AGENDA
CITY COUNCIL/ SUCCESSOR
AGENCY TO THE FOUNTAIN
VALLEY AGENCY
FOR COMMUNITY DEVELOPMENT/
FOUNTAIN VALLEY HOUSING AUTHORITY
Closed Session 5:00 p.m.
Regular Meeting 6:00 p.m.
Tuesday, March 3, 2020
Council Chambers
10200 Slater Avenue
Fountain Valley, CA 92708
http://www.fountainvalley.org

MEETING ASSISTANCE: In compliance with the Americans with Disabilities Act, anyone needing special assistance to participate in a meeting of the government bodies listed herein should contact the City Clerk's Office at (714) 593-4445. Notification 72 hours prior to the meeting allows the City to make reasonable arrangements to ensure accessibility to the meeting.

AGENDA COMMUNICATIONS: All revised or additional documents and writings related to an item on this agenda provided to all or a majority of the government body members after distribution of the agenda packet, are available for public inspection (1) in the City Clerk's Office at 10200 Slater Avenue, Fountain Valley, CA 92708 during normal business hours; and (2) in the Council Chambers at the time of the meeting. Unless directed otherwise by a government body listed herein all actions shall be based on memorialized by the latest document submitted as a late communication.

PUBLIC COMMENTS/PUBLIC HEARINGS: Persons wishing to address the City Council or other government body listed complete a speaker card and give it to the City Clerk prior to the public comment period. Requests to speak will not be accepted after the public comment session begins without permission of the Mayor/Chair. Speakers must limit remarks to a total of (3) three minutes and address the City Council through the Mayor. Comments to individuals or staff are not permitted. Scheduled Matters, including Public Hearings: Indicate on the card what item you want to address. Unscheduled Matters: Indicate on the card what subject matter you want to address. Comments must be related to issues that are within the jurisdiction of the governing body listed on the agenda. Pursuant to the Brown Act, the governing body may not enter into discussion regarding items not on the agenda.

CONSENT CALENDAR: All matters listed under the Consent Calendar are considered by the governing bodies listed herein to be routine and will be enacted on simultaneously with one motion without discussion unless separate action and/or discussion is requested by a governing body member, staff, or a member of the public.

PUBLIC HEARINGS: Persons wishing to speak in favor of or in opposition to a proposal are given an opportunity to do so during the public hearing. Those wishing to address a governing body during the hearing are requested to complete the speaker card and submit it to the City Clerk prior to the hearing. If a proposed action is challenged in court, there may be a limitation to
raising only those issues raised during the hearing or in written correspondence received by the governing body at or before the hearing.

*Note: The Fountain Valley City Council serves as the Successor Agency to the Fountain Valley Agency for Community Development (Successor Agency), the Fountain Valley Housing Authority, and the Fountain Valley Finance Authority. The Actions of the Successor Agency are separate and apart from the actions of the City Council.*

**CLOSED SESSION**

**CALL TO ORDER**

5:00 p.m.

**PUBLIC COMMENTS**

(Closed Session matters only)

Persons wishing to speak on a Closed Session matter are requested to identify themselves by completing a blue speaker card indicating the item they want to address and to give the card to the City Clerk prior to the public comment period.

1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
   Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (1 potential case)

2. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
   Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9 (2 potential cases) (regarding Government Claims Act claims received from Devon Taylor and Phillip DeLuca)

3. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code §54957.6.
   Agency Designated Representatives: City Manager, Rob Houston, Budget Analyst, David Farone Human Resources Director, Chelsea Phebus, Attorney for the City, Colin Burns Employee Organizations: Police Officers' Association (POA), Police Officers' Management Unit (POMU), Fire Association (FVFA), Fountain Valley Municipal Employees Association (Field Services unit), Fountain Valley General Employees Association (FVG EA) and Fountain Valley Professional and Technical Employees (P&T)

**CALL TO ORDER**

6:00 p.m.

**INVOCATION**

Pastor Kene Panas

**SALUTE TO THE FLAG**

Mayor Pro Tem Michael Vo

**CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY/ ROLL CALL**

Council Members: Constantine, Harper, Nagel, Mayor Pro Tem/Vice Chair Vo, Mayor/Chair Brothers
PRESENTATIONS
Presentation on the 2020-24 Consolidated Plan and the Community Needs Workshop presented by Ashlynn Newman, Housing Coordinator

PUBLIC COMMENTS (Scheduled Matters Only)
Persons wishing to speak on Agenda item(s) are requested to identify themselves by completing a blue speaker card indicating the item they want to address and to give the card to the City Clerk prior to the public comment period. Each person will be given up to 3 minutes to speak on the entire Consent Calendar, 3 minutes to speak on each item pulled from the consent calendar, and 3 minutes to speak on any agendized item(s) not appearing on the Consent Calendar.

READING ORDINANCES
4. Waive the reading in full of all ordinances under consideration and direct the Mayor to read by titles only.

CONSENT CALENDAR
Consent Calendar Items 5 - 8 will be approved simultaneously with one motion, unless separate action/or discussion is requested.

5. Receive and File the Draft Minutes of the February 18, 2020 Regular City Council Meeting Page 5

6. Second Reading and Adoption of an Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven Page 11

7. Approval of Final Map for Tract No. 18186 for the property located at 10460 Slater Avenue Page 15

8. Approval of the 2019 Annual State Housing Element Progress Report Page 22

PUBLIC HEARINGS
Each person will have up to 3 minutes to speak on each Public Hearing.

9. Code Amendment No. 20-01 – Introduce an Amendment To Fountain Valley Municipal Code (FVMC) Sections 21.08.055 And 21.90.020 For Accessory Dwelling Units (ADU’s) In Compliance With State Law (Report by Steven Ayres, Planner) Page 47
ADMISTRATIVE ITEMS

10. Request Approval of the following: 1. Waive the Bidding Requirements per FVMC 2.36.070 Paragraph 5 and Authorize Staff to Purchase and Equip a 2020 Pierce Arrow XT PUC Fire Engine in the Amount of $1,574,131, 2. Amend the 2019/20 Capital Budget to Accommodate this Purchase, and 3. Authorize Staff to Dispose of one surplus American La France tiller truck by Means That Best Meet the City’s Needs (Report by Ron Cookston, Fire Chief) Page 76

11. Request for Legislative Amendments to Enable Local Compliance with State Housing Laws (Report by Brian James, Planning / Building Director) Page 90

COUNCIL MEMBER ITEMS FOR FUTURE CONSIDERATION

CITY COUNCIL/ SUCCESSOR AGENCY/ HOUSING AUTHORITY/ PUBLIC COMMENTS
(Unscheduled Matters Only)

Persons wishing to speak on an unscheduled matter are requested to identify themselves by completing a blue speaker and to give the card to the City Clerk. Each person will have up to 3 minutes to speak. The City Clerk will call upon those that wish to speak.

CITY COUNCIL/SUCCESSOR AGENCY/ HOUSING AUTHORITY AB 1234/GENERAL COMMENTS

ADJOURN THE MEETING OF THE CITY COUNCIL/SUCCESSOR AGENCY/ HOUSING AUTHORITY

The next Regular Meeting of the Fountain Valley City Council is March 17, 2020 at 6:00 p.m., in the Fountain Valley Council Chambers, 10200 Slater Avenue, Fountain Valley.
MINUTES OF THE
CITY COUNCIL/ SUCCESSOR AGENCY TO THE FOUNTAIN VALLEY AGENCY
FOR COMMUNITY DEVELOPMENT/ FOUNTAIN VALLEY HOUSING AUTHORITY
Study Session 5:45 p.m.
Regular Meeting 6:00 p.m.
Tuesday, February 18, 2020
Council Chambers

STUDY SESSION

CALL TO ORDER
5:45 p.m.

PUBLIC COMMENTS
(Study Session matters only)
No public comments

1. COMMERCIAL SELF-STORAGE

Study Session to discuss a possible code amendment to prohibit or limit the development of new commercial self-storage facilities in the City presented by Brian James, Planning/Building Director.

Building and Planning Director Brian James presented a code amendment for self-storage facilities.

OPEN SESSION

CALL TO ORDER
6:03 p.m.

INVOCATION
Pastor Brent Wagner

SALUTE TO THE FLAG
Council Member Patrick Harper

CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY/ ROLL CALL

Council Members Present:: Constantine, Harper, Nagel, Mayor Pro Tem/Vice Chair Vo, Mayor/Chair Brothers
Council Members Absent: None

ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATIONS

A copy of the expenses relating to investigating massage establishment for item number 6 was provided to the City Council and the public.
PRESENTATIONS

Presentation by Alicia Be&how, Director of Government Affairs for Charter / Spectrum

PUBLIC COMMENTS (Scheduled Matters Only)

None

READING ORDINANCES

2. Waive the reading in full of all ordinances under consideration and direct the Mayor to read by titles only.

ACTION:   Move to approve waiving the reading in full of all ordinances under consideration and direct the Mayor to read by titles only

MOTION:   Vo    SECOND:  Nagel

AYES:  Constantine, Harper, Nagel, Vo, Brothers
NOES:    None
ABSENT:  None
ABSTAIN: None

CONSENT CALENDAR

3. Draft Minutes of the February 4, 2020 Regular City Council Meeting

ACTION:   Move to approve Draft Minutes of the February 4, 2020 Regular City Council Meeting

MOTION:   Vo    SECOND:  Nagel

AYES:  Constantine, Harper, Nagel, Vo, Brothers
NOES:    None
ABSENT:  None
ABSTAIN: None

4. Approval of Amendment No. 1 to CON-19-35 in the Amount Not to Exceed $14,750 with Goodale Architecture Planning for Architectural Design Services for the Interior Improvements to the Existing Fountain Valley Recreation Center, Project No. GF341

ACTION:   Move to approve Amendment No. 1 to CON-19-35 in the Amount Not to Exceed $14,750 with Goodale Architecture Planning for Architectural Design Services for the Interior Improvements to the Existing Fountain Valley Recreation Center, Project No. GF341

MOTION:   Vo    SECOND:  Nagel
AYES: Constantine, Harper, Nagel, Vo, Brothers
NOES: None
ABSENT: None
ABSTAIN: None

(Item Pulled by Council Member Harper)
5. Waive the Bidding Requirements Pursuant to FVMC 2.36.070 and Authorize Staff to Issue Purchase Orders as Follows:

1) National Auto Fleet Group in the Amount of $66,417.84 for the Purchase of Two 2020 Honda Accord Sports through the Existing Cooperative Contract with Sourcewell;

2) National Auto Fleet Group in the Amount of $32,896.01 for the Purchase of One 2020 Toyota Sienna through the Existing Cooperative Contract with Sourcewell;

3) National Auto Fleet Group in the Amount of $28,419.49 for the Purchase of One 2020 Ford Ranger XL SuperCab through the Existing Cooperative Contract with Sourcewell;

4) Huntington Beach Honda in the Amount of $27,387.51 for the Purchase of One Police Equipped Honda ST1300P Police Motorcycle as a single source purchase;

5) National Auto Fleet Group in the Amount of $62,520.64 for the Purchase of One 2020 Ford F-350 Flatbed w/Lift Gate through the Existing Cooperative Contract with Sourcewell;

6) National Auto Fleet Group in the Amount of $127,882.74 for the Purchase of One 2020 Ford F-450 Stencil Truck through the Existing Cooperative Contract with Sourcewell;

7) Coastline Equipment in the Amount of $29,175.96 for the Purchase of One Trail King TK40LP Tag Trailer Through the Existing Cooperative Contract with Sourcewell;

8) Authorize Staff to Dispose of the Existing Vehicles by Means that Best Meet the City's Needs; and

9) Amend the FY 2019/20 Fleet Management Capital Budget in the amount of $49,200.19

ACTION: Move to approve line items 1 – 4 and 6 - 8

MOTION: Harper SECOND: Vo

AYES: Constantine, Harper, Nagel, Vo, Brothers
NOES: None
ABSENT: None
ABSTAIN: None
PUBLIC HEARINGS

6. (Council) Introduction and First Read of an Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven

Public Hearing Opened 6:47 p.m.
Public Comment: Sara
Public hearing Closed 6:50 p.m.

ACTION: Move to approve the Introduction and First Read of an Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven

MOTION: Constantine SECOND: Vo

AYES: Constantine, Harper, Nagel, Vo, Brothers
NOES: None
ABSENT: None
ABSTAIN: None

ADMINISTRATIVE ITEMS

7. (Council) Report from the Measure HH Essential City Services Advisory Oversight Committee on 2018/19 Audited Measure HH Revenues and Expenditures

ACTION: Move to approve the Report from the Measure HH Essential City Services Advisory Oversight Committee on 2018/19 Audited Measure HH Revenues and Expenditures

MOTION: Vo SECOND: Nagel

AYES: Constantine, Harper, Nagel, Vo, Brothers
NOES: None
ABSENT: None
ABSTAIN: None

8. Approval of a Three Year Agreement with O Entertainment for Special Event Production Services; Summerfest RFP – 19-008

ACTION: Move to approve a Three Year Agreement with O Entertainment for Special Event Production Services; Summerfest RFP – 19-008

MOTION: Nagel SECOND: Vo

AYES: Constantine, Harper, Nagel, Vo, Brothers
NOES: None
ABSENT: None
ABSTAIN: None
9. 1) Authorize the Payment of $36,960 to Charles Abbott Associates, Inc. for Public Works Project Management Services Performed from December 2019 through February 2020; and
2) Amend the 2019/20 Budget in the Amount of $15,100

ACTION: Move to approve the Payment of $36,960 to Charles Abbott Associates, Inc. for Public Works Project Management Services Performed from December 2019 through February 2020; and Amend the 2019/20 Budget in the Amount of $15,100

MOTION: Vo SECOND: Constantine

AYES: Constantine, Harper, Nagel, Vo, Brothers
NOES: None
ABSENT: None
ABSTAIN: None

COUNCIL MEMBER ITEMS FOR FUTURE CONSIDERATION

Mayor Pro Tem Vo requested a staff report on the city using EVP or clean energy vehicles for volunteer services. The item was seconded by Council Member Harper.

Council member Nagel requested that an item discussing contract approval or purchase order amounts be brought back to the City Council for consideration. The item was seconded by Mayor Pro tem Vo.

CITY COUNCIL/SUCCESSION AGENCY/HOUSING AUTHORITY/ GENERAL COMMENTS
(Unscheduled Matters Only)

Tanya Pham

CITY COUNCIL/SUCCESSION AGENCY/HOUSING AUTHORITY AB 1234/GENERAL COMMENTS

Council Member Constantine

February 7 Attended the Dance for Persons with Disabilities at the Senior Center
February 13 Attended the Annual Valentine’s Day Luncheon
February 18 Attended the Rotary Breakfast honoring the three most improved Fountain Valley High School students

Council Member Nagel

February 6 Attended the SCAG Regional meeting
February 10 Attended the OCCOG Committee Meeting conference call

Council Member Harper

Thanked outgoing Finance Director Jason Al-Imam for all his work with the city.
Mayor Pro Tem Vo

There was no report given

Mayor Brothers

February 7    Attended the Water Advisory meeting and ACCOC local finance committee meeting
February 10   Attended the meeting with Southern California gas Company with staff
February 11   Attended the Summerfest Committee meeting
February 13   Attended the SCAN NATOA workshop on small cells
February 18   Attended the Rotary meeting honoring the most improved students at Fountain Valley High School

ADJOURN THE MEETING OF THE CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY

Mayor Brothers adjourned the meeting at 7:37 pm to the next Regular Meeting of the Fountain Valley City Council on March 3, 2020 at 6:00 p.m., in the Fountain Valley Council Chambers, 10200 Slater Avenue, Fountain Valley.

__________________________
Cheryl Brothers, Mayor

Attest:

__________________________
Rick Miller, City Clerk
To: Honorable Mayor and Members of the City Council

Agenda Date: March 3, 2020

SUBJECT: Second Reading and Adoption of an Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven

EXECUTIVE SUMMARY

At its February 18, 2020 meeting, the City Council introduced for first reading an Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven. The Ordinance was approved during the first reading without amendment.

The Ordinance is now presented to the City Council for second reading and adoption.

RECOMMENDED ACTION

Staff recommends that the City Council adopt the attached Ordinance.

ENVIRONMENTAL ANALYSIS

This Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

FINANCIAL ANALYSIS

There is no fiscal impact with the adoption of the attached Ordinance or resolution.

ATTORNEY REVIEW:

The Attorney for the City has reviewed and approved the Ordinance.

PUBLIC NOTIFICATION

Public notice was published in the Orange County Register a minimum of 10 days prior
City Council Request
Second Reading and Adoption of an Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven
March 3, 2020
Page 2

to the public hearing on the first read. Public notice was also posted at City Hall, the Recreation Center, and the Fountain Valley Library.

**ALTERNATIVES**

1. Adopt the attached Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven.

2. Do not adopt the attached Ordinance.

3. Continue the item for further consideration.

**RECOMMENDED ACTION**

Staff recommends that the City Council adopt the attached Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven.

