CITY OF FOUNTAIN VALLEY fountainvalley.org

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March 12, 2020

Honorable Senator Tom Umberg
1000 E. Santa Ana Blvd., Ste. 220B
Santa Ana, CA 92701

Re: Request for Legislative Amendments to Enable Local Compliance with State Housing Laws

Dear Senator Umberg:

Your constituent jurisdictions are in urgent need of assistance. Because of a combination of housing laws and the last-second actions by the Southern California Association of Governments (SCAG) Regional Council to shift a large percentage of regional housing targets to the coast, Fountain Valley and many of its neighbors have been placed in a situation where they will likely be unable to comply with state housing law. Non-compliance is not the desired result, but it is a likely outcome given legal, physical and market realities.

After unsuccessful appeals to SCAG and the Department of Housing and Community Development (HCD), the City of Fountain Valley is requesting that you sponsor five (5) legislative amendments to current housing laws, which have been proposed by the City of Newport Beach in their letter to Assemblywoman Petrie-Norris on February 14, 2020.

These constructive legislative amendments would significantly reduce barriers for cities throughout the 72nd Assembly District to achieve the State of California's ambitious housing goals set forth in the Regional Housing Needs Allocation ("RHNA") process for the 6th cycle covering the period 2021-2029 ("6th Cycle Housing Element").

The proposed legislative amendments include:

- Allowing cities to count accessory dwelling units ("ADUs") as *affordable units* provided the ADU meets certain objective standards;
- Eliminating barriers to applying alternative methodologies for achieving compliance with state obligations to provide an adequate number of housing units;
- Establishing objective standards of what constitutes "site eligibility" as cities are zoning for housing units in the preparation of 6th Cycle Housing Element;
- Providing a statutory exemption under the California Environmental Quality Act ("CEQA") for the preparation and completion of a certified 6th Cycle Housing Element; and
- Extending the deadline to submit a 6th Cycle Housing Element to the California Department of Housing Community Development ("HCD") for certification.

ATTACHMENT A
BACKGROUND AND SUMMARY OF AMENDMENTS

BACKGROUND

State of California Housing Goals and Reality

Governor Gavin Newsom took office and set an ambitious goal of creating 3.5 million housing units by 2025 using a per-capita model utilized by New York. However, it is critical to realize that California added just over 200,000 housing units in 2005, which was the highest rate in three decades, but more recently the State has been adding around 80,000 to 90,000 units a year. Additionally, in 2019 homebuilders in Southern California had their largest inventory of unsold residences since the Great Recession and were forced to discount slow-selling homes. To achieve 3.5 million homes by 2025 would require that the State add almost 600,000 housing units a year—a number that represents almost half the housing added nationally in 2017.

In light of population slowdown and the difficulty of adding that many housing units in a truncated amount of time, Governor Newsom recently called his goal of creating 3.5 million housing units by 2025 a "stretch goal." Indeed, the California Department of Finance's demographic data illustrates population growth has reduced to its lowest in 80 years, down to an anemic growth of less than one-half percent per year.

Over the past four years, the State Legislature has passed sweeping housing-oriented legislation. Examples include AB1763, SB35, AB1485, SB167, AB678, AB1515, and SB330. The first law addresses density bonuses. The second and third laws specifically address affordable housing. The last four laws strengthened the Housing Accountability Act (HAA) that was originally enacted in 1982 to limit the ability of local jurisdictions to deny or make infeasible qualifying housing projects. The HAA, which is codified as Government Code Section 65589.5, severely restricts cities and counties from denying or imposing conditions on residential projects that would require a reduction in density of a development that complies with "objective" general plan, zoning, and subdivision standards without making specified findings that the project would have a "specific adverse impact" on public health or safety.

SB 330 – among other provisions – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards, or conditions that would change current zoning and general plan designations of properties where housing is allowed in order to "lessen the intensity of housing," such as by reducing height, density or floor area ratio; requiring new or increased open space, lot size, setbacks or frontage; or limiting maximum lot coverage. Moreover, the bill stipulates that any such amendment that took effect after January 1, 2018, would be null and void as a matter of law. SB 330 also bans jurisdictions from placing a moratorium or similar restrictions on housing development, from imposing subjective design standards established after Jan. 1, 2020, and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural.

year, provided multiple opportunities for engagement, including detailed analysis of three draft allocation methodologies. Based in part on stakeholder input, SCAG staff developed a single recommended RHNA allocation methodology, which was introduced in September 2019 at a public workshop, subsequently reviewed and approved by both the SCAG RHNA Subcommittee and the SCAG Community, Economic and Human Development (CEHD) Committee, and finally recommended for SCAG Regional Council approval before submittal to HCD.

However, at the November 7, 2019, meeting of the SCAG Regional Council to consider the recommended RHNA allocation methodology, a substitute motion was made by the City of Riverside introducing a modified RHNA methodology, which effectively shifted a significant portion of the 6th cycle RHNA allocation away from developing areas in Riverside and San Bernardino Counties to the largely developed coastal areas, mainly into Orange County. Ignoring the recommendation of its staff and the significant public vetting process, a majority of SCAG's Regional Council voted to accept the substitute motion without full discussion allowed.

