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Pursuant to Gov. Code § 6103

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ORANGE

13
14 **GRANDMA'S HOUSE OF HOPE,**

15 Petitioner and Plaintiff,

16 **v.**

17 **CITY OF ANAHEIM and CITY COUNCIL**
18 **OF THE CITY OF ANAHEIM,**

19 Respondents and
20 Defendants.

Case No. 30-2022-01241823-CU-WM-CJC

**CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT'S *EX PARTE*
APPLICATION FOR LEAVE TO
INTERVENE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

**(Cal. Court Rules 3.1200, *et seq.* and Code
Civ. Proc., § 387.)**

(Declaration of David Zisser; Declaration of
Norma N. Franklin; and [Proposed] Order
filed concurrently.)

Date: October 6, 2022
Time: 1:30 p.m.
Dept: C11
Judge: Hon. John Gastelum
Trial Date: None Set
Action Filed: January 19, 2022

1 **EX PARTE APPLICATION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 Pursuant to California Rules of Court 3.1200, *et seq.*, including rules 3.1202 and 3.1204,
4 Code of Civil Procedure section 387, subdivisions (b) through (d), and Government Code sections
5 65585, subdivisions (j) and (l), on October 6, 2022 at 1:30 p.m. in Department C11 of the
6 California Superior Court for the County of Orange, Central Justice Center, located at 700 Civic
7 Center Drive, Santa Ana, California 92701, the California Department of Housing and
8 Community Development (HCD) will and hereby does bring this *ex parte* application for leave to
9 intervene in this action.

10 Petitioner Grandma's House of Hope (Petitioner) filed this action to, among other things,
11 challenge the City of Anaheim's (City) requirement and denial of a conditional use permit (CUP)
12 that would allow Petitioner to operate transitional and supportive housing for homeless women
13 with disabilities in a residential neighborhood. This dispute involves the City's violation of
14 critical state housing laws caused by the City's impediments to transitional and supportive
15 housing. Specifically, the City's requirement and denial of the CUP in this case violates
16 California's Housing Element Law (Gov. Code,¹ § 65580, *et seq.*), the Housing Accountability
17 Act (§ 65589.5, subds. (j)(1)(A) and (j)(1)(B).), California's law prohibiting discrimination in
18 land use (§ 65008), and California's Affirmatively Furthering Fair Housing requirements (§§
19 65008, 8899.50, 65583).

20 HCD is the state agency with primary responsibility for ensuring local government
21 compliance with these laws. (Health & Saf. Code, § 50152 and Gov. Code § 65585, subds. (j) and
22 (l).) HCD therefore has a direct interest in ensuring that the City removes all unlawful
23 impediments to transitional and supportive housing, and seeks intervention as a matter of right to
24 fulfill its statutory enforcement mandate. (Code Civ. Proc., § 387, subd. (d)(1)(B).)

25 Intervention at this procedural juncture is critical and HCD will suffer irreparable harm if
26 not allowed to intervene immediately. A status conference in the case is scheduled for November
27 11, 2022 and the administrative record may soon be certified. However, this Court has no

28 ¹ All statutory references are to the Government Code unless otherwise specified.

1 available law and motion hearing date until February 2023. Requiring HCD to file a separate
2 action or to wait until February 2023 for a hearing will deprive HCD from participating in the
3 status conference and certification of the administrative record. Moreover, should this action
4 reach an early resolution before HCD joins the case, such resolution may impair or impede
5 HCD's ability to enforce the City's compliance with important state housing laws.

6 Alternatively, HCD respectfully requests that the Court exercise its discretion and permit
7 HCD to intervene immediately pursuant to Code of Civil Procedure section 387, subdivision
8 (d)(2). HCD has a direct and immediate interest in this case and HCD's involvement will not
9 enlarge the issues, which are subject to an administrative record and which involve many of the
10 same enforcement statutes as those raised by Petitioner. HCD's intervention also outweighs any
11 opposition by the City, a local government that is statutorily required to comply with state
12 housing laws. Moreover, the application is timely and will not impact the prompt resolution of the
13 issues presented in this action.

14 Pursuant to California Rules of Court 3.1203, subdivision (a) and 3.1204, on October 3,
15 2022, HCD gave all parties written notice of this *ex parte* application and served all parties with
16 copies of this application, supporting documents, a [Proposed] Order, and copies of HCD's
17 [Proposed] Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief
18 (Writ Petition). Petitioner advised that it will not oppose this *ex parte* application. HCD awaits a
19 response from the City and will advise the Court whether the City intends to oppose.

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1 This application is based on the *ex parte* application, the accompanying Memorandum of
2 Points and Authorities, the declarations of Norma N. Franklin and David Zisser, the [Proposed]
3 Writ Petition attached hereto as Exhibit A, the [Proposed] Order, the pleadings on file with the
4 Court in this action, and such other matters which may be brought to the attention of this Court
5 before or during the hearing on this application.

6 Dated: October 3, 2022

Respectfully submitted,

7
8 ROB BONTA
Attorney General of California
9 JESSICA E. TUCKER-MOHL
Supervising Deputy Attorney General

10 

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12 NORMA N. FRANKLIN
Deputy Attorney General
13 *Attorneys for Intervener-Petitioner*
14 *California Department of Housing and*
15 *Community Development*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Petitioner filed this action to challenge the City's requirement and denial of a CUP that
4 would allow Petitioner to operate transitional and supportive housing for homeless women with
5 disabilities in a single-family home. At its core, this dispute involves the City's refusal to comply
6 with several state housing laws by creating zoning impediments to much-needed transitional
7 housing within the City and by discriminating against and failing to affirmatively support housing
8 for persons with disabilities or who have experienced homelessness.

9 HCD is the state agency with primary responsibility for ensuring local government
10 compliance with state housing laws. Noting that the State's lack of affordable housing is "a
11 critical statewide problem," the Legislature bestowed on HCD the statutory authority to enforce
12 local government compliance with state housing laws including California's Housing Element
13 Law (§ 65580, *et seq.*), the Housing Accountability Act (§ 65589.5, subds. (j)(1)(A), (j)(1)(B)),
14 California's law prohibiting discrimination in land use (§ 65008), and California's Affirmatively
15 Furthering Fair Housing requirements (§§ 65008, 8899.50, 65583).

16 HCD seeks intervention in this action as a matter of right because, as the State's housing
17 enforcement agency, it has a direct interest to ensure the City's compliance with these laws.
18 Moreover, HCD's intervention at this early procedural stage is critical. A status conference is
19 scheduled for November 11, 2022, and the administrative record in the action has yet to be
20 certified. However, this court has no available law and motion hearing date until February 2023.
21 Requiring HCD to file a separate action or to wait until February 2023 for a hearing will deprive
22 HCD from participating in the status conference and certification of the administrative record. In
23 addition, should the parties resolve this action before HCD's intervention, such resolution may
24 impair or impede HCD's ability to enforce state housing laws, resulting in irreparable harm to
25 HCD and to the State.

26 In the alternative, HCD requests that the Court grant its application to permissibly intervene
27 on grounds that HCD has a direct and immediate interest to ensure the City's compliance with
28 state housing laws. HCD's intervention will not enlarge the issues, which involve the same facts,

1 parties, and potential witnesses, and many of the same asserted statutory violations. Finally, HCD
2 brings this timely application at the early procedural stages of the litigation, and HCD’s
3 intervention will not impair or impede the prompt resolution of this dispute.

4 HCD should be allowed to intervene as a party in the present action.

5 **STATEMENT OF FACTS**

6 **I. HCD ENFORCES STATE HOUSING LAWS.**

7 HCD is the state agency responsible for enforcing housing laws in California, and has
8 “primary responsibility for development and implementation of housing policy.” (See, e.g.,
9 Health & Saf. Code, § 50152; Gov. Code, § 65585, subds. (j), (j)(1), (j)(4), and (j)(6); Declaration
10 of David Zisser [Zisser Dec.] ¶ 5.) HCD’s responsibilities include developing guidelines on
11 housing elements, reviewing each local government’s draft and final housing elements, and
12 determining whether each substantially complies with Housing Element Law. (§ 65585, subds.
13 (a)-(e); Zisser Dec., ¶ 10.)

14 In recent years, and most notably through Assembly Bill 72 passed in 2017 and Assembly
15 Bill 215 passed in 2021, the Legislature recognized HCD’s critical enforcement role in reviewing
16 local government compliance with state housing laws. (Zisser Dec., ¶ 5.) When a local
17 government is unwilling to comply with state law, HCD may refer the matter to the Attorney
18 General to bring a civil action to remedy any violations. (§ 65585, subds. (j), (k) and (l); Zisser
19 Dec., ¶ 6.) Indeed, HCD’s ability to enforce state housing laws through litigation against local
20 governments is crucial to HCD’s enforcement authority, including its ability to enforce the State’s
21 Housing Element Law (§ 65580, *et seq.*). (Zisser Dec., ¶ 7.)

22 The Housing Accountability Unit (HAU) within HCD assists with local government
23 compliance with the Housing Element Law and other state housing laws. (Zisser Dec., ¶¶ 1, 6, 8-
24 10.) For example, the HAU enforces compliance with the Housing Accountability Act, which
25 significantly limits a local government’s discretion to deny certain housing, including transitional
26 housing. (§ 65589.5; Zisser Dec., ¶ 8.) In addition, the HAU monitors compliance with fair
27 housing laws that require local governments to affirmatively further fair housing and that prevent
28

1 local governments from discriminating against certain housing projects, including transitional
2 housing. (§§ 8899.50, 65583, and 65008; Zisser Dec., ¶ 9.)

3 **II. THE CITY REQUIRED THEN DENIED A CONDITIONAL USE PERMIT FOR**
4 **PETITIONER’S TRANSITIONAL HOUSING PROJECT.**

5 City zoning code section 18.04.030 requires a CUP to operate transitional or supportive
6 housing for seven or more residents in a single-family residential zone. The City’s zoning code
7 does not generally impose similar requirements for other single-family dwellings, and does not
8 generally require that development of a single-family dwelling undergo public hearings or
9 discretionary review if the home does not meet the definition for transitional or supportive
10 housing.

11 As required by section 18.04.030, Petitioner applied to the City for a CUP to operate
12 transitional housing. (Grandma’s House of Hope Verified Petition for Writ of Mandate and
13 Complaint for Declaratory and Injunctive Relief [Petition], ¶ 35.) Specifically, Petitioner
14 proposed to convert an existing single-family dwelling to provide housing and supportive services
15 to women with mental disabilities who have been unable to obtain permanent housing, and who
16 have experienced or are experiencing homelessness. On August 30, 2021, after a public hearing
17 process, the City’s Planning Commission denied Petitioner’s CUP application. (Petition ¶ 46.)
18 This decision became final on October 26, 2021, when the City Council denied Petitioner’s
19 appeal. (Petition ¶ 51.)

20 **III. THE CITY REFUSED TO COMPLY WITH STATE LAW.**

21 In or around October 2021, the City’s Planning Commission denied Petitioner a CUP to
22 operate transitional housing within the City. (Zisser Dec. ¶ 11.) The City’s requirement and denial
23 of the CUP violates state housing laws, including but not limited to Government Code section
24 65583, subdivision (c)(3) which states that “[t]ransitional and supportive housing...may only be
25 subject to the restrictions that apply to other residential dwellings of the same type in the same
26 zone.”

27 HCD staff contacted the City to advise that its CUP requirement for transitional housing
28 was unlawful, consistent with HCD’s previous communications to the City that its permit

1 requirements for transitional and supportive housing violated state housing laws. In addition, on
2 December 14, 2021, HCD sent a Notice of Violation to the City explaining that the City was in
3 violation of state housing laws by requiring and denying a CUP for Petitioner's transitional
4 housing project. (Zisser Dec. ¶ 12.) The NOV also advised that the City had failed to implement
5 numerous provisions of its most recent housing element. (*Ibid.*)

6 After several meetings and additional correspondence regarding the City's failure to
7 comply with state housing laws, the City refused to immediately amend its zoning ordinance and
8 refused to immediately allow Petitioner to operate its transitional housing project without
9 requiring it to obtain a permit. (*Id.*, ¶¶ 12-14.) After these meetings and additional
10 correspondence, HCD sent another letter to the City on May 12, 2022, advising the City that it
11 remained in violation of state housing law, including the Housing Accountability Act, Housing
12 Element Law, and Government Code sections 8899.50 and 65008. (*Id.*, ¶ 13.)

13 **IV. HCD SEEKS TO INTERVENE IN THIS ACTION.**

14 On January 19, 2022, Petitioner filed this action to challenge the City's CUP denial. A
15 status conference in the case is scheduled on November 11, 2022. (Declaration of Norma N.
16 Franklin [Franklin Dec.], ¶ 2.) As of the date of this application, the parties have yet to certify an
17 administrative record. (*Id.*, ¶ 3.) HCD, as the state agency primarily responsible for enforcing
18 housing laws, seeks to intervene in this matter while the matter remains in its early procedural
19 stages. (Zisser Dec., ¶ 19.)

20 On October 3, 2022, HCD gave written notice to the parties of this *Ex Parte* Application
21 and of its intention to intervene in this action. (Franklin Dec., ¶ 5.) Petitioner will not oppose this
22 application. (*Id.* at ¶ 6.) HCD awaits a response from the City, and will advise the Court whether
23 the City intends to oppose this application. (*Id.*)

24 **LEGAL STANDARD**

25 *Ex parte* relief affords a party relief on an emergency basis. A court grants *ex parte* relief
26 when an applicant makes a factual showing of irreparable harm or any other statutory basis for
27 granting such relief. (*Newsom v. Superior Court of Sutter County* (2020) 51 Cal.App.5th 1093,
28 1097 [citing Cal. Rules of Court, rule 3.1202, subd. (c)]). An applicant may meet the irreparable

1 harm standard by presenting “evidence of ‘a substantial risk that ‘great or irreparable injury’
2 would result to [the applicant] before the matter [could] be heard on notice.’” (*People ex rel.*
3 *Allstate Ins. Co. v. Suh* (2019) 37 Cal.App.5th 253, 257 [citing *Nakamura v. Parker* (2007) 156
4 Cal.App.4th 327, 337].)

5 A non-party may seek mandatory or permissive intervention in an existing civil action by *ex*
6 *parte* application. (Code Civ. Proc., § 387, subds. (b), (c), (d).) The court shall allow a non-party
7 to intervene in an action as a matter of right if the party seeking intervention (1) “claims an
8 interest relating to the property or transaction that is the subject of the action and (2) that (party)
9 is so situated that the disposition of the action may impair or impede that (party’s) ability to
10 protect that interest, unless that (party’s) interest is adequately represented by one or more of the
11 existing parties.” (*Id.*, § 387, subd. (d)(1)(B).)

12 Alternatively, “[t]he court may, upon timely application, permit a nonparty to intervene in
13 the action or proceeding if the person has an interest in the matter in litigation, or in the success of
14 either of the parties, or an interest against both.” (*Id.*, § 387, subd. (d)(2).) “Permissive
15 intervention is appropriate if: ‘(1) the proper procedures have been followed; (2) the nonparty has
16 a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the
17 litigation; and (4) the reasons for the intervention outweigh any opposition by the parties
18 presently in the action.’” (*Carlsbad Police Officers Association v. City of Carlsbad* (2020) 49
19 Cal.App.5th 135, 148.)

20 Whether a party’s interest is substantial and direct must be decided on the facts of the case,
21 but Code of Civil Procedure section 387 must be construed liberally in favor of intervention.
22 (*Simpson Redwood Co. v. State of Calif.* (1987) 196 Cal.App.3d 1192, 1200.) Indeed, a trial
23 court’s decision to permit intervention should only be overturned where “the court exceeds the
24 bounds of reason, all of the circumstances before it being considered.” (*City of Malibu v.*
25 *California Coastal Comm’n* (2005) 128 Cal.App.4th 897, 906.)

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ARGUMENT

I. HCD SEEKS TO INTERVENE AS A MATTER OF RIGHT

A. HCD Seeks Intervention as a Matter of Right to Fulfill Its Statutory Mandate of Enforcing the State Housing Laws at Issue in This Action.