Prepared by: Colin Burns, Attorney for the City

Attachment No 1: Ordinance Amending Section 4.40.110 of the Fountain Valley Municipal Code to Reduce the Number of Massage Establishments from Nine to Seven
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOUNTAIN VALLEY AMENDING SECTION 4.40.110 OF THE FOUNTAIN VALLEY MUNICIPAL CODE TO REDUCE THE NUMBER OF MASSAGE ESTABLISHMENTS FROM NINE TO SEVEN


WHEREAS, the 2014 amendment to the Act re-established local control over the land use and business aspects of massage establishments;

WHEREAS the restrictions imposed by this ordinance are necessary to protect the health, safety and welfare of the citizens of the City, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting;

WHEREAS, there is an opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking;

WHEREAS, the California courts have recognized that the issuance of permits and imposition of restrictions on the operation of massage establishments serve to reduce the risk of illegal activity;

WHEREAS, the City's budget is limited and restricting the number of massage establishments in the City assures that the police department can properly oversee the enforcement of Chapter 4.40 with existing resources;

WHEREAS, the restrictions contained in this ordinance reduce the burden on the police department and allow deployment of police personnel so that other crimes may be prevented and other laws enforced.
ORDAIN as follows:

Section 1. Section 4.40.110 of the Fountain Valley Municipal Code is amended as follows:

4.40.110. Number of Establishments. There shall be no more than nine seven massage establishments in the City at any given time.

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 3. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published as required by law.

PASSED AND ADOPTED by the City Council of the City of Fountain Valley at a regular adjourned meeting this _____ day of ______________, 2020.

ATTEST:

_____________________________  ______________________________
Rick Miller                    Cheryl Brothers
City Clerk                    Mayor

APPROVED AS TO FORM:
HARPER & BURNS LLP

_____________________________
Colin Burns
Attorney for the City
CITY OF FOUNTAIN VALLEY
CITY COUNCIL
COUNCIL ACTION REQUEST

To: Honorable Mayor and 
Members of the City Council

SUBJECT: Approval of Final Map for Tract No. 18186 for the property located at 10460 Slater Avenue

Agenda Date: March 3, 2020

EXECUTIVE SUMMARY:

Keystone DCS, developer and applicant of the property located at 10460 Slater Avenue, has submitted the final map for Tract No. 18186. Keystone DCS is proposing to construct 12 residential homes in the Southernmost parcel of 10460 Slater Avenue where a field and parking lot currently exist. The map meets the conditions of approval set forth by the Planning Commission Resolution and is consistent with the City's General Plan.

Required in the conditions of approval and acceptance of the final map for Tract No. 18186 the owner/developer is responsible for paying fees totaling $176,963.66.

Staff is recommending that the City Council accept the final map for Tract No. 18186 for the property located at 10460 Slater Avenue.

DISCUSSION:

Keystone DCS, developer and applicant of the property located at 10460 Slater Avenue, has submitted the final map for Tract No. 18186. Keystone DCS is proposing to construct 12 residential homes in the Southernmost parcel of 10460 Slater Ave where a field and parking lot currently exist.

The City's Planning Commission has reviewed and approved the tentative tract map. The final map meets the requirements of the Subdivision Map Act and is in conformance with the tentative tract map. The project is being developed in accordance with City Planning Commission Resolution. City Staff and the County Surveyor's office have reviewed and approved the map for technical accuracy and compliance with the Subdivision Map Act. After acceptance of the map by the City Council, the map will be forwarded to the County for recordation.
FINANCIAL ANALYSIS:

Required in the conditions of approval and acceptance of the final map for Tract No. 18186 the owner/developer will pay the following fees upon request for Certificate of Occupancy:

1. Public Improvement Large Project Plan Checking Deposit $ 15,000.00
2. Public Improvement Large Project Inspection Deposit $ 15,000.00
3. Final Subdivision Map Checking $ 1,640.00
4. Landscape Plan Checking/Inspection Fee $ 745.00
5. Water Quality Management Fee $ 1,390.00
6. Drainage Annexation Fee $ 5,252.08
7. Waterline Assessment Fee $ 2,608.65
8. Sewerline Assessment Fee $ 2,608.65
9. Transportation Impact Fee $ 6,775.56
10. Park Site Fee $ 89,057.88
11. Sewer Connection Fee $ 11,172.00
12. Water Supply Facilities Fee $ 19,815.24
13. Water Meter Purchase $ 5,898.60

Total Fees: $ 176,963.66

ATTORNEY REVIEW:

The Attorney for the City has reviewed and approved the Final Map for Tract No. 18186.

ALTERNATIVES:

Staff is recommending that the City Council accept Tract Map. No. 18186 for the property located at 10460 Slater Avenue.

RECOMMENDATION:

Staff is recommending that the City Council accept the final map for Tract No. 18186 for the property located at 10460 Slater Avenue.

Prepared by: Kyle Hilton, Associate Engineer
Approved by: Temo Galvez, Acting Director of Public Works/City Engineer
Fiscal Review by: Teresa Gonzalez, Accounting Manager
Approved by: Rob Houston, City Manager
City Council Request
Final Map for Tract No. 18186
March 3, 2020
Page 3

Attachment 1: Final Map for Tract No. 18186
OWNERSHIP CERTIFICATE

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP, AS SHOWN WITHIN THE DISTRICTED BOUNDARY LINE.

WE HEREBY DECLARE TO THE CITY OF FOUNTAIN VALLEY
1. A LAYOUT EXEMPTION FOR WATER SYSTEM AND ITS APPURTENANCES, ACROSS THE TRACT EXCLUDING AREAS BENEATH STRUCTURES.
2. THE DOMESTIC WATER SYSTEM AND APPURTENANCES AS SHOWN ON THE IMPROVEMENT PLANS FOR THIS MAP.
3. THE DOMESTIC WATER SYSTEM AND APPURTENANCES AS SHOWN ON THE IMPROVEMENT PLANS FOR THIS MAP.
4. ALL VEHICULAR ACCESS RIGHTS TO WARD STREET & GLATER AVENUE, EXCEPT AT APPROVED ACCESS LOCATIONS.

OWNER:
Fountain Valley Baptist Church, Inc. A California Corporation

NOTARY ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHOM THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF ORANGE
ON JANUARY 14, 2020, BEFORE ME, HUY T NGUYEN, A NOTARY PUBLIC, PERSONALLY APPEARED HUY T. NGUYEN, AND ACKNOWLEDGED TO BE THAT PERSON WHO SIGNED THE ABOVE NAMED DOCUMENT WHICH IS THE CERTIFICATE OF ACKNOWLEDGMENT OF THE SUBDIVISION MAP.

WHO PROMISE TO ME ON THE BASIS OF CONSIDERATION GIVEN TO ME IN THE REMITTED MAJOR RECTIFICATION MAP, THE PARTY OR PARTIES SIGNEE TO THE ABOVE INSTRUMENT AND ACKNOWLEDGED TO BE THAT PERSON WHO SIGNED THE MAP AS THE TRUE AND ACCURATE COPIES ARE HEREBY ENDORSED AS THEIR AUTHORIZED REPRESENTATIVE(S) AND THAT BY SIGNED (Signature(s)) ON THE FRONT OF THE DOCUMENT, THE UNITED STATES郵政, 11955, DAY OF JUNE, 2020.

NOTARY PUBLIC IN AND FOR SAID STATE
HUY T. NGUYEN

SIGNATURES:
HUY T. NGUYEN

STATE OF CALIFORNIA
COUNTY OF ORANGE

CITY ENGINEER’S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE SUBSIDINGLY IN CONFORMANCE WITH THE SUBDIVISION MAP, AS REQUIRED.

NOTE:
SEE SHEET 3 FOR SIGNATURES.

CITY CLERK’S CERTIFICATE

I HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL OF THE CITY OF FOUNTAIN VALLEY AT A REGULAR MEETING HELD ON THE
THIRD DAY OF JUNE, 2020, OWEN D. HILL, CITY CLERK, AT WHICH MEETING THE SAME WAS ACCEPTED AND ADOPTED.

COUNTY SURVEYOR’S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND THAT ALL MAPPING PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH.

COUNTY TREASURER-TAX COLLECTOR’S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS AGAINST THE LAND COVERED BY THIS MAP OR ANY PART THEREOF FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR OTHER ASSESSMENTS COLLECTED AS TAXES EXCEPT AS SPECIAL ASSESSMENTS, ASSESSMENTS COLLECTED AS TAXES NOT YET PAID.


SHARON L. SRODMAN
COUNTY TREASURER-TAX COLLECTOR
TRACT NO. 18186
IN THE CITY OF FOUNTAIN VALLEY, COUNTY OF ORANGE, STATE OF CALIFORNIA
BEING A SUBDIVISION OF A PORTION OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE
NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 6, SOUTH, RANGE 10
WEST, IN THE RANCHOS LAS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 12 OF MISCELLANEOUS
MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CRUZ COUNTY.

OAS CONSULTANTS, INC.
AUGUST 2019
WILLIAM A. PATAPOFF, R.E. 24987

SIGNATURE OMISSIONS
PURSUANT TO SECTION 664.266(C)(1) OF THE SUBDIVISION MAP ACT, THE FOLLOWING
SIGNATURES HAVE BEEN OMMITTED:
1. THE CITY OF FOUNTAIN VALLEY, A MUNICIPAL CORPORATION, HOLDER OF AN
EASEMENT RECORDED MARCH 28, 1973 IN BOOK 10002, PAGE 390 OF OFFICIAL
RECORDS.

2. THE CITY OF FOUNTAIN VALLEY, A MUNICIPAL CORPORATION, HOLDER OF AN
EASEMENT RECORDED MARCH 29, 1974 AS INSTRUMENT NO. 24143 IN BOOK 11101,
PAGE 292 OF OFFICIAL RECORDS.

3. SOUTHERN CALIFORNIA Edison, HOLDER OF AN EASEMENT RECORDED SEPTEMBER
15, 1974 AS INSTRUMENT NO. 24105 IN BOOK 11322, PAGE 293 OF OFFICIAL
RECORDS.

4. THE CITY OF FOUNTAIN VALLEY, A MUNICIPAL CORPORATION, HOLDER OF AN
EASEMENT RECORDED NOVEMBER 1, 1974 AS INSTRUMENT NO. 4339 IN BOOK 11389,
PAGE 1108 OF OFFICIAL RECORDS.

5. SOUTHERN CALIFORNIA Edison, HOLDER OF AN EASEMENT RECORDED JANUARY
14, 1975 AS INSTRUMENT NO. 4420 IN BOOK 11322, PAGE 1405 OF OFFICIAL
RECORDS.
CITY OF FOUNTAIN VALLEY
CITY COUNCIL
COUNCIL ACTION REQUEST

To: Honorable Mayor and Members of the City Council

Agenda Date: March 3, 2020

SUBJECT: 2019 Annual State Housing Element Progress Report

EXECUTIVE SUMMARY:

Government Code Section 65400 requires that each governing body (City Council) prepare an annual report on the status and progress in implementing the jurisdiction’s Housing Element of the General Plan using forms and definitions adopted by the California Department of Housing and Community Development (HCD). The passage of SB35 and AB879 in 2017, as well as AB1486 in 2019, amended the existing code and now requires HCD to obtain additional information from cities regarding the status and progress in implementing their annual housing goals. HCD updated their reporting format in 2018 and again in 2019 to reflect these requirements. This report covers the 2019 calendar year and must be submitted to HCD by April 1, 2020.

The current Housing Element planning cycle is 2014-2021. This report addresses the progress in meeting the City’s Regional Housing Needs Assessment (RHNA) allocation as well as the progress to remove governmental constraints to the maintenance, improvement and development of affordable housing for 2019.

Staff has completed the report on the prescribed State forms and attached a copy of the report to the Council Action Request (Attachment 1).

Staff recommends the City Council review the Housing Element Annual Progress Report and authorize the City Manager to forward it to the California Department of Housing and Community Development and the Governor’s Office.

DISCUSSION:

The Housing Element Annual Progress Report is a reporting document that is required by Government Code Section 65400. It requires each governing body (City Council) to prepare an annual report on the status and progress in implementing the jurisdiction’s Housing Element of the General Plan using forms and definitions adopted by HCD. The report also addresses the progress to remove governmental constraints to the maintenance, improvement and development of affordable housing. The annual report shows a city’s progress in meeting their goals as outlined in their Housing Element.
In 2018 and 2019, HCD updated their reporting forms as required by newly amended laws. Reporting agencies are now required to submit information on the number of housing applications submitted, projects that have an approved entitlement, building permits that were issued, building permits that were finaled, identify any sites rezoned to accommodate housing shortfall, list sites receiving a commercial development bonus and finally, list any land included in the Housing Element site inventory that has been leased or otherwise disposed of. The information collected is specific to projects that meet the HCD definition of a new housing unit. The information entered onto the reporting forms is for the portion of the project that occurred in 2019 only. For instance, if a particular project received a building permit in 2018 and was finaled in 2019, the only information reported on the 2019 reporting forms will be the date the building permit was finaled. The 2018 reporting forms will show the date of building permit issuance.

One of the main features of the report is the tracking of progress towards achieving the RHNA allocation. The report shows that the City has exceeded the required goal of above-moderate income units for this planning cycle. The RHNA goal for above-moderate income units is 151. The city has 189 units completed as of this reporting period. The significant jump this year was due to the issuance of a building permit for the 145 units of above-moderate income units from the construction of the Wellbrook Assisted Living facility. This completes the city's above-moderate income RHNA goal for the 2014-2021 planning cycle.

The new state requirements requiring jurisdictions to allow the building of Accessory Dwelling Units (ADU’s) in residential zones has resulted in a substantial increase in the issuance of building permits for ADU’s in the city. HCD defines ADU’s as new housing units. Currently, HCD allows the city to count ADU’s towards their RHNA goals without any deed restrictions, as low or moderate income units, if a survey of comparable units show that ADU’s are affordable to low and/or moderate income levels, or if rent or market conditions show that local rents meet affordability limits. An informal rent survey of apartments in the Fountain Valley area was conducted on February 12-13, 2020 and showed that there are one and two-bedroom units for rent in Fountain Valley that meet the affordability requirement for low-income households. There are additionally three-bedroom units that meet the affordability requirement for moderate-income households. Accordingly, of the 23 ADU’s receiving building permits in 2019, 17 were counted in the city’s low-income unit RHNA requirement, and 6 were counted towards the City’s moderate-income RHNA requirement.

The Planning and Building Department continues to field a high number of requests for information regarding ADU’s due to the State passing more legislation making ADU requirements ever less restrictive. For the 2019 reporting year, there are 46 ADU’s in plan check pending approval for building permits. It is anticipated that the number of ADU’s built in the city will continue to rise and contribute positively towards meeting the City's low and moderate-income RHNA goals.
Council Action Request
March 3, 2020
2019 Housing Element Update
Page 3

Currently, the total remaining RHNA goals for low, very low and extremely low units in Fountain Valley is 112. There is an approved affordable housing project in the city, which, once building permits are issued in approximately 2021, will contribute approximately 50 units towards meeting these goals.

The largest constraint to the development of affordable housing remains the demise of redevelopment funding. Redevelopment funds were the largest provider of funding for affordable housing outside of programs supplied by the Federal government. The RHNA goal for low, very low and extremely low-income units continues to be difficult to achieve without a new funding source to provide the affordability gap financing that was previously provided by redevelopment funds. The high cost of land in the city, and the lack of vacant or underutilized land in the city, are secondary factors that make it challenging to develop affordable housing projects in Fountain Valley.

Since 2015, state law has required cities to send a copy of the Housing Successor Annual Report (SB341) to the State Department of Housing and Community Development (Attachment 2) along with the Housing Element Annual Progress Report.

Staff recommends the City Council review the attached Housing Element Annual Progress Report and authorize the City Manager to forward it to the California Department of Housing and Community Development and the Governor’s Office of Planning and Research.

**FINANCIAL ANALYSIS**

There is no financial impact for submitting this report however; the submission of this report is a pre-requisite to keep the current Housing Element certified.

**ATTORNEY REVIEW:**

City Attorney review is not required for this item.

**ALTERNATIVES:**

1. Review the Housing Element Annual Progress Report and authorize the City Manager to forward it to the California Department of Housing and Community Development and the Governor’s Office of Planning and Research prior to the April 1, 2020 deadline.

2. Do not authorize the City Manager to forward it to the California Department of Housing and Community Development and the Governor’s Office of Planning and Research and not submit report by the April 1, 2020 deadline.
3. Continue for further review and not submit report by the April 1, 2020 deadline.

**RECOMMENDATION:**

Staff recommends Alternative #1 - Review the Housing Element Annual Progress Report and authorize the City Manager to forward it to the California Department of Housing and Community Development and the Governor's Office of Planning and Research prior to the April 1, 2020 deadline.