As it stands, the new draft methodology results in 4,756 units that the City of Fountain Valley would need to accommodate (not build, but ensure zoning capacity for). This is a much larger RHNA allocation than anticipated, and much larger than the version originally offered by SCAG staff (1,371 units). <u>The modified methodology increases the City's housing target by 1,228.5% over the current RHNA allocation (358 units) without regard for feasibility, infrastructure capacity, land availability, community desires, market realities, fiscal considerations, construction costs, and sound planning and growth principals</u>.

Despite the fact that these serious procedural and practical issues were communicated to the State by Fountain Valley and numerous other coastal communities, on January 13, 2020, HCD approved the draft SCAG RHNA Methodology.

SUMMARY OF PROPOSED LEGISLATIVE AMENDMENTS WITH JUSTIFICATION

Below are five (5) proposed legislative amendments to current housing law that would significantly reduce the barriers to achieving local government compliance while still supporting the California Legislature's objective of increased housing production:

1. **<u>Amending Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.</u>**

In light of recent changes in state law requiring cities to allow up to three (3) units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially. <u>To illustrate, the new laws have created a capacity for over 26,000 new and additional units in the City of Fountain Valley</u> – more than enough to satisfy several RHNA cycles. Furthermore, relaxed parking and owner-occupancy requirements has eliminated additional barriers to the development of ADUs and increased development capacity in every jurisdiction with residential zoning. Therefore, it is essential that

affordable housing units in high resource areas should be encouraged and supported by expanding cities' and counties' ability to utilize these more flexible compliance options.

Attachment C *includes a more detailed analysis and justification for this bill with proposed revisions to state law.*

3. Amending Government Code Section 65583.2(g) to establish objective standards of what constitutes "substantial evidence" providing cities and counties more certainty of a site's eligibility for Housing Element compliance.

In Fountain Valley, there is limited vacant land available for development (58 acres). Therefore, locating available sites for housing purposes will need to occur through redevelopment of non-vacant and underutilized sites. However, there are few, if any, underutilized sites that have a potential of recycling to residential in the 6th cycle planning period. The City's industrial and retail markets are extremely healthy and there is a strong likelihood that, outside of the vacant sites, there will not be much more land that will be considered acceptable sites by HCD.

This is due to the fact that recent changes to State housing element law (e.g., AB1397, Chapter 2017) requiring substantial evidence criteria will make the viability and use of these remaining non-vacant and underutilized sites to accommodate RHNA more onerous and difficult.

The California Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant with current statutes. One of the most important aspects of Housing Element law is the requirement that cities demonstrate "adequate sites" with realistic development potential that can accommodate the jurisdiction's RHNA allocation at each income level (very low, low, moderate and above moderate). Recent amendments to Housing Element law establish additional criteria for underutilized sites to be considered suitable for "RHNA credit." Under Section 65583.2(g)(2), if a city or county relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed an impediment to additional residential development, absent findings based on "substantial evidence" that the use is likely to be discontinued during the planning period. (Emphasis added.) Existing statutes and HCD guidance have not provided clear, objective criteria regarding what constitutes substantial evidence. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA goals, the substantial evidence requirement that development is "likely" to occur on all of the underutilized sites in the Housing Element inventory results in the inability to demonstrate adequate sites. Essentially, current law provides standards that are unlikely to be met by most jurisdictions, due to the onerous and non-objective criteria.

For example, previous HCD guidance on this issue has suggested that cities consider the status of existing leases and their expiration dates to determine whether a property is "underutilized" and likely to be redeveloped with new housing during the 8-year Housing Element period. However, cities do not have the legal authority to require property owners to disclose lease terms. Further, current law grants HCD full discretion to determine whether a site is "underutilized" based upon subjective criteria determined by HCD. In many cities with little vacant land, high property values and very few blighted

5. **Granting a two (2) year extension for cities to submit the 6th Cycle Housing Element to HCD.**

An amendment to California Government Code Section 65588(e)(3) would provide local jurisdictions' adequate time to prepare and submit a certified 6th Cycle Housing Element to HCD. The amendment to Section 65588(e)(3) is proposed to read as follows:

(3) Subsequent revisions of the housing element shall be due as follows:

(A) (i) For local governments described in subparagraphs (A), (B), and (C) of paragraph (2), 18 months after adoption of every second regional transportation plan update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element, or as otherwise provided in law.
(ii) For local governments within the regional jurisdiction of the Southern California Association of Governments, the sixth revision of the housing element shall be due October 21, 2023.