The Legislature has declared the State’s lack of affordable housing “a critical statewide problem.” (§ 65589.5, subd. (g).) Indeed, the Legislature found that the State “has a housing supply and affordability crisis of historic proportions.” (§ 65589.5, subd. (a)(2)(A).) “The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives.” (*Ibid.*)

As the state agency with primary responsibility for enforcing local government compliance with state housing laws, HCD has a direct interest in ensuring that the City removes all unlawful impediments to transitional and supportive housing. (Code Civ. Proc., § 387, subd. (d)(1)(B).) Indeed, HCD has been directly involved in the matters at the heart of this litigation. For example, in 2008, HCD issued guidance to all local governments on then-new Senate Bill 2, which among other things, codified the requirement that local governments treat transitional housing projects the same as other dwellings of the same type in the same zone.² (§ 65583, subd. (c)(3).) Moreover, the Legislature has authorized HCD to bring actions against local governments in Superior Court to enforce the State’s housing laws. (See § 65585, subds. (j), (k).) Pursuant to this authority, HCD asserts that the City violated the Housing Element Law, the Housing Accountability Act, the State’s land use anti-discrimination statute, and the duty to affirmatively further fair housing, when it required Petitioner to submit to a CUP process for transitional housing that the City does not require for single-family dwellings in the same neighborhood, and then denying the permit.

² California Department of Housing and Community Development, *Senate Bill 2—Legislation Effective January 1, 2008: Local Planning and Approval for Emergency Shelters and Transitional and Supportive Housing*, May 7, 2008, available at https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf (last visited September 30, 2022.)

1 HCD's intervention in this case is critical to securing the City's compliance with state
2 housing laws. Before and after the City required and denied Petitioner's CUP for the transitional
3 housing project, HCD repeatedly notified the City that requiring and denying the permit violates
4 state housing laws. (Zisser Dec. ¶¶ 11-14.) HCD then held three meetings with City staff after the
5 City Council upheld the CUP denial, in hopes of reaching a resolution towards the City's
6 compliance. (*Id.* ¶ 12.) Despite these efforts, the City continues to violate state housing laws.
7 (Zisser Dec. ¶ 15.)

8 **B. HCD Will Suffer Irreparable Harm If Not Allowed to Intervene Because**
9 **Disposition of This Action Will Impede or Impair HCD's Ability to Protect**
10 **Its Interest in Enforcing State Housing Laws.**

11 The disposition of this action may impede or impair HCD's ability to protect its interest in
12 enforcing state housing laws governing transitional housing. A status conference in the case is
13 scheduled for November 11, 2022 and the administrative record may soon be certified. However,
14 this court has no available law and motion hearing date until February 2023. Requiring HCD to
15 file a separate action or to wait until February 2023 for a hearing on this application will prevent
16 HCD from participating in the status conference and in the certification of the administrative
17 record. Moreover, early resolution in this case without HCD's involvement will deprive HCD of
18 its housing enforcement duties and could undermine the Legislature's goals of removing
19 impediments to transitional housing projects like the one at issue. As a result, HCD's inability to
20 intervene in this action will result in irreparable harm.

21 **C. HCD's Interests Are Not Presently Represented by Either Party.**

22 Neither party adequately represents HCD's interests. The City, most obviously, has an
23 incentive to contest liability and defend the lawsuit. And although Petitioner appears poised to
24 vigorously prosecute its meritorious claims, its interests understandably focus on vindicating its
25 right to develop the Project. HCD, however, has a separate interest in vindicating its right to
26 require fair and non-discriminatory treatment of transitional and supportive housing projects in
27 general, as well as its interest in deterring future violations of the State's housing laws through
28 this enforcement action. These interests are unique to HCD and are not adequately represented by
either of the existing parties. Given the threat to HCD's interest resulting from the City's actions,

1 HCD has a right to intervene. (See *Crestwood Behavioral Health Inc., v. Lacy* (2021) 70
2 Cal.App.5th 560, 579, 584-585 (*Lacy*).)

3 **D. HCD’s Motion to Intervene Is Timely.**

4 The timeliness of a request to intervene “is determined by the totality of the circumstances
5 facing would-be interveners, with a focus on three primary factors: ‘(1) the stage of the
6 proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the
7 reason for the delay.’” (*Lacy, supra*, 70 Cal.App.5th at p. 574, quoting *Smith v. Los Angeles*
8 *Unified School Dist.* (9th Cir. 2016) 830 F.3d. 843, 857.) Of these three factors, the most
9 important is prejudice. (*Ibid.*) In considering prejudice, courts focus solely on prejudice resulting
10 from the nonparty’s delay in seeking intervention, not prejudice resulting from the intervention in
11 and of itself. (*Ibid.*)

12 Here, the instant action remains at an early stage: an answer has been filed and a case
13 management conference has been scheduled, but no briefing schedule has been set. Consequently,
14 intervention will not significantly disrupt the case proceedings. Further, the timing of HCD’s
15 motion poses no prejudice to the City. Since HCD seeks to litigate causes of action consistent
16 with those pled by Petitioner, which test a common set of factual allegations that Petitioner
17 makes, HCD’s intervention poses no substantial threat of delay.

18 Finally, HCD’s timing in seeking to intervene does not militate against intervention.
19 Section 65585, subdivision (k) of the Government Code requires that HCD first hold two
20 meetings with the City before commencing litigation to enforce state housing laws. Any nominal
21 delay in requesting this relief is due to HCD’s consultations with the City, during which HCD has
22 explored whether the City might cure its violations of housing laws of its own volition.
23 Regrettably, the City has elected not to comply with the state housing laws that HCD is charged
24 with enforcing. For these reasons, all of the factors upon which the Court must focus demonstrate
25 that HCD is timely seeking to intervene.

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1 **II. ALTERNATIVELY, THE COURT SHOULD EXERCISE ITS DISCRETION AND PERMIT**
2 **HCD TO INTERVENE**

3 In addition to the right to intervene discussed above, the Court may permit HCD to
4 intervene if HCD can demonstrate that it has “an interest in the matter of the litigation, or in the
5 success of either of the parties, or an interest against both.” (Code Civ. Proc., § 387, subd. (d)(2).)
6 For the purposes of permissive intervention, the proposed intervener’s interest is sufficient so
7 long as it stands to gain or lose by direct operation of the judgment. (*Fireman’s Fund Ins. Co. v.*
8 *Gerlach* (1976) 56 Cal.App.3d 299, 303-305.) In addition, intervention cannot enlarge the issues
9 in the case, and the reasons for intervention must outweigh the reasons against intervention.
10 (*Lindelli v. Town of Anselmo* (2006) 139 Cal.App.4th 1499, 1504.)

11 HCD fully satisfies these requirements. HCD stands to gain or lose by direct operation of
12 the judgment which will, among other things, determine whether the City complies with state
13 housing laws. Further, HCD proposes to assert causes of action consistent with those pled by
14 Petitioner and based upon the same factual allegations that Petitioner raises. Consequently,
15 intervention will not enlarge the issues in the case. (*Lindelli, supra*, 139 Cal.App.4th at p. 1504.)

16 HCD’s reasons for intervention outweigh any possible reasons against intervention.
17 (*Lindelli, supra*, 139 Cal.App.4th at p. 1504.) Here, HCD seeks to intervene because the City has
18 violated several provisions of California housing law that HCD is charged with enforcing. The
19 City has failed to abate these violations despite repeated written notifications from HCD directing
20 the City to do so. HCD’s duty to enforce state housing laws against a recalcitrant city favors
21 allowing intervention.

22 Finally, HCD’s intervention in the pending action also favors judicial economy compared
23 to the filing of a new action. A new action would likely be consolidated with this action after the
24 scheduled status conference and after the certification of the administrative record, thus depriving
25 HCD of participation in key procedural stages of the litigation. In the alternative, litigating the
26 same operative facts with common questions of law in separate actions would create unnecessary
27 delay, inconvenience the parties and potential witnesses, and could result in duplicative or
28 inconsistent rulings, orders, or judgments.

1 HCD requests that the Court exercise its discretion to allow HCD to intervene in the present
2 action.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should grant HCD's *ex parte* application for leave to
5 file the proposed Writ Petition.

6 Dated: October 3, 2022

7 Respectfully submitted,

8 ROB BONTA
9 Attorney General of California
10 JESSICA E. TUCKER-MOHL
11 Supervising Deputy Attorney General

12 

13 NORMA N. FRANKLIN
14 Deputy Attorney General
15 *Attorneys for Petitioner-Intervener*
16 *California Department of Housing and*
17 *Community Development*

EXHIBIT A

1 ROB BONTA
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2 JESSICA E. TUCKER-MOHL
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8 *Attorneys for Petitioner and Plaintiff in Intervention*
9 *California Department of Housing and Community*
Development

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ORANGE
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14 **GRANDMA'S HOUSE OF HOPE,**
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Petitioner and Plaintiff,
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v.
17 **CITY OF ANAHEIM and CITY COUNCIL**
OF THE CITY OF ANAHEIM,
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Respondents and Defendants.
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20 **CALIFORNIA DEPARTMENT OF**
21 **HOUSING AND COMMUNITY**
22 **DEVELOPMENT,**
23
Petitioner and Plaintiff in Intervention.
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27
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Case No. 30-2022-01241823

**[PROPOSED] PETITION FOR WRIT OF
MANDATE AND COMPLAINT IN
INTERVENTION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Code of Civ. Proc., §§ 387, subd. (d), 1085,
1094.5, 1060; Gov. Code §§ 8899.50, 65008,
65583, 65585, 65589.5.)

INTRODUCTION

1. California’s housing shortage crisis persists, and by many measures, its effects are most acutely borne by its most vulnerable population: an estimated more than 160,000 Californians experiencing homelessness. A subset of these Californians is chronically homeless due to mental health or other physical disabilities. In response to the State’s severe housing crisis, and in consideration of the unique role played by transitional and supportive housing services in resolving chronic homelessness, the Legislature passed several laws to remove barriers to the development of transitional and supportive housing.

2. Housing Element Law (Government Code § 65580, *et seq.*)¹ requires local public entities like the City of Anaheim and its City Council (collectively, “the City”) to provide for a variety of housing types, including transitional and supportive housing. Under Housing Element Law, the City must consider transitional and supportive housing “a residential use of property [that] shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.” (See §§ 65583, subds. (a)(5), (c)(3).)

3. Under the Housing Accountability Act (HAA), the City may not deny or impose conditions on a transitional housing project when the project “complies with applicable, objective general plan, zoning, and subdivision standards and criteria,” unless the City makes written findings supported by a preponderance of the evidence that the project (1) “would have a specific, adverse impact² upon the public health or safety” and (2) “there is no feasible method to satisfactorily mitigate or avoid [that] adverse impact . . . other than disapproval of the housing development. . .” (§ 65589.5, subds. (j)(1)(A), (j)(1)(B).)

4. California’s Planning and Zoning Law (§ 65000, *et seq.*) expressly prohibits local public entities, including the City, from discriminating against very low, low and moderate income dwellings, or against dwellings that provide housing for people with disabilities. (§ 65008, subds. (b)(1)(B)-(C).)

¹ All statutory references are to the Government Code unless otherwise specified.

² “As used in this paragraph, a ‘specific, adverse impact’ means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (§ 65589.5, subd. (d)(2).)

1 5. California's Affirmatively Furthering Fair Housing (AFFH) laws impose on the City
2 a mandatory duty to affirmatively address housing disparities for individuals within protected
3 classes, including individuals living with disabilities and persons or families of very low, low, or
4 moderate income. (§§ 65008, 8899.50, 65583.)

5 6. Intervenor the California Department of Housing and Community Development
6 (HCD) is the state agency responsible for ensuring the City's compliance with these laws.³

7 7. The City violated these laws when it required a conditional use permit for a
8 transitional housing project proposed by Petitioner Grandma's House of Hope, and then denied
9 the permit.

10 8. Petitioner is a California non-profit corporation dedicated to, among other things,
11 providing transitional housing to homeless women. Petitioner is funded, in part, by the County of
12 Orange. Petitioner proposed a transitional housing project within an existing single-family
13 residence sitting on two parcels, 626 North West Street and 945 West Pioneer Drive in Anaheim,
14 California (the Project). The Project would provide housing for homeless women who live with
15 mental health disabilities.

16 9. Prior to denying the conditional use permit, the City unlawfully required Petitioner to
17 submit to a discretionary public review process that the City does not require for other dwellings
18 of the same type in the same zone. At the conclusion of this process, the City's Planning
19 Commission staff recommended that the City approve the Project. Despite its own staff
20 recommendation, the City Council voted 7-0 to deny the conditional use permit for the Project.

21 10. Pursuant to Code of Civil Procedure section 387, subdivision (d), HCD seeks to
22 intervene in this action, and seeks a writ of mandate and injunctive relief directing the City and its
23 City Council (1) to set aside the conditional use permit denial, (2) amend the City's zoning code
24 (e.g., Anaheim Municipal Code section 18.04.030) to remove any and all unlawful constraints on
25 transitional and supportive housing, (3) enjoin the City from requiring conditional use or other
26 permits for transitional and supportive housing that the City does not require for other dwellings
27 of the same type in the same zone, (4) enjoin the City from violating its duty to affirmatively

28 ³ See, e.g., § 65585.

1 further fair housing for persons with disabilities or persons experiencing homelessness, (5) enjoin
2 the City from discriminating against housing for persons with disabilities or persons or families of
3 very low, low, or moderate incomes, and (6) require the City to take any other action necessary to
4 allow transitional and supportive housing as a residential use, in the same manner that the City
5 treats other dwellings of the same type in the same zone. HCD also seeks declaratory and
6 injunctive relief declaring that the City's actions violated state housing laws, and, where
7 applicable, requests that the Court impose statutory fines and penalties until the City is found in
8 full compliance with state laws.

9 11. HCD has no plain, speedy, or adequate remedy in the ordinary course of law. The
10 only remedy provided by law for HCD is to enforce these state laws by way of seeking judicial
11 relief.

12 **ALLEGATIONS SUPPORTING INTERVENTION**

13 12. HCD's intervention in this action is vital. HCD is the State agency delegated by the
14 Legislature with "primary responsibility for development and implementation of housing policy,"
15 (Health & Saf. Code, § 50152). Such matters include those in which a local agency is alleged to
16 have violated the State's housing laws. (§ 65585, subd. (j).) Additionally, the Legislature has
17 expressly authorized HCD to enforce Housing Element Law, the Housing Accountability Act,
18 section 65008 of the Government Code, and Assembly Bill 686 requiring all local governments,
19 among other public entities, in California to affirmatively further fair housing, and to pursue all
20 remedies available under those laws. (§ 65585, subds. (j), (j)(1), (j)(4), (j)(6).) HCD therefore
21 seeks to intervene in this action, as a matter of right, because it has a substantial interest in the
22 City's approval of the Project at issue in this litigation. As the State's chief housing law
23 enforcement agency, HCD also has a substantial interest in ensuring that the City remove all
24 unlawful impediments to transitional and supportive housing in accordance with state law.
25 Indeed, no other party can represent HCD's interests in this matter, and failure to join HCD as an
26 intervening party will substantially impair HCD's interest in enforcing state housing laws.

27 ///

28 ///

1 **PARTIES**

2 13. HCD is a public agency established under the laws of the State of California. HCD is
3 charged with oversight and enforcement of the State’s housing laws and related statutes, which
4 together, provide a framework for local housing needs, permitting decisions, and other housing-
5 related land use decisions.

6 14. HCD is informed and believes, and on that basis alleges, that Petitioner is a California
7 non-profit corporation based in the County of Orange. The City’s Planning Department reports
8 that Petitioner has for many years operated transitional housing in the City providing housing and
9 on-site services for “individuals that find themselves homeless or at risk of being homeless,
10 including those recovering from past trauma (e.g. domestic violence, post-traumatic stress
11 disorder, human trafficking, and depression).”⁴

12 15. Respondent and Defendant the City of Anaheim is and was at all times mentioned
13 herein a municipal corporation organized and existing under the laws of the State of California.
14 The City of Anaheim is a legal entity with the capacity to sue and be sued.

15 16. Respondent and Defendant City Council of Anaheim is the elected governing body
16 for the City and is responsible for implementing laws in accordance with the United States
17 Constitution and federal laws, and the constitution and laws of the State of California, including
18 state housing laws. The City Council is also the legislative body charged under Government Code
19 section 65300 with responsibility for adopting a general plan, including a housing element, for the
20 physical development of the City. Through the City Council, the City denied Petitioner’s appeal
21 of the denial of its transitional housing project.

22 **JURISDICTION AND VENUE**

23 17. The Court has jurisdiction over the matters alleged in this Petition pursuant to Code
24 of Civil Procedure sections 387, 1060, 1085 and 1094.5 and Government Code sections 8899.50,
25 65008, 65583, 65585, and 65589.5.

26 _____
27 ⁴ August 30, 2021 City of Anaheim Planning Commission Staff Report, p. 103, available
28 at <https://records.anaheim.net/CityClerk/DocView.aspx?id=2428318&dbid=0&repo=CITYOFANAHEIM> (last visited September 30, 2022).