Prepared By: Ashlyn Newman, Housing Coordinator
Approved By: Brian James, Planning and Building Director
Fiscal Review by: Jason Al-Imam, Finance Director
Approved By: Rob Houston, City Manager

Attachment 1: Annual Element Progress Report
Attachment 2: Housing Successor Annual Report
Please Start Here

<table>
<thead>
<tr>
<th>General Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction Name</td>
</tr>
<tr>
<td>Reporting Calendar Year</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Name</td>
</tr>
<tr>
<td>Last Name</td>
</tr>
<tr>
<td>Title</td>
</tr>
<tr>
<td>Email</td>
</tr>
<tr>
<td>Phone</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address</td>
</tr>
<tr>
<td>City</td>
</tr>
<tr>
<td>Zipcode</td>
</tr>
</tbody>
</table>

Optional: Click here to import last year’s data. This is best used when the workbook is new and empty. You will be prompted to pick an old workbook to import from. Project and program data will be copied exactly how it was entered in last year's form and must be updated.

v 12.23.19
Submittal Instructions

Please save your file as `Year_Region_Jurisdiction_2018` (no spaces). Example: the city of San_Luis_Obstego would save the file as `SanLuisObstego2018`

Tracking Element: Annual Progress Reports (APRs) forms and labels must be submitted to HCD and the Director's Office of Planning and Research (OPR) on or before April 1 of each year for the prior calendar year. Submit separate reports directly to both HCD and OPR pursuant to Government Code section 65500. There are two options for submitting APRs:

1. Online Annual Progress Reporting System (Preferred): Please use the link for the online system in the link. This allows your information directly into HCD's database, minimizing the risk of errors. If you wish to use the online system, visit [APR on the HCD web site](https://apc.hcd.ca.gov). HCD will send you the login information for your jurisdiction. Please note: Using the online system only provides the information to HCD. The APR must still be submitted to OPR. Their email address is apr@housing.ca.gov.

2. Email: If you prefer to submit the report by email, you can complete the online Annual Progress Report forms and submit to HCD at APR@hcd.ca.gov and to OPR at apr@housing.ca.gov. Please send the Excel workbook, not a scanned or PDF copy of the spreadsheets.

Link to the online system: [https://apc.hcd.ca.gov/APR](https://apc.hcd.ca.gov/APR)
### Table A

#### Housing Development Applications Submitted

<table>
<thead>
<tr>
<th>Project Identifier</th>
<th>Unit Types</th>
<th>Date Application Submitted</th>
<th>Proposed Units - Affordability by Household Incomes</th>
<th>Total Approved Units by Project</th>
<th>Total Disapproved Units by Project</th>
<th>Streamlining</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Notes

* "* indicates an optional field

* Cola in gray column calculation formulae

---

**ANNUAL ELEMENT PROGRESS REPORT**

**Housing Element Implementation**

**CRB Title 20-02**

**Table A**

**Housing Development Applications Submitted**

- **Project Identifier**
- **Unit Types**
- **Date Application Submitted**
- **Proposed Units - Affordability by Household Incomes**
- **Total Approved Units by Project**
- **Total Disapproved Units by Project**
- **Streamlining**
- **Notes**

---

**Streamlining (and Data From Below)**

- **Prior AP**
- **Current AP**
- **Street Address**
- **Project Name**
- **Local Calculation "Locking in"**
- **Unit Category**
- **Terminology**
- **Data Application Submitted**
- **Very Low-Income**
- **Low-Income**
- **Very Low-Income Non-Deed Restricted**
- **Low-Income Non-Deed Restricted**
- **Very Low-Income Moderate Deed Restricted**
- **Low-Income Moderate Deed Restricted**
- **Above Moderate Income**
- **TotalProposed Units by Project**
- **Total Disapproved Units by Project**
- **Notes**

---

**Page 28**
<table>
<thead>
<tr>
<th>Income Level</th>
<th>RNA Allocation by Income Level</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>Total Units to Date (all years)</th>
<th>Total Remaining RNA by Income Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Low</td>
<td>Grown Restricted</td>
<td>83</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>Non-Grown Restricted</td>
<td>59</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>Grown Restricted</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moderate</td>
<td>Non-Grown Restricted</td>
<td>65</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Above Moderate</td>
<td>Non-Grown Restricted</td>
<td>152</td>
<td>8</td>
<td>6</td>
<td>10</td>
<td>8</td>
<td>4</td>
<td>155</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total RNA</td>
<td>358</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Units</td>
<td>6</td>
<td>6</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>231</td>
<td>185</td>
</tr>
</tbody>
</table>

Note: Units serving extremely low-income households are included in the very low-income permitted units totals.

Cells in grey contain auto-calculation formulas.
### Table C: Sites Identified or Required to Accommodate Shortfall Housing Need

<table>
<thead>
<tr>
<th>Project Identifier</th>
<th>Date of Rezoning</th>
<th>ANA Amount by Household Income Category</th>
<th>Type of Shortfall</th>
<th>Sites Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting Year</td>
<td>2019</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Notes: *"* indicates an optional field.

Cola a grey contain the calculation formulas.

Summary Row: See Data Entry Below.
### ANNUAL ELEMENT PROGRESS REPORT

**Housing Element Implementation**

(CCR Title 25 §6202)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Fountain Valley</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reporting Year</td>
<td>2019</td>
</tr>
<tr>
<td>(Jan. 1 - Dec. 31)</td>
<td>(Jan. 1 - Dec. 31)</td>
</tr>
</tbody>
</table>

#### Table D

**Program Implementation Status pursuant to GC Section 65583**

**Housing Programs Progress Report**

Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.

<table>
<thead>
<tr>
<th>Name of Program</th>
<th>Objective</th>
<th>Timeframe in H.E</th>
<th>Status of Program Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Improvement Program</td>
<td>15 grants or rebates and 10 energy grants per year</td>
<td>Annually</td>
<td>15 Grants/ 5 Rebates/ 2 loans that included energy items</td>
</tr>
<tr>
<td>Infrastructure Improvement Program</td>
<td>Coordinate infrastructure improvements</td>
<td>Ongoing</td>
<td>Staff continues to coordinate infrastructure improvements citywide</td>
</tr>
<tr>
<td>Lead Based Paint Hazard Grant Program</td>
<td>5 grants per year</td>
<td>Annually</td>
<td>5 units tested for Lead Based Paint Hazards</td>
</tr>
<tr>
<td>Provision of Adequate Sites</td>
<td>Rezone vacant and underutilized land</td>
<td>1st Planning Year</td>
<td>Housing Overlay Zones created October 15, 2013 (H01 and H02)</td>
</tr>
<tr>
<td>Review Residential Development Standards</td>
<td>Review and revise standards as necessary</td>
<td>Review by 2015</td>
<td>Residential Development Standards reviewed. No change needed currently.</td>
</tr>
<tr>
<td>South Island Project</td>
<td>50 New Affordable Units, low to very low</td>
<td>2021</td>
<td>City has entered into an Affordable Housing Agreement with an affordable housing developer to develop a 50 unit affordable workforce housing which will include 8 PSH units. Developer currently competing for Tax Credits.</td>
</tr>
<tr>
<td>Mt. Hope Specific Plan Area</td>
<td>Project cancelled</td>
<td>2021</td>
<td>Project cancelled and property sold due to title restrictions. An assisted living facility is being built at location. Funds from sell are being put towards South Island project noted above.</td>
</tr>
<tr>
<td>Housing Choice Vouchers</td>
<td>Assist 460 households through Section 8 Program</td>
<td>Annually</td>
<td>OCHA assisted 453 with over 20,000 on the waiting list</td>
</tr>
<tr>
<td>Affordable Housing Monitoring and Preservation</td>
<td>Monitor and Preserve 71 at risk units</td>
<td>Ongoing</td>
<td>Guadalupe Manor is no longer at risk as their Section 8 and 202 contracts have been extended.</td>
</tr>
<tr>
<td>Support Homeless Services</td>
<td>Support Homeless Services/ Coordination</td>
<td>Ongoing</td>
<td>Provided assistance to Interval House- Temporary Shelter (assisted 72)</td>
</tr>
<tr>
<td>Program</td>
<td>Activity</td>
<td>Status</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>---------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Promote Affordable Housing</td>
<td>Support and encourage development of affordable housing</td>
<td>Ongoing</td>
<td>Staff continues to support and encourage development of affordable housing citywide. Currently working with developers on South Island Project and has eliminated standard requirement for separate water meter and associated fees for each new address to encourage production of ADUs.</td>
</tr>
<tr>
<td>Explore Alternative Funding and Financing Sources</td>
<td>Funding and financing for housing development</td>
<td>Ongoing</td>
<td>Staff continues to explore funding opportunities for affordable housing development citywide</td>
</tr>
<tr>
<td>Promote Fair Housing Practices throughout the city</td>
<td>Support Fair Housing Services</td>
<td>Ongoing</td>
<td>Partnered with Fair Housing Council of Orange County for assistance with Fair Housing/Landlord-Tenant disputes and educational workshops</td>
</tr>
<tr>
<td>Support Persons with Disabilities</td>
<td>Housing and services for persons with disabilities</td>
<td>Ongoing</td>
<td>Partnered with Elwyn California for case management of disabled adults. New Disability Modification Grant available for ADA improvements for low income households.</td>
</tr>
</tbody>
</table>
## ANNUAL ELEMENT PROGRESS REPORT

**Housing Element Implementation**  
(CCR Title 25 §6202)

### Table E

<table>
<thead>
<tr>
<th>APN</th>
<th>Street Address</th>
<th>Project Name*</th>
<th>Local Jurisdiction Tracking ID*</th>
<th>Very Low Income</th>
<th>Low Income</th>
<th>Moderate Income</th>
<th>Above Moderate Income</th>
<th>Description of Commercial Development Bonus</th>
<th>Commercial Development Bonus Date Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: 
- "*" indicates an optional field
- Cells in grey contain auto-calculation formulas

Summary: Raw Start Data Entry Below
## Annual Element Progress Report

### Housing Element Implementation

(CCR Title 25 §6020)

---

**Table F**

**Units Rehabilitated, Preserved and Acquired for Alternative Adequate Sites pursuant to Government Code section 65583.1(c)(2)**

This table is optional. Jurisdictions may list (for informational purposes only) units that do not count toward RHNA, but were substantially rehabilitated, acquired or preserved. To enter units in this table as progress toward RHNA, please contact HCD at APR@hcd.ca.gov. HCD will provide a password to unlock the grey fields. Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in Government Code section 65583.1(c)(2).

<table>
<thead>
<tr>
<th>Activity Type</th>
<th>Units that Do Not Count Towards RHNA* Listed for Informational Purposes Only</th>
<th>Units that Count Towards RHNA* Note: Because the statutory requirements severely limit what can be counted, please contact HCD to receive the password that will enable you to populate these fields.</th>
<th>The description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Extremely Low-Income*</td>
<td>Very Low-Income*</td>
<td>Low-Income*</td>
</tr>
<tr>
<td>Rehabilitation Activity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preservation of Units At-Risk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of Units</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Units by Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Fountain Valley</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting Period</td>
<td>2019 (Jan. 1 - Dec. 31)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: This table must only be filled out if the housing element sites inventory contains a site which is or was owned by the reporting jurisdiction, and has been sold, leased, or otherwise disposed of during the reporting year.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

<table>
<thead>
<tr>
<th>Table G</th>
<th>Locally Owned Lands Included in the Housing Element Sites Inventory that have been sold, leased, or otherwise disposed of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Identifier</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>APN</td>
<td>Street Address</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Summary Row: Start Data Entry Below
### Jurisdiction

Fountain Valley

### Reporting Year

2019 (Jan. 1 - Dec. 31)

#### Building Permits Issued by Affordability Summary

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Current Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Low</td>
<td></td>
</tr>
<tr>
<td>Deed Restricted</td>
<td>0</td>
</tr>
<tr>
<td>Non-Deed Restricted</td>
<td>0</td>
</tr>
<tr>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Deed Restricted</td>
<td>0</td>
</tr>
<tr>
<td>Non-Deed Restricted</td>
<td>17</td>
</tr>
<tr>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td>Deed Restricted</td>
<td>0</td>
</tr>
<tr>
<td>Non-Deed Restricted</td>
<td>6</td>
</tr>
<tr>
<td>Above Moderate</td>
<td>155</td>
</tr>
<tr>
<td><strong>Total Units</strong></td>
<td><strong>178</strong></td>
</tr>
</tbody>
</table>

Note: Units serving extremely low-income households are included in the very low-income permitted units totals.

#### Housing Applications Summary

- **Total Housing Applications Submitted:** 67
- **Number of Proposed Units in All Applications Received:** 67
- **Total Housing Units Approved:** 8
- **Total Housing Units Disapproved:** 0

#### Use of SB 35 Streamlining Provisions

- **Number of Applications for Streamlining:** 0
- **Number of Streamlining Applications Approved:** 0
- **Total Developments Approved with Streamlining:** 0
- **Total Units Constructed with Streamlining:** 0

#### Units Constructed - SB 35 Streamlining Permits

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Rental</th>
<th>Ownership</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Low</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Low</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Moderate</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Above Moderate</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Cells in grey contain auto-calculation formulas.
This Housing Successor Annual Report (Report) regarding the Low and Moderate Income Housing Asset Fund (LMIHAF) has been prepared pursuant to California Health and Safety Code Section 34176.1(f) and is dated as of December 17, 2019. This Report sets forth certain details of the Fountain Valley Housing Authority (Housing Successor) activities during Fiscal Year 2018-2019 (Fiscal Year). The purpose of this Report is to provide the governing body of the Housing Successor an annual report on the housing assets and activities of the Housing Successor under Part 1.85, Division 24 of the California Health and Safety Code, in particular sections 34176 and 34176.1 (Dissolution Law).

The following Report is based upon information prepared by Housing Successor staff and information contained within the financial records of the Low and Moderate Income Housing Asset Fund 85 for Fiscal Year 2018-19. This Report conforms with and is organized into sections I. through X II, inclusive, pursuant to Section 34176.1(f) of the Dissolution Law:

I. Amount Received Pursuant to Section 34191.4(b)(3)(A): This section provides a total amount of funds received pursuant to Section 34191.4(b)(3)(A).

II. Amount Deposited into LMIHAF: This section provides the total amount of funds deposited into the LMIHAF during the Fiscal Year. Any amounts deposited for items listed on the Recognized Obligation Payment Schedule (ROPS) must be distinguished from the other amounts deposited.

III. Ending Balance of LMIHAF: This section provides a statement of the balance in the LMIHAF as of the close of the Fiscal Year. Any amounts deposited for items listed on the ROPS must be distinguished from the other amounts deposited.

IV. Description of Expenditures from LMIHAF: This section provides a description of the expenditures made from the LMIHAF during the Fiscal Year. The expenditures are to be categorized.

V. Statutory Value Of Assets Owned By Housing Successor In LMIHAF: Under the Dissolution Law and for purposes of this Report, the "statutory value of real property" means the value of properties formerly held by the former redevelopment agency as listed on the housing asset transfer schedule approved by the Department of Finance as listed in such schedule under Section 34176(a)(2), the value of the properties transferred to the Housing Successor pursuant to Section 34181(f), and the purchase price of property(ies) purchased by the Housing Successor. Further, the value of loans and grants receivable is included in these reported assets held in the LMIHAF.

VI. Description of Transfers: This section describes transfers, if any, to another housing successor agency made in previous Fiscal Year(s), including whether the funds are
unencumbered anc the status of projects, if any, for which the transferred LMIHAF will be used. The sole purpose of the transfers must be for the development of transit priority projects, permanent supportive housing, housing for agricultural employees or special needs housing.

VII. Project Descriptions: This section describes any project for which the Housing Successor receives or holds property tax revenue pursuant to the ROPS and the status of that project.

VIII. Status of Compliance with Section 33334.16: This section provides a status update on compliance with Section 33334.16 for interests in real property acquired by the former redevelopment agency prior to February 1, 2012. For interests in real property acquired on or after February 1, 2012, provide a status update on the project.

IX. Description of Outstanding Obligations under Section 33413: This section describes the outstanding inclusionary and replacement housing obligations, if any, under Section 33413 that remained outstanding prior to dissolution of the former redevelopment agency as of February 1, 2012 along with the Housing Successor's progress in meeting those prior obligations, if any, of the former redevelopment agency and how the Housing Successor's plans to meet unmet obligations, if any.

X. Income Test: This section provides the information required by Section 34176.1(a)(3)(B), or a description of expenditures by income restriction for five year period, with the time period beginning January 1, 2014 and whether the statutory thresholds have been met. However, reporting of the Income Test is not required until 2019.

XI. Senior Housing Test: This section provides the percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the Housing Successor, its former redevelopment Agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the Housing Successor, its former Redevelopment Agency and its host jurisdiction within the same time period. For this Report the ten-year period reviewed is July 1, 2009- June 30, 2019.

XII. Excess Surplus Test: This section provides the amount of excess surplus in the LMIHAF, if any, and the length of time that the Housing Successor has had excess surplus, and the Housing Successor's plan for eliminating the excess surplus.

XIII. Inventory of Home Ownership Units: This section provides an inventory of homeownership units assisted by the former Agency or FVHA as Housing Successor that are subject to covenants or restrictions or to an adopted program that protects the former Agency’s investment of moneys from the Low and Moderate Income Fund per Section 33334.3 (f).

This Report is to be provided to the Housing Successor's governing body by December 31, 2019.

In addition, this Report and the former redevelopment agency's pre-dissolution Implementation Plans are to be made available to the public on the City's website www.fountainvalley.org.
I. AMOUNT RECEIVED PURSUANT TO SECTION 34191.4(b)(3)(A):

No funds were received pursuant to Section 34191.4(b)(3)(A).

