

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 Garden Grove'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 Garden Grove'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.

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 methodology, failure to consider local planning factors and information affirmatively furthering fair housing ("AFFH"), or significant and unforeseen change in circumstances. Although the City has characterized its appeal as based on only methodology and changed circumstances, it also includes an argument based on local planning factors and information affirmatively furthering fair housing and asks for a reduction of 2,813 units from its RHNA allocation.

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).¹ The City claims that SCAG's application of the Disadvantaged Communities ("DAC") exemption to Garden Grove and SCAG's inequitable redistribution of residual need units to Non-DAC Jurisdictions does not meet Section 65584(d)(1)'s objective: "increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner."²

¹ Cal. Gov. Code § 65584.05(b)(2).

² Cal. Gov. Code § 65584(d)(1).

The City argues that SCAG did not equitably apply the DAC exemption when assigning its allocation.³ SCAG applies the DAC exemption to jurisdictions that have over 50% of their populations in very low resource areas.⁴ The City misses this threshold with 48% of its residents living in such areas and asks that SCAG “consider a more equitable approach by utilizing a ‘sliding scale exemption’” rather than its current “all or nothing approach.”⁵ Additionally, the City claims it received an inequitable redistribution of residual need units because it is not subject to the DAC exemption.⁶ SCAG allocates a higher percentage of residual need units to Non-DAC Jurisdictions with greater access to jobs and transit.⁷ The City argues that the amount of redistributed units it received was unfair because it would not have received those units if 2% more of its population lived in very low resource areas.⁸ The City claims this is a result of an inequitable method of redistributing units and therefore does not further Section 65584(d)(1)’s objective.⁹

Although the City describes these arguments as SCAG’s failure to determine the share of the regional housing need in a manner that furthers, and does not undermine, the intent of the objectives listed in Section 65584(d), the City is actually asking for SCAG to alter the Final RHNA Allocation Methodology that was adopted by the Regional Council. However, on January 13, 2020, the Department of Housing and Community Development (“HCD”) sent SCAG a letter reviewing SCAG’s Draft RHNA Methodology.¹⁰ HCD specifically commented on the objective stated in Section 65584(d)(1) and found that “the methodology generally allocates increased shares of lower income RHNA to jurisdictions that have higher housing costs,” and “in support of a mix of affordability, the highest housing cost cities generally receive higher shares of lower income RHNA.”¹¹ This finding directly contradicts the City’s assertions. Further, a jurisdiction cannot appeal its RHNA allocation based on any criteria other than those listed in Section I.C. of the published 6th RHNA Cycle Appeals Procedures.¹² An unfair methodology is not included in that list and therefore, SCAG should not grant Garden Grove’s appeal based on these claims.

The City also contends that its share of the RHNA allocation is too large because SCAG did not take into account planned and/or approved housing in DAC Jurisdictions. The City compares DAC Jurisdictions’ 5th Cycle RHNA allocations with units that have been planned and/or approved as of September 2020. This comparison shows that production in DAC Jurisdictions has generally surpassed 5th Cycle RHNA allocations. The City believes SCAG should consider these extra units when assigning RHNA allocations. Although not a DAC Jurisdiction, the City believes consideration of planned and/or approved units would reduce the number of residual need units redistributed to Non-DAC Jurisdictions such as Garden Grove.

³ Garden Grove RHNA Appeal Letter, 2-3 (October 26, 2020).

⁴ SCAG Final RHNA Allocation Methodology, 10-12 (March 4, 2020).

⁵ Garden Grove RHNA Appeal Letter, 2-3 (October 26, 2020).

⁶ Garden Grove RHNA Appeal Letter, 4-5 (October 26, 2020).

⁷ SCAG Final RHNA Allocation Methodology, 10-12 (March 4, 2020).

⁸ Cal. Gov. Code § 65584(d)(1).

⁹ Cal. Gov. Code § 65584(d)(1).

¹⁰ HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology (January 13, 2020).

¹¹ HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology, 2 (January 13, 2020).

¹² Cal. Gov. Code § 65584.05(b); 6th RHNA Cycle Appeals Procedures, I.D.1.

Second, the City argues that SCAG should not have used the Tax Credit Allocation Committee's ("TCAC") Opportunity Mapping Tool to identify DAC Jurisdictions because it was not intended for such use and the information the Tool utilizes can be outdated by two years, rendering it irrelevant. The City asserts that using the TCAC Opportunity Mapping Tool despite these concerns constitutes a failure to consider relevant information.

However, neither of these arguments are claims that SCAG failed to accurately determine the City's allocation in accordance with the adopted methodology, rather the City seeks for SCAG to entirely alter the approved and adopted methodology by changing the data sets the methodology specifically identifies to be used and by adding additional elements into the methodology's calculations. This is not a permitted basis of appeal enumerated in Government Code Section 65584.05 as it seeks to alter the approved and adopted methodology, requiring a recalculation of all jurisdictions' RHNA, rather than claim that SCAG improperly determined the City's RHNA in accordance with the approved and adopted methodology. Therefore, SCAG should not grant the City's appeal based on these claims.

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 Section 65584.04(b).¹³ Only the jurisdiction where the change occurred may appeal its RHNA on this basis.¹⁴

Similar to many other jurisdictions, the City bases its appeal due to a significant and unforeseen change in circumstance on the COVID-19 Pandemic restrictions and their negative effects on tourism and commercial employment. The City expects its employment growth projection to be 32% less than it anticipated in 2018. The City argues that considering this data is important to the state's objective of promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.¹⁵ We do not doubt that the City has experienced significant economic impacts due to the Pandemic. However, all SCAG jurisdictions currently find themselves in this truly unfortunate circumstance. Jurisdictions across the region and country are experiencing similar drops in tourism and employment. 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 tourism and employment.¹⁶ 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

¹³ Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

¹⁴ Cal. Gov. Code § 65584.04(b)(3).

¹⁵ Cal. Gov. Code § 65584(d)(3).

¹⁶ 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.

case with the previous economic downturn and the 5th Cycle. No source has proclaimed that the COVID-19 pandemic will continue to restrict the population's movement and employment in the same manner for the next eight (8) years. It would be unreasonable to reduce a jurisdiction's RHNA allocation based on current data when it is unlikely tourism and employment rates will be diminished for the entire 6th Cycle. Additionally, while the pandemic has changed circumstances for cities and had negative economic impacts, 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.

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', written in a cursive style.

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