18. Venue for this action properly lies in Orange County Superior Court pursuant to Code of Civil Procedure sections 394 (actions against a city, county, or local agency) and 395 (actions generally) because the City's main offices are located in Orange County and the violations of State law alleged in this Petition arose in Orange County.

GENERAL ALLEGATIONS

HCD's Oversight and Enforcement Authority

19. California has a crisis-level housing shortage that is exacerbated by the failure of local governments to supply affordable housing to meet the needs of all Californians. For decades, the Legislature has found that California has been suffering from “a severe shortage of affordable housing, especially for persons and families of low and moderate income” and that “there is an immediate need to encourage the development of new housing.” (*Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 295, quoting § 65913.) With recent amendments to the Housing Accountability Act, the Legislature stated plainly that “California has a housing supply and affordability crisis of historic proportions.” (§ 65589.5, subd. (a)(2)(A).) “The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the State’s environmental and climate objectives.” (*Ibid.*)

20. As a consequence of this housing shortage, California is home to more than 160,000 people experiencing homelessness, which is more than a quarter of all people experiencing homelessness nationwide. Seventy percent of homeless individuals within the state are “unsheltered” homeless – individuals who do not have regular access to homeless shelters or transitional housing. Approximately 49,000 Californians are chronically homeless, many as a result of a disability.

A. Housing Element Law

21. In 1980, the Legislature found and declared that “[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living

environment for every Californian ... is a priority of the highest order.” (§ 65580, subd. (a).) The Legislature also found that “[t]he early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.” (*Id.*, subd. (b).) In addition, the Legislature determined that “[l]ocal and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.” (*Id.*) The Legislature went on to enact a comprehensive statutory scheme – referred to as the Housing Element Law (§ 65580, *et seq.*) – to strengthen the housing element component of local general plans. (*Ibid.*)

22. In pertinent part, the City’s housing element must provide an inventory of sites available in the community for the development of housing that would meet the city or county’s share of the regional housing need allocation (RHNA) for all income levels, which is set by HCD and local council of governments. (§ 65583, subd. (a)(3); 65584, subd. (b).) This inventory must also include an analysis of available sites for a variety of housing types, including supportive housing, emergency shelters, and transitional housing, and an analysis of whether the inventory affirmatively furthers fair housing. (§ 65583.2, subd. (c).) Generally, a city or county must create a revised housing element every eight years. (§ 65588.)

23. In addition, the City’s housing element must address the potential and actual government constraints “upon the maintenance, improvement, or development of housing . . . for persons with disabilities.” (§ 65583, subd. (a)(5).) This analysis should include a discussion of, among other things, land use controls, building codes and their enforcement, site improvements, fees and exactions, local processing and permit procedures, and any local ordinance that impacts the cost and supply of residential development. (*Ibid.*) The City’s housing element must also include a program to address and remove “governmental constraints to and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.” (§ 65583, subd. (c)(3).) Indeed, the City’s housing element must demonstrate its efforts “to remove governmental constraints that hinder [the City] from meeting

1 its share of [RHNA] . . . and from meeting the need for persons with disabilities, supportive
2 housing, transitional housing, and emergency shelters.” (§ 65583, subd. (a)(5).)

3 24. When the city or county is not able to meet the goals or objectives of the housing
4 element immediately, the housing element must include a schedule of actions and a timeline to
5 implement those programs during the period that the housing element is in effect. (§ 65583, subd.
6 (c)(1).) The housing element must include a program that makes sufficient sites available to meet
7 the city or county’s share of its RHNA. The housing element must also identify sites meeting the
8 city or county’s obligation to affirmatively further fair housing and facilitate and encourage a
9 wide range of housing types, including transitional housing. (See, e.g., § 65583, subd. (c)(1).)

10 25. HCD develops guidelines on housing elements that cities and counties must consider
11 in developing their housing elements. (§ 65585, subd. (a).) HCD also has a significant oversight
12 role in the development of each local government’s housing element and works with each
13 individual city and county during the housing element process. Cities and counties must submit
14 their draft housing elements to HCD for approval before adopting the housing element, and HCD
15 must review the draft and provide written findings to determine whether the draft housing
16 element substantially complies with state law governing housing elements. (§ 65585, subds. (b)-
17 (d).) City and county governments must then consider HCD’s findings before adopting the draft
18 housing element. (§ 65585, subd. (e).) City and county governments must submit adopted
19 housing elements to HCD, which must then report findings on the adopted housing elements to
20 the city or county government. (§ 65585, subds. (g), (h).)

21 26. Under Chapter 370, Statutes of 2017 (“AB 72”), codified at Government Code
22 section 65585, subdivisions (i) and (j), HCD has authority to review any action or failure to act by
23 a local government that it determines is inconsistent with an adopted housing element or
24 Government Code section 65583. This includes failure to implement program actions included in
25 the housing element. HCD may revoke housing element compliance if the local government’s
26 actions violate state law or refer the matter to the Attorney General’s Office to bring a civil action
27 to remedy any violations. (§ 65585, subds. (j), (l).)

1 **B. Senate Bill 2**

2 27. In 2007, the Legislature enacted Senate Bill 2 (“SB 2,” Sen. Bill No. 2 (2007-2008
3 Reg. Sess.)), which removed obstacles to the siting of emergency shelters, transitional housing,
4 and supportive housing.

5 28. SB 2 amended Government Code section 65583 to provide that “[t]ransitional
6 housing and supportive housing shall be considered a residential use of property and shall be
7 subject only to those restrictions that apply to other residential dwellings of the same type in the
8 same zone.” (§ 65583, subd. (c)(3).) “‘Transitional housing’ means buildings configured as rental
9 housing developments, but operated under program requirements that require the termination of
10 assistance and recirculating of the assisted unit to another eligible program recipient at a
11 predetermined future point in time that shall be no less than six months from the beginning of the
12 assistance.” (§ 65582, subd. (j).)

13 29. In 2008, HCD issued guidance on SB 2 to local governments.⁵ HCD explained that
14 transitional housing projects are of varying sizes and may be in single-family homes or multi-
15 family developments and that, under SB 2’s amendment to Government Code section 65583, local
16 governments must treat transitional housing projects the same as other housing projects that are in
17 the same type of building.⁶ “For example, transitional housing located in an apartment building in
18 a multifamily zone is permitted in the same manner as an apartment building in the same zone and
19 supportive housing located in a single family home in a single family zone is permitted in the same
20 manner as a single family home in the same zone.”⁷

21 30. Due to the severity of the homelessness crisis, there is an urgent need to provide
22 shelter, services, and assistance for homeless Californians who are transitioning to permanent
23 housing. While this need exists statewide, the siting of new emergency shelters, transitional
24 housing, and supportive housing is made at the local level, as with other land use decisions.

25 ⁵ Department of Housing and Community Development, *Senate Bill 2—Legislation*
26 *Effective January 1, 2008: Local Planning and Approval for Emergency Shelters and Transitional*
27 *and Supportive Housing*, May 7, 2008 [updated April 10, 2013], available at
[https://www.hcd.ca.gov/community-development/housing-element/housing-element-](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf)
28 [memos/docs/sb2_memo050708.pdf](https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf).

⁶ *Id.* at pp. 13-14.

⁷ *Id.* at p. 14.

1 Unfortunately, local communities often oppose the creation of these facilities that serve people
2 experiencing homelessness, due to stigma against this population and the mistaken perception that
3 the opening of housing opportunities for this population will lead to increased rates of crime,
4 litter, traffic, and disruptive behavior.

5 **C. Land Use Discrimination Law**

6 31. Government Code section 65008 prohibits discrimination in land use decisions by
7 local governments. Under Government Code section 65008, subsection (a), “any action” pursuant
8 to Title 7 of the Government Code, which covers zoning and land use, is “null and void” if it
9 denies residence or tenancy to any individual or group of individuals because the individual(s)
10 is/are a member of a class protected by the California Fair Employment and Housing Act
11 (“FEHA”) which is codified at Government Code section 12955. (§ 65008, subds. (a)(1)(A),
12 (a)(3).) A disability is a characteristic protected by the FEHA. (*Id.*, § 12955.)

13 32. An action is also “null and void if it denies to any individual or group of individuals
14 the enjoyment of residence, landownership, tenancy, or any other land use in this state because of
15 . . . [t]he intended occupancy of any residential development by persons or families of very low,
16 low, moderate, or middle income.” (§ 65008, subd. (a)(1)(B)(3).)

17 33. Additionally, section 65008 provides that a city shall not “in the enactment or
18 administration of ordinances pursuant to any law . . . prohibit or discriminate against any
19 residential development” because of any characteristic of the intended occupants that is protected
20 under the FEHA, or because “the development or shelter is intended for occupancy by persons
21 and families of very low, low, or moderate income. . . or persons or families of middle income.”
22 (§ 65008, subds. (b)(1)(B)-(C).) Section 65008 also prohibits cities from imposing different
23 requirements on dwellings that are intended to house people with characteristics protected by this
24 law. (§ 65008, subd. (d)(2)(A).)

25 **D. Duty to Affirmatively Further Fair Housing**

26 34. In 2018, the Legislature enacted Assembly Bill 686, which requires all public entities
27 in California, including cities and counties, to affirmatively further fair housing (AFFH). Assem.
28 Bill No. 686 (2017-2018) Reg. Sess.) AFFH means “taking meaningful actions, in addition to

combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.” (§ 8899.50, subd. (a)(1).) In creating the AFFH requirement, the Legislature recognized that while existing anti-discrimination laws prevented future discrimination in housing, more work was needed to undo entrenched patterns of segregation that pervade housing policies and practices.

35. Cities and counties must “administer [their] 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 [the] obligation to affirmatively further fair housing.” (§ 8899.50, subd. (b)(1).)

36. Disability is a protected characteristic for the purposes of the AFFH statute. (See, e.g., §§ 8899.50, subd. (c) [referencing the federal AFFH rule as published in 80 Fed. Reg. 42272-42371 (July 16, 2015)]; 65583, subd. (c)(1) and (c)(5).)

37. In 2021, HCD issued guidance for all public entities on how to comply with the AFFH requirement, including AB 686’s requirements to affirmatively further fair housing through the housing element process.⁸ HCD instructs cities and counties to “[s]eek local input on housing proposals while recognizing that ‘local vetoes’ of affordable and mixed-income housing in racially segregated concentrated areas of affluence create fair housing issues.”⁹

E. Housing Accountability Act

38. The Legislature has also placed other limits on the ability of cities and counties to deny housing development projects. Through the Housing Accountability Act (HAA), cities and counties may only deny housing development projects in very narrow circumstances. The intent of the HAA was “to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters.” (§ 65589.5, subd. (a)(2)(K).) The HAA explicitly

⁸ 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 (last visited September 30, 2022).

⁹ *Id.* at p. 15.

1 covers transitional and supportive housing. (§ 65589.5, subd. (h)(2)(C).) “It is the policy of the
2 state that [the HAA] be interpreted and implemented in a manner to afford the fullest possible
3 weight to the interest of, and the approval and provision of, housing.” (§ 65589.5, subd.
4 (a)(2)(L).)

5 39. A local agency may deny a housing development project not specifically intended for
6 very low, low, or moderate income residents that “compl[ies] with applicable, objective general
7 plan, zoning, and subdivision standards and criteria, including design review standards, in effect
8 at the time that the application was deemed complete” if the city or county “base[s] its decision . .
9 . upon written findings supported by a preponderance of the evidence on the record that” the
10 project would both have “a specific, adverse impact upon the public health or safety” as defined
11 in section 65589.5, subdivision (d)(2) and “there is no feasible method to satisfactorily mitigate or
12 avoid the adverse impact.” (§ 65589.5, subds. (j)(1)(A)-(B).) If a local agency finds that a
13 proposed housing development project is inconsistent with applicable and objective standards and
14 criteria, it shall provide the applicant with written documentation to that effect. (§ 65589.5, subd.
15 (j)(2).)

16 **The City’s Unlawful Treatment of Transitional and Supportive Housing**

17 40. In fall 2013, HCD reviewed the City’s Draft Fifth Cycle Housing Element, which the
18 City had submitted to HCD on or around October 3, 2013. HCD advised the City over the phone
19 and via email that it needed to add a program regarding transitional and supportive housing to the
20 Housing Element to comply with SB 2.

21 41. On February 4, 2014, the City adopted its Fifth Cycle Housing Element and
22 submitted the adopted Fifth Cycle Housing Element to HCD for review on February 21, 2014. In
23 the Housing Element, the City promised to revise the definitions of transitional and supportive
24 housing to make it consistent with Government Code section 65582 and to “amend the Municipal
25 Code in accordance with Government Code section 65583(a)(5) to consider transitional housing
26 and supportive housing as a residential use of property, subject only to those development
27
28

standards that apply to other dwellings of the same type in the same zone” within one year of the Housing Element adoption.¹⁰

42. Those promises remain empty. To date, the City has failed to implement the goals, policies, and programs it set in its Fifth Cycle Housing Element.

43. Instead, in spring 2021, the Planning Commission voted to recommend amending the City’s zoning ordinance to further constrain and discriminate against housing for persons with disabilities and other persons with protected characteristics, including transitional and supportive housing.

44. In a technical assistance letter that HCD issued to Anaheim on May 3, 2021, HCD advised the City of the many ways that the proposed amendments would violate state housing laws. Among other things, in this letter HCD also reminded the City that “[t]ransitional and supportive housing regardless of size are by law ‘residential uses,’ not quasi-residential, and may only be subject to the restrictions that apply to other dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (c)(3).) Under state law, for instance, if the transitional or supportive housing is located in a single-family home, 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.” A true and correct copy of the May 3, 2021 technical assistance letter is attached hereto as **Exhibit A**.

The City’s Denial of Grandma’s House of Hope’s Transitional Housing Project

45. The City is the largest City in the County of Orange, with a population of approximately 346,824 people living in approximately 103,704 households. The City has issued more than three times the permits for market-rate housing allocated to it in the Fifth Cycle RHNA. However, per the City’s own data, the City failed to meet its RHNA for very low, low, and moderate income housing by the end of 2020.

46. Petitioner proposed a transitional housing use at an existing 5,376 square-foot, two-story single-family house on an over 28,749 square-foot, double-parcel lot at 626 North West

¹⁰ City of Anaheim Fifth Cycle Housing Element, available at p. 4-15 (ch. 4, p. 15), available at <https://www.anaheim.net/DocumentCenter/View/2272/2014-2021-Housing-Element-Housing-Production-Strategy-10> (last visited September 30, 2022).

1 Street and 945 West Pioneer Drive. The house is in an RS-1 Single-Family Residential zone and
2 is designated for Low Density Residential land uses by the City’s General Plan. The two-story
3 house has eight bedrooms, ten bathrooms, a pool house, pool, basketball court, three-car garage,
4 and driveway that accommodates three additional cars.

5 47. Surrounding land uses include large, single-family residences on all sides, with
6 10,000 square-foot minimum lot sizes. (Anaheim Municipal Code § 18.04.020.040.)

7 48. Petitioner proposed to provide housing and supportive services for adult females
8 “with severe and persistent mental health disabilities that have not been able to obtain permanent
9 housing and are experiencing homelessness.”¹¹ As originally proposed, the Project would house
10 20 pre-screened participants and one house manager. Participants would live at the Project for
11 approximately 10 to 18 months, while receiving case management and other services, including
12 assistance with placement in permanent housing. Staff would be on-site or on-call seven days a
13 week between 7 a.m. and 11 p.m., with nighttime supervision provided by a resident Community
14 Leader trained and chosen by staff, as well as an on-call manager.

15 49. Despite being clearly on notice that it was unlawful to impose a discretionary use
16 permit process on transitional housing like the Project, and having promised to comply with state
17 law governing transitional housing, the City insisted on imposing a conditional use permit process
18 before Petitioner could be allowed to provide transitional housing to formerly homeless
19 individuals at the Project site. Accordingly, to be allowed to provide transitional housing,
20 Petitioner requested approval of a discretionary conditional use permit from the City.

21 50. Petitioner submitted its application on or around May 25, 2021, and it was deemed
22 complete on or around August 6, 2021.