II. AMOUNT DEPOSITED INTO LMIHAF

A total of $723,742 was deposited into the LMIHAF during the Fiscal Year. Of the total funds deposited into the LMIHAF, $0 were held for items listed on the ROPS. The deposits are allocated as follows:

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Time Homebuyer Monthly Loan Repayment (Principal)</td>
<td>$3,330</td>
</tr>
<tr>
<td>1st Time Homebuyer Monthly Loan Repayment (Interest)</td>
<td>$7,187</td>
</tr>
<tr>
<td>Housing Rehab Monthly Loan Repayment (Principal)</td>
<td>$3,937</td>
</tr>
<tr>
<td>Housing Rehab Monthly Loan Repayment (Interest)</td>
<td>$2,475</td>
</tr>
<tr>
<td>Jasmine Project Loan Repayment (Principal)</td>
<td>$241,582</td>
</tr>
<tr>
<td>Jasmine Project Loan Repayment (Interest)</td>
<td>$97,444</td>
</tr>
<tr>
<td>Misc. Received Interest</td>
<td>$175,140</td>
</tr>
<tr>
<td>Interest Income on Investments</td>
<td>$192,602</td>
</tr>
<tr>
<td>Misc. Fees</td>
<td>$45</td>
</tr>
<tr>
<td>SERAF Payment (ROPS Requested Reimbursement)</td>
<td>$0</td>
</tr>
<tr>
<td>Total LMIHAF Deposits</td>
<td>$723,742</td>
</tr>
</tbody>
</table>

III. ENDING BALANCE OF LMIHAF

At the close of the Fiscal Year, the ending available cash balance in the LMIHAF was $11,294,942. None of the funds were held for items listed on the ROPS.

IV. DESCRIPTION OF EXPENDITURES FROM LMIHAF

The following is a cescription of LMIHAF by category:

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring &amp; Administration</td>
<td>$ 119,753</td>
</tr>
<tr>
<td>Homeless Provision &amp; Rapid Rehousing Services Expenditures</td>
<td>$ 0</td>
</tr>
<tr>
<td>Housing Development Expenditures for pre-development expenses.</td>
<td>$ 156,849</td>
</tr>
<tr>
<td>Acquisition Loan to The Related Companies California</td>
<td>$1,185,000</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>$1,461,602</td>
</tr>
</tbody>
</table>

The Housing Successor is allowed to spend the greater of $200,000 or 5% of the value of the Housing Assets Portfolio on Monitoring and Administration. 5% of the portfolio value (shown in Section V) calculates to $352,965 for the maximum allowable amount to use for Monitoring and Administration Expenditures. The Housing Successor, therefore, only used
34% of the maximum allowable on Monitoring and Administrative expenses.

Housing Development expenditures were for legal and professional services related to the negotiation and approval of an Acquisition Loan Agreement and Affordable Housing Agreement between the Housing Authority and The Related Companies California (TRCC) for a 50-unit affordable housing project. The Housing Successor loaned $1,185,000 to TRCC as the first and second installment of the Acquisition Loan. The remaining approximately $7,000,000 of the Acquisition and Development loans are anticipated to be distributed in FY 2019-20 and/or FY 2020-21.

V. STATUTORY VALUE OF ASSETS OWNED BY HOUSING SUCCESSOR IN LMIHAF
Under the Dissolution Law and for purposes of this Report, the "statutory value of real property" means the value of properties formerly held by the former redevelopment agency as listed on the housing asset transfer schedule approved by the Department of Finance as listed in such schedule under Section 34176(a) (2), the value of the properties transferred to the Housing Successor pursuant to Section 34181(f), and the purchase price of property (ies) purchased by the Housing Successor. Further, the value of loans and grants receivable is included in these reported assets held in the LMIHAF.

The Housing Successor does not own any real property. The following provides the statutory value of loans owned by the Housing Successor.

<table>
<thead>
<tr>
<th>Asset Category - Loans</th>
<th>Statutory Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Time Home Buyer Loans (9 Loans)</td>
<td>$ 883,590</td>
</tr>
<tr>
<td>Home Improvement Loans (23 Loans)</td>
<td>$ 359,597</td>
</tr>
<tr>
<td>Development Loans (Jasmine)</td>
<td>$4,631,115</td>
</tr>
<tr>
<td>Acquisition Loan (Harbor-Related)</td>
<td>$1,185,000</td>
</tr>
<tr>
<td><strong>Total Statutory Value of Loans Held by Housing Successor</strong></td>
<td><strong>$7,059,302</strong></td>
</tr>
</tbody>
</table>

VI. DESCRIPTION OF TRANSFERS
The Housing Successor did not make any LMIHAF transfers to other Housing Successor(s) under Section 34176.1(c) (2) during the Fiscal Year.

VII. PROJECT DESCRIPTIONS
The Housing Successor does not receive or hold property tax revenue pursuant to the ROPS.

VIII. STATUS OF COMPLIANCE WITH SECTION 33334.16
This section describes any project for which the Housing Successor receives or holds
property tax revenue pursuant to the ROPS and the status of that project.

The following provides a status update on the project(s) for property or properties that were acquired prior to February 1, 2012 and compliance with the five-year period:

➤ The Housing Successor does not own any properties acquired prior to February 1, 2012.

The following provides a status update on the project(s) for property or properties that have been acquired by the Housing Successor using LMIHAF on or after February 1, 2012:

➤ The Housing Successor does not own any properties acquired on or after February 1, 2012.

IX. DESCRIPTION OF OUTSTANDING OBLIGATIONS PURSUANT TO SECTION 33413

Replacement Housing:
According to the FY2010/11 - FY2014/15 Implementation Plan for the former redevelopment agency, no Section 33413(a) replacement housing obligations were transferred to the Housing Successor.

Inclusionary/Production Housing:
According to the FY2010/11 - FY2014/15 Implementation Plan for the former redevelopment agency, no Section 33413(b) inclusionary/production housing obligations were transferred to the Housing Successor.

The former redevelopment agency's Implementation Plans are posted on the City's website at www.fountainvalley.org

X. INCOME TEST
This section provides the information required by Section 34176.1(a)(3)(B), or a description of expenditures by income restriction for five year period, with the time period beginning January 1, 2014 and whether the statutory thresholds have been met. However, reporting of the Income Test is not required until 2019.

Section 34176.1(a)(3)(B) requires that the Housing Successor must require at least 30% of the LMIHAF, after expenditures allowed pursuant to Code section 34176.1(a)(1) and (2) to be expended for development of housing affordable to, and occupied by, households earning 30% or less of the AMI. If the housing successor fails to comply with the extremely low income requirement in any five year report beginning with the five year report to be issued in 2019, then the housing successor shall ensure that at least 50% of these
remaining LMIHAF funds expended in each fiscal year following the latest fiscal year following the five year report are expended for the development of rental housing affordable to and occupied by households earning 30% or less of the area AMI until the housing successor demonstrates compliance with the extremely low income requirement in an annual report. This information is not required to be reported until 2019 for the 2014 – 2019 reporting period.

<table>
<thead>
<tr>
<th>LMIHAF Spent on Extremely-Low Income Households</th>
<th>Total LMIHAF Expenditures</th>
<th>Cumulative Extremely-Low Income Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2014 – June 30, 2014</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2014/2015</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2015/2016</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2016/2017</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2017/2018</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2018/2019</td>
<td>$362,299</td>
<td>$1,341,849</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$362,299</strong></td>
<td><strong>$1,341,849</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LMIHAF Spent on 80% AMI+ Income Households</th>
<th>Total LMIHAF Expenditures</th>
<th>Cumulative Low Income Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2014 – June 30, 2014</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2014/2015</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2015/2016</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2016/2017</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2017/2018</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>FY 2018/2019</td>
<td>$93,929</td>
<td>$1,341,849</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$93,929</strong></td>
<td><strong>$1,341,849</strong></td>
</tr>
</tbody>
</table>

The remainder of the LMIHAF funds expended, other than Monitoring and Administration costs, were expended towards 59.5% HCD AMI/50% Tax Credit AMI households, in the development of the affordable housing project and subsequent Acquisition Loan with TRRC.

**XI. SENIOR HOUSING TEST**

The Housing Successor is to calculate the percentage of units of deed-restricted rental housing restricted to seniors and assisted by the Housing Successor, the former redevelopment agency and/or the City within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted by the Housing Successor, the former redevelopment agency and/or City within the same time period. If this percentage exceeds 50%, then the Housing Successor cannot expend future funds in the LMIHAF to assist additional senior housing units until the Housing Successor or City
assists and construction has commenced on a number of restricted rental units that is equal to 50% of the total amount of deed-restricted rental units.

The following provides the Housing Successor's Senior Housing Test for the 10-year period of 7/1/2009-6/30/2019.

<table>
<thead>
<tr>
<th>Senior Housing Test</th>
<th>10 Year Test – July 1, 2009-June 30, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Assisted Senior Rental Units</td>
<td>0</td>
</tr>
<tr>
<td># of Total Assisted Rental Units</td>
<td>0</td>
</tr>
<tr>
<td>Senior Housing Percentage</td>
<td>0%</td>
</tr>
</tbody>
</table>

XII. EXCESS SURPLUS TEST

Excess Surplus is defined in Section 34176.1(d) as an unencumbered amount in the account that exceeds the greater of one million dollars ($1,000,000) or the aggregate amount deposited into the account during the Housing Successor's preceding four Fiscal Years, whichever is greater.

The following provides the Excess Surplus test for the preceding four Fiscal Years:

<table>
<thead>
<tr>
<th>Excess Surplus Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater of:</td>
</tr>
<tr>
<td>➢ Base Amount or</td>
</tr>
<tr>
<td>➢ Four Years of Deposits</td>
</tr>
<tr>
<td>FY'15-16</td>
</tr>
<tr>
<td>FY'16-17</td>
</tr>
<tr>
<td>FY 17-18</td>
</tr>
<tr>
<td>FY 18-19</td>
</tr>
<tr>
<td>Total cf Deposits</td>
</tr>
</tbody>
</table>

Greater amount is: $11,044,860

A total of $11,044,830 has been deposited into the account in the four previous fiscal years with the 2018-19 Fiscal Year-end cash balance in the account being $11,294,942. The LMIHAF, therefore, has an excess surplus of $250,082. The Housing Successor plans to eliminate the $250,082 of excess surplus by distributing the remaining approximate $5,150,000 of the approved Acquisition Loan to TRCC in FY 2019-20, for the acquisition of the project site.

XII. INVENTORY OF HOME OWNERSHIP UNITS

This section provides an inventory of homeownership units assisted by the former Agency or FVHA as Housing Successor that are subject to covenants or restrictions or to an adopted program that protects the former Agency's investment of moneys from the Low and Moderate Income Fund per Section 33334.3 (f).
(A) As of June 30, 2019, the total number of homeownership units currently assisted by the former Agency that are subject to covenant or restrictions is **63 units**.

(B) Since February 1, 2012, the total number of homeownership units lost to the FVHA/Housing Successor’s portfolio is **15 units**. 14 of the homes were sold and the loans were paid off, and one homeowner paid off the loan and continued to live in the house. **0 units** were lost from the portfolio for FY 2018-19.

(C) From February 1, 2012 to June 30, 2019, **$429,119** in funds were returned to the FVHA/Housing Successor as part of an adopted program that protects the former Agency’s investment of moneys from the Low and Moderate Income Housing Fund. **$10,517** were returned to the LMIHAF in FY 2018-19 from households making monthly payments on their First Time Homebuyer loans.

(D) The FVHA/Housing Successor has existing consulting agreements with AmeriNat Loan Services relating to certain, but not all, aspects of administration of the former Agency’s Single Family Rehabilitation and First Time Homebuyer Program that provided second lien mortgages for homeownership units. These consulting services include oversight and assistance with amortized loan payments, tracking and calculation of loan balances in the event of payoff, and other administrative activities related to outstanding Single Family Rehabilitation and First Time Homebuyer Program loans. In addition, FVHA utilizes Celeste Brady of Stradling, Yocca, Carlson and Rauth as Special Legal Counsel to assist staff with legal issues and Kathe Head of Keyser Marston Associates for the provision of financial analysis for existing projects as well potential future projects.

**Actions Needed**

This report must be presented to the Housing Successor Agency governing body within six months of the end of the previous fiscal year.

This report and the former redevelopment agency’s Implementation Plans are posted on the City’s website at [www.fountainvalley.org](http://www.fountainvalley.org).
CITY OF FOUNTAIN VALLEY
CITY COUNCIL
COUNCIL ACTION REQUEST

To: Honorable Mayor and Members of the City Council

Agenda Date: March 3, 2020

SUBJECT: Public Hearing: Code Amendment No. 20-01 – Introduce an Amendment To Fountain Valley Municipal Code (FVMC) Sections 21.08.055 And 21.90.020 For Accessory Dwelling Units (ADU’s) In Compliance With State Law

EXECUTIVE SUMMARY:

In October 2019, the Governor signed multiple new housing bills into law including several for Accessory Dwelling Units (ADU’s) that made every city’s ADU ordinances in the state null and void as of January 1, 2020. These new requirements: allow ADU’s in more locations as there is no minimum lot size; limit opportunities to regulate size; reduce parking requirements for garage conversions and ADU’s near bus stops; limit city review of ADU’s to a 60 day ministerial review; allow multiple ADU’s and ADU’s on multi-family properties; limit fees on ADU’s; eliminate the owner occupancy requirement until January 1, 2025; prohibit the use of short term rentals in ADU’s; void Homeowner Association restrictions prohibiting ADU’s; and require Department of Housing and Community Development (HCD) approval of ADU ordinances.

On February 4, 2020, City Council approved an interim urgency ordinance to regulate ADU’s as a result of new state laws until the city approves its own ADU ordinance.

The proposed Code Amendment would bring the City of Fountain Valley into compliance with state law and allow the city to preserve what limited authority we have remaining to regulate ADU’s and Junior ADU’s as a result of these new state laws. In addition to the new requirements outlined above, some of the local control development standards that were in the old ADU ordinance that will remain in the proposed ADU ordinance include provisions for building height, setbacks, building separation, passageway and entrances, development standards such as floor area ratio, landscaping, ratio of 2nd story to 1st story, balconies and decks, and open space.

At the Planning Commission meeting of February 12, 2020, the Planning Commission voted 5-0 recommending the City Council approve a Notice of Exemption in accordance with the California Environmental Quality Act (CEQA) and approve Code Amendment No. 20-01 to amend Fountain Valley Municipal Code (FVMC) Sections 21.08.055 and 21.90.020 for the adoption of an ordinance for ADU’s.

Staff recommends the City Council introduce the attached ordinance approving Code Amendment No. 20-01 to amend Fountain Valley Municipal Code Sections 21.08.055 and 21.90.020 for the adoption of an ordinance for ADU’s.
Council Action Request
Code Amendment 20-01
City Council Meeting March 3, 2020
Page 2

Proposal:

An amendment to FVMC Sections 21.08.055 and 21.90.020 for ADU’s in compliance with state law.

Background/Current Code Requirements:

ADU’s, once referred to as second units or granny units, are secondary living units on a residential property with their own separate living, kitchen, and bathroom facilities. They may be detached from the main living unit on the property, attached, or internal to the main living unit.

Prior to the City of Fountain Valley’s code update in 2017, secondary units were permitted in the R1 zones only if they met certain requirements including a minimum 7,200 square foot lot size and an additional enclosed garage parking space for each bedroom in the secondary unit. In 2017, per the requirements of the state, certain requirements were relaxed to allow for the construction of more ADU’s. As shown on the City of Fountain Valley’s old ADU handout (below), requirements for ADU’s were organized into three (3) separate categories – Internal ADU’s, Attached and Detached ADU’s, and Junior ADU’s. A summary of the main requirements of each included the following:

**Internal ADU**
- ADU within an existing single-family dwelling
- No additional parking required
- ADU shall provide independent exterior access
- Fire sprinklers not required
- Separate utilities are not required
- Covenant required

**Attached and Detached ADU**
- ADU as an attached addition to a single-family dwelling or as a detached unit
- Permitted in the R1 and GH zones with a minimum 7,200 sf lot
- Rear yard open space min 1,000 sf
- Parking - 1 space/ADU [parking exemptions apply (FVMC 21.08.055)]
- Covenant required
- Separate address required
Council Action Request
Code Amendment 20-01
City Council Meeting March 3, 2020
Page 3

**Attached** - Max 50% of the living area or 1,200 sf, whichever is smaller

**Setbacks & Height** - same as main dwelling

**Detached** - Max 1,200 sf

- 10 ft separation from house and 5 ft side and rear setback, 10 ft street side setback, 5 ft on zero side yard to property line
- Height - max 1-story, 15 ft

---

### Junior ADU

- ADU within existing single-family dwelling
- Same as ADU within existing single-family dwelling
- 150-500 sf size limitation
- Must include an existing bedroom and an efficiency kitchen
- May share bathroom facilities with the main dwelling

---

On January 1, 2020, multiple new housing bills, which were adopted in October 2019, relating to ADU's became law, including AB 68, AB 881, SB 13, AB 587, and AB 670. Municipal regulations that are inconsistent with these new laws were preempted effective January 1, 2020. These new requirements: allow ADU's in more locations as there is no minimum lot size; limit opportunities to regulate size; reduce parking requirements for garage conversions and ADU's near bus stops; limit city review of ADU's to a 60 day ministerial review; allow multiple ADU's and ADU's on multi-family properties; limit fees on ADU's; eliminate the owner occupancy requirement until January 1, 2025; prohibit the use of short term rentals in ADU's; void Homeowner Association restrictions prohibiting ADU's; and require Department of Housing and Community Development (HCD) approval of ADU ordinances. A summary is provided in Attachment #3.

