

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

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www.hcd.ca.gov



October 2, 2024

Jesus Gomez, City Manager
City of Norwalk
12700 Norwalk Blvd
Norwalk, CA 90650

Dear Jesus Gomez:

RE: City of Norwalk – Revocation of Housing Element Compliance Finding

The California Department of Housing and Community Development (HCD) here notifies the City of Norwalk (City) that HCD has revoked, as of the date of this letter, its November 21, 2023 finding that the City's housing element is in substantial compliance with Housing Element Law.¹ The City adopted its housing element on February 21, 2023.

Background

On August 6, 2024, the City Council adopted Urgency Ordinance No. 24-1752U, which includes a moratorium on emergency shelters, single room occupancy, transitional housing, and supportive housing (Moratorium). On September 16, 2024, HCD issued the City a Notice of Violation and Corrective Action Letter (incorporated by reference) with written findings that the Moratorium is inconsistent with Housing Element Law² and with several of the City's housing element goals, policies, and programs, including, but not limited to, Goal 1 and Policy 1.4; Goal 2, Policy 2.3, Program 2.1, and Program 2.5; and Goal 3, Policy 3.5, Program 3.5, and Program 3.7. HCD also directed the City to repeal the Moratorium and provided the City seven days to respond to HCD's written findings pursuant to Government Code section 65585, subdivision (i)(1)(A).

Despite receiving HCD's letter, the City Council voted to extend the Moratorium by 10 months and 15 days the following day, September 17, 2024. On September 20, 2024, the City's attorney requested additional time to respond to HCD's letter, and HCD agreed to give the City until October 2, 2024 to respond. In approving this extension, HCD directed the City to do one of two things at the October 1, 2024 City Council meeting: repeal the Moratorium or direct staff to prepare an ordinance to repeal the moratorium to be voted on at its subsequent meeting.

¹ Gov. Code, § 65580 et seq.

² See, e.g., Gov. Code, § 65583, subd. (c)(2)-(3).

As a reminder, per Housing Element Law, HCD “shall review any action or failure to act by [the City] that it determines is inconsistent with an adopted housing element..., including any failure to implement any program actions included in the housing element....” If HCD “finds that the action or failure to act by [the City] does not substantially comply with this article,” HCD may revoke its findings that the City’s housing element is in compliance with Housing Element Law until it determines that the City has come into compliance with state law.³

Findings

As of the close of business on October 2, 2024, HCD had not received the City’s formal response to HCD’s Notice of Violation and Corrective Action Letter. However, at its October 1 meeting, the City Council failed to repeal the Moratorium or put into place any action that would set the repeal in motion. Although the City expressed an intent to stay enforcement of the Moratorium, the City did not take any formal action that would prevent the City from enforcing the Moratorium at any moment. Moreover, the City has failed to commit to repealing the Moratorium in the near future. As a result, the Moratorium remains in place, violates Housing Element Law, and is inconsistent with goals, policies, and programs in the City’s housing element.

HCD thus finds that the City’s housing element is no longer in substantial compliance with Housing Element Law. Consequently, HCD is revoking its finding of the City’s housing element compliance, as authorized by Government Code section 65585, subdivision (i)(1)(B). Should the City take action to repeal the Moratorium, or to formally stay the Moratorium and set in motion a plan to repeal it, HCD will review the documentation, and any documentation related to past due programs, and issue correspondence identifying the updated status of the City’s housing element compliance.

Consequences of Noncompliance

Various consequences may apply when a city does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General, court-imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the application of the “builder’s remedy.”⁴

³ Gov. Code, § 65585, subd. (i).

⁴ Gov. Code, §§ 65585, subs. (j), (l); 65589.5, subd. (d)(5).