23 51. On August 30, 2021, the City’s Planning Commission held a hearing to consider the
24 Project for the grant of a conditional use permit to operate the transitional housing facility at the
25 Project site. The Planning Commission Staff Report recommended that the Planning Commission

26 _____
27 ¹¹ August 30, 2021 City of Anaheim Planning Commission Staff Report, supra, p. 105,
28 available at <https://records.anaheim.net/CityClerk/DocView.aspx?id=2428318&dbid=0&repo=CITYOFANAHEIM> (last visited September 30, 2022)

1 adopt a resolution approving the conditional use permit for the Project and included a draft
2 resolution that made the requisite findings pursuant to Anaheim Municipal Code section
3 18.66.060. The Planning Commission Staff Report explained that the Project was not anticipated to
4 cause traffic or parking impacts in the neighborhood and that the Police Department did not believe
5 that there would be excessive service calls to the Project. Overall, the Planning Commission Staff
6 Report concluded that there would not be any negative impacts to the neighborhood.

7 52. At the Planning Commission meeting, members of the public submitted letters and
8 spoke in opposition to the project. Residents opposing the project raised general concerns about the
9 perceived threat to the safety of children and neighborhood residents, the perceived large number of
10 similar existing facilities in the area, and having to live among people with mental illness in the
11 neighborhood.

12 53. Notwithstanding staff's recommendation to approve the conditional use permit, on
13 August 30, 2021, the Planning Commission voted 6-0 to deny the conditional use permit and
14 directed staff to prepare a resolution making findings denying the Project. The subsequently
15 prepared Planning Commission disapproval resolution claimed—in direct contradiction to its own
16 staff report—that the Project would adversely impact circulation and traffic in the surrounding
17 neighborhood. The resolution also stated that the Project's demands on water and sewer
18 infrastructure, and the anticipated delayed assistance for overnight emergencies because
19 participants do not drive and would not have overnight care, would negatively impact the health
20 and safety of the Project's participants and other citizens of Anaheim. These concerns were not
21 supported by any objective evidence in the record.

22 54. Following the Planning Commission's denial of the conditional use permit, HCD
23 advised the City that it was unlawful for the City to impose a requirement to seek a conditional use
24 permit on the Project.

25 55. On September 9, 2021, Petitioner filed a timely appeal to the Anaheim City Council
26 seeking review of the Planning Commission's decision.

27 56. On October 12, 2021, Petitioner submitted a revised Letter of Operation that reduced
28 the number of resident participants from 20 to 15, meaning the total number of inhabitants would be

1 16, including the resident community leader. Petitioner’s October 12 letter also addressed the
2 Planning Commission’s findings in the resolution of denial by clarifying that staff would have a car
3 on premises, that overnight staff would call 911 in the event of an emergency, and that there is an
4 on-call manager available 24/7.

5 57. On October 26, 2021, the City Council held a public hearing to consider Petitioner’s
6 appeal. At the hearing, despite HCD’s clear and unequivocal warning that Anaheim’s policy
7 violates, inter alia, section 65583, subdivision (c)(3), staff advised the Council that it believed the
8 requirement for a conditional use permit for transitional housing “is consistent with state law,”
9 without providing any further rationalization for their conclusion. As with the Planning
10 Commission hearing, a large number of residents submitted written comments and/or spoke in
11 opposition to the Project. Many commentators expressed concerns—without factual support—about
12 the “over-saturation” of group homes and similar facilities in the neighborhood and fears over the
13 impacts of having mentally ill residents living near their homes.

14 58. The City Council voted to deny the appeal by a 7-0 vote. The City Council’s decision
15 was later memorialized in Resolution No. 2021-100, denying approval of the Project. Consistent
16 with the City’s history of shirking its obligation to fairly consider the housing needs of its most
17 vulnerable population, the Resolution made a “finding” that Petitioner’s project posed a health
18 and safety detriment to the entire City of Anaheim.

19 **II. HCD’S POST-DENIAL COMMUNICATIONS WITH THE CITY**

20 **A. HCD’s Notice of Violation**

21 59. Following the denial, on December 14, 2021, HCD sent a Notice of Violation
22 (“NOV”) to the City outlining the numerous ways in which the City’s conditional use permit
23 requirement violated state law. The NOV found that the City “failed to act consistent with
24 Government Code sections 65008 and 65583 in applying standards to the approval of the Project
25 that are not applied to other residential dwellings of the same type in the same zone.” A true and
26 correct copy of the December 14, 2021 NOV is attached hereto as **Exhibit B**.

27 60. The December 14, 2021 NOV also found that the City Council imposed barriers to
28 transitional and supportive housing seemingly based on protected characteristics when it “applied

1 extraordinary scrutiny not applied for any other home and other occupants of single-family homes
2 in the City.”

3 61. The NOV further found that in denying the Project, the City failed to implement
4 multiple Goals, Policies and Programs of the City’s housing element, and outlined ten specific
5 violations of state Housing Element Law. The NOV explained that the law required the City to
6 allow the Project the ability to operate without delay.

7 62. The NOV further noted that the City was in violation of Housing Element Law
8 because of its failure to adopt a legally sufficient plan to meet the City’s fair share of the regional
9 need for housing.

10 **B. The City’s Response to HCD’s Notice of Violation**

11 63. The City responded to HCD’s NOV on January 28, 2022 (“Response Letter”). The
12 Response Letter is attached as **Exhibit C**. In the Response Letter, the City noted that its Fifth
13 Cycle Housing Element asserted that state law allows for a distinction between transitional
14 housing projects of six or fewer residents versus those of seven or more residents, without citing a
15 legal basis for this assertion. (Ex. C., Response Letter, p. 2.) The City’s Response Letter did not
16 deny that its denial of a conditional use permit for the Project violated state law.

17 **C. The Meetings Pursuant to Government Code § 65585, subd. (k).**

18 64. Pursuant to statute (§ 65585, subd. (k)), HCD and the City held two follow-up meetings
19 via videoconference to discuss the City’s alleged violations of Housing Element Law. These
20 meetings occurred on March 4, 2022, and March 24, 2022. In addition, HCD and the City held one
21 additional meeting on May 10, 2022. The City did not agree to meet HCD’s demands to (1) amend
22 the City’s zoning code to bring the City’s permitting requirements for transitional and supportive
23 housing into compliance with state housing laws and (2) allow Petitioner’s transitional housing
24 project to operate as planned without further delay.

25 65. HCD sent a findings letter to the City after holding the meetings, dated May 12, 2022
26 (Findings Letter). The Findings Letter advised the City that it had violated and continued to violate
27 state law through its permitting processes for transitional and supportive housing and its denial of a
28 conditional use permit for the Project. Specifically, HCD explained that the City was in violation of:

- Housing Element Law, Government Code § 65580 *et seq.*, because the City requires conditional use permits for transitional and supportive housing in single-family dwellings, despite not requiring conditional use permits for other single-family dwellings in the same zone; because the City denied the Project; and, because the City did not implement its goals, policies, and programs in its Fifth Cycle Housing Element;
- Government Code section 65008, because the conditional use requirement for transitional and supportive housing, the City’s failure to remove this requirement from the zoning code, and the denial of the Project each have the purpose and effect of discriminating against people with disabilities and those with very low or low incomes;
- The State’s requirement to affirmatively further fair housing by failing to promote housing opportunities for people with disabilities and those with very low or low incomes; and
- The Housing Accountability Act, Government Code section 65589.5, because the City denied the Project without meeting the criteria established under that statute.

The Findings Letter is attached as **Exhibit D**.

66. Based on, among other things, the City’s ongoing violations, HCD’s unsuccessful efforts to obtain the City’s voluntary compliance, and HCD’s responsibility to enforce state housing law, HCD seeks to intervene in this pending action.

FIRST CAUSE OF ACTION

Petition for Writ of Mandate – Violation of Housing Element Law Unlawful Imposition of Special Restrictions on Transitional Housing (Code Civ. Proc., §§ 526, 1085, 1094.5; Gov. Code, §§ 65751, 65583, subd. (c)(3), 65585.)

67. HCD re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

68. For the reasons HCD specifically explained to the City in, among other things, HCD’s May 3, 2021 letter, HCD’s email communications with the City, HCD’s December 14, 2021 NOV, and HCD’s May 12, 2022 Findings Letter, the City’s insistence on requiring a conditional use permit for the Project violated Housing Element Law.

69. Housing Element Law requires the City to “[a]ddress and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities.” (§ 65583, subd. (c)(3).)

70. More specifically, Housing Element Law provides that “[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.” (§ 65583, subd. (c)(3).) The Project is a transitional housing project located in a single-family dwelling in the City’s RS-1 residential zoning district. The City applies its code such that, if a single-family dwelling does not provide transitional or supportive housing, the City does not require a conditional use permit or other discretionary approval. Therefore, transitional and supportive housing projects that occupy a single-family dwelling cannot be compelled to apply for a conditional use permit.

71. Despite this, the City insisted that Petitioner must obtain a conditional use permit and then denied Petitioner's request for this permit. These actions violated section 65583, subdivision (c)(3) of the Government Code.

72. In undertaking these actions (and failing to act), the City failed to substantially comply with Housing Element Law.

73. The law specifically gives HCD the responsibility to review the City's actions for compliance with Housing Element Law and to seek redress for violations thereof. HCD is therefore entitled to a writ of mandate compelling the City to revise its Municipal Code to comply with Government Code section 65583, subdivision (c)(3).

SECOND CAUSE OF ACTION

**Petition for Writ of Mandate – Violation of Housing Accountability Act Improper Denial of Housing Development Project That Complies with Applicable Objective Criteria
(Code Civ. Proc., § 1094.5; Gov. Code, § 65589.5, subd. (j).)**

74. HCD re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

1 75. The City bears the burden of proof to demonstrate that it complied with the HAA.
2 (§ 65589.6.)

3 76. Under the HAA, the Project is a “housing development project” because the HAA
4 applies to dwellings, including “transitional or supportive housing.” (§ 65589.5, subd. (h)(2)(C).)

5 77. Under the HAA, the governing body of a city “disapproves” a housing development
6 project when it “[v]otes on a proposed housing development project application and the
7 application is disapproved, including any required land use approval or entitlements necessary for
8 the issuance of a building permit.” (§ 65589.5, subd. (h)(6)(A.) Thus, for the purposes of the
9 HAA, the City Council’s October 26, 2021 decision constituted a disapproval of the Project.

10 78. The Project complies with “applicable, objective general plan, zoning, and
11 subdivision standards and criteria, including design review standards, in effect at the time the
12 [Project’s] application [was] deemed complete[.]” (See § 65589.5, subd. (j)(1).) The Project so
13 complies because there is “substantial evidence that would allow a reasonable person to conclude”
14 that it complies. (*California Renters Legal Advocacy & Education Fund v. City of San Mateo*
15 (2021) 68 Cal.App.5th 820, 845 (citing § 65589.5, subd. (f)(4)).) And because the City did not
16 provide any written determination to the contrary within the applicable statutory deadline, the Project
17 is now deemed to satisfy all such standards as a matter of law. (§ 65589.5, subd. (j)(2)(B).)

18 79. Because the Project complied with the objective standards listed above, the HAA requires
19 the City to base its disapproval of the Project “upon written findings supported by a preponderance of
20 the evidence on the record” that both: “[t]he housing development project would have a specific,
21 adverse impact upon the public health or safety unless the project is disapproved . . .” and “[t]here is no
22 feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the disapproval of
23 the housing development project. . .” (§ 65589.5, subd. (j)(1)(A)-(B).)

24 80. “It is the intent of the Legislature that the conditions that would have a specific,
25 adverse impact upon the public health and safety . . . arise infrequently.” (§ 65589.5, subd.
26 (a)(3).) The City must find “a significant, quantifiable, direct, and unavoidable impact, based on
27 objective, identified written public health or safety standards, policies, or conditions as they
28 existed on the date the application was deemed complete.” (§ 65589.5, subd. (j)(1)(A).)

1 81. The City did not produce any written findings supported by a preponderance of
2 evidence on the record. Instead, the City’s resolution denying the project merely cited general
3 concerns about public health and safety that had no basis in “objective, identified written public
4 health or safety standards, policies, or conditions.” (See, § 65589.5, subd. (j)(1)(A).

5 82. To the extent the City’s resolution identified any specific public health or safety
6 standards with which the Project conflicts, the record also lacks a showing that there were no
7 feasible methods to mitigate those purported impacts. Indeed, the record fails to demonstrate that
8 the City even considered any measures to mitigate the Project’s impacts, to say nothing of
9 explaining why the City concluded none of these measures were feasible.

10 83. By rejecting the Project without making the proper findings required by section
11 65589.5, subdivision (j), the City has “not proceeded in the manner required by law.” (*Honchariw*
12 *v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1081.) The City did not make a valid
13 finding supported by a preponderance of the evidence that the Project would have “significant,
14 quantifiable, direct, and unavoidable impact, based on objective, identified written public health
15 or safety standards, policies, or conditions” that could not be mitigated in any way other than
16 disapproving the Project. (§ 65589.5, subd. (j)(1).)

17 84. “It is the policy of the state that . . . [the HAA] should be interpreted and
18 implemented in a manner to afford the fullest possible weight to the interest of, and the approval
19 and provision of, housing.” (§ 65589.5, subd. (a)(2)(L).) HCD is entitled to an order or judgment
20 compelling compliance with the HAA, including but not limited to an order that the City take
21 action to approve the Project. (§ 65589.5, subd. (k)(1)(A)(ii).) Further, by supporting disapproval
22 of the Project based on claims that are completely without merit and that fail to reflect the
23 Council’s true grounds for disapproving the Project, the City acted in “bad faith” as it is defined in
24 the HAA. (§ 65589.5, subds. (k)(1)(A)(ii), (l).)

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THIRD CAUSE OF ACTION
(Petition for Writ of Mandate – Violation of Planning & Zoning Law
Unlawful Discrimination
(Code Civ. Proc., §§ 1085; 1094.5; Gov. Code, § 65008.)

85. HCD re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

86. At all times relevant to this action, the City has been subject to clear, mandatory duties and prohibitions imposed by section 65008 of the Government Code.

87. Section 65008 of the Government Code makes “null and void” any local planning and zoning action that denies to any individual the enjoyment of residence, landownership, tenancy, or any other land use in this state because of intended occupancy of any dwelling by persons who have a disability or “persons or families of very low, low, moderate, or middle income.” (§ 65008, subds. (a)(1)(A) [referencing § 12955], (a)(3).)

88. Section 65008 of the Government Code also mandates that no city or county shall, in the enactment or administration of ordinances, including planning and land use ordinances, prohibit or discriminate against any dwelling or emergency shelter, because of the disability of the intended occupants of the housing, or because the housing is intended for occupancy by “persons or families of very low, low, moderate, or middle income.” (§ 65008, subd. (b)(1)(B)-(C).)

89. By adopting, publishing, applying, and imposing onerous requirements on housing a specific class of low-income residents; i.e., women with disabilities experiencing homelessness, the City violated section 65008. The City further violated section 65008 by erroneously and discriminatorily regarding these prospective residents as a health and safety hazard to justify its requirement then denial of the Project’s conditional use permit.

90. By the City’s acts and omissions alleged herein, including, without limitation, the improper requirement that Petitioner seek a conditional use permit for a transitional housing project for homeless disabled women in a zone that otherwise allows single-family residential uses by right, the City discriminated on the basis of a disability and against households intended for occupancy by individuals with very low, low or moderate income. In addition, the City discriminated against these protected characteristics by concluding that housing serving disabled

1 individuals was overly concentrated in the neighborhood of the proposed Project without any
2 factual basis to support that conclusion or to support the Project's denial.

3 91. In subjecting transitional housing to heightened scrutiny in violation of the
4 Government Code, based on the use and occupants of the home, the City has discriminated
5 against disabled women experiencing homelessness, in violation of section 65008 of the
6 Government Code.

7 92. The acts and omissions of the City alleged herein also have discriminatory effects on
8 disabled women experiencing homelessness, including a significant adverse and disparate impact
9 on persons with disabilities and persons with very low, low and moderate income. Further, any
10 stated justification for the City's acts and omissions could have been legitimately achieved through
11 less discriminatory alternatives.

12 93. The acts and omissions of the City alleged herein, including the City's refusal to
13 comply with HCD's Notice of Violation, predictably perpetuates segregated housing patterns on
14 the basis of disability and income status.

15 94. The City committed a prejudicial abuse of discretion because the City did not proceed
16 in the manner required by law. HCD is therefore entitled to a writ of mandate compelling
17 compliance with the law, including compelling the City to set aside its action requiring a
18 conditional use permit for the Project, and later disapproval of that conditional use permit, as "null
19 and void" acts taken in violation of the law. (§ 65008, subd. (a).)