As Fountain Valley's ADU ordinance approved December 5, 2017, is inconsistent with the new state laws, the city's ADU ordinance has been null and void since January 1, 2020. Therefore, since January 1, 2020, the city has been operating under the new state regulations for ADU's while preparing and formulating the City of Fountain Valley's ADU ordinance compliant with state law.

On February 4, 2020, City Council approved an interim urgency ordinance to regulate ADU's as a result of new state laws until the city approves its own ADU ordinance. The interim urgency ordinance was created in order to preserve the maximum local limitations allowable under state law while staff prepared a new ADU ordinance that incorporates all desired development standards. The interim urgency ordinance became effective immediately on February 4, 2020, and is effective for 45 days.
DISCUSSION:

On January 1, 2020, multiple new housing bills relating to ADU's became law, including AB 68, AB 881, SB 13, AB 587, and AB 670. Municipal regulations that are inconsistent with these new laws were preempted effective January 1, 2020.

Specifically, with respect to ADU’s, Subsection (a)(4) of Government Code 65852.2 states in part,

“If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void…”

As Fountain Valley’s ADU ordinance approved December 5, 2017, is inconsistent with provisions of the new state laws, the city’s ADU ordinance has been null and void since January 1, 2020. Therefore, since January 1, 2020, the city has been operating under the new state regulations for ADU’s, outlined below under Summary of ADU Key Provisions, while preparing and formulating the City of Fountain Valley’s ADU ordinance compliant with state law.

Summary of ADU Key Provisions

Reduced Costs and Burdens for Developing ADU’s

- ADUs must now be allowed in all residential zones with some limitations. Additionally, in certain circumstances they are also required to be allowed in mixed-use zones.
- Cities must approve ADU applications within 60 days, without a hearing or discretionary review. (different from city ordinance)
- For ADUs permitted by 2025, cities cannot require the owner to live at the property. (different from city ordinance)
- Cities cannot charge any impact fees for ADU’s under 750 square feet; fees for larger ADUs are limited. (different from city ordinance)
- Homeowners associations must allow the construction of ADU’s.
- ADU’s can be developed at the same time as a primary unit, under most of the same rules.
- A city must delay code enforcement against an existing unlawful ADU to allow it to be legalized.

ADUs Subject to Automatic Approval — No Local Limits (different from city ordinance)

Cities must permit certain categories of ADU without applying any local development standards (e.g., limits on lot size, unit size, parking, height, setbacks, landscaping, or aesthetics), if proposed on a lot developed with one single-family home. ADUs eligible for this automatic approval include:

- An ADU converted from existing space in the home or another structure (e.g., a garage), so long as the ADU can be accessed from the exterior and has setbacks sufficient for fire safety.
- A new detached ADU that is no larger than 800 square feet, is at least 16 feet tall, and has rear arc side setbacks of 4 feet.
- Both of the above options (creating two ADUs), if the converted ADU is a Junior ADU smaller than 500 square feet.
ADUs Subject to Ministerial Approval — Minimal Local Limits
Even if not subject to automatic approval, a city generally must approve any attached or detached ADU under 1,200 square feet unless the city adopts a new ADU ordinance setting local development standards for ADU’s. If a city adopts such an ordinance, it must abide by the following restrictions:

- No minimum lot size requirements. (different from city ordinance)
- No maximum unit size limit under 850 square feet (or 1,000 square feet for a two-bedroom ADU).
- No required replacement parking when a parking garage is converted into an ADU. (different from city ordinance)
- No required parking for an ADU created through the conversion of existing space or located within a half-mile walking distance of a bus stop or transit station.
- If the city imposes a floor area ratio limitation or similar rule, the limit must be designed to allow the development of at least one 800 square feet attached or detached ADU on every lot. (different from city ordinance)

Adding Units to Multifamily Properties (different from city ordinance)
The new laws allow units to be added to multifamily buildings. Cities must permit these types of units in multifamily buildings without applying any local development standards:

- New units within the existing non-living space of a building (e.g., storage rooms, basements, or garages). At least one unit and up to ¼ of the existing unit count may be created this way.
- Two new detached ADU’s located on the same lot as the multifamily building, with 4-foot side and rear setbacks and a 16-foot maximum height.

The proposed ADU ordinance (Attachment #1) has been created in order to preserve what limited authority the city has remaining to regulate ADU’s and Junior ADU’s as a result of these new state laws. In addition to the new requirements outlined above, some of the local control development standards that were in the old ADU ordinance that will remain in the proposed ADU ordinance include provisions for building height, setbacks, building separation, passageway and entrances, development standards such as floor area ratio, landscaping, ratio of 2nd story to 1st story, balconies and decks, and open space. A summary of development standards that will be carried over to the new ordinance to help preserve the design and aesthetics of ADU’s can be found below.

Height
- Maximum 1-story 16 feet for detached ADU’s.
- Maximum height of the zoning district for attached ADU’s.

Setbacks
- 10 foot interior setback separation between the main residence and an ADU.

Building Separation
- The ADU must be located in the rear yard of the property.
- The ADU must be clearly subordinate by location and size to the main dwelling.

Passageway and Entrances
Council Action Request
Code Amendment 20-01
City Council Meeting March 3, 2020
Page 6

- Entrances/outside stairways serving second story ADU’s shall not face front or street side property lines.
- Landing areas for second story ADU’s shall be screened from adjacent side and rear yard properties when adjacent to other single-family homes and cannot be visible from a front or side yard public street.
- Landing areas that are covered with a roof structure shall be counted toward the seventy percent ratio if attached to the main dwelling.
- Outside stairways shall adhere to setback requirements of this code.
- Besides a door, or sliding glass door located off of the main living area of an accessory dwelling unit, only one main entrance shall be provided with a door to the accessory dwelling unit per each accessory dwelling unit.
- No entry to a ground level accessory dwelling unit shall be visible from the public right-of-way.
- The method of screening of any landing or entry shall be architecturally compatible with other onsite development in terms of colors, materials, and architectural style.

Development Standards
- Both detached and attached accessory dwelling units shall comply with the residential district general development standards for the property found in Table 2-3 of Section 21.08.040 for each zoning district including floor area ratio, landscaping, ratio of second story to first story, balconies and decks, and open space requirements.

Parking
- Parking requirements for ADU’s may be provided as tandem parking on a driveway.
- Off-street parking shall be permitted in setback areas on an existing or expanded driveway or through tandem parking on an existing or expanded driveway as allowed by this code, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. Front yard setback landscaping requirements of Chapter 21.20 shall apply.
- No additional driveway shall be provided on the property to provide parking for an accessory dwelling unit unless the driveway is located on a corner lot subject to review and approval by the public works department.

Architectural Compatibility
- The accessory dwelling unit must be architecturally compatible with the existing single-family dwelling on the lot and match the existing single-family dwelling unit in terms of exterior color and material, roof material and color, and types of windows and doors.
- The garage doors of a garage that has been converted to an accessory dwelling unit shall be removed and replaced with a structural wall.

Additionally, staff is proposing to relocate and update definitions found in FVMC 21.90.020 that relate to ADU’s to the ADU section of the code in FVMC 21.08.055.

State law requires that all local ADU ordinances be sent to the Department of Housing and Community Development (HCD) within 60 days after adoption. After adoption of an
ordinance, HCD may submit written findings to the local agency as to whether the ordinance complies with state law.

If HCD finds that the local agency's ordinance does not comply with state law, HCD will notify the local agency and will provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by state law. The local agency shall consider the findings made by HCD and shall do one of the following:

- Amend the ordinance to comply with state law.
- Adopt the ordinance without changes. The local agency shall include findings in its resolution accepting the ordinance that explain the reasons the local agency believes that the ordinance complies with state law despite the findings of HCD.

If the local agency does not amend its ordinance in response to the HCD's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with state law and addressing HCD's findings, HCD shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law. Before notifying the Attorney General that the local agency is in violation of state law, HCD may consider whether a local agency adopted an ordinance in compliance with state law between January 1, 2017, and January 1, 2020.

ENVIRONMENTAL REVIEW:

Adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17 [statutory exemption for second unit ordinances]; CEQA Guidelines sections 15282(h) [statutory exemption for second unit ordinances]; 15303 [new construction or small structures] and 15305 [minor alterations to land]. This ordinance is also exempt under CEQA Guidelines section 15061, because this ordinance will not have a significant effect on the environment, because ADUs will largely constitute infill housing which is exempt from CEQA (Attachment #2).

FINANCIAL ANALYSIS:

There is no financial impact associated with approving the proposed code amendment.

ATTORNEY REVIEW:

The Attorney for the City has reviewed the attached ordinance.

PUBLIC NOTIFICATION:

The item was published in the Fountain Valley View and public notices were posted at City Hall, Recreation Center, and Fountain Valley Library.

ALTERNATIVES:

1. Introduce the attached ordinance approving a notice of exemption in accordance with the California Environmental Quality Act (CEQA) and approving Code Amendment
Council Action Request  
Code Amendment 20-01  
City Council Meeting March 3, 2020  
Page 8

No. 20-01 to amend FVMC Sections 21.18.055 and 21.90.020 for accessory dwelling units (ADU's).

2. Do not introduce the attached ordinance approving a notice of exemption in accordance with the California Environmental Quality Act (CEQA) and approving Code Amendment No. 20-01 to amend FVMC Sections 21.18.055 and 21.90.020 for accessory dwelling units (ADU's).

3. Continue the request for additional information.

**Recommended Action**

Staff recommends that the City Council select Alternative No. 1 – Introduce the attached ordinance approving a notice of exemption in accordance with the California Environmental Quality Act (CEQA) and approving Code Amendment No. 20-01 to amend FVMC Sections 21.18.055 and 21.90.020 for accessory dwelling units (ADU's).

Prepared By: Steven Ayers, Principal Planner
Approved By: Brian James, Planning and Building Director
Fiscal Review By: Teresa Gonzalez, Accounting Manager
Approved By: Rob Houston, City Manager

**Attachments:**

1. Ordinance for Code Amendment No 20-01
2. Notice of Exemption
3. California Paves Way for More ADU's, BBK Attorneys at Law
4. Letter from Californians for Homeownership dated February 3, 2020
ORDINANCE NO._____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOUNTAIN VALLEY APPROVING A CATEGORICAL EXEMPTION PER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND APPROVING CODE AMENDMENT (CA) NO. 20-01 TO AMEND THE FOUNTAIN VALLEY MUNICIPAL CODE (FVMC) SECTIONS 21.08.055 AND 21.90.020 FOR ACCESSORY DWELLING UNITS (ADU'S)

WHEREAS, the Fountain Valley City Council adopted the Development Code Update on December 7, 2000; and

WHEREAS, on December 5, 2017, the Fountain Valley City Council adopted Ordinance No. 1527 approving an ADU ordinance compliant with AB 2299 and SB 1069 that amended California Government Code 65852.2 and 65852.22; and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws took effect January 1, 2020, and, at that time, if the City’s ADU ordinance did not comply with the New ADU Laws, the City’s ordinance became null and void on that date as a matter of law; and

WHEREAS, portions of Fountain Valley’s existing ADU Ordinance (Ordinance No. 1527) conflicted with provisions of the New ADU Laws and became null and void on January 1, 2020; and

WHEREAS, the Fountain Valley City Council adopted an interim urgency ordinance on February 4, 2020, to enforce the California Government Code Sections 65852.2 and 65852.22 and the maximum standards allowed therein. The interim urgency ordinance became effective immediately and will be effective for 45 days; and

WHEREAS, the City of Fountain Valley desires to amend FVMC Sections 21.08.055 and 21.90.020 for the construction of ADU’s and Junior ADU’s (JADU’s) to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, the Fountain Valley Planning Commission considered the proposed Code Amendment No. 20-01 at a duly noticed public hearing on February 12, 2020, and recommended the City Council approve a Categorical exemption per CEQA and approve Code Amendment No. 20-01 to amend FVMC Sections 21.08.055 and 21.90.020 for ADU’s by a vote of 5-0; and

WHEREAS, the proposed Code Amendment No. 19-08 has been publicly noticed in accordance with State Law and the Fountain Valley Municipal Code.
SECTION 1

The City Council hereby determines that Code Amendment No. 20-01 is exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17 [statutory exemption for second unit ordinances]; CEQA Guidelines sections 15282(h) [statutory exemption for second unit ordinances]; 15303 [new construction or small structures] and 15305 [minor alterations to land]. This ordinance is also exempt under CEQA Guidelines section 15001, because this ordinance will not have a significant effect on the environment, because ADUs will largely constitute infill housing which is exempt from CEQA.

SECTION 2

The City Council finds that due notice of the public hearing on March 3, 2020, conducted in the City Council Chambers, 10200 Slater Avenue, Fountain Valley, was given as required by the Fountain Valley Municipal Code, Title 21, and the State of California. Public notice of this hearing and a copy of the Planning Commission agenda were posted at City Hall, Recreation Center and the Fountain Valley Library.

SECTION 3

Pursuant to Fountain Valley Municipal Code section 21.34.050 the City Council does hereby find as follows:

1. The proposed amendment ensures and maintains internal consistency with the actions, goals, objectives and policies of the General Plan, and would not create any inconsistencies with Title 21, in the case of a title amendment. The proposed amendment would promote and encourage the development of a variety of housing opportunities to accommodate current and projected households by promoting the construction of additional dwelling units to accommodate Fountain Valley’s share of regional housing needs in accordance with adopted land use policies (General Plan Housing Element Goal #2/Policy2.a). Code Amendment No. 20-01 would be consistent with California Government Code 65852.2, 65852.22, and Title 21 and would not create any inconsistencies with Title 21, in the case of a title amendment.

2. The proposed amendment would not be detrimental to the public convenience, health, interest, safety or welfare of the city. The proposed amendment would clearly identify standards that must be met per California Government Code 65852.2 and 65852.22 along with development standards to ensure consistency with the Fountain Valley Municipal Code to ensure public convenience, health, interest, safety, and welfare will be met.

3. The proposed amendment has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and the city’s environmental review procedures as addressed in Section 1 above.

4. The proposed amendment is internally consistent with other applicable provisions of Title 21. As noted in finding 1 above, Code Amendment No. 20-01 would update FVMC 21.08.055 and 21.90.020 to provide internal consistency with other
applicable provisions of Title 21. There are no other known inconsistencies with the proposed amendment and other applicable provisions of Title 21.

SECTION 4

Section 21.08.055 is hereby amended to read as follows:

"...

Building Permits will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with California Government Code Section 65862.2 and 65862.22 and the maximum standards allowed therein.

The following standards shall apply to accessory dwelling units.

(a) Accessory Dwelling Units Constructed Within Existing Structures. An accessory dwelling unit: (1) attached to, or located within, a proposed or existing single-family dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or (2) constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit or (3) attached to, or located within an existing multi-family structure projects shall conform to the following:

(1) Building Permit. Prior to constructing an accessory dwelling unit per this subsection, the applicant must apply for and receive approval of a building permit. The application shall be ministerially considered and approved, without discretionary review or a hearing, and be in compliance with all requirements imposed by subsection (a).

(2) Plan Review. The city shall act on an application to create an accessory dwelling unit under subsection (a) within 60 days from the date the city receives a completed building permit application if there is an existing single-family or multifamily dwelling on the lot. If the application to create an accessory dwelling unit is submitted in conjunction with an application to create a new residential structure on the lot, the city may delay acting on the application for the accessory dwelling unit until the city acts on the application for the new residential structure, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the agreed-upon delay.

(3) Building Code Requirements. Accessory dwelling units shall be constructed on a permanent foundation and shall be built in compliance with the California Building Code.

(4) Areas Allowed. Accessory dwelling unit(s) shall be permitted on a residentially zoned parcel with one existing or proposed single-family dwelling and in multi-family projects as noted in subsection (e).

(5) Number of Accessory Dwelling Units Allowed. (1) A parcel with one existing or proposed single-family dwelling shall contain no more than a total of one single-family
dwelling, one attached or detached accessory dwelling unit, and one junior accessory dwelling unit, and (2) in multi-family projects as noted in subsection (e).

(6) Access. The accessory dwelling unit shall provide independent exterior access from the existing dwelling.

(7) Cannot be Sold Separately. The accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

(8) Passageway. No passageway shall be required.

(9) Fire Sprinklers. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(10) Utility Connection. Accessory dwelling units shall not be considered by the city to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service. The city shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge for an accessory dwelling unit under subsection (a).

(11) Parking. No additional parking spaces shall be required.

(12) Minor Expansion. A minor expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure may be allowed if it is limited to accommodating ingress and egress, there is exterior access from the proposed or existing dwelling, and the side and rear setbacks are sufficient for fire safety.

(13) Rental. If the Accessory Dwelling Unit is available for rent, the rental of the accessory dwelling unit shall be for a term longer than 30 days.