In the absence of affordability information, it is recommended that the statute establish reasonable assumptions for determining the percentage of ADUs that count towards a jurisdiction's lower-income requirements. The suggested method is currently required under SB 330 (Government Code Section 66300(d)(2)) and Density Bonus Law (Government Code Section 65915) when reviewing the replacement housing requirements for housing development projects regulated by these laws. The laws state that when any existing dwelling units are occupied by lower-income households, a proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be a rebuttable presumption that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

Given that this methodology for determining the affordability of households is currently utilized in both Density Bonus Law and SB330, it is recommended that this same methodology be utilized for determining the likely occupancy of ADUs. For example, if a jurisdiction's realistic capacity for ADUs is determined to be 1,000 new ADUs in the eight-year planning period, for the purposes of determining the number of these units that may count towards accommodating the low and very-low income housing needs, a jurisdiction would utilize the percentage of existing very low- and low-income households compared to the jurisdiction's total renter households based on the HUD database. In the example below, a jurisdiction could count the capacity of up to 260 units towards the very low-income RHNA need and up to 146 units towards the low-income RHNA need.

The HUD database can be accessed at the following link: https://www.huduser.gov/portal/datasets/cp.html

Example Breakdown of a Jurisdiction's Renter Household Income Distribution

Income Level	Renter Households	Percentage of Total Renter Households
Very Low Income	4,400	26%
Low Income	2,400	14.6%
Moderate Income	1,100	6.7%
Above Moderate Income	8,500	52%
Total	16,400	100%

Total Determined ADU Capacity	ADU Capacity Assumed to Accommodate Very Low-Income Housing Need	ADU Capacity Assumed to Accommodate Low-Income Housing Need
1,000	260 (26%)	146 (14.6%)

ATTACHMENT C

Proposed amendments to Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements

Justification

Generally, RHNA credit is obtained for new construction units, except Government Code 65583.1(c) currently does allow local governments to meet up to 25 percent of site requirements for RHNA by providing affordable units through either: *rehabilitation*; *conversion*; and/or *preservation*. However, this statute is seldom used by jurisdictions because it includes a number of prohibitive prerequisites making qualification of sites extremely difficult. While there is no current example in Fountain Valley, the City of Newport Beach recently committed $2 million to a rehabilitation project that converted 12 market-rate rental units in the coastal zone to affordable housing for homeless veterans and seniors. Yet, due to a requirement that the City must have committed funds within the first two (2) years of the planning period, the project was not eligible for RHNA credit. The problems and recommended solutions are summarized as follows:

1. Requires "committed assistance" from a local government during the first two years of the planning period. This is defined as a legally enforceable agreement that obligates the preemptive identification of sufficient available funds to the availability of financial assistance necessary to make the identified units affordable and available for occupancy within two years of the execution of the agreement. This has proven problematic for a number of reasons, including:

   a. Committing assistance in the first two years is a difficult standard to achieve because housing element planning periods in metropolitan areas were extended from five years to eight years under SB 375 in 2008. For example, if a project is committed assistance in the third year of a planning period, those units would not be eligible. The statute should be amended to clarify that committed assistance must be demonstrated early enough in the planning period such that the housing units would be completed and available before the end of the planning period.

   b. The definition of "committed assistance" is problematic because it requires a local government to actually provide financial assistance. For jurisdictions where a project's inclusionary housing requirement is satisfied through the preservation or conversion of existing units to affordable housing, the affordable units provided would not be eligible under this statute. Therefore, the definition of "committed assistance" should be revised to eliminate sole reliance on financial commitment from a local government and clarify that private entities satisfying local jurisdiction's affordable housing requirements would also comply.

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, or the relocation is otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units, are converted with committed assistance from the city or county, or from a private entity satisfying a city or county's housing requirement, from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available for rent at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government or private entity has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the ~~third~~ fifth year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the ~~third~~ fifth year of the planning period, the city or county, or private entity satisfying a city or county's housing requirement, has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the ~~fourth~~ sixth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.

requirement that development is "likely" to occur on all of the underutilized sites in the Housing Element inventory results the inability to demonstrate adequate sites. Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

The combination of much higher RHNA allocations, particularly for cities in highly urbanized areas with little vacant developable land, together with new substantial evidence criteria for underutilized sites, results in a very high level of uncertainty and potential financial risk for many cities.

One of the important legislative initiatives for increasing housing production has been to limit local government discretion in the review and approval of housing developments. SB 330, the Housing Crisis Act of 2019, describes the Legislature's intent to "Suspend certain restrictions on the development of new housing during the period of the statewide emergency" and "Work with local governments to expedite the permitting of housing..." In adopting SB 330 and other recent housing bills, the Legislature has recognized the importance of establishing clear, objective criteria for housing developments to reduce processing time and cost, and increase the certainty of housing approvals.

By the same token, demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. This approach would be similar to existing law regarding "default density" for lower-income housing. In metropolitan areas, zoning densities of either 20 or 30 units/acre (depending on population) are deemed suitable for lower-income housing, but jurisdictions may use alternative densities in their sites analysis subject to HCD approval (Government Code 65583.2(c)).

In short, it is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market friendly State guidance for implementing reasonable local policies that facilitate housing development.

This bill would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development. Several of the proposed standards build upon on the analysis and recommendations of leading housing experts in California, including University of California researchers and the Tax Credit Allocation Committee of the California Treasurer's office.

Proposed Government Code Amendment to Section 65583.2(g) (Amend to provide objective standards for substantial evidence determination)

65583.2(g)(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by