20 **FOURTH CAUSE OF ACTION**

21 **(Petition for Writ of Mandate – Violation of Obligation to Affirmatively
Further Fair Housing)**

22 **(Code Civ. Proc., §§ 526, 1085; 1094.5; Gov. Code, §§ 8899.50, 65583, 65585.)**

23 95. HCD re-alleges and re-incorporates by reference all preceding allegations in their
24 entirety, as if fully set forth herein.

25 96. The City's mandatory AFFH duty requires it to take "meaningful actions, in addition
26 to combating discrimination, that overcome patterns of segregation and foster inclusive
27 communities free from barriers that restrict access to opportunity based on protected
28

characteristics.” (§ 8899.50, subd. (a)(1).) The City may not take any action “that is materially inconsistent with its obligation to affirmatively further fair housing.” (§ 8899.50, subd. (b)(1).)

97. Section 65583 also sets specific, mandatory AFFH duties for local land use policies and practices. (See, e.g., § 65583, subds. (c)(1), (c)(3), (c)(5), (c)(10)(A).) These include the City’s duty to “facilitate and encourage the development of a variety of housing types for all income levels, including . . . supportive . . . and transitional housing.” (*Id.* at subd. (c)(1).)

98. Protected classes for purposes of AFFH duties applicable to the City’s land use policies and practices include persons with disabilities and persons or families of very low, low, or moderate income. (See, e.g., §§ 65008, subds. (a)(1)(A), (a)(1)(B)(3), (b)(1)(B)(i), (b)(1)(C); 65583, subd. (c)(5).)

99. The City adopted, published, applied and imposed onerous requirements on housing for a protected class of residents, i.e. disabled women experiencing homelessness. In doing so, the City violated section 8899.50 by imposing permitting constraints that restrict housing opportunities and choices based on protected characteristics.

100. Rather than take meaningful action to affirmatively further fair housing, the City improperly and discriminatorily: (a) required Petitioner to seek a conditional use permit for a transitional housing project in a single-family residence for disabled individuals experiencing homelessness in a zone that otherwise allows single-family residential uses by right, and (b) denied Petitioner’s conditional use permit application. In so doing, the City violated its mandatory duty to affirmatively further housing intended for occupancy by disabled persons or by persons or families of very low, low, or moderate incomes.

101. Rather than take action to overcome patterns of segregation, the acts and omissions of the City alleged herein perpetuated segregated housing patterns on the basis of disability and income status.

102. And rather than promote and foster inclusive communities, the acts and omissions of the City alleged herein have had, and continue to have, a discriminatory effect on disabled women experiencing homelessness, including a significant adverse and disparate impact on persons with disabilities and persons with very low, low and moderate income. Further, any stated justification

1 for the City's acts and omissions could have been legitimately achieved through less discriminatory
2 alternatives.

3 103. By requiring a conditional use permit process and denying the Project, the City also
4 constrained housing opportunities and choices for disabled women experiencing homelessness,
5 whereas the City does not impose the same constraints on housing that serves people without
6 these characteristics. The City's practice of requiring conditional use permits for transitional
7 housing like the Project perpetuates patterns of segregation. It further denies housing
8 opportunities and choices to people with disabilities and very low, low, and moderate incomes
9 and to Petitioners and others who provide transitional, supportive, or other housing for residents
10 with these characteristics.

11 104. The City has a clear, ministerial duty to allow the Project in compliance with its duty
12 to affirmatively further fair housing.

13 105. As the requirement for and disapproval of the Project was materially inconsistent with
14 the City's mandatory AFFH duty, HCD is entitled to a writ of mandate and injunctive relief to
15 compel the performance of an act that the law specially requires. (See, e.g., §§ 8899.50, subd.
16 (b)(2), 65585, subd. (l) and Code Civ. Proc. § 526.)

17 106. HCD has no plain, speedy, or adequate remedy at law to enforce the City's
18 compliance with its mandatory AFFH duty.

19 **FIFTH CAUSE OF ACTION**

20 **(Petition for Writ of Mandate – Violation of Housing Element Law**
21 **Failure to Implement Housing Element Goals, Policies, and Programs)**
22 **(Code Civ. Proc., §§ 1085; Gov. Code, § 65580 *et seq.*)**

23 107. HCD re-alleges and re-incorporates by reference all preceding allegations in their
24 entirety, as if fully set forth herein.

25 108. At all times relevant to this action, the City has been subject to clear, mandatory
26 duties and prohibitions imposed by Government Code section 65580 *et. seq.*

27 109. For the reasons explained to the City in, among other things, HCD's May 3, 2021
28 Technical Advisory Letter, its email communications with the City, its December 14, 2021 Notice

1 of Violation, and the Findings Letter, the City’s insistence on requiring a conditional use permit for
2 the Project violated Housing Element Law.

3 110. Specifically, by denying the Project and by continuing to enforce its zoning code that
4 imposes constraints on transitional and supportive housing not applied to other dwellings of the
5 same type in the same zone, the City failed to implement the following goals, policies, and
6 programs of the City’s Housing Element:

7 ▪ **Housing Strategy Area, Housing Production:** “[E]stablishes policy actions
8 for the production of a range of rental and for-sale housing units in the City.”

9 ▪ **Housing Strategy Area, Affordable Housing Opportunity:** “[E]stablishes
10 policy actions for the establishment of affordable housing opportunity for all
11 segments of Anaheim’s populations.”

12 ▪ **Housing Production Strategy 1D – Encourage the Development of**
13 **Housing for Extremely-Low Income Households:** “Specific emphasis shall
14 be placed on the provision of extremely low income households by encouraging
15 the development of transitional living facilities, permanent special needs
16 housing, and senior housing.”

17 ▪ **Housing Production Strategy 1E – Encourage the Development of**
18 **Housing for Special Needs Households:** “The City shall continue to utilize
19 available incentives to encourage and support the development of rental
20 housing for special needs families within future affordable housing projects . . .
21 The City will coordinate with local developers and non-profit entities
22 specializing in housing for Special Needs residents to meet existing and future
23 housing needs.”

24 ▪ **Housing Production Strategy 1O - Accommodating Transitional and**
25 **Supportive Housing:** “[T]he City will amend the Municipal Code in
26 accordance with Government Code section 65583(a)(5) to consider transitional
27 housing and supportive housing as a residential use of property, subject only to
28

1 those development standards that apply to other residential dwellings of the
2 same type in the same zone . . ."
3 (Exhibit B, NOV, pp. 5-6.)

4 111. This final obligation in Strategy 1O was to be accomplished within one year of
5 housing element adoption. The housing element was adopted on February 4, 2014, and the City's
6 municipal code continues to violate the Government Code nearly eight years later, specifically
7 Government Code section 65583, subdivision (c)(3).

8 112. For the reasons explained in this Petition, the City failed to substantially comply with
9 its Housing Element and therefore violated Housing Element Law. Because the City did not
10 proceed in the manner required by law, HCD is entitled to a writ of mandate compelling
11 compliance with the law.

12 **SIXTH CAUSE OF ACTION**
13 **(Declaratory Relief)**
14 **(Code Civ. Proc. § 1060.)**

15 113. HCD incorporates by reference each and every allegation of the preceding
16 paragraphs.

17 114. There is a controversy between HCD and the City as to whether the City's actions of
18 requiring a conditional use permit for a transitional housing shelter in an RS-1 Zone and denying
19 Petitioner a permit for its Project violates California's Housing Element Law (§ 65580, *et seq.*),
20 the HAA (§ 65589.5), Government Code section 65008, and the requirement to Affirmatively
21 Further Fair Housing (§ 8899.50). Based on the events alleged in the preceding paragraphs, the
22 City is in violation of each of these state laws. Further, on information and belief, as well as the
23 events alleged in the preceding paragraphs, HCD alleges that the City is aware that it is out of
24 compliance and has failed to take any meaningful action to substantially comply.

25 115. It is necessary and appropriate for the Court to render a declaratory judgment that
26 sets forth the parties' legal rights and obligations with respect to whether the City has violated the
27 Housing Element Law (§ 65580, *et seq.*), the HAA (§ 65589.5), Government Code section 65008,
28 and the requirement to Affirmatively Further Fair Housing (§ 8899.50).

116. HCD therefore requests a declaration that the City's disapproval of the Project's permit is null and void, and further requests a declaration that to the extent the City's 2013 ordinance requires a conditional use permit for transitional or supportive housing proposed in a residential zone, such requirement is null and void. HCD further requests a declaration that the City requiring Petitioner to obtain a permit for the Project and denying that permit violated Housing Element Law (§ 65580, *et seq.*), the HAA (§ 65589.5), Government Code section 65008, and the requirement to Affirmatively Further Fair Housing (§ 8899.50).

PRAYER FOR RELIEF

WHEREFORE, HCD prays for relief as follows:

1. For the City's violation of the Housing Element Law, HCD is entitled to:
 - a. A judicial declaration that the City's conditional use permit requirement for transitional and supportive housing violates Housing Element Law.
 - b. A writ of mandate directing the City to allow Petitioner full use of the Project as transitional housing without the requirement to obtain a conditional use or other permit.
 - c. A writ of mandate directing the City to cease requiring conditional use or other permits for transitional and supportive housing that are not required for other dwellings of the same type in the same zone, as the requirement violates Government Code section 65583, subd. (c)(3).
 - d. An order enjoining the City from taking any further unlawful acts to constrain the Project or other transitional and supportive housing.
 - e. An order enjoining the City from taking any further unlawful acts that violate the Housing Element Law.
2. For the City's violation of the Housing Accountability Act, HCD is entitled to:
 - a. A writ of mandate directing the City to allow Petitioner full use of the Project as transitional housing without the requirement to obtain a conditional use or other permit.

- 1 b. Alternatively, an order or judgment directing the City to take action on the
- 2 Project that complies with the Housing Accountability Act.
- 3 c. A judicial declaration that the City’s requirement of a conditional use permit
- 4 for the Project and denial of the permit violated the Housing Accountability
- 5 Act.
- 6 d. An order enjoining the City from taking any further unlawful acts to
- 7 constrain the Project or other transitional and supportive housing.
- 8 e. An order enjoining the City from taking any unlawful acts that violate the
- 9 Housing Accountability Act.

10 3. For the City’s violation of Government Code sections 8899.50 and 65583, subds.
11 (c)(1), (c)(3), (c)(5), and (c)(10)(A), HCD is entitled to:

- 12 a. A writ of mandate directing the City to allow Petitioner full use of the
- 13 Project as transitional housing, as the disapproval of the Project was
- 14 materially inconsistent with the City’s AFFH duty.
- 15 b. A judicial declaration that the City’s conditional use permit requirement for
- 16 transitional and supportive housing has violated its AFFH duty.
- 17 c. An order enjoining the City from taking any further unlawful acts that
- 18 require conditional use or other permits for transitional and supportive
- 19 housing in violation of the City’s duty to affirmatively further fair housing.
- 20 d. An order enjoining the City from taking any other unlawful acts that violate
- 21 its duty to affirmatively further fair housing.

22 4. For the City’s violation of Government Code section 65008, HCD is entitled to:

- 23 a. A writ of mandate directing the City to allow Petitioner’s full use of the
- 24 Project as transitional housing, as the City’s disapproval of the Project was
- 25 materially inconsistent with section 65008.
- 26 b. A judicial declaration that the City’s requirement and application of its
- 27 permit requirements for the Project and any other transitional and supportive
- 28 housing are null and void.

- 1 c. An order enjoining the City from taking any further unlawful acts to require
2 conditional use or other permit requirements for transitional and supportive
3 housing that violate section 65008.
- 4 d. An order enjoining the City from taking any further unlawful acts that
5 discriminate against housing for persons with disabilities or persons and
6 families of very low, low and moderate income, in violation of section
7 65008.
- 8 5. For the City's failure to implement Housing Element goals, policies, and programs,
9 HCD is entitled to:
- 10 a. A judicial declaration that the City has failed to implement numerous goals,
11 policies, and programs of its Fifth Cycle Housing Element through its
12 conditional use permit requirement for transitional and supportive housing
13 and is thus in violation of Housing Element law.
- 14 b. A finding that the City's implementation of its Fifth Cycle Housing Element
15 has not substantially complied with the requirements of Article 5
16 (commencing with section 65300).
- 17 6. Any and all remedies available under section 65755.
- 18 7. Any and all remedies available under section 65585.
- 19 8. For a declaratory judgment pursuant to Code of Civil Procedure section 1060.
- 20 9. For the Court to maintain continuing jurisdiction to ensure that the City complies with
21 the Court's order and with state law.
- 22 10. For reasonable attorneys' fees and costs of suit as permitted by law.
- 23 ///
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1 11. For any applicable statutory fines and penalties, including but not limited to levies
2 imposed by this Court pursuant to section 65585, subdivision (l).

3 12. Any other such relief this Court deems may be just and proper.
4

5 Dated: October 3, 2022

Respectfully submitted,

6 ROB BONTA
7 Attorney General of California

8 

9
10 NORMA N. FRANKLIN
11 Deputy Attorney General
12 *Attorneys for Petitioner and Plaintiff in*
13 *Intervention California Department of*
14 *Housing and Community Development*
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EXHIBIT A
TO PETITION

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



May 3, 2021

Niki Wetzel, Deputy Director
Planning and Services Division
Planning and Building Department
City of Anaheim
200 S. Anaheim Boulevard, Suite 162
Anaheim, CA 92805

RE: City of Anaheim Approach to Community Care Facilities and Sober Living Homes – Letter of Technical Assistance

Dear Niki Wetzel:

The California Department of Housing and Community Development (HCD) has reviewed the City of Anaheim's (City's) land-use regulations set out in Municipal Code sections 18.16.058 (Community Care Facilities-Unlicensed (Small) and Sober Living Homes (Small)) and 18.38.123 (Community Care Facilities-Unlicensed and Sober Living Homes) (Municipal Code) as well as the City's proposed Zoning Code Amendment 2021-00176 (DEV2021-00027) (Zoning Code Amendment) pursuant to Government Code sections 65585 and 65008, the latter of which prohibits discrimination in land use.

In support of its review, HCD held a call with City staff on March 23, 2021, to discuss HCD's concerns that the City's Municipal Code and its proposed Zoning Code Amendment potentially conflict with statutory prohibitions on discrimination in land use (Gov. Code, § 65580) by imposing separate, more onerous requirements on housing for a protected class, limiting the use and enjoyment of their homes, and jeopardizing the financial feasibility of group homes, which the City refers to as "community care facilities-unlicensed" and "sober living homes." During the call, City staff requested a letter of technical assistance to assist and inform its City Council regarding the potential impacts their decisions have surrounding these issues. HCD provides the following technical assistance pursuant to that request.

Background Information: California's Planning and Zoning Law Prohibits Discrimination.

California's Planning and Zoning Law (Gov. Code, § 65000 et al.) prohibits jurisdictions from engaging in discriminatory land use and planning activities. Specifically, Government Code section 65008, subdivision (a), deems any action taken by a city or

county 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 illegal discrimination. Under the law, it is illegal to discriminate based on 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 (including individuals in recovery for drug or alcohol abuse, whether or not they are actively seeking recovery assistance), veteran or military status, or genetic information.

The law further recites multiple categories of actions that are determined to be discriminatory, including:

- Enactment or administration of ordinances pursuant to any law that prohibits or discriminates against a protected class (Gov. Code, § 65008, subd. (b)(1)(B));
- Enactment or administration of ordinances pursuant to any law that prohibits or discriminates against residential developments because they are “intended for occupancy by persons and families of very low, low, or moderate income, ... or persons and families of middle income” (Gov. Code, § 65008, subds. (a)(3) and (b)(1)(C)); and
- Imposition of different requirements on a residential use by a protected class or by persons of very low, low, moderate, or middle income, other than those generally imposed upon other residential uses. (Gov. Code, § 65008, subd. (d)(2)(A).)

Proposed Zoning Code Amendment 2021-00176 (DEV2021-00027) Potentially Discriminates

Recitals in the draft Ordinance for Zoning Code Amendment 2021-00176 include statements that are potentially concerning. The recital notes “continuous resident complaints regarding quasi-residential facilities expressing concerns such as overcrowding, parking, noise, and loitering”; the need to “preserve the character of single-family residential neighborhoods”; and the desire to “provide an accommodation for disabled persons that is reasonable and actually bears some resemblance to the opportunities afforded non-disabled individuals”. The proposed solution to these recited concerns is to regulate Community Care Facilities-Unlicensed and Sober Living Homes, and to require additional distancing requirements between Community Care Facilities-Unlicensed and Sober Living Homes as well as impose additional distancing requirements from residential uses that are deemed “quasi-residential”. The City considers the following residential uses to be quasi-residential:

- Community Care Facilities, regardless of size, both licensed and unlicensed
- Sober Living Homes, regardless of size
- Senior Living Facilities, regardless of size
- Transitional Housing (Large)

- Supportive Housing (Large)
- Short-Term Rental Units (although these are not the subject of these regulations, their impacts are cited as part of the justification for these regulations).