(14) Covenant. A covenant containing restrictions that the accessory dwelling unit shall not be sold separately from the main dwelling unit and the rental term of the accessory dwelling unit shall not be less than 30 days shall be recorded with the county recorder’s office. Copies of the recorded covenant shall be filed with the building department and the covenant shall run with the land and shall be binding upon any future owner, heirs, or assigns. Accessory dwelling units created after January 1, 2025 shall be owner occupied and a covenant containing this restriction shall also be recorded for accessory dwelling unit’s created after January 1, 2025.

(15) Nonconforming Zoning Conditions. An existing structure converted to an accessory dwelling unit under this section shall not require the correction of any legal nonconformity that may exist on the property as a requirement of approval. Illegal nonconformities shall be subject to Section 21.56.050 “Unlawful Uses and Structures.”

(16) Impact Fee. An impact fee for the development of an accessory dwelling unit may only be imposed for an accessory dwelling unit of 750 square feet or larger and shall be charged proportionately in relation to the square footage of the primary dwelling unit. For purposes of this paragraph, “impact fee” has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000 of the State of California Government Code, except that it also includes fees specified in Section 66477 of the
State of California Government Code. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(17) Certificate of Occupancy. The city shall not issue a certificate of occupancy for an accessory dwelling unit before a certificate of occupancy has been issued for the primary dwelling.

(b) New Construction Accessory Dwelling Unit Structures. New accessory dwelling unit structures constructed: (1) attached to a single-family dwelling or multi-family dwelling, or (2) detached from a single-family dwelling or multi-family dwelling and located on the same lot as the main dwelling shall conform to the following:

(1) Building Permit. Prior to constructing a new accessory dwelling unit per this subsection, the applicant must apply for and receive approval of a building permit. The application shall be ministerially considered and approved, without discretionary review or a hearing, and be in compliance with all requirements imposed by subsection (b).

(2) Plan Review. The city shall act on an application to create an accessory dwelling unit under subsection (b) within 60 days from the date the city receives a completed building permit application if there is an existing single-family or multifamily dwelling on the lot. If the application to create an accessory dwelling unit is submitted in conjunction with an application to create a new residential structure on the lot, the city may delay acting on the application for the accessory dwelling unit until the city acts on the application for the new residential structure, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the agreed-upon delay.

(3) Building Code Requirements. Accessory dwelling units shall be constructed on a permanent foundation and shall be built in compliance with the California Building Code.

(4) Areas Allowed. New accessory dwelling unit(s) shall be permitted on a residentially zoned parcel with one existing or proposed single-family dwelling and in multi-family projects as noted in subsection (e).

(5) Number of Accessory Dwelling Units Allowed. (1) A parcel with one existing or proposed single-family dwelling shall contain no more than a total of one single-family dwelling, one attached or detached accessory dwelling unit, and one junior accessory dwelling unit, and (2) in multi-family projects as noted in subsection (e).

(6) Kitchen, Bathroom, and Entrance. The accessory unit shall contain separate kitchen and bathroom facilities and may have a separate entrance from the main dwelling. The unit shall have a minimum gross floor area to accommodate the development of an efficiency unit as defined in Section 17958.1 of the Health and Safety Code.

(7) Cannot be Sold Separately. The accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

(9) Attached and Detached Accessory Dwelling Units Maximum and Minimum unit size. The minimum size of a new accessory dwelling unit shall be 220 square feet.
The maximum size for a new: (1) detached accessory unit shall be 1,200 square feet, and (2) attached accessory dwelling unit shall be 50% of the primary residence.

(10) Building Separation for Detached Accessory Dwelling Units. A detached accessory dwelling unit shall be separated from the main dwelling a minimum of ten feet, must be located in the rear yard of the primary dwelling, and must be clearly subordinate by location and size.

(11) Setbacks. A setback of no more than four feet from the side and rear lot lines shall be required for a new accessory dwelling unit.

(12) Passageway and Entrances. No passageway shall be required in conjunction with the construction of an accessory dwelling unit. Entrances and outside stairways serving second story accessory dwelling units shall not be constructed on any building elevation facing a front or side yard public street. Landing areas for outside stairways shall be screened from adjacent side and rear yard properties when adjacent to other single-family homes and cannot be visible from a front or side yard public street. Landing areas that are covered with a roof structure shall be counted toward the seventy percent ratio if attached to the main dwelling. Outside stairways shall adhere to setback requirements of this code. Besides a door, or sliding glass door located off of the main living area of an accessory dwelling unit, only one main entrance shall be provided with a door to the accessory dwelling unit per each accessory dwelling unit. No entry to a ground level accessory dwelling unit shall be visible from the public right-of-way. The method of screening of any landing or entry shall be architecturally compatible with other onsite development in terms of colors, materials, and architectural style.

(13) Development Standards. Both detached and attached accessory dwelling units shall comply with the residential district general development standards for the property found in Table 2-3 of Section 21.08.040 for each zoning district including floor area ratio, landscaping, ratio of second story to first story, balconies and decks, and open space requirements. No development standard regarding lot coverage, floor area ratio, landscaping, or open space shall apply that wouldn't allow for at least a new 800 square foot, 16-foot-tall accessory dwelling unit with at least 4 foot side and rear setbacks.

(14) Parking. Parking requirements for accessory dwelling units shall be one space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Off-street parking shall be permitted in setback areas on an existing or expanded driveway or through tandem parking on an existing or expanded driveway as allowed by this code, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. Front yard setback landscaping requirements of Chapter 21.20 shall apply. No additional driveway shall be provided on the property to provide parking for an accessory dwelling unit unless the driveway is located on a corner lot subject to review and approval by the public works department. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, those off-street parking spaces shall not be required to be replaced.
(15) Architectural Compatibility. The accessory dwelling unit must be architecturally compatible with the existing single-family dwelling on the lot and match the existing single-family dwelling unit in terms of exterior color and material, roof material and color, and types of windows and doors. The garage doors of a garage that has been converted to an accessory dwelling unit shall be removed and replaced with a structural wall.

(16) Height. A detached, new construction, accessory dwelling unit shall be restricted to a single-story structure with a maximum height of 10 feet. An attached new construction, accessory dwelling unit shall not exceed the height limit applied to the main dwelling unit in the underlying zoning district.

(17) Fire Sprinklers. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence unless otherwise required by the current California Fire Code or Fountain Valley Municipal Code.

(18) Utility Connections. An accessory dwelling unit shall not be considered to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling. The city may require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with California Government Code Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(19) Impact Fee. An impact fee for the development of an accessory dwelling unit may only be imposed for an accessory dwelling unit of 750 square feet or larger and shall be charged proportionately in relation to the square footage of the primary dwelling unit. For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000 of the State of California Government Code, except that it also includes fees specified in Section 66477 of the State of California Government Code. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(20) Rental. If the Accessory Dwelling Unit is available for rent, the rental of the accessory dwelling unit shall be for a term longer than 30 days.

(21) Covenant. A covenant containing restrictions that the accessory dwelling unit shall not be sold separately from the main dwelling unit, and the rental term of the accessory dwelling unit shall not be less than 30 days shall be recorded with the county recorder’s office. Copies of the recorded covenant shall be filed with the building department and the covenant shall run with the land and shall be binding upon any future owner, heirs, or assigns. Accessory dwelling units created after January 1, 2025 shall be owner occupied and a covenant containing this restriction shall also be recorded for accessory dwelling unit’s created after January 1, 2025.
(22) Nonconforming Zoning Conditions. An existing structure converted to an accessory dwelling unit under this section shall not require the correction of any legal nonconformity that may exist on the property as a requirement of approval. Illegal nonconformities shall be subject to Section 21.56.050 "Unlawful Uses and Structures."

(23) Certificate of Occupancy. The city shall not issue a certificate of occupancy for an accessory dwelling unit before a certificate of occupancy has been issued for the primary dwelling.

(c) Notwithstanding subsection (a) or (b), parking requirements for an accessory dwelling unit will not be imposed in any of the following instances and upon verifiable proof provided by the applicant:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit. For the purposes of this section "public transit" shall include any bus stop.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a designated, fixed pick-up or drop-off location for a car share vehicle located within one block of the accessory dwelling unit.

(d) Junior Accessory Dwelling Units. Junior accessory dwelling units constructed within the existing or proposed space of a single-family dwelling shall conform to the following:

(1) Building Permit. Prior to constructing a junior accessory dwelling unit per this subsection, the applicant must apply for a building permit. The application shall be considered and approved, without discretionary review or a hearing, and be in compliance with all requirements imposed by subsection (d).

(2) Plan Review. The city shall act on an application to create a junior accessory dwelling unit under subsection (d) within 60 days from the date the city receives a completed building permit application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted in conjunction with a permit application to create a new single-family dwelling on the lot, the city may delay acting on the permit application for the junior accessory dwelling unit until the city acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the agreed-upon delay.

(3) Building Code Requirements. Junior accessory dwelling units shall be constructed on a permanent foundation and shall be built in compliance with the California Building Code.

(4) Areas Allowed. Junior accessory dwelling units shall be permitted in the R1 and GH residential zones subject to compliance with subsection (d).
(5) Number of Junior Accessory Dwelling Units Allowed. Only one junior accessory dwelling unit shall be allowed in any residential zone in addition to a single-family dwelling. No junior accessory dwelling unit shall be permitted on any residential lot already containing three or more dwelling units.

(6) Owner-Occupied. The main dwelling or the junior accessory dwelling unit shall be owner-occupied. Notwithstanding the foregoing, owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(7) Rental. If the Junior Accessory Dwelling Unit is available for rent, the rental of the accessory dwelling unit shall be for a term longer than 30 days.

(8) Cannot be Sold Separately. The junior accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(9) Maximum and Minimum Size: The junior accessory dwelling unit is restricted to a maximum of 500 square feet and a minimum size of 220 square feet.

(10) Constructed within Existing Structures. Junior accessory dwelling units must be constructed within the walls of the proposed or existing single-family residence.

(11) Entrance. A junior accessory dwelling unit must include a separate entrance from the main entrance to the proposed or existing single-family residence.

(12) Efficiency Kitchen. At a minimum, a junior accessory dwelling unit must include an efficiency kitchen, which shall include a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(13) Parking. No additional parking shall be required as a condition to grant the building permit.

(14) Fire or Life Protection. A junior accessory dwelling unit shall not be considered a separate or new dwelling unit for the purpose of any fire or life protection.

(15) Utility Connections. For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(16) Nonconforming Zoning Conditions. An existing structure converted to accommodate a junior accessory dwelling unit under this section shall not require the correction of any legal nonconformity that may exist on the property as a requirement of approval. Illegal nonconformities shall be subject to Section 21.56.050 "Unlawful Uses and Structures."

(17) Certificate of Occupancy. The city shall not issue a certificate of occupancy for an accessory dwelling unit before a certificate of occupancy has been issued for the primary dwelling.

(18) Covenant. A covenant containing restrictions below shall be recorded with the county recorder’s office and copies of the recorded covenant shall be filed with the building department.
(A) Either the main dwelling or the junior accessory dwelling unit shall be owner-occupied except if the owner is a governmental agency, land trust, or housing organization.

(B) The junior accessory dwelling unit shall not be sold separately from the main dwelling unit.

(C) The junior accessory dwelling unit shall be as approved. No changes to the junior accessory dwelling unit shall occur without approval of a new building permit.

(D) The rental term of the accessory dwelling unit shall not be less than 30 days.

(E) This covenant shall run with the land and shall be binding upon any future owners, heirs, or assigns.

(G) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner including revocation of any right to maintain a junior accessory dwelling unit on the property.

(e) Special Regulations for Multifamily and Mixed-Use Accessory Dwelling Units. In addition to the requirements under subsections (a) through (c), accessory dwelling units attached to, or located within existing multifamily dwelling structures, or new construction accessory dwelling units in a multifamily residential or mixed-use zones shall conform to the following:

(1) At least one accessory dwelling unit shall be allowed within an existing multifamily dwelling and up to 25 percent of the existing multifamily dwelling units. Multiple accessory dwelling units shall be allowed within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(2) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks shall be allowed.

(f) Definitions. As used in this section, the following terms mean:

(1) “Accessory dwelling unit” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

SECTION 5

Section 21.90.020(1) Definitions "A" is hereby amended to read as follows:

"... "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:
— (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
— (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
...

SECTION 6

Section 21.90.020(5) Definitions "E" is hereby amended to read as follows:

"... "Efficiency unit" means a habitable space as defined in Section 17958.1 of the Health and Safety Code.
...

Page 65
SECTION 7

Section 21.90.020(10) Definitions "J" is hereby amended to read as follows:

"... "Junior accessory dwelling unit" means a unit that is no more than five hundred square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure."

SECTION 8

Section 21.90.020(16) Definitions "P" is hereby amended to read as follows:

"... "Passageway" means a path that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit."

SECTION 9

Section 21.90.020(19) Definitions "S" is hereby amended to read as follows:

"... "Secondary residential unit" see Accessory dwelling unit."

SECTION 10

If any section, subsection, section, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, section, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

SECTION 11

The City Clerk shall certify to the adoption of this ordinance and cause it to be published as required by law. This ordinance shall become effective thirty (30) days after the date of its adoption. When this ordinance becomes effective, Interim Urgency Ordinance No. 1556 shall be null and void.
PASSED, APPROVED AND ADOPTED THIS ___ DAY OF MARCH, 2020.

ATTEST:

__________________________  _______________________
City Clerk                              Mayor

APPROVED AS TO FORM

HARPER & BURNS LLP

__________________________
Attorneys for the City
Notice of Exemption

TO: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

FROM: City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

County Clerk
County of Orange
12 Civic Center Plaza
Santa Ana, CA 92701

Project Title: Accessory Dwelling Units - Code Amendment No. 20-01

Project Location/Address: Citywide

Project Activity/Description: Code Amendment to Fountain Valley Municipal Code (FVMC) Sections 21.08.055 and 21.90.020 to bring the City's Accessory Dwelling Unit (ADU) regulations into compliance with State law.

Public Agency Approving Project: City of Fountain Valley, Orange County, California

Project Applicant: City of Fountain Valley

Project Applicant's Address: 10200 Slater Avenue, Fountain Valley, CA 92708 Phone Number: (714) 593-4425

Exempt Status: (check one):

☐ Ministerial (Sec. 21080 (b)(1); 15268);

☐ Declared Emergency (Sec. 21080 (b)(3); 15269 (a));

☐ Emergency Project (Sec. 21080 (b)(4); 15269 (b) (c));

☑ Categorical Exemption. State type and section number: 15061, 15303, and 15305

☐ Statutory Exemptions. State code number:

Reasons why project is exempt: Adoption of this Ordinance is exempt from CEQA under Public Resources Code section 21080.17 (statutory exemption for second unit ordinances); CEQA Guidelines sections 15282(b) (statutory exemption for second unit ordinances); 15303 (new construction or small structures) and 15306 (minor alterations to land). This ordinance is also exempt under CEQA Guidelines section 15061, because this ordinance will not have a significant effect on the environment, because ADU's will largely constitute infill housing which is exempt from CEQA.

Lead Agency
Contact Person: Steven Ayers, Planner
Contact Phone: 714-593-4431

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?: ☐ Yes ☐ No

Signature: __________________________ Date: ___________ Title: Principal Planner

☑ Signed by Lead Agency ☐ Signed by Applicant
LEGAL ALERTS OCT 16, 2019

California Paves Way for More ADUs

Part 5: New California Housing Laws

As part of its response to California’s housing crisis, the Legislature passed a handful of new laws that further limit local regulation of accessory dwelling units, or ADUs. The Legislature’s goal is to accelerate ADU development throughout the State. Historically, an ADU is usually a second small residence on the same grounds as a single-family home, such as a back house or an apartment over a garage.

**AB 881, SB 13 and AB 68[1]**

**More Locations**

- State law now clearly prohibits a city from requiring a minimum lot size.
- ADUs are now allowed on lots with multifamily dwellings (not just single-family dwellings).
- The no-setback rule is expanded beyond just nonconforming garages to include any existing structure, or any new structure in the same place and with the same dimensions as an existing structure.
- The most a city may require for a side or rear setback is now 4 feet.
- Before, the adequacy of water and sewer services and ADU impact on traffic flow and public safety were just examples of reasons that might justify a city in restricting ADUs.
in a certain area. Now, they're the only allowed reasons, and cities must consult with utility providers before deciding that water and sewer services are inadequate.

Fewer Opportunities to Regulate Size

- Minimum size must be 220 square feet, or as low as 150 square feet if the city has adopted a lower efficiency-unit standard by local ordinance.
- Maximum size must be at least 850 square feet for attached and detached studio and one-bedroom ADUs and at least 1,000 square feet for two or more bedrooms. In practice, an ADU might be limited to less than these minimum maximums by the application of development standards, such as lot coverage and floor-area ratio. But another new provision prohibits the application of any standard that wouldn't allow for at least an 800-square foot, 16-foot tall ADU with four-foot side and rear setbacks.
- Converted ADUs may now include an expansion of the existing structure of up to 150 square feet for ingress and egress.
- Attached ADUs are no longer limited to 1,200 square feet — just 50 percent of the existing primary dwelling.