HCD is committed to assisting all localities in achieving and retaining substantial compliance with Housing Element Law. If you have questions or need additional information, please contact Stephanie Reyes at Stephanie.Reyes@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosure: City of Norwalk, Urgency Ordinance No. 24-1752U – Notice of Violation and Corrective Action Letter (September 16, 2024)

cc: Alex Hamilton, Interim Director of Community Development
Nancy Lee, Development Services Manager
Arnold Alvarez-Glasman, City Attorney

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September 16, 2024

Mayor Margarita Rios
Vice Mayor Tony Ayala
Councilmembers Jennifer Perez, Rick Ramirez, Ana Valencia
City of Norwalk
12700 Norwalk Blvd
Norwalk CA, 90650

Dear Mayor Margarita Rios, Vice Mayor Tony Ayala, and Councilmembers Jennifer Perez, Rick Ramirez, and Ana Valencia:

RE: City of Norwalk, Urgency Ordinance No. 24-1752U – Notice of Violation and Corrective Action Letter

The California Department of Housing and Community Development (HCD) has reviewed the City of Norwalk's ("City") Urgency Ordinance No. 24-1752U ("Ordinance"). The purpose of this letter is to inform the City that the Ordinance violates several state housing laws, including, but not limited to, the Housing Crisis Act (HCA), Anti-Discrimination in Land Use Law, Affirmatively Furthering Fair Housing (AFFH), and Housing Element Law, and to provide the City an opportunity to take corrective action.

Background

HCD understands that, on August 6, 2024, the City Council ("Council") of the City adopted the Ordinance, which imposes "a citywide moratorium to establish, implement, operate" (sic) convenience stores (liquor stores), discount stores, laundromats, carwashes, payday loan establishments, emergency shelters, single-room occupancy (SRO) housing, supportive housing, and transitional housing. HCD further understands that, at its September 17, 2024, meeting, the Council will consider, at staff's recommendation, extending the Ordinance for 10 months and 15 days.

There is a clear need for emergency shelters, SRO housing, supportive housing, and transitional housing in Norwalk. As of January 2020, an estimated 168 people were experiencing homelessness in Norwalk.¹ In addition, Norwalk has approximately 3,925 extremely low-income (ELI) households (households that have incomes at or below 30 percent of the household area median income). About 81 percent of ELI renter

¹ City of Norwalk Adopted Housing Element 2021-2029, available at <https://www.norwalk.org/home/showpublisheddocument/28854/638361838696770000>, page 42.

households and 72 percent of ELI owner households are cost burdened, meaning they pay more than 30 percent of their income towards housing costs. For large households, cost burden appears to affect 99 percent of renters and 89 percent of owner-households.²

Meanwhile, the City has a 6th Cycle Regional Housing Needs Allocation (RHNA) of 5,034 housing units but had issued permits for only 175 units between 2021-2023, a mere 3.5 percent of its RHNA.³

Moratoria Under the Housing Crisis Act

The Ordinance is defective substantively and procedurally as an urgency ordinance imposing restrictions on housing development.

Substantively, the HCA, codified at Government Code Section 66300 et seq., regulates when a local government may impose a moratorium on housing development. The statute is structured to impose a broad prohibition against “a moratorium or similar restriction or limitation” unless specific exempting circumstances are fulfilled. The City of Norwalk has not met this test.

First, Government Code section 66300 prohibits a city from adopting a moratorium on housing unless it finds that the moratorium is necessary “to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium or for projects specifically identified as existing restricted affordable housing.”⁴ The City has made no such findings. Although the Ordinance contains a conclusory statement that the Ordinance is “necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Norwalk,” there are no findings of a threat specific to the housing subject to the moratorium, nor any finding of a citywide threat.

Indeed, the staff report attached to the September 17, 2024 City Council Agenda effectively concedes that the City has made no such findings. That report indicates that “staff *began* to research to determine and quantify the impacts of” affected uses *after* the adoption of the urgency ordinance, and that additional research is necessary to

² City of Norwalk Adopted Housing Element 2021-2029, available at <https://www.norwalk.org/home/showpublisheddocument/28854/638361838696770000>, page 29.

³ Housing Element Implementation and APR Dashboard, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>.