The proposed Zoning Code Amendment is problematic for the following reasons:

- 1) These restrictions lump together various living arrangements for regulation, such as large, licensed community care facilities, with residential homes occupied by individuals or groups of individuals, based only on protected characteristic without explanation, analysis, or data to justify doing so. In fact, the only characteristic that they appear to have in common is that they are occupied by persons with disabilities, a fact that is concerning.
- 2) There are no similar restrictions on non-disabled persons. (Gov. Code, § 65008, subd. (d)(2)(A).)
- 3) Regulation of cars, traffic, noise, loitering, and overcrowding can be administered directly through the City's existing laws. This approach applies universally and does not discriminate against persons with disabilities or persons or families with very low, low, moderate, or middle household incomes.
 - a. Population density can be regulated by reference to floor space and facilities.
 - b. Noise and morality can be regulated by enforcement of police power ordinances and criminal statutes.
 - c. Traffic and parking can be regulated by limitations on the number of cars (and applied evenly to all households) and by off-street parking requirements.¹
- 4) Citywide implementation of distancing requirements threatens the capacity to facilitate a sufficient number of facilities to meet the special needs of the City's residents who require residing in Community Care Facilities and Sober Living Homes.

Existing requirements for Sober Living and Community Care Facilities severely restrict the sites in which they can be located. However, Community Care Facilities may not be located within 300 feet of another Community Care Facility or 800 feet of a Sober Living Home. Sober Living Homes may not be located within 800 feet of another Sober Living Home. (Municipal Code § 18.38.123.020.0205.) Proposed amendments would further, substantially restrict the locations for such residences. In particular, it would extend these kinds of restrictions to preclude Sober Living and Community Care Facilities near senior living facilities, transitional housing, supportive housing, and short-term rentals.

¹ As the Supreme Court explained in *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133: "In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users."

The draft Zoning Code Amendment cites records from the California Department of Social Services dated May 28, 2020, that “show more than 100 state-licensed community care facilities for adults and the elderly are located in the City and that the City is home to 15 licensed and/or certified alcoholism and drug abuse recovery or treatment facilities providing 205 beds.” Since Anaheim’s population is roughly 350,000 persons, and the City’s housing element cites 26,240 persons with disabilities currently residing in the City (2011 ACS, S1810), existing facilities appear to fall short of meeting the need. The Zoning Code Amendment creates additional barriers for persons with disabilities to obtain housing.

The City should treat Group Homes as comparable to any other residence to satisfy the goal to accommodate and integrate persons with disabilities in all communities. The proposed Zoning Code Amendment is an excessive regulation that fails to achieve the expressed intent of “restrict[ing] residential zones to specified types of uses deemed compatible” or “preserv[ing] the character of single-family residential neighborhoods”.

- 5) Transitional and supportive housing regardless of size are by law “residential uses,” not quasi-residential, and may only be subject to the restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (c)(3).) Under state law, for instance, if the transitional or supportive housing is located in a single-family home, 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. Likewise, unless all single-family homes are subject to an operator’s permit, such a permit cannot be required for transitional and supportive housing.²
- 6) Community Care Facilities and Sober Living Homes with current distancing less than the proposed requirement are “grandfathered in” only under limited circumstances.
- 7) Under certain circumstances, the grandfathered distancing exemption can be revoked, thus reducing the City’s ability to provide much needed housing and undermining the purpose of grandfathering.
- 8) Persons residing in Community Care Facilities and Sober Living Homes are disabled and generally lower income. Implementing constraints to providing these types of housing opportunities could have the effect of increasing the City’s homeless population and thwarting efforts to house the homeless.

² Note that some Community Care Facilities, Sober Living Homes, and Senior Living Facilities may also qualify as Transitional or Supportive Housing. The City’s ordinance should recognize this and acknowledge that when they do so, the rules for transitional and supportive housing would control under Government Code section 65583.

- 9) The City's obligation is to provide equal opportunities in housing to persons with disabilities as are provided to those without disabilities, not to merely provide opportunities that "bear some resemblance" to the opportunities offered to non-disabled persons. (Gov. Code, § 65008, subd. (d)(2)(A).)

Existing Municipal Code Sections 18.16.058 and 18.38.123 Potentially Discriminate

HCD is concerned about Municipal Code sections 18.16.058 and 18.38.123. Although the requirements seek to address the "adverse impacts" of various group homes arrangements, these kinds of ordinances—calling out protected classes for specific regulatory action based on concerns of this nature—can result in significant barriers to housing for persons with disabilities in a way that a more generalized regulatory response, targeting actions or impacts rather than persons, would not.³

Existing Municipal Code is problematic for the following reasons:

- 1) *Municipal Code requires a discriminatory permitting process for Community Care Facilities and Sober Living Homes. (Municipal Code section 18.16.058)*

The Municipal Code requires an onerous permit and registration process for Community Care Homes and Sober Living Homes—including registration with the Orange County Sheriff's Department and compliance with "certification" guidelines crafted for those who are being monitored through the criminal justice system. This onerous and intrusive permit process is not applied in a non-discriminatory manner to all residential uses, and, as such, is a violation of Government Code section 65008, subdivision (d)(2). The City should treat Community Care Facilities and Sober Living Homes as comparable to any other residence to satisfy the goal to accommodate and integrate persons with disabilities in all communities. The Fair Housing Act (FHA) also prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled.⁴ Government Code section 65008, subdivision (d)(2)(A), prohibits imposition of different requirements on a residence intended for occupancy by a protected class or by persons of very low, low, moderate, or middle income, other than those generally imposed upon other residences.

³ See, e.g., Brian J. Connolly and Dwight H. Merrian, Planning and Zoning for Group Homes: Local Government Obligations.

⁴ See, e.g., United States Department of Justice and United States Department of Housing and Urban Development, Joint Statement: Local Land Use Laws and Practices and the Application of the Fair Housing Act (November 10, 2016) ("Joint Statement"), p. 4 ("A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Fair Housing Act because it treats persons with disabilities differently based on their disability"); see also *Oconomowoc Residential Programs, Inc. v. City of Milwaukee* (7th Cir. 2002) 300 F.3d 775, 783.

2) *The Municipal Code applies to both existing and future Community Care Facilities and Sober Living Homes. (Municipal Code section 18.16.058.040.090)*

The Municipal Code requires facilities existing prior to the effective date of regulations to apply for the Operator's Registration or Operator's Permit within 180 days of the effective date of the regulations. It is questionable whether the retroactive application of the ordinance in this manner is constitutional. The courts have instructed, "If the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid"⁵ and "The rights of users of property as those rights existed at the time of adoption of a zoning ordinance are well recognized and have always been protected."⁶ For this reason, zoning ordinances typically exempt existing uses from new zoning regulations.

3) *The Municipal Code requires a 24-hour house manager. (Municipal Code section 18.38.123.020.0203)*

The Municipal Code requires Community Care Facilities and Sober Living Homes to have a house manager reside on site or any number of persons acting as a house manager who are present at the facility on a 24-hour basis or who will be available 24-hours per day, seven days per week to physically respond within 45 minutes. Residents are frequently persons of very low- or low-income and are disabled. The house manager requirement creates a financial hardship on the residents as the additional costs create an additional expense for the residents.

The requirement to have a house manager effectively mandates an "institutional" arrangement that is not "on par with" housing policies for those who are not disabled in conflict with the FHA.⁷ It is hugely intrusive in that it interferes with the residents' freedom to live with persons of their choice, and adds significant additional expense, both problematic under notions of fair housing. (Gov. Code, § 65008.)

4) *The Municipal Code limits occupancy to residents who are handicapped. (Municipal Code section 18.16.058.040.0401.02)*

Under the Municipal Code, an Operator's Registration and an Operator's Permit application shall be denied or revoked for multiple reasons, including accepting residents, other than a housing manager or staff, who are not handicapped as defined in the FHA and FEHA.

⁵ *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 551-552.

⁶ *Edmonds v. Los Angeles County* (1953) 40 Cal.2d 642, 651.

⁷ *Oconomowoc Residential Programs, supra*, 300 F.3d at p. 783.

In limiting residence in this way, the Municipal Code impermissibly discriminates on the bases of familial status. (See Gov. Code, § 12955, subd. (I).) The Municipal Code prohibits any residents that are not “handicapped,” which means that Community Care Facilities and Sober Living Homes designed for families are effectively prohibited in the City because these requirements would prevent families, including non-disabled spouses and small children, from residing in the residence. In the context of a Sober Living Home, this prohibition would also effectively preclude sober living arrangements for nursing mothers, mothers of infants or small children, and parents endeavoring to reunify with children after recovery. This restriction effectively mandates an “institutional” arrangement that is not “on par with” housing policies for those who are not disabled in conflict with the FHA.⁸

- 5) *Sober Living Homes require residents to be actively participating in legitimate recovery program. (Municipal Code sections 18.16.058.040.0401.04 and 18.38.123.020.0210.01)*

The Municipal Code contains a requirement for active participation of all residents in a legitimate recovery program located off-site and cites an Operator’s Registration and an Operator’s Permit application shall be denied or revoked for failing to take measures to remove any resident of a Sober Living Home who is not actively participating in a legitimate recovery program from contact with all other sober residents.

Disability rights laws apply not only to individuals with histories of drug addiction or alcoholism who are currently participating in recovery programs, but also those who have completed those programs or who are “erroneously regarded as using drugs when in fact they are not.”⁹ Additionally, state or local zoning and land use ordinances may not, consistent with the FHA, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate.¹⁰

By precluding persons who are not currently participating in established recovery programs, the Municipal Code discriminates based upon disability. Further, the enforcement of such a provision may unconstitutionally intrude into the privacy interests of disabled persons if it forces residents to provide records to the City as part of its land-use enforcement efforts.¹¹

⁸ *Oconomowoc Residential Programs*, *supra*, 300 F.3d at p. 783.

⁹ *Hernandez v. Hughes Missile System Co.* (9th Cir. 2004) 362 F.3d 564, 568.

¹⁰ Joint Statement, *supra* note 4, p. 13.

¹¹ See, e.g., Cal. Const. art. 1, § 1.

6) *Other regulations imposing different requirements on Community Care Facilities and Sober Living Homes than are imposed on other residential uses.*

- All facilities shall have a good neighbor policy, which directs residents to be considerate of neighbors, including refraining from engaging in excessively loud, profane, or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. (Municipal Code § 18.38.123.020.0209.03)
- All garages, driveways, and/or assigned parking spaces associated with the facility shall be available for the parking of vehicles at all times. (Municipal Code § 18.38.123.020.0204.01)
- The facility shall not be located in an Accessory Dwelling Unit unless the primary dwelling unit is used for the same purpose. Residents of all units on a parcel will be combined to determine the total number of residents. (Municipal Code § 18.38.123.0201 and 0202)
- Existing, as well as proposed separation requirements. Existing requirements state Sober Living Homes shall not be located within 800 feet of other Sober Living Homes or Alcoholism or Drug Abuse Recovery or Treatment Facilities. Proposed amendments are address earlier in this correspondence. (Municipal Code § 18.38.123.020.0205)

None of the requirements outlined above apply universally to all residential uses in the City. The requirements were crafted explicitly to target a specific population—persons with disabilities and most likely persons with low-incomes. These populations are legally protected from such actions.

7) *Other regulations imposing different requirements on Sober Living Homes than are imposed on other residential uses.*

- A Sober Living Home shall have a visitation policy that precludes any visitors who are under the influence of any drug or alcohol. (Municipal Code § 18.38.123.020.0210.02)
- A Sober Living Home shall have a controlled substance policy, which, at a minimum, states the prohibition of the use of any alcohol or any non-prescription drugs at the facility or by any resident either on- or off-site. (Municipal Code § 18.38.123.020.0210.03)

None of the requirements outlined above apply universally to all residential uses in the City. The requirements were crafted explicitly to target a specific population – persons with disabilities and most likely persons with low-incomes. These populations are legally protected from such actions.

Community Care Facilities and Sober Living Home requirements may conflict with housing element policies and programs

HCD reminds the City that its decisions and actions must align with, and not contradict, the policies, principles, and strategies included in its current 5th cycle housing element. Community Care Facilities and Sober Living Home requirements may conflict with or fail to implement multiple provisions of the City's general plan housing element, including:

- Policy Consideration 5.0: Affordable Housing Opportunities for Anaheim Residents
- Policy Consideration 7.0: Housing Availability and Affordability
- 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.
- Guiding Principle C: Persons with special housing needs should have access to a variety of housing choices that are integrated within the community.
- Housing Production Strategy 1D: Encourage the Development of Housing for Extremely-Low-Income Households
- Housing Production Strategy 1E: Encourage the Development of Housing for Special Needs Households
- Housing Quality and Design Strategy 3B: Monitoring of Adopted Reasonable Accommodation Procedures
- Affordable Housing Opportunity Strategy 5A: Local Support of Regional Fair Housing Efforts

Additionally, HCD reminds the City that its housing element update for the 6th cycle planning period is due October 15, 2021. While multiple laws require the element to analyze and include programs to mitigate potential governmental constraints, including constraints for persons with disabilities (Gov. Code § 65583, subds. (c)(3), (c)(5), (a)(5), and (a)(7)), new requirements surrounding the City's obligation to affirmatively further fair housing (Gov. Code § 65583, subd. (c)(10)) also apply. Implementation of discriminatory regulations not only violates Housing Element Law, it fails to allow the City to meet its obligation to affirmatively further fair housing pursuant to Government Code section 8899.50.

Conclusion

HCD reminds the City that California is experiencing a severe housing crisis and the availability of housing affordable to all income levels is of vital statewide importance. (Gov. Code § 65580.)

HCD has reviewed the City's municipal code and proposed amendments under Government Code section 65585. HCD's authority pursuant to Government Code

section 65585 extends to statutory prohibitions on discrimination in land use (Gov. Code, § 65008). HCD has found that the City's municipal code potentially discriminates against persons in protected classes and that adoption of Zoning Code Amendment No. 2021-00176 (DEV2021-0027) would amplify HCD's concerns. HCD recommends the City reject the Zoning Code Amendment and amend its current municipal code to ensure it adheres to the nondiscrimination requirements in Government Code section 65008.

Thank you for reaching out to HCD for this guidance. For technical assistance regarding the City's 6th cycle housing element update, please contact Marisa Prasse at Marisa.Prasse@hcd.ca.gov. If you have any questions or would like to discuss the content of this letter, please contact Robin Huntley at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West", is centered below the word "Sincerely,".

Shannan West
Land Use & Planning Unit Chief

**EXHIBIT B
TO PETITION**

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

2020 W. El Camino Avenue, Suite 500

Sacramento, CA 95833

(916) 263-2911 / FAX (916) 263-7453

www.hcd.ca.gov

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 stylized 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)).

**EXHIBIT C
TO PETITION**



City of Anaheim
OFFICE OF THE CITY MANAGER

January 28, 2022

Via email at David.Zisser@hcd.ca.gov

David Zisser, Assistant Deputy Director
Local Government Relations and Accountability
Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

Re: Notice of Violation dated December 14, 2021

Dear Assistant Deputy Director Zisser:

On December 14 2021, the City of Anaheim received the above-referenced Notice of Violation (NOV) stating that the Department of Housing and Community Development (HCD) has determined that the City has failed to implement goals, policies, and program actions included in its adopted 2014-2021 (5th cycle) housing element and failed to act consistent with Government Code sections 65008 and 65883 in connection with its processing of an application for a transitional housing facility for 21 individuals at 625 N. West Street and 945 W. Pioneer Drive, DEV2021-00122 (Project).

In response to your notice, please be advised that the City does not believe it has failed to implement the goals, policies and program actions included in its adopted 5th cycle housing element. In fact, the City's action with regard to the Project are consistent with its adopted 5th cycle housing element as certified by HCD in 2014. Further, the City has applied standards to transitional and supportive housing that are applied to other residential dwellings of the same type in the same zone.

Specifically, as to transitional housing, the 5th cycle housing element expressly identified the City's policy for the development of transitional housings as follows:

State law allows a distinction in the permitting requirements for certain residential uses in single-family homes based on whether there are six or fewer, or seven or more people served by the housing type. This size distinction currently exists in the City's Zoning Code for Residential and Group Care Facilities. Residential and Group Care Facilities provide 24-hour per day residential living accommodations in exchange for the payment of money or other consideration, where the duration of tenancy is determined, in whole or in part, by the individual resident's participation in group or individual activities, such as counseling, recovery planning, or medical or therapeutic assistance. Residential or Group Care Facilities include, but are not limited to, residential care facilities for persons with chronic, life-threatening illnesses, and alcoholism or drug abuse recovery or treatment facilities. Residential Care Facilities provide residential living accommodations for six or fewer persons and Group Care Facilities provide living accommodations for seven or more persons.