Less Parking

- Cities may no longer require replacement parking when a garage is converted to an ADU.
- A city cannot require ADU parking within a 1/2 mile of public transit. State law now clarifies that “public transit” includes any bus stop, which may considerably expand parking-exempt areas for many cities.

More Limited Review

- Whether or not a city has a compliant ADU ordinance, it must ministerially approve a compliant ADU, and now a junior ADU as well, within 60 days of receiving a complete application — a decrease from 120 days. But the city must extend that time if an applicant requests it. Cities may charge a fee to recover review costs.
- Any new primary dwelling that requires a discretionary review may still be subjected to the normal discretionary process, and consideration of an ADU on the same lot may be delayed until the primary dwelling is approved. But the ADU decision must remain ministerial.
- Cities now have to approve new detached ADUs with only a building permit (as they do for converted ADUs), without applying any standard except for 4-foot setbacks, an 800-square foot max and a 16-foot height limit.
- Cities may not require correction of physical nonconforming zoning conditions for an ADU or junior ADU.

Multiple ADUs and Multifamily

- Cities must now allow both a junior ADU and either a converted ADU or a detached building-permit-only ADU on the same lot.
• A city must now allow junior ADUs even if the city doesn’t have an ADU ordinance, in which case it may only impose the few standards in state law.
• Cities must now allow multiple converted ADUs on lots with a multifamily dwelling.
• Cities must now allow up to two detached ADUs on lots with a multifamily dwelling, subject only to a 16-foot height limit and 4-foot setback.

**More Limited Fees**

• Utility providers are now more limited in whether and how they can charge connection fees and capacity charges.
• Impact fees are prohibited for ADUs smaller than 750 square feet. They’re allowed for large ADUs, but only proportional to the primary dwelling.

**No Owner-occupancy**

• All ADUs are exempt from owner-occupancy requirements until Jan. 1, 2025. Cities may then impose occupancy requirements, but only to ADUs created after that date.

**No Short-term**

• Cities may no longer allow short-term rentals of ADUs.

**Heavier Consequences for Cities**

• Now, a local ADU ordinance is null and void if it does not fully comply with whatever the current state law requires — not just with the 2017 amendments (which was previously the case). So cities will have to proactively conform their ordinances before changes in state law take effect or continually risk voiding their entire local ordinance.
• Cities are more accountable now to the California Department of Housing Community Development for confirming their local ordinances to the state ADU law, and HCD may refer a violator to the Attorney General.

**AB 671 and AB 1392**

*Housing elements must now promote ADUs for affordable rent. HCD must provide financial incentives.*

Every general plan housing element must now include, as part of its program to make adequate provision for the housing needs of all economic segments of the community, a “plan that incentivizes and promotes the creation of [ADUs] that can be offered at affordable rent ... for very low, low, and moderate-income households.” For its part, HCD is charged with developing “a list of existing state grants and financial incentives” for ADU developers and operators by the end of 2020.

In practice, cities and counties will likely need to not only discuss their ADU ordinance and report on ADU development in their housing elements, but also report on what they are doing to
promote affordable rental of those ADUs. The upside is that affordable ADUs may count toward fulfilling regional housing needs allocations, also known as RHNA, requirements.

**AB 670**

*Home Owner Associations are now limited like local agencies in restricting ADUs.*

State law has limited local agencies in restricting ADUs for a while now, but hasn't addressed private restrictions such as HOA Covenant, Conditions & Restrictions, or CC&Rs. **AB 670** makes any governing HOA document void and unenforceable to the extent that it prohibits, or effectively prohibits, the construction or use of ADUs or junior ADUs. **AB 670** does permit an HOA to place “reasonable restrictions” on ADUs and junior ADUs in common interest developments, as long as the restrictions do not discourage ADU or junior ADU construction or unreasonably increase the cost to construct them. (Like cities, HOAs are bound to disagree with ADU proponents over what those standards mean in practice.) The new law does not define what sort of “restrictions” are “reasonable,” but the bill does not require an HOA to follow the same exact standards that the city or county has adopted, leaving open the possibility that the HOA might still have its own “reasonable restrictions” that differ from those of the local agency.

While HOA regulation of ADUs is not directly a local agency’s business, it is helpful for cities and counties to keep this in mind since they receive complaints from time to time from residents concerned about government approval of uses that violate CC&Rs.

**AB 587**

*Separate sale or conveyance of ADUs is now okay in limited situations.*

State law generally prohibits local ADU ordinances from allowing ADUs to be sold or otherwise conveyed separately from the primary dwelling. But **AB 587** creates a limited exception by allowing (though not requiring) cities to adopt ordinances authorizing ADUs to be conveyed separately from the primary dwelling if certain conditions are met. These conditions include, among others, that the property was built by a qualified nonprofit, there is an enforceable restriction on the use of the land between the nonprofit and qualified low-income buyer and the property is held in a tenancy-in-common agreement that:

- gives the low-income buyer an undivided, unequal interest in the property based on the size of the dwelling,
- gives the nonprofit a right of first refusal to buy back the property if the buyer wishes to sell,
- requires the buyer to occupy the residence as his or her principal residence, and
- contains affordability restrictions on the sale or conveyance of the property ensuring that the property will remain low-income housing for at least 45 years.

This new, narrow exception appears to be a concession aimed at a particular project or model.

Note that this exception is not automatic. The local agency must choose to provide it, and it will likely be of only limited interest to most jurisdictions where there is no qualified nonprofit ready to proceed under this model.

**The Bottom Line**

Nearly every — if not every — city and county in the state will need to amend its ADU ordinance in time to take effect before Jan. 1, or the ordinance will be void and the agency will have to
approve ADUs ministerially without applying any architectural, landscaping, zoning or development standard.

With California’s housing shortage reaching crisis levels, the state Legislature and Gov. Gavin Newsom approved a slew of new bills this session aimed at helping the situation. Using a mix of carrots and sticks, these laws will change how cities and counties address housing shortages in their own communities. Watch for more Legal Alerts analyzing the new laws and how they impact your agency.

Also in DD&K’s Housing Series:

- Omnibus Housing Bill Adds Teeth to Housing Element Law Enforcement
- Surplus Land Act Requirements Expand for Local Agencies
- Tenant Protection Act Sets Statewide Rent Caps and Eviction Rules
- SB 330 Limits Local Laws Over Housing Developments
- Housing Density Bonus and Reporting Changes for Local Agencies

If you have any questions about new ADU laws and how they may impact your agency, please contact the authors of this Legal Alert listed to the right in the firm’s Municipal Law practice group, or your BB&K attorney.

Please feel free to share this Legal Alert or subscribe by clicking here. Follow us on Facebook @BestBestKrieger and on Twitter @BBKlaw.

Disclaimer: BB&K Legal Alerts are not intended as legal advice. Additional facts or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information in this communiqué.

[1] “When, during a calendar year, two or more bills amending the same code section become law, the bill enacted last (with a higher chapter number) becomes law and prevails over (chapters out) the code section in the bill or bills previously enacted. Chaptering out can be prevented with the adoption of ‘double jointing’ amendments.” (Cal. State Legis. Glossary, s.v. chaptering out.) AB 881 was “double-jointed” with AB 881 and SB 13, and AB 881 was enacted last, so sections 1.5 and 2.5 of AB 881 are the operative provisions resulting from the passage of all three bills in the order in which they were enacted.

[2] AB 671 and AB 139 were double-jointed bills. Section 1.5 of AB 671 governs because it was enacted last.
February 3, 2020

VIA EMAIL AND U.S. MAIL

City Council
City of Fountain Valley
10200 Slater Ave.
Fountain Valley, CA 92708
Email: cheryl.brothers@fountainvalley.org; michael.vo@fountainvalley.org;
      kim.constantine@fountainvalley.org; patrick.harper@fountainvalley.org;
      steve.nagel@fountainvalley.org

RB: February 4, 2020 City Council Meeting, Agenda Item 12.

To the City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California’s housing crisis. I am writing as part of our work monitoring local compliance with California’s laws regarding accessory dwelling units (ADUs).

At your February 4 meeting, you will discuss an urgency ordinance intended to address recent changes to state ADU law. If the City adopts a compliant ADU ordinance, it will be able to maintain certain local controls on ADU development.

Unfortunately, instead of actually revising the City’s rules to conform to the new state laws, the draft urgency ordinance directs the City’s planning and building staff to issue building permits “in accordance with California Government Code Sections[s] 65852.2 and 65852.22 and the maximum standards allowed therein.” Although this text is difficult to parse, we understand from the staff report that this is intended to apply “the maximum local limitations allowable under state law,” without actually identifying what those restrictions are.

This is not how cities are required to legislate. How is a homeowner supposed to know what the rules are? How will City staff know what rules to apply? What written, objective standards are City staff supposed to identify if they intend to reject a project, as they are required to do under the Housing Accountability Act? How will the state Department of Housing and Community Development review the ordinance for compliance with state law? How is a court supposed to judge whether the City is applying rules that comply with state law?

The City’s approach here is puzzling. Of the over 100 cities we have monitored in the process of amending their ADU policies to comply with the new state laws, we have not seen any other city try this approach. Other cities are adopting urgency ordinances (typically paired with
February 3, 2020
Page 2

identical, later-effective traditional ordinances) that comprehensively update their municipal codes to comply with state law. That’s how this needs to be done.

The City’s proposed approach also impermissibly interferes with the state’s statutory scheme for regulating ADUs. Understanding the dire nature of the state’s housing crisis, the Legislature designed Section 65852.2 to give a city two options. The default option is for the city to apply broadly permissive state ADU standards within its borders. The only way for a city to avoid this default option is by adopting a fully valid ADU ordinance consistent with the requirements in Section 65852.2. See Gov. Code § 65852.2(a)(4) (A city must “apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until [it] adopts an ordinance that complies with [Section 65852.2].”).

As drafted, the City’s ordinance will be null and void, in its entirety, and staff will be legally required to apply permissive state law standards for ADUs until the City adopts a compliant ordinance. We urge you to continue this item so that staff can take the time necessary to develop a compliant urgency ordinance. We would like to be part of that process. To that end, we request that you include us on the notice list for all future public meetings regarding the City’s ADU policies, and we request that this letter be included in the correspondence file for those meetings.

Sincerely,

Matthew Gelfand

cc: Steven Ayers, Principal Planner (by email to steven.ayers@fountainvalley.org)
Brian James, Planning & Building Director (by email to brian.james@fountainvalley.org)
Jason Al-Imam, Finance Director (by email to jason.alimam@fountainvalley.org)
Rob Houston, City Manager (by email to rob.houston@fountainvalley.org)
Alexandra Halfman, City Attorney (by email to amhalfman@harperburns.com)
CITY OF FOUNTAIN VALLEY
CITY COUNCIL
COUNCIL ACTION REQUEST

To: Honorable Mayor and Members of the City Council

Agenda Date: March 3, 2020

SUBJECT: Request Approval of the following: 1. Waive the Bidding Requirements per FVMC 2.36.070 Paragraph 5 and Authorize Staff to Purchase and Equip a 2020 Pierce Arrow XT PUC Tiller Truck in the Amount of $1,574,131, 2. Amend the 2019/20 Capital Budget to Accommodate this Purchase, and 3. Authorize Staff to Dispose of one surplus American La France tiller truck by Means That Best Meet the City’s Needs.

EXECUTIVE SUMMARY:

In 2001, The City of Fountain Valley entered into a five year lease agreement with American La France (ALF) to obtain three fire engines and one tiller truck. The quality and reliability of the ALF equipment was exceptional due to unmatched vehicle build standards and use of high quality parts. Under the lease agreement, the 2001 fleet provided exceptional service for five years.

In 2005, The City entered into a successive seven year lease with ALF. Under the program, two 2006 fire engines and one 2006 tiller truck were leased and one previously leased 2001 fire engine was purchased that still serves the city today. The equipment from the second lease proved to be less reliable and more costly to maintain, which was a result of ALF’s restructuring and the implementation of lower quality manufacturing standards and parts. As a result, the department is faced with apparatus reliability problems and at one point had to borrow equipment from a neighboring organization and utilize the Office of Emergency Services (OES) assigned engine to ensure uninterrupted emergency service. Staff recognized a need to develop a plan to replace this generation of apparatus. Therefore, an Apparatus Committee (AC) was formed to evaluate fire engine manufacturers and seek solutions to procure a quality replacement product. The result was the purchase of a state of the art, high quality fire engine that has been serving the city continuously since 2018. Now the same need exists to replace the 2006 ALF tiller truck and the same AC process has been utilized.

Staff is requesting Council’s approval to waive the bidding requirements per FVMC 2.36.070 paragraph 5, authorization to purchase and equip a 2020 Pierce Arrow XT PUC Tiller Truck in the amount of $1,574,131 and authorization to amend the 2019/20 budget and dispose of one 2006 ALF tiller truck by means that best meet the city’s needs.
DISCUSSION:

The 2001 lease and eventual engine purchase left the department with a quality fire engine capable of enduring a robust service life. The 2006 lease was a similar process; however, it proved to be a more costly and frustrating experience because ALF was met with operational and financial challenges. As a result, the 2006 fire engines and tiller truck were built with lower quality control by ALF and have proven to be less reliable, less durable and more costly due to frequent repairs and replacement of major operational components. The excessive amount of repairs led to extreme out of service times for the 2006 fleet, which resulted in both an excessive use of the OES engine assigned to Fountain Valley and the use of a Newport Beach fire engine in service out of Fountain Valley Fire Station 1. Similarly, the same repair needs have existed with the tiller truck, most notably in 2018 when it was out of service for repairs comprehensively for over four months.

Staff recognizes the importance of firefighting vehicles that provide reliable service. A high quality tiller truck will reduce the amount of time that front line equipment is out of service and provide more predictable and acceptable fleet maintenance costs. The 2006 fleet regularly exceeded fiscal year funds allocated for maintenance. The purchase of the 2017 Pierce fire engine has had a dramatic impact on lowering annual maintenance and repair costs as predicted. The new AC researched several fire apparatus manufacturers and again, determined that Pierce builds a quality product that will best serve the city. Part of the apparatus committees research included speaking with other agencies within Orange County about which manufacturer they use and found that most agencies within the county have Pierce fire apparatus because of their proven performance record, safety, and long term reliability. The committee also analyzed the efficacy of other manufacturers such as, but not limited to KME, and found Pierce to best satisfy the needs of the department within the targeted budget.

VEHICLE PROCUREMENT:

In accordance with the City’s Purchasing Policies, the City of Fountain Valley obtained pricing from Pierce using cooperative contract pricing provided by Sourcewell. Sourcewell is a municipal agency that leverages the purchasing power of more than 50,000 member agencies and provides competitively solicited purchasing contracts. The fact that Sourcewell awards contracts through a competitive process, with price as the main factor, ensures the cost competitiveness of the purchase. Utilizing the cooperative pricing also reduces the amount of time required to solicit for items that have already been competitively solicited.

Sourcewell advertised their RFP # 022818 for Fire Apparatus, with Related Equipment, Accessories, and Supplies on January 11, 2018, which was publicly advertised and distributed to 63 companies. Eighteen companies responded to the request and submitted proposals. The proposals were evaluated based on factors including, but not limited to, pricing, warranty coverages and financial, industry and marketplace success.
Based on the competitive procurement process conducted by Sourcewell, a cooperative contract was awarded to Pierce, which is effective for four years and is available for use by government and state agencies including cities.

Pierce products are manufactured in Appleton, Wisconsin and the local dealership is located in Fontana, California. Pierce is a well-established company which has been in business since 1913 and has been building quality fire apparatus for nearly 100 years. They are highly respected within the fire truck manufacturing community and over the decades have sold fire engines and tiller trucks to a number of surrounding cities and agencies. In response to the City’s informal request for pricing, Pierce submitted an engine bid that satisfies all current operational needs and requirements.

**Electronic Outfitting New Tiller Truck**

Final outfitting of the new tiller truck with equipment such as, but not limited to, radios, chargers and onboard computer systems specific to fire apparatus within Orange County will be required once the apparatus is delivered to Fountain Valley. Staff recommends the use of Johnson Equipment Company which regularly performs this type of work on FV fire department vehicles. This will take place after the 13 month build process and is estimated to be $15,000 (approximately 1% of the price of the fire truck), which can be procured with the City Manager’s contract signing authority.

**FINANCIAL ANALYSIS**

The cost to purchase and equip the Pierce tiller truck is listed below. Included with the listed engine price is a prepayment discount which is offered at contract signing or with a lease. A performance bond ensures that the city will receive its money back should the builder default on the build contract and will be paid for by Pierce.

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020 Pierce Tiller Truck</td>
<td>1,514,131</td>
</tr>
<tr>
<td>Radios and Electronics Installation (Johnson Equipment)</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>Total Vehicle &amp; Modification Cost</strong></td>
<td><strong>1,529,131</strong></td>
</tr>
<tr>
<td>Contingency (3% of purchase price)</td>
<td>45,000.00</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$ 1,574,131</strong></td>
</tr>
</tbody>
</table>

This tiller truck is not included in the current budget and therefore, a budget amendment of $1,574,131 is required. The City’s Fleet Management Internal Service Fund began 2019-20 with a balance of $3.6 million, of which $1.6 million is set-aside for the replacement of the fire apparatus. The fund, after the purchase of the tiller truck, is
projected to have a balance of $2.0 million. This figure will meet the Council approved reserve balance for the Fleet Management Internal Service Fund.