⁴ Gov. Code, § 66300, subd. (b)(1)(B)(i).

determine the “*potential* adverse impacts of these uses.”⁵ The City’s adoption of the Ordinance is therefore invalid and in violation of the HCA.⁶

Second, Government Code section 66300 prohibits a city from enforcing a moratorium unless and until it has been submitted to HCD for review and approval.⁷ The City has not done so.

Had the City submitted the Ordinance to HCD, as required, HCD would not have approved the Ordinance because, again, the City has not established that an “imminent threat” exists. As a result, the Ordinance is void,⁸ and the adoption of the Ordinance violated the HCA.

Moreover, it defies logic that the creation of housing and shelter opportunities for people experiencing homelessness and people at risk of homelessness would pose a threat to health and safety. Indeed, the very opposite is true: transitional and supportive housing, SROs, and emergency shelters promote the health and safety of both the people being housed and the surrounding community.

Urgency Ordinances

In addition, Government Code section 65858, which governs the adoption of urgency ordinances, requires legislative findings to show a qualifying threat exists. The Office of the Attorney General published a letter on July 17, 2023, providing guidance to local jurisdictions regarding the enactment of urgency ordinances and specifically detailing what constitutes a valid legislative finding in this context.⁹

The Attorney General’s Letter provides detailed guidance, including extensive citations to case law, regarding the required legislative findings that “there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable

⁵ City Council Agenda Report, Urgency Ordinance No. 24-1753U, Sept. 17, 2024 (Staff Report), page 3, available at

<https://norwalk.primegov.com/api/compilemeetingattachmenthistory/historyattachment/?historyId=d251991d-7ca7-4468-ac00-70ccbbaa271b7> (emphasis added).

⁶ Gov. Code, § 66300, subd. (b)(1)(B)(i).

⁷ Gov. Code, § 66300, subd. (b)(1)(B)(ii).

⁸ Gov. Code, § 66300, subd. (b)(1)(B)(ii).

⁹ Office of the Attorney General Letter on Urgency Ordinances and Ministerial Approval of Housing Projects, July 17, 2023 (Attorney General’s Letter), available at

<https://oag.ca.gov/system/files/attachments/press-docs/7-17-23%20Letter%20Urgency%20Ordinances%20and%20Ministerial%20Approval%20of%20Housing%20Projects.pdf>.

entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.”¹⁰

The letter states that legislative findings must constitute more than mere allegations. Specifically, “Local jurisdictions must provide evidence documenting the immediacy of the threat to public health, safety, or welfare.”¹¹ In addition, the findings must document the nature of the threat.¹²

As noted above, the City’s Ordinance states, “the City Council finds this Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Norwalk.” However, the Ordinance does not provide evidence documenting the immediacy of the threat or the nature of the threat. The Ordinance therefore falls short of the legal requirements under Government Code section 65858 and is invalid as a matter of law.¹³

Again, it is nonsensical to conclude that housing and shelter for vulnerable populations constitute a threat to the public health, safety, or welfare when in fact they specifically address such threats resulting from homelessness and housing insecurity.

Anti-Discrimination in Land Use Law

Anti-Discrimination in Land Use Law¹⁴ deems any action taken by a city, county, or other local governmental agency pursuant to Title 7 of the Government Code, including section 65858, 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 discrimination.¹⁵ This law prohibits discrimination based on a 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, veteran or military status, or genetic information. The law further prohibits discrimination based on the method of financing of any residential development or the intended occupancy of any residential development by persons of very low, low, moderate, or middle income.¹⁶

In addition, the law prohibits a city, county, or local government agency from enacting or administering “ordinances pursuant to any law [that] prohibit or discriminate against any residential development or emergency shelter” because of the method of financing, the

¹⁰ Gov. Code, § 65858, subd. (c).

¹¹ See Attorney General’s Letter, page 2.

¹² See Attorney General’s Letter, page 3.

¹³ See Attorney General’s Letter, page 2.

¹⁴ Gov. Code, § 65008.

¹⁵ Gov. Code, § 65008, subd. (a).

¹⁶ Gov. Code, § 65008, subd. (a)(1)-(3).

protected characteristics of the intended occupants, or the intended occupancy by persons of very low, low, moderate, or middle income.¹⁷

By specifically targeting emergency shelters, SRO housing, supportive housing, and transitional housing for a moratorium, the City is prohibiting – and appears to be discriminating against – housing because of the method of financing and/or the intended occupants. Moreover, regardless of the City’s intent, by targeting housing that is explicitly intended for the most vulnerable residents, the moratorium specifically denies low-income individuals and families, including individuals experiencing homelessness and individuals with disabilities, the enjoyment of housing. As a result, the City is in violation of the Anti-Discrimination in Land Use Law.

Obligation to Affirmatively Further Fair Housing

Under Government Code section 8899.50, all public agencies must AFFH through their housing and community development programs. “Affirmatively furthering fair housing” means “taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”¹⁸

The duty to AFFH extends to all of a public agency’s activities and programs relating to housing and community development. Public agencies are required to take meaningful actions to AFFH and take no action that is materially inconsistent with their obligation to AFFH.¹⁹

A moratorium on emergency shelters, SRO housing, and transitional and supportive housing severely restricts access to affordable homes for low-income individuals and families, including individuals experiencing homelessness and individuals with disabilities. As a result, the Ordinance is “materially inconsistent” with the City’s obligation to AFFH.

Housing Element Law

Requirements

As the City is aware, the Legislature has established through Housing Element Law that “the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including

¹⁷ Gov. Code, § 65008, subd. (b)(1).

¹⁸ Gov. Code, § 8899.50, subd. (a)(1). See California Department of Housing and Community Development, Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements, April 2021, available at https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

¹⁹ Gov. Code, § 8899.50, subd. (b).

farmworkers, is a priority of the highest order.”²⁰ The City contributes to this statewide effort through the programs in its adopted 6th Cycle Housing Element (2021-2029), HCD found in substantial compliance with Housing Element Law on November 21, 2023.

Each jurisdiction’s housing element must contain programs that “assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.”²¹ The programs must also remove constraints to the “development of housing, including housing for all income levels and housing for persons with disabilities” and “housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.”²²

Moreover, “[t]ransitional 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 dwellings of the same type in the same zone. Supportive housing... shall be a use by right in all zones where multifamily and mixed uses are permitted....”²³

HCD “shall review any action or failure to act by [the City] that it determines is inconsistent with an adopted housing element..., including any failure to implement any program actions included in the housing element....” If HCD “finds that the action or failure to act by [the City] does not substantially comply with this article,” HCD may revoke its findings that the City’s housing element is in compliance with Housing Element Law until it determines that the City has come into compliance with state law.²⁴

Findings

The City’s adoption of the Ordinance, which explicitly lumps housing for low-income people with liquor stores as having a “detrimental impact on the City,” is inconsistent with several of the City’s housing element goals, policies, and programs, including, but not limited to, the following:

Goal 1: “The City of Norwalk will encourage a variety of housing types to meet the existing and future needs of City residents.”

Policy 1.4: “Encourage the development of residential units and the provision of related services for special needs groups, including the elderly, large households, single parents, persons with disabilities, extremely low-income persons, and persons experiencing homelessness.”

²⁰ Gov. Code, § 65580, subd. (a).

²¹ Gov. Code, § 65583, subd. (c)(2).

²² Gov. Code, § 65583, subd. (c)(3).

²³ Ibid.

²⁴ Gov. Code, § 65585, subd. (i).

Goal 2: “The City of Norwalk will assist in the development of adequate housing and provide resources to meet the needs of low and moderate income and special needs households.”

Policy 2.3: “Provide incentives and encourage public and private sectors to produce or assist in producing affordable housing with emphasis on persons with disabilities, seniors, large families, female headed households with children, and people experiencing homelessness.”

Program 2.1: Special Needs Housing: “Provide housing opportunities to meet the needs of special needs residents—including seniors, residents with disabilities and developmental disabilities, large families, extremely low-income households, and those experiencing homelessness—by giving priority to development projects that include a component for special needs groups in addition to other lower-income households. AFFH Outcomes: Facilitate the development of 500 lower income units, including 100 units for special needs households.”