In single-family residential zones, the City permits Supportive and Transitional Housing for six or fewer people in the same manner as a single-family dwelling unit, consistent with the current provisions for a Residential Care Facility. If the use is for seven or more people, a conditional use permit is required, consistent with the requirement for a Group Care Facility. Supportive and Transitional Housing is permitted as a matter of right within multiple-family residential and mixed use zones, regardless of the number of persons the housing serves. (2014-2021 Housing Element, pp. 3-30, 3-33.)

By way of background, this policy was included in the 5th cycle housing element in furtherance of Senate Bill No. 2 (Reg. Sess. 2007-2008) (SB 2). The City had previously complied with the provisions of SB 2 relating to the siting of Emergency Shelters by adopting an ordinance in February 2012 that permitted emergency shelters by right in certain zones.

Because State law mandated that cities demonstrate compliance with SB 2 prior to State certification, the City Council adopted Ordinance No. 6289 concurrent with authorizing the transmittal of the draft 5th cycle housing element to HCD in September 2013. Ordinance No. 6289 was adopted with the express intent to amend the City's local regulations to facilitate transitional housing consistent with the policy set forth in the 5th cycle housing element and apply the same permitting approach for supportive and transitional housing uses in single-family residential zones that existed under State law. In its report to City Council, staff advised:

[F]acilities with six or fewer residents would be allowed by right while larger facilities would only be permitted subject to the approval of a conditional use permit. This approach would ensure that larger facilities proposed in single-family residential areas would be subject to Planning Commission review at a noticed public hearing. This hearing would provide the Commission with the opportunity to review compatibility with the surrounding neighborhood, and where appropriate, apply conditions to improve compatibility. State law does not allow cities to use the threshold of seven or more residents to require a conditional use permit in multiple-family residential zones. Therefore, the proposed Code Amendment would allow Supportive and Transitional Housing within multiple-family residential zones as a matter of right, regardless of the number of persons the housing would serve.

To be sure, the City adopted Ordinance No. 6289 for the stated purpose of submitting a compliant 5th cycle housing element to HCD, which was accomplished in October 2013. Upon its review in November 2013, HCD requested that the City "[a]dd a program to evaluate and revise as appropriate in compliance with SB 2." As a result of this request, the City included Housing Production Strategy 1-O in the draft 5th cycle housing element with the understanding that with Ordinance No. 6289 in effect, the City had complied with State law by subjecting transitional and supportive housing with more than seven persons to the same regulatory requirements as other residential uses of the same type.

Shortly thereafter, in December 2013, HCD notified the City that the draft 5th cycle housing element met the statutory requirements of State housing element law and commended the City. The City's 5th cycle

David Zisser
January 28, 2022
Page 3

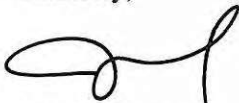
housing element was adopted by City Council in February 2014. Since its certification, the City has approved eight conditional use permits for transitional and supportive housing, which demonstrates that the City's regulations do not impede transitional or supportive housing categorically and are valid and enforceable. Until receipt of the NOV last December, the City was unaware that HCD had changed its position with respect to the "type" of residential uses, nor do we believe that such modification is warranted under the law.

For these reasons, the City's response to the NOV is to respectfully request that HCD reconsider its opinion that the City failed to implement goals, policies, and program actions included in its adopted 5th cycle housing element, failed to act consistent with State law, or failed to update its municipal code. The City implemented the goals, policies, and program actions that were previously certified by HCD. The City enacted Ordinance No. 6289 to implement these goals and policies, and the City's Housing Element was deemed to be consistent with State law in 2014. We are not aware of any change in State law since 2014 that requires a different conclusion.

As noted in your letter, the City's 6th cycle planning period began on October 15, 2021. In fact, the City received comments from HCD on December 14, 2021 (the same day you issued the NOV) and is currently evaluating and responding to the comments received. As you know, the process of housing element certification is lengthy, involves complex and technical drafting, public outreach, review and engagement, all cumulating in adoption by the City Council. The City of Anaheim is pushing forward with all effort to complete its 6th cycle housing element and anticipates submittal to HCD for certification in spring.

Be assured that the City will consider HCD's recently adopted position and the findings included in the NOV as it prepares to submit a 6th cycle housing element meeting all of the statutory requirements of State law.

Sincerely,



Jim Vanderpool
City Manager

cc: Robert Fabela, City Attorney
Ted White, Planning and Building Director
Robin Huntley, HCD Senior Housing Policy Specialist

EXHIBIT D
TO PETITION

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



May 12, 2022

James Vanderpool, City Manager
City of Anaheim
200 S. Anaheim Blvd. Suite 733
Anaheim, CA 92805

RE: Anaheim (Grandma's House of Hope) – Written Findings Pursuant to Government Code section 65585, subdivisions (j) and (k)

Dear James Vanderpool:

The California Department of Housing and Community Development (HCD) has offered, and held, two meetings with the City of Anaheim (City) as required under Government Code section 65585, subdivision (k). At the City's request, HCD also held a third meeting with the City. This letter's purpose is to update the City on HCD's findings after these meetings.

Background

On February 4, 2014, the City adopted its 5th cycle housing element, which included Housing Production Strategy 1O (Accommodating Transitional and Supportive Housing). This strategy committed the City to amend its Municipal Code to comply with state laws affecting transitional and supportive housing¹ within one year of adoption of the element. As of this letter's date, the City has not made this amendment.²

On May 3, 2021, HCD issued Anaheim a Letter of Technical Assistance: City of Anaheim Approach to Community Care Facilities and Sober Living Homes (TA Letter). One of the many compliance issues discussed in this letter was the City's unlawful treatment of transitional and supportive housing.³

On October 19, 2021, HCD spoke with Nick Taylor, Senior Planner, and subsequently sent an email to Taylor stating that the City improperly processed an application for transitional housing from Grandma's House of Hope (Grandma's House). The email stated, "The conditional use permit (CUP) requirement is inconsistent with state law, specifically Government Code section 65583, subdivision (c)(3)." The email also

¹ See, e.g., Government Code section 65583, subdivision (c)(3).

² As referenced in HCD's December 14, 2021 NOV, the housing element includes multiple Policy Considerations, Guiding Principles, Housing Strategy Areas, and Housing Production Strategies that the City has failed to implement as demonstrated by its denial of the Grandma's House of Hope project application.

³ TA Letter at p. 4. The TA Letter is attached, and its contents are incorporated into this letter.

provided a copy of Municipal Code section 18.04.030 demonstrating the City's inconsistency with state law.

On October 26, 2021, Anaheim's City Council voted unanimously to deny Grandma's House's appeal of the Planning Commission's denial of the transitional housing project.⁴

On December 14, 2021, HCD issued a Notice of Violation (NOV) to the City. The NOV is attached, and its contents are incorporated into this letter. HCD's NOV requested the City provide 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 with a timeline for adoption, and (2) allowing Grandma's House to move forward with its plans at 626 North West Street and 945 West Pioneer Drive without further delay.

On January 28, 2022, the City sent HCD a letter responding to the NOV. Anaheim disputed HCD's findings that the City had failed to implement goals, policies, and program actions in its 5th cycle housing element and asked HCD to reconsider these findings. However, the letter did not address HCD's findings that Anaheim's permitting requirements violated state law, and Anaheim did not agree to change its Municipal Code to comply with state law and did not include the corrective action plan that HCD requested in the NOV.

HCD met with the City on March 7 and 28, 2022. These meetings satisfied the requirements of Government Code section 65585, subdivision (k), which specifies that HCD offer to meet twice with a city before the California Office of the Attorney General (AG) files a civil action related to housing element compliance.⁵ At Anaheim officials' request, HCD met with the City again on May 10, 2022.

During these meetings, Anaheim conditionally proposed using its 6th cycle housing element process to amend its Municipal Code to eliminate its current CUP requirements for transitional and supportive housing. But the City said it would not implement this amendment until spring 2023 at the earliest and could not confirm that the City Council would approve any such proposed amendment.⁶ In addition, the City proposed unusual

⁴ City of Anaheim, Resolution No. 2021-100.

⁵ This requirement to offer two meetings does not apply to HCD's enforcement of other violations of state laws listed in subdivision (j). This letter summarizes some, but not all, of the topics that the City and HCD discussed in these March 2022 meetings.

⁶ HCD has separately provided guidance to the City about its draft 6th cycle housing element. Certification of a housing element is a separate process involving a variety of issues to determine if overall a housing element substantially complies with state law. As part of that process, HCD may advise Anaheim on a program the City may propose to bring its transitional and supportive housing zoning provisions into compliance. But a compliance program in the 6th cycle housing element to make Municipal Code amendments that should already have been completed during the 5th cycle, or at the very least promptly after receiving HCD's TA letter or NOV, does not relieve Anaheim of its obligations to immediately redress the violations discussed in this letter.

nullification conditions on its proposed Municipal Code amendment, which HCD suggested the City remove.

The City also did not provide a satisfactory explanation why it has not already amended its Municipal Code to bring it into compliance. The City could have done this in 2014, as it committed to do in its 5th cycle housing element. And the City could have promptly amended its Municipal Code in 2021 or early 2022 after HCD advised that the City was in violation of state law.

The City also stated that it would not reconsider its denial of the Grandma's House project.

Anaheim Has Violated and Continues to Violate State Law

Having considered, among other things, the City's responses in its letter and the three meetings, HCD finds that the City has violated and is continuing to violate state law through its permit policies for transitional and supportive housing and by its denial of the Grandma's House project. The City has violated:

- the Housing Element Law⁷ by: (1) requiring CUPs for transitional and supportive housing projects that are not required for other single-family dwellings in the same zone, (2) denying the Grandma's House project, and (3) failing to implement goals, policies, and programs in the City's 5th cycle housing element;
- the Land Use Discrimination Law⁸ with the purpose and effect of discriminating against persons with disabilities and persons with very low or low incomes by: (1) requiring CUPs for transitional and supportive housing projects that are not required for other single family dwellings in the same zone, (2) failing to amend its Municipal Code to remove this requirement, and (3) denying the Grandma's House project despite Planning Commission staff's recommendation to approve it and based on a record that shows the City unlawfully discriminated because the project is designed to house women with disabilities who had experienced homelessness;
- state law's affirmatively furthering fair housing provisions⁹ by failing to promote and affirmatively further housing opportunities for persons with disabilities and persons with very low or low incomes; and
- the Housing Accountability Act by denying a housing project without meeting the City's burden of establishing by a preponderance of the evidence one of the

⁷ Gov. Code, § 65580 et seq.

⁸ Gov. Code, § 65008.

⁹ See, e.g., Gov. Code §§ 8899.50, subd. (b); 65583, subds. (a)(5), (7), (c)(1), (5), (10)(A).

exceptions for this allowed by Government Code section 65589.5, subdivisions (d) and (j).

In light of Anaheim's failure to comply with HCD's requests that it abate all these violations, HCD is assessing what actions it will take, which may include referring this matter to the AG to bring a civil action to remedy these violations. If the City wants to continue meeting to discuss bringing it into compliance with state law, we are willing to continue our meetings, with the understanding that the meetings would not waive or forestall HCD's authority to refer this matter to the AG or the AG's authority to file a civil action.

If you wish to schedule another meeting or have any questions about this letter, please contact Robin Huntley at Robin.Huntley@hcd.ca.gov.

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosures

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

2020 W. El Camino Avenue, Suite 500

Sacramento, CA 95833

(916) 263-2911 / FAX (916) 263-7453

www.hcd.ca.gov

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 stylized 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)).

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

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May 3, 2021

Niki Wetzel, Deputy Director
Planning and Services Division
Planning and Building Department
City of Anaheim
200 S. Anaheim Boulevard, Suite 162
Anaheim, CA 92805

RE: City of Anaheim Approach to Community Care Facilities and Sober Living Homes – Letter of Technical Assistance

Dear Niki Wetzel:

The California Department of Housing and Community Development (HCD) has reviewed the City of Anaheim's (City's) land-use regulations set out in Municipal Code sections 18.16.058 (Community Care Facilities-Unlicensed (Small) and Sober Living Homes (Small)) and 18.38.123 (Community Care Facilities-Unlicensed and Sober Living Homes) (Municipal Code) as well as the City's proposed Zoning Code Amendment 2021-00176 (DEV2021-00027) (Zoning Code Amendment) pursuant to Government Code sections 65585 and 65008, the latter of which prohibits discrimination in land use.

In support of its review, HCD held a call with City staff on March 23, 2021, to discuss HCD's concerns that the City's Municipal Code and its proposed Zoning Code Amendment potentially conflict with statutory prohibitions on discrimination in land use (Gov. Code, § 65580) by imposing separate, more onerous requirements on housing for a protected class, limiting the use and enjoyment of their homes, and jeopardizing the financial feasibility of group homes, which the City refers to as "community care facilities-unlicensed" and "sober living homes." During the call, City staff requested a letter of technical assistance to assist and inform its City Council regarding the potential impacts their decisions have surrounding these issues. HCD provides the following technical assistance pursuant to that request.

Background Information: California's Planning and Zoning Law Prohibits Discrimination.

California's Planning and Zoning Law (Gov. Code, § 65000 et al.) prohibits jurisdictions from engaging in discriminatory land use and planning activities. Specifically, Government Code section 65008, subdivision (a), deems any action taken by a city or

county 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 illegal discrimination. Under the law, it is illegal to discriminate based on 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 (including individuals in recovery for drug or alcohol abuse, whether or not they are actively seeking recovery assistance), veteran or military status, or genetic information.

The law further recites multiple categories of actions that are determined to be discriminatory, including:

- Enactment or administration of ordinances pursuant to any law that prohibits or discriminates against a protected class (Gov. Code, § 65008, subd. (b)(1)(B));
- Enactment or administration of ordinances pursuant to any law that prohibits or discriminates against residential developments because they are "intended for occupancy by persons and families of very low, low, or moderate income, ... or persons and families of middle income" (Gov. Code, § 65008, subds. (a)(3) and (b)(1)(C)); and
- Imposition of different requirements on a residential use by a protected class or by persons of very low, low, moderate, or middle income, other than those generally imposed upon other residential uses. (Gov. Code, § 65008, subd. (d)(2)(A).)

Proposed Zoning Code Amendment 2021-00176 (DEV2021-00027) Potentially Discriminates

Recitals in the draft Ordinance for Zoning Code Amendment 2021-00176 include statements that are potentially concerning. The recital notes "continuous resident complaints regarding quasi-residential facilities expressing concerns such as overcrowding, parking, noise, and loitering"; the need to "preserve the character of single-family residential neighborhoods"; and the desire to "provide an accommodation for disabled persons that is reasonable and actually bears some resemblance to the opportunities afforded non-disabled individuals". The proposed solution to these recited concerns is to regulate Community Care Facilities-Unlicensed and Sober Living Homes, and to require additional distancing requirements between Community Care Facilities-Unlicensed and Sober Living Homes as well as impose additional distancing requirements from residential uses that are deemed "quasi-residential". The City considers the following residential uses to be quasi-residential:

- Community Care Facilities, regardless of size, both licensed and unlicensed
- Sober Living Homes, regardless of size
- Senior Living Facilities, regardless of size
- Transitional Housing (Large)

- Supportive Housing (Large)
- Short-Term Rental Units (although these are not the subject of these regulations, their impacts are cited as part of the justification for these regulations).

The proposed Zoning Code Amendment is problematic for the following reasons:

- 1) These restrictions lump together various living arrangements for regulation, such as large, licensed community care facilities, with residential homes occupied by individuals or groups of individuals, based only on protected characteristic without explanation, analysis, or data to justify doing so. In fact, the only characteristic that they appear to have in common is that they are occupied by persons with disabilities, a fact that is concerning.
- 2) There are no similar restrictions on non-disabled persons. (Gov. Code, § 65008, subd. (d)(2)(A).)
- 3) Regulation of cars, traffic, noise, loitering, and overcrowding can be administered directly through the City's existing laws. This approach applies universally and does not discriminate against persons with disabilities or persons or families with very low, low, moderate, or middle household incomes.
 - a. Population density can be regulated by reference to floor space and facilities.
 - b. Noise and morality can be regulated by enforcement of police power ordinances and criminal statutes.
 - c. Traffic and parking can be regulated by limitations on the number of cars (and applied evenly to all households) and by off-street parking requirements.¹
- 4) Citywide implementation of distancing requirements threatens the capacity to facilitate a sufficient number of facilities to meet the special needs of the City's residents who require residing in Community Care Facilities and Sober Living Homes.

Existing requirements for Sober Living and Community Care Facilities severely restrict the sites in which they can be located. However, Community Care Facilities may not be located within 300 feet of another Community Care Facility or 800 feet of a Sober Living Home. Sober Living Homes may not be located within 800 feet of another Sober Living Home. (Municipal Code § 18.38.123.020.0205.) Proposed amendments would further, substantially restrict the locations for such residences. In particular, it would extend these kinds of restrictions to preclude Sober Living and Community Care Facilities near senior living facilities, transitional housing, supportive housing, and short-term rentals.

¹ As the Supreme Court explained in *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133: "In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users."

The draft Zoning Code Amendment cites records from the California Department of Social Services dated May 28, 2020, that "show more than 100 state-licensed community care facilities for adults and the elderly are located in the City and that the City is home to 15 licensed and/or certified alcoholism and drug abuse recovery or treatment facilities providing 205 beds." Since Anaheim's population is roughly 350,000 persons, and the City's housing element cites 26,240 persons with disabilities currently residing in the City (2011 ACS, S1810), existing facilities appear to fall short of meeting the need. The Zoning Code Amendment creates additional barriers for persons with disabilities to obtain housing.

The City should treat Group Homes as comparable to any other residence to satisfy the goal to accommodate and integrate persons with disabilities in all communities. The proposed Zoning Code Amendment is an excessive regulation that fails to achieve the expressed intent of "restrict[ing] residential zones to specified types of uses deemed compatible" or "preserv[ing] the character of single-family residential neighborhoods".

- 5) Transitional and supportive housing regardless of size are by law "residential uses," not quasi-residential, and may only be subject to the restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (c)(3).) Under state law, for instance, if the transitional or supportive housing is located in a single-family home, 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. Likewise, unless all single-family homes are subject to an operator's permit, such a permit cannot be required for transitional and supportive housing.²
- 6) Community Care Facilities and Sober Living Homes with current distancing less than the proposed requirement are "grandfathered in" only under limited circumstances.
- 7) Under certain circumstances, the grandfathered distancing exemption can be revoked, thus reducing the City's ability to provide much needed housing and undermining the purpose of grandfathering.
- 8) Persons residing in Community Care Facilities and Sober Living Homes are disabled and generally lower income. Implementing constraints to providing these types of housing opportunities could have the effect of increasing the City's homeless population and thwarting efforts to house the homeless.

² Note that some Community Care Facilities, Sober Living Homes, and Senior Living Facilities may also qualify as Transitional or Supportive Housing. The City's ordinance should recognize this and acknowledge that when they do so, the rules for transitional and supportive housing would control under Government Code section 65583.

- 9) The City's obligation is to provide equal opportunities in housing to persons with disabilities as are provided to those without disabilities, not to merely provide opportunities that "bear some resemblance" to the opportunities offered to non-disabled persons. (Gov. Code, § 65008, subd. (d)(2)(A).)

Existing Municipal Code Sections 18.16.058 and 18.38.123 Potentially Discriminate

HCD is concerned about Municipal Code sections 18.16.058 and 18.38.123. Although the requirements seek to address the "adverse impacts" of various group homes arrangements, these kinds of ordinances—calling out protected classes for specific regulatory action based on concerns of this nature—can result in significant barriers to housing for persons with disabilities in a way that a more generalized regulatory response, targeting actions or impacts rather than persons, would not.³

Existing Municipal Code is problematic for the following reasons:

- 1) *Municipal Code requires a discriminatory permitting process for Community Care Facilities and Sober Living Homes. (Municipal Code section 18.16.058)*

The Municipal Code requires an onerous permit and registration process for Community Care Homes and Sober Living Homes—including registration with the Orange County Sheriff's Department and compliance with "certification" guidelines crafted for those who are being monitored through the criminal justice system. This onerous and intrusive permit process is not applied in a non-discriminatory manner to all residential uses, and, as such, is a violation of Government Code section 65008, subdivision (d)(2). The City should treat Community Care Facilities and Sober Living Homes as comparable to any other residence to satisfy the goal to accommodate and integrate persons with disabilities in all communities. The Fair Housing Act (FHA) also prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled.⁴ Government Code section 65008, subdivision (d)(2)(A), prohibits imposition of different requirements on a residence intended for occupancy by a protected class or by persons of very low, low, moderate, or middle income, other than those generally imposed upon other residences.

³ See, e.g., Brian J. Connolly and Dwight H. Merrian, Planning and Zoning for Group Homes: Local Government Obligations.

⁴ See, e.g., United States Department of Justice and United States Department of Housing and Urban Development, Joint Statement: Local Land Use Laws and Practices and the Application of the Fair Housing Act (November 10, 2016) ("Joint Statement"), p. 4 ("A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Fair Housing Act because it treats persons with disabilities differently based on their disability"); see also *Oconomowoc Residential Programs, Inc. v. City of Milwaukee* (7th Cir. 2002) 300 F.3d 775, 783.

2) *The Municipal Code applies to both existing and future Community Care Facilities and Sober Living Homes. (Municipal Code section 18.16.058.040.090)*

The Municipal Code requires facilities existing prior to the effective date of regulations to apply for the Operator's Registration or Operator's Permit within 180 days of the effective date of the regulations. It is questionable whether the retroactive application of the ordinance in this manner is constitutional. The courts have instructed, "If the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid"⁵ and "The rights of users of property as those rights existed at the time of adoption of a zoning ordinance are well recognized and have always been protected."⁶ For this reason, zoning ordinances typically exempt existing uses from new zoning regulations.

3) *The Municipal Code requires a 24-hour house manager. (Municipal Code section 18.38.123.020.0203)*

The Municipal Code requires Community Care Facilities and Sober Living Homes to have a house manager reside on site or any number of persons acting as a house manager who are present at the facility on a 24-hour basis or who will be available 24-hours per day, seven days per week to physically respond within 45 minutes. Residents are frequently persons of very low- or low-income and are disabled. The house manager requirement creates a financial hardship on the residents as the additional costs create an additional expense for the residents.

The requirement to have a house manager effectively mandates an "institutional" arrangement that is not "on par with" housing policies for those who are not disabled in conflict with the FHA.⁷ It is hugely intrusive in that it interferes with the residents' freedom to live with persons of their choice, and adds significant additional expense, both problematic under notions of fair housing. (Gov. Code, § 65008.)

4) *The Municipal Code limits occupancy to residents who are handicapped. (Municipal Code section 18.16.058.040.0401.02)*

Under the Municipal Code, an Operator's Registration and an Operator's Permit application shall be denied or revoked for multiple reasons, including accepting residents, other than a housing manager or staff, who are not handicapped as defined in the FHA and FEHA.

⁵ *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 551-552.

⁶ *Edmonds v. Los Angeles County* (1953) 40 Cal.2d 642, 651.

⁷ *Oconomowoc Residential Programs, supra*, 300 F.3d at p. 783.

In limiting residence in this way, the Municipal Code impermissibly discriminates on the bases of familial status. (See Gov. Code, § 12955, subd. (l).) The Municipal Code prohibits any residents that are not "handicapped," which means that Community Care Facilities and Sober Living Homes designed for families are effectively prohibited in the City because these requirements would prevent families, including non-disabled spouses and small children, from residing in the residence. In the context of a Sober Living Home, this prohibition would also effectively preclude sober living arrangements for nursing mothers, mothers of infants or small children, and parents endeavoring to reunify with children after recovery. This restriction effectively mandates an "institutional" arrangement that is not "on par with" housing policies for those who are not disabled in conflict with the FHA.⁸

- 5) *Sober Living Homes require residents to be actively participating in legitimate recovery program. (Municipal Code sections 18.16.058.040.0401.04 and 18.38.123.020.0210.01)*

The Municipal Code contains a requirement for active participation of all residents in a legitimate recovery program located off-site and cites an Operator's Registration and an Operator's Permit application shall be denied or revoked for failing to take measures to remove any resident of a Sober Living Home who is not actively participating in a legitimate recovery program from contact with all other sober residents.

Disability rights laws apply not only to individuals with histories of drug addiction or alcoholism who are currently participating in recovery programs, but also those who have completed those programs or who are "erroneously regarded as using drugs when in fact they are not."⁹ Additionally, state or local zoning and land use ordinances may not, consistent with the FHA, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate.¹⁰

By precluding persons who are not currently participating in established recovery programs, the Municipal Code discriminates based upon disability. Further, the enforcement of such a provision may unconstitutionally intrude into the privacy interests of disabled persons if it forces residents to provide records to the City as part of its land-use enforcement efforts.¹¹

⁸ *Oconomowoc Residential Programs*, *supra*, 300 F.3d at p. 783.

⁹ *Hernandez v. Hughes Missile System Co.* (9th Cir. 2004) 362 F.3d 564, 568.

¹⁰ Joint Statement, *supra* note 4, p. 13.

¹¹ See, e.g., Cal. Const. art. 1, § 1.

6) Other regulations imposing different requirements on Community Care Facilities and Sober Living Homes than are imposed on other residential uses.

- All facilities shall have a good neighbor policy, which directs residents to be considerate of neighbors, including refraining from engaging in excessively loud, profane, or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. (Municipal Code § 18.38.123.020.0209.03)
- All garages, driveways, and/or assigned parking spaces associated with the facility shall be available for the parking of vehicles at all times. (Municipal Code § 18.38.123.020.0204.01)
- The facility shall not be located in an Accessory Dwelling Unit unless the primary dwelling unit is used for the same purpose. Residents of all units on a parcel will be combined to determine the total number of residents. (Municipal Code § 18.38.123.0201 and 0202)
- Existing, as well as proposed separation requirements. Existing requirements state Sober Living Homes shall not be located within 800 feet of other Sober Living Homes or Alcoholism or Drug Abuse Recovery or Treatment Facilities. Proposed amendments are address earlier in this correspondence. (Municipal Code § 18.38.123.020.0205)

None of the requirements outlined above apply universally to all residential uses in the City. The requirements were crafted explicitly to target a specific population—persons with disabilities and most likely persons with low-incomes. These populations are legally protected from such actions.

7) Other regulations imposing different requirements on Sober Living Homes than are imposed on other residential uses.

- A Sober Living Home shall have a visitation policy that precludes any visitors who are under the influence of any drug or alcohol. (Municipal Code § 18.38.123.020.0210.02)
- A Sober Living Home shall have a controlled substance policy, which, at a minimum, states the prohibition of the use of any alcohol or any non-prescription drugs at the facility or by any resident either on- or off-site. (Municipal Code § 18.38.123.020.0210.03)

None of the requirements outlined above apply universally to all residential uses in the City. The requirements were crafted explicitly to target a specific population – persons with disabilities and most likely persons with low-incomes. These populations are legally protected from such actions.

Community Care Facilities and Sober Living Home requirements may conflict with housing element policies and programs

HCD reminds the City that its decisions and actions must align with, and not contradict, the policies, principles, and strategies included in its current 5th cycle housing element. Community Care Facilities and Sober Living Home requirements may conflict with or fail to implement multiple provisions of the City's general plan housing element, including:

- Policy Consideration 5.0: Affordable Housing Opportunities for Anaheim Residents
- Policy Consideration 7.0: Housing Availability and Affordability
- 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.
- Guiding Principle C: Persons with special housing needs should have access to a variety of housing choices that are integrated within the community.
- Housing Production Strategy 1D: Encourage the Development of Housing for Extremely-Low-Income Households
- Housing Production Strategy 1E: Encourage the Development of Housing for Special Needs Households
- Housing Quality and Design Strategy 3B: Monitoring of Adopted Reasonable Accommodation Procedures
- Affordable Housing Opportunity Strategy 5A: Local Support of Regional Fair Housing Efforts

Additionally, HCD reminds the City that its housing element update for the 6th cycle planning period is due October 15, 2021. While multiple laws require the element to analyze and include programs to mitigate potential governmental constraints, including constraints for persons with disabilities (Gov. Code § 65583, subds. (c)(3), (c)(5), (a)(5), and (a)(7)), new requirements surrounding the City's obligation to affirmatively further fair housing (Gov. Code § 65583, subd. (c)(10)) also apply. Implementation of discriminatory regulations not only violates Housing Element Law, it fails to allow the City to meet its obligation to affirmatively further fair housing pursuant to Government Code section 8899.50.

Conclusion

HCD reminds the City that California is experiencing a severe housing crisis and the availability of housing affordable to all income levels is of vital statewide importance. (Gov. Code § 65580.)

HCD has reviewed the City's municipal code and proposed amendments under Government Code section 65585. HCD's authority pursuant to Government Code

section 65585 extends to statutory prohibitions on discrimination in land use (Gov. Code, § 65008). HCD has found that the City's municipal code potentially discriminates against persons in protected classes and that adoption of Zoning Code Amendment No. 2021-00176 (DEV2021-0027) would amplify HCD's concerns. HCD recommends the City reject the Zoning Code Amendment and amend its current municipal code to ensure it adheres to the nondiscrimination requirements in Government Code section 65008.

Thank you for reaching out to HCD for this guidance. For technical assistance regarding the City's 6th cycle housing element update, please contact Marisa Prasse at Marisa.Prasse@hcd.ca.gov. If you have any questions or would like to discuss the content of this letter, please contact Robin Huntley at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West", is centered below the word "Sincerely,".

Shannan West
Land Use & Planning Unit Chief

DECLARATION OF SERVICE

Case Name: **Grandma's House of Hope v. City of Anaheim and City Council of the City of Anaheim**

Case No.: **30-2022-01241823-CU-WM-CJC**

I declare:

I am employed in the Office of the Attorney General, and a member of the California State Bar. I am 18 years of age or older; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230. On October 3, 2022, I served the following document(s):

- **CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S *EX PARTE* APPLICATION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- **DECLARATION OF DAVID ZISSER IN SUPPORT OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S *EX PARTE* APPLICATION FOR LEAVE TO INTERVENE**
- **DECLARATION OF NORMA N. FRANKLIN IN SUPPORT OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S *EX PARTE* APPLICATION FOR LEAVE TO INTERVENE**
- **[PROPOSED] ORDER GRANTING CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S *EX PARTE* APPLICATION FOR LEAVE TO INTERVENE**

☒ on the parties through their attorneys of record, by electronic mail for service as designated below:

- (A) **By One Legal:** Correspondence that is submitted electronically is transmitted using the ONE LEGAL electronic filing system. Participants who are registered with ONE LEGAL will be served electronically.
- (B) **By E-mail:** I served the attached document by transmitting a true copy as a FILE EXCHANGE link via electronic mail.

Please see the attached service list below

TYPE OF SERVICE: [A] and [B] Damian M. Moos Tyler D. Anthony Best Best & Krieger LLP 18101 Von Karman Avenue, Suite 1000 Irvine, California 92616 damian.moos@bbklaw.com tyler.anthony@bbklaw.com	TYPE OF SERVICE: [A] and [B] Kristin A. Pelletier Chief Assistant City Attorney, Civil Division Anaheim City Attorney's Office 200 S. Anaheim Boulevard, Suite 356 Anaheim, CA 92805 kpelletier@anaheim.net
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DECLARATION OF SERVICE

Case Name: **Grandma's House of Hope v. City of Anaheim and City Council of the City of Anaheim**

Case No.: **30-2022-01241823-CU-WM-CJC**

TYPE OF SERVICE: [A] and [B] Daniel R. Golub Bradley B. Brownlow Jessica Laughlin Paloma Perez-McEvoy Holland & Knight LLP 3 Park Plaza, Suite 1400 Irvine, CA 92614 daniel.golub@hklaw.com jessica.laughlin@hklaw.com	TYPE OF SERVICE: [A] and [B] Kenneth W. Babcock Leigh E. Ferrin Public Law Center 601 Civic Center Drive West Santa Ana, CA 92701-4402 kbabcock@publiclawcenter.org lferrin@publiclawcenter.org
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TYPE OF SERVICE: [B]
Ted White: tedwhite@anaheim.net
Niki Wetzel: nwetzel@anaheim.net
Heather Allen: hallen@anaheim.net
Grace Stepter: gstepter@anaheim.net
Leonie Mulvihill: lmulvihill@anaheim.net

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 3, 2022, at Los Angeles, California.

Norma N. Franklin

Declarant

Norma Franklin

Signature