to analyze and include programs to mitigate potential governmental constraints, including constraints for persons with disabilities (Gov. Code § 65583, subds. (c)(3), (c)(5), (a)(5), and (a)(7)), new requirements surrounding the City's obligation to affirmatively further fair housing (Gov. Code § 65583, subd. (c)(10)) also apply. Implementation of discriminatory regulations not only violates Housing Element Law, it fails to allow the City to meet its obligation to affirmatively further fair housing pursuant to Government Code section 8899.50.

Conclusion

HCD reminds the City that California is experiencing a severe housing crisis and the availability of housing affordable to all income levels is of vital statewide importance. (Gov. Code § 65580.)

HCD has reviewed the City's municipal code and proposed amendments under Government Code section 65585. HCD's authority pursuant to Government Code

section 65585 extends to statutory prohibitions on discrimination in land use (Gov. Code, § 65008). HCD has found that the City's municipal code potentially discriminates against persons in protected classes and that adoption of Zoning Code Amendment No. 2021-00176 (DEV2021-0027) would amplify HCD's concerns. HCD recommends the City reject the Zoning Code Amendment and amend its current municipal code to ensure it adheres to the nondiscrimination requirements in Government Code section 65008.

Thank you for reaching out to HCD for this guidance. For technical assistance regarding the City's 6th cycle housing element update, please contact Marisa Prasse at Marisa.Prasse@hcd.ca.gov. If you have any questions or would like to discuss the content of this letter, please contact Robin Huntley at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief