

December 10, 2020

Mr. Kome Ajise, Executive Director  
Southern California Association of Governments (SCAG)  
900 Wilshire Boulevard, Suite 1700  
Los Angeles, California 90017

RE: Comment on the City of Fountain Valley's Appeal of Its Share of the Regional Housing Needs Assessment Allocation

Dear Director Ajise,

The Public Law Center ("PLC") is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. We provide services across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Specifically, the mission of our Housing and Homelessness Prevention Unit includes preserving and expanding affordable housing.

I write on behalf of individuals in need of affordable housing in Orange County to comment on the City of Fountain Valley's ("the City") appeal of its allocated share of the regional housing need as part of the Southern California Association of Government's ("SCAG") Draft Regional Housing Needs Assessment ("RHNA") Allocation Plan.

### **Appeal Requirements**

Appeals are required to be based on comparable data available for all jurisdictions and the accepted planning methodology, be supported by adequate documentation, and include a statement as to why the revision is necessary to further the intent of the objectives listed in Section 65584(d).<sup>1</sup> Further, appeals must be consistent with, and not to the detriment of, the development pattern in the sustainable communities strategy, or SCAG's Connect SoCal Plan.<sup>2</sup>

### **Permitted Bases of Appeal**

Pursuant to Government Code Section 65584.05, a jurisdiction can only appeal its RHNA allocation based on failure to determine the allocation in accordance with the approved and adopted methodology, failure to consider local planning factors and information affirmatively furthering fair housing ("AFFH"), or significant and unforeseen change in circumstances. The City has appealed on all three bases requesting that its current allocation of 4,827 be reduced by 3,455 to 1,372.

### **Methodology**

An appeal based on methodology addresses SCAG's failure to determine the share of the regional housing need: (1) in accordance with the information described in Section 65584.04, (2) in accordance with the methodology established in Section 65584.04, and (3) in a manner that furthers, and does not undermine, the intent of the objectives listed in Section 65584(d).<sup>3</sup>

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<sup>1</sup> Cal. Gov. Code § 65584.05.

<sup>2</sup> Cal. Gov. Code § 65584.05(b) and 65080(b)(2).

<sup>3</sup> Cal. Gov. Code § 65584.05(b)(2).

However, rather than identify how SCAG failed to allocate the City's RHNA in accordance with the approved and adopted methodology, the City instead objects to the methodology itself and the manner in which it was presented to and adopted by the Regional Council. Indeed, the City calculates its proposed reduction and new RHNA using a methodology that was rejected by the Regional Council. This is not a statutorily authorized justification for appeal and there is no legal ground for SCAG to grant an appeal based on the application of an entirely different methodology. As such, SCAG should reject this basis for an appeal.

#### Local Planning Factors and Information Affirmatively Furthering Fair Housing

A jurisdiction may appeal its RHNA allocation based on local planning factors and information affirmatively furthering fair housing if SCAG failed to adequately consider the information submitted pursuant to Section 65584.04(b).<sup>4</sup> The City makes their appeal based on the following factors: The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities;<sup>5</sup> and Information based upon the issues, strategies, and actions that are included, as available, in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the California Department of Housing and Community Development, and in housing elements adopted within SCAG's jurisdiction.<sup>6</sup>

The City identifies in its appeal "Potential Suitable Sites for Housing" and then proceeds to explain how there are no other suitable sites within the City, how these sites do not have the capacity to accommodate the City's entire RHNA, and how development of these sites to accommodate the City's low-income RHNA will result in an overconcentration of affordable housing and undermine objectives to affirmatively further fair housing. The City, however, does not provide adequate documentation of these claims, as required by statute.<sup>7</sup> In fact, there is no documentation whatsoever as to why these sites are the only available sites within the City. Furthermore, the fact that the City is concerned that the development of these sites for affordable housing will result in segregation and concentrated areas of poverty without documentation raises the question of whether the City is actually selecting sites with the intent to affirmatively further fair housing or is only considering sites that continue to exacerbate historic land use decisions and trends that have resulted in the segregation and concentrations of poverty that we see today in Orange County. Without adequate data and documentation as to why the seven (7) sites identified in its appeal are the only suitable sites for housing and there are no other possible sites, SCAG should not grant the City's appeal on this basis.

