

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

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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,

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

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)).