Program 2.5: Addressing Homelessness: “Implement the City’s Plan to Prevent and Combat Homelessness, which includes the following goals: ... Create new supportive and affordable housing opportunities. AFFH Outcomes: ... Pursue one Project Homekey with the goal of creating 20 affordable units with supportive services.”

Goal 3: “The City of Norwalk will address, and where appropriate and possible, remove governmental constraints to the maintenance, improvement, and development of housing.”

Policy 3.5: “Eliminate zoning and other regulatory barriers to the placement and operation of housing facilities for the homeless and special needs populations in appropriate locations throughout the City.”

Program 3.5: Special Needs Housing: “Supportive Housing and Low Barrier Navigation Center: Review the Zoning Ordinance and other pertinent documents such as Specific Plans to make any necessary changes to ensure compliance with the Supportive Housing Streamlining Act (AB 2162) and AB 101 (Low-Barrier Navigation Centers). Emergency Shelters: The City will amend its zoning code to address the provision of emergency shelters. Specifically, the following changes will be made: Amend the Zoning Code to comply with AB 2339 to allow emergency shelters up to 50 beds by right without discretionary review in the C-3 zone.”

Program 3.7: Remove Development Constraints: “Review development standards periodically to ensure that they do not constrain development of affordable housing and housing for special needs groups, such as individuals with disabilities. Revise development regulations and processes where it is needed and appropriate to address any identified constraints. Further evaluate adequate cross-referencing within the land use matrix to facilitate the development of housing. AFFH Outcomes: Facilitate the

development of 500 lower income units, including 100 units for special needs households.”

Review and Approval Requirements for Supportive Housing and Low-Barrier Navigation Centers

In 2018, Assembly Bill (AB) 2162 (Chapter 753, Statutes of 2018) was signed into law to reduce barriers that inhibit the development of permanent supportive housing throughout the state. The bill, effective January 1, 2019, is codified in Article 11 of the Government Code beginning with section 65650. In sum, the statute requires all local jurisdictions to approve, within statutory timeframes, proposed permanent supportive housing developments that comply with the specified criteria listed in Government Code section 65651, subdivision (a).

Similarly, Article 12 of the Government Code, beginning with section 65660, requires all local jurisdictions to approve, within statutory timeframes, proposed low-barrier navigation centers that comply with the specified criteria listed in Government Code section 65662. A low-barrier navigation center is a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.

The Ordinance would prevent the City from meeting these approval requirements for proposed permanent supportive housing projects and low-barrier navigation centers that comply with the specified criteria.

Conclusion

As described above, the City’s adoption of the Ordinance violates various state housing laws, including, but not limited to, the Housing Crisis Act, Anti-Discrimination in Land Use Law, Affirmatively Furthering Fair Housing statute, and Housing Element Law. Extending the Ordinance would continue – and extend the severity of – these violations of state law. The City Council must repeal the Ordinance to immediately allow the development and operation of emergency shelters, SRO housing, transitional housing, and supportive housing.

Under Government Code section 65585, HCD must notify a local government when that local government takes actions that violate state housing law and may notify the California Office of the Attorney General.²⁵

²⁵ Gov. Code, § 65585, subs. (i)(1), (j).

Mayor Margarita Rios; Vice Mayor Tony Ayala; and Councilmembers Jennifer Perez, Rick Ramirez, and Ana Valencia

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The City has until September 23, 2024, to provide a written response to this letter. HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivisions (i) and (j), including, but not limited to, referral to the California Office of the Attorney General and revocation of HCD's finding that the City's housing element is in substantial compliance with Housing Element Law.

If you have any questions regarding the content of this letter or need additional technical assistance, please contact Stephanie Reyes at Stephanie.Reyes@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

cc: Jesus M. Gomez, City Manager
Alex Hamilton, Interim Director of Community Development
Nancy Lee, Development Services Manager
Arnold Alvarez-Glasman, City Attorney