The City also bases its appeal on the high cost of land and construction as justification for a lower RHNA and more specifically, a lower RHNA dedicated to affordable housing. However, these are not factors that SCAG can consider when determining the City's RHNA as they are not identified in the statute and were not adopted by SCAG as part of the methodology. Any appeal based on these factors should not be granted.

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<sup>4</sup> Cal. Gov. Code § 65584.05(b)(1).

<sup>5</sup> Cal. Gov. Code § 65584.04(e)(2)(B).

<sup>6</sup> Cal. Gov. Code § 65584.04(b)(2); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.2.i.

<sup>7</sup> Cal. Gov. Code § 65584.05.

We are encouraged, however, that the City has taken a proactive approach to identifying sites and consider the constraints that exist for its jurisdiction. The fact that the City is already considering programs like an inclusionary housing ordinance to ensure the development of affordable housing is promising. This shows that, to accommodate the 6th Cycle's RHNA, the City is thinking outside of its traditional approach. It is also encouraging that the City is already very mindful of the need to affirmatively further fair housing and ensure that affordable housing is not concentrated in select areas of the City to make sure all families have access to all that is great about Fountain Valley. We look forward to collaborating with Fountain Valley and other community partners to creatively find solutions to these constraints.

### Changed Circumstances

A jurisdiction may appeal its RHNA allocation if it has experienced a significant and unforeseen change in circumstances after April 30, 2019 that merits a revision of the information submitted pursuant to subdivision (b) of Section 65584.04.<sup>8</sup> Only the jurisdiction where the change occurred may appeal its RHNA on this basis.<sup>9</sup> Similar to many other jurisdictions, the City bases its appeal due to a significant and unforeseen change in circumstance on the COVID-19 Pandemic. Specifically the City references shifts by employers to remote working and permanent relocation of employees to remote, less populated areas, and areas out of the state entirely. We do not doubt that the Pandemic has had impacts on employment dynamics and relationships between home and work locations. However, all SCAG jurisdictions currently find themselves in this circumstance. An appeal granted on this basis would have to be granted for every jurisdiction.

If SCAG approves a reduction of the units allocated to the City on this basis, it will have to reallocate those units throughout rest of the region to jurisdictions that are likely experiencing a similar, temporary drop in employment.<sup>10</sup> While the impact of the COVID-19 pandemic cannot be understated, the duration or lasting nature of those impacts cannot be predicted at this time and may not even last the term of the housing element cycle, as was the case with the previous economic downturn and the 5th Cycle. As the City itself states when referring to the shift in remote employment, “[i]t is unknown what this means to Fountain Valley.” Not only is it unknown what the lasting impacts of the Pandemic will be on the City and the rest of SCAG jurisdictions, the City does not provide comparable data available for all jurisdictions or adequate documentation to support its appeal as required by statute.<sup>11</sup> Without evidence that the COVID-19 pandemic will continue to alter the work/home dynamic in the same manner for the next eight (8) years, it would be unreasonable to justify the reduction of the City's RHNA allocation for the entire 6<sup>th</sup> Cycle. Additionally, while the pandemic has changed circumstances for cities, it has also amplified and exacerbated the state's housing crisis. Therefore, SCAG should consider the impact of COVID-19 across the entire region and should not grant the City's appeal on this basis.

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<sup>8</sup> Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

<sup>9</sup> Cal. Gov. Code § 65584.04(b)(3).

<sup>10</sup> A determination that the pandemic constitutes a change in circumstances justifying a reduction in RHNA would be futile, as all jurisdictions would be eligible for this reduction and the reduced units from all of the jurisdictions would simply be redistributed back to the same jurisdictions resulting in substantially no net change in the allocation.

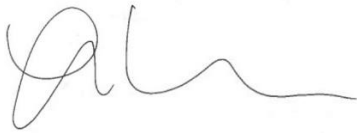
<sup>11</sup> Cal. Gov. Code § 65584.05.

**Conclusion**

Maintaining the City's share of the RHNA allocation as drafted is imperative to increase a diverse housing supply, promote development and socioeconomic equity, improve the relationship between jobs and housing, encourage affordable housing, and affirmatively further fair housing. To promote these objectives, SCAG should consider this information and deny the City's appeal.

Sincerely,

**THE PUBLIC LAW CENTER, BY:**

A handwritten signature in black ink, appearing to read 'Alexis Mondares', with a long horizontal flourish extending to the right.

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