ATTORNEY REVIEW:

The City Attorney drafted a contract that provides standard terms and conditions, which were reviewed by staff and approved by the City Attorney.

ALTERNATIVES:

Alternative No. 1 – 1. Waive the bidding requirements per FVMC 2.36.070 paragraph 5 and authorize staff to purchase and equip a 2020 Pierce Arrow XT PUC Tiller Truck in the amount of $1,574,131, 2. Amend the 2019/20 budget, and 3. Authorize Staff to dispose of one surplus American La France tiller truck by means that best meet the city’s needs.

Alternative No. 2 - Do not approve this action and direct staff to research alternatives.

RECOMMENDATION:

Staff recommends City Council approve Alternative No. 1, which is 1. Waive the bidding requirements per FVMC 2.36.070 paragraph 5 and authorize staff to purchase and equip a 2020 Pierce Arrow XT PUC Tiller Truck in the amount of $1,574,131, 2. Amend the 2019/20 budget, and 3. Authorize Staff to dispose of one surplus American La France tiller truck by means that best meet the city’s needs.

Prepared By: David Dukellis, Battalion Chief

Approved By: Ron Cookston, Fire Chief

Fleet Review by: Temo Galvez, Acting Director, Public Works/City Engineer

Fiscal Review by: Jason Al-Imam, Finance Director/ Treasurer

Approved By: Rob Houston, City Manager

Attachment 1: Pierce tiller truck quote
Attachment 2: Johnson Equipment quote
Attachment 3: Sourcewell cooperative purchasing recommendation
Attachment 4: Contract for sale of goods
### CONTRACT PRICING WORKSHEET

<table>
<thead>
<tr>
<th>Contract No.</th>
<th>Date Prepared</th>
</tr>
</thead>
<tbody>
<tr>
<td>#022818-PMI</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Buying Agency:</th>
<th>Fountain Valley Fire Department</th>
<th>Dealer:</th>
<th>South Coast Fire Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td></td>
<td>Sales Rep:</td>
<td>Adrian Beyer</td>
</tr>
<tr>
<td>Member Number:</td>
<td></td>
<td>Phone:</td>
<td>909-223-1077</td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
<td>Email:</td>
<td><a href="mailto:adrian@southcoastfire.net">adrian@southcoastfire.net</a></td>
</tr>
</tbody>
</table>

#### Base Spec.

<table>
<thead>
<tr>
<th>ID #</th>
<th>Description</th>
<th>Published Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>780</td>
<td>Aerial, Tiller, Alum Body</td>
<td>$1,137,435.00</td>
</tr>
</tbody>
</table>

#### Removed Options

<table>
<thead>
<tr>
<th>Notes:</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$151,342.00</td>
</tr>
</tbody>
</table>

**With Pierce Discount (5.5%)**

<table>
<thead>
<tr>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>$8,324.00</td>
</tr>
</tbody>
</table>

#### Added Options

<table>
<thead>
<tr>
<th>Notes:</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$472,222.00</td>
</tr>
</tbody>
</table>

**With Pierce Discount (5.5%)**

<table>
<thead>
<tr>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>$25,972.00</td>
</tr>
</tbody>
</table>

#### Other

<table>
<thead>
<tr>
<th>Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Taxes</td>
<td>$121,568.74</td>
</tr>
<tr>
<td>Performance Bond</td>
<td>$3,192.00</td>
</tr>
<tr>
<td>Applicable State Fees (Tire Fee, etc.)</td>
<td>$14.00</td>
</tr>
<tr>
<td></td>
<td>$126,774.74</td>
</tr>
</tbody>
</table>

### Discounts

<table>
<thead>
<tr>
<th>Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Pre-Payment Discount</td>
<td>$51,310.00</td>
</tr>
<tr>
<td><strong>Total Discount</strong></td>
<td>$51,310.00</td>
</tr>
</tbody>
</table>

#### Total Purchase Price

| $1,516,131.74 |

Page 80
CONTRACT NO.

CONTRACT FOR SALE OF GOODS
FIRE APPARATUS – TILLER TRUCK

THIS CONTRACT FOR SALE OF GOODS ("AGREEMENT") is made and effective as of March 5, 2020 ("EFFECTIVE DATE"), between the City of Fountain Valley, a municipal corporation ("CITY") and Pierce Manufacturing, Inc., a Wisconsin corporation ("SELLER"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. GOODS TO BE SOLD

SELLER shall sell, transfer, and deliver to the CITY, and the CITY shall accept and pay for the following goods: a fire apparatus and associated equipment manufactured or furnished for the CITY by SELLER, which shall be provided in strict accordance with the Pierce multipurpose response vehicle specifications, including the general specifications, technical specifications, training, samples, diagrams, and testing requirements, prepared in response to the CITY's request for proposal ("SPECIFICATIONS"), and any subsequent modifications thereto by the CITY ("GOODS"). SELLER shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefor; and shall obtain and maintain all building and other permits and licenses required by public authorities in connection with the performance of the work.

2. DELIVERY

SELLER shall deliver the GOODS to the City of Fountain Valley at 10200 Slater Avenue, Fountain Valley, California, within four hundred twenty-one (421) calendar days of the EFFECTIVE DATE of this AGREEMENT. The quantity of GOODS to be delivered is as specified in the SPECIFICATIONS and any subsequent modifications thereto by the CITY. Any delay in delivery will be charged to SELLER at $100 per day starting on day 422 (plus any additional days agreed to by CITY and SELLER in writing arising from a subsequent modification) and continuing until delivery of GOODS to CITY. The full amount of delay damages will be remitted to the CITY from SELLER no later than 30 days after delivery.

3. PRICE

The CITY shall pre-pay to SELLER $1,514,131.74 for the GOODS. Payment shall be made within 30 days of the EFFECTIVE DATE of this AGREEMENT.

4. RISK OF LOSS

The risk of loss from any casualty to the GOODS, regardless of the cause, shall be on SELLER until the GOODS have been accepted by the CITY.
5. **RIGHT OF INSPECTION**

The CITY shall have the right to inspect the GOODS on arrival and, within thirty (30) business days after delivery, the CITY shall give written notice to SELLER of any claim for damages on account of condition, quality, or grade of the GOODS.

6. **REJECTED GOODS**

If the GOODS or tender are not in accordance with the SPECIFICATIONS, any subsequent modifications thereto by the CITY, and the terms set forth in this AGREEMENT, they may be rejected by the CITY in the CITY’s sole discretion within thirty (30) business days of delivery of the GOODS.

7. **RIGHT TO CURE**

SELLER shall have the right to cure nonconformities in the GOODS or in their tender, provided that SELLER notifies the CITY, within fifteen (15) business days of the CITY's notification of the nonconformity, of SELLER's intent to cure. Any such cure must occur within fifteen business (15) days of the CITY’s notification of the nonconformity.

8. **RIGHT TO CANCEL**

a) If SELLER should fail to comply with any of the provisions hereof, or in the event SELLER should become the subject of a proceeding under state or federal law for relief of debtors, or if SELLER makes an assignment for the benefit of creditors, CITY shall have the right to hold SELLER in default and cancel this AGREEMENT in whole or in part.

b) Should SELLER, at any time during the progress of the work, refuse or neglect to supply sufficient material or labor, or fail in compliance with any provision of this AGREEMENT, the CITY shall have the right, without prejudice to any other right or remedy it may have, to provide such materials and labor, or make good such deficiencies as the CITY may deem expedient after three (3) days notice in writing, delivered, or mailed to SELLER at his last address on file with the CITY, and SELLER shall be liable for the cost and expense thereof which may be deducted by the CITY from any money that may be due SELLER.

c) Without limiting any rights which the CITY may have by reason of any default by SELLER hereunder, the CITY reserves the right to terminate this AGREEMENT in whole or in part at its convenience, with or without cause. In such event the CITY shall compensate SELLER, subject to deduction for previous payments (i) by reimbursing SELLER for all actual expenditures and costs incurred in performing under this AGREEMENT (ii) by reimbursing SELLER for all expenditures made and costs incurred with the CITY’S prior written approval in settling or discharging outstanding commitments entered into by SELLER in performing under this AGREEMENT and (iii) by paying SELLER as a profit, insofar as a profit is realized hereunder, an amount equal to the profit
on the entire AGREEMENT estimated at the time of termination, multiplied by the percentage of completion of the work. In no event, however, will the compensation to SELLER exceed the total AGREEMENT price less payments previously made and less the AGREEMENT price of work not terminated. Upon receipt of any notice of termination, SELLER shall, unless the notice otherwise directs, (i) immediately discontinue the work and the placing of all orders and subcontracts in connection with this AGREEMENT, (ii) immediately cancel all existing orders and subcontracts made hereunder and (iii) immediately transfer to the CITY all materials, supplies, work-in-process, appliances, facilities, equipment, machinery, and tools acquired by SELLER in connection with the performance of this AGREEMENT.

9. **TIME OF ESSENCE**

SELLER acknowledges that time is of the essence of this AGREEMENT.

10. **WARRANTY**

The warranty described hereunder extends to the original purchaser of the GOODS warranted under the warranty, and to each transferee owner of the product during the term of the warranty. The term of this warranty begins on the date the product is delivered to the CITY, and continues therefrom. SELLER expressly warrants that:

a) The GOODS covered by this AGREEMENT will function properly under normal use, will be of good workmanship, free from defect, of merchantable quality, and fit for the CITY's particular purpose as set forth in the SPECIFICATIONS and any subsequent modifications thereto by the CITY;

b) The GOODS will fully comply with the SPECIFICATIONS and any subsequent modifications thereto by the CITY;

c) The GOODS will be free of any security interests, liens, or encumbrances and SELLER has title to the GOODS;

d) The GOODS will not violate any intellectual property rights of any third party;

e) The GOODS will be delivered free of the rightful claim of any third person by way of infringement;

f) The GOODS are merchantable in accordance with Commercial Code Section 2314; and

g) The warranty listed above is in addition to any other warranties expressly made by SELLER (including those in the SPECIFICATIONS) or imposed by law. All warranties will survive inspection and payment by the CITY and are assignable to the CITY's successors and assigns.
Inspection by the CITY or its agents or employees and acceptance of the GOODS shall not constitute release or waiver of the CITY's rights by reason of failure of SELLER to comply with any of the warranties contained herein. Warranties herein expressed or implied shall be construed as consistent with each other and as cumulative.

11. **WARRANTY REMEDIES**

   If any GOODS do not meet the warranty, the CITY may, at the CITY's option, and without additional cost to the CITY:

   a) Require SELLER to repair or replace the GOODS until the GOODS meet the warranty. If SELLER cannot replace the GOODS and repair either is not commercially practicable or cannot be made within thirty (30) days, SELLER will refund the purchase price;

   b) Return any of the GOODS to SELLER at SELLER's expense for a full refund;

   c) Correct the nonconformance and charge SELLER for the costs to make the correction; or

   d) Engage a third party to provide substitute GOODS and charge SELLER for the costs of obtaining the substitute GOODS from the third party.

   Such remedies shall be in addition to any other remedies provided by law. In order to obtain performance of any obligation under this warranty, the CITY will contact SELLER at the address described in Section 13.

12. **BOND**

   SELLER shall furnish to the CITY, a performance bond in the amount of the purchase price of this AGREEMENT.

13. **NOTICES**

   Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

   To CITY: City of Fountain Valley
   10200 Slater Avenue
   Fountain Valley, California 92708
   Attention: City Clerk
To SELLER: Pierce Manufacturing, Inc.
2600 American Drive
Appleton, Wisconsin 54912
Attention: Director of Order Management

14. ASSIGNMENT

This AGREEMENT, any portion hereof, and/or any right(s) hereunder, at the CITY's election, shall inure to the benefit of its successors, assignees, licensees, grantees, and associated, affiliated, and subsidiary companies, and the CITY and any subsequent assignee, licensee, or grantee shall have the right to freely assign or license this AGREEMENT, any portion hereof or right(s) hereunder, and grant the rights obtained hereunder, in whole or in part, to any person, firm, corporation, or other entity. SELLER shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY.

15. INSOLVENCY

In the event that SELLER shall make an assignment for the benefit of creditors, admit SELLER's inability to pay SELLER's debts as they become due, file a voluntary petition in bankruptcy, be adjudicated as bankrupt or insolvent, file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against SELLER in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian, or liquidation of SELLER or of all or any substantial part of the properties of SELLER, or if an involuntary case shall be commenced seeking the liquidation or reorganization of SELLER under the United States Bankruptcy Code or any similar proceeding shall be commenced against SELLER under any other applicable federal, state, or foreign law and: a) the petition commencing the involuntary case is not timely controverted; b) the petition commencing the involuntary case is not dismissed within sixty days of its filing; c) an interim trustee is appointed to operate all or any part of the business of SELLER; or d) an order for relief shall have been issued or entered therein, or if SELLER, its directors, or shareholders take action to dissolve or liquidate SELLER, or should SELLER fail to comply with any material term or condition of this AGREEMENT, the CITY may, at the CITY's option and in the CITY's sole discretion, terminate this AGREEMENT.

16. INDEMNIFICATION

Acceptance of this order shall constitute an agreement upon SELLER's part to indemnify and hold harmless from liability, loss, damage, and expense, including reasonable attorney fees, incurred or sustained by the CITY, its officers, employees, and agents, by reason of the failure of the GOODS to conform to the warranties contained herein, faulty work performance, negligent or unlawful acts, and noncompliance with any
applicable local, State, or Federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and any applicable State Industrial Safety Act. SELLER shall defend, indemnify, and hold harmless the CITY from and against any and all claims, liabilities, demands, causes of action, damages, losses, penalties, fines, charges, assessment, impositions, costs, and expenses of any kind, including without limitation the CITY's tort liability, arising out of, related to, or connected with the failure of the GOODS to comply with the requirements of this AGREEMENT, including without limitation, violation of any state or federal laws and for any failure to deliver such GOODS, or on account of alleged infringement of any patent, copyright, or trademark, resulting from or arising in connection with the manufacture, sale, normal use, or other normal disposition of the GOODS. SELLER's foregoing indemnity obligations shall also include, without limitation, the reasonable consultants' fees and investigation costs incurred by the CITY.

17. **INDEPENDENT CONTRACTOR**

   a) SELLER is and shall at all times remain as to the CITY a wholly independent contractor. The personnel performing the services under this AGREEMENT on behalf of SELLER shall at all times be under SELLER's exclusive direction and control. Neither the CITY nor any of its officers, employees, or agents shall have control over the conduct of SELLER or any of SELLER's officers, employees, or agents, except as set forth in this AGREEMENT. SELLER shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. SELLER shall not incur or have the power to incur any debt, obligation, or liability whatsoever against the CITY, or bind the CITY in any manner.

   b) No employee benefits shall be available to SELLER in connection with the performance of this AGREEMENT. Except for the fees paid to SELLER as provided in this AGREEMENT, the CITY shall not pay salaries, wages, or other compensation to SELLER for performing services hereunder for the CITY. The CITY shall not be liable for compensation or indemnification to SELLER for injury or sickness arising out of performing services hereunder. In addition to the indemnification provisions of Section 16, SELLER shall indemnify, defend, and hold the CITY harmless from claims or liability arising from SELLER's employees for the CITY benefits including, but not limited to, pension, health benefits, holiday, vacations, etc.

18. **GOVERNING LAW**

   The CITY and SELLER understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this AGREEMENT. Any litigation concerning this AGREEMENT shall take place in the superior or federal district court located in Orange County.

19. **ENTIRE AGREEMENT**
This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this AGREEMENT on behalf of SELLER warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of SELLER and has the authority to bind SELLER to the performance of its obligations hereunder.

21. **SEVERABILITY**

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the AGREEMENT that can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

22. **INTERPRETATION**

In the event of conflict or inconsistency between this AGREEMENT and any other document, including any proposal or exhibit hereto, this AGREEMENT shall control unless a contrary intent is clearly stated.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF FOUNTAIN VALLEY

______________________________  ______________________________
Mayor                              City Clerk-Administrator

APPROVED AS TO FORM

Harper & Burns LLP

______________________________  ______________________________
Atorneys for the City           Pierce Manufacturing, Inc.
Fountain Valley Fire Department
100% Pre-Payment Option
February 17, 2020

If a 100% pre-payment were made at contract signing, the following discount would be applied to the final invoice:

<table>
<thead>
<tr>
<th>Description</th>
<th>Each</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>One (1) Pierce Arrow XT 107' Tractor Drawn Aerial</td>
<td>$1,440,667.00</td>
<td>$1,440,667.00</td>
</tr>
<tr>
<td>100% Prepayment Discount</td>
<td>$51,310.00</td>
<td>$51,310.00</td>
</tr>
<tr>
<td>APPARATUS COST</td>
<td>$1,389,357.00</td>
<td>$1,389,357.00</td>
</tr>
<tr>
<td>Sales Tax @ 8.750%</td>
<td>$121,568.74</td>
<td>$121,568.74</td>
</tr>
<tr>
<td>Performance Bond</td>
<td>$3,192.00</td>
<td>$3,192.00</td>
</tr>
<tr>
<td>California Tire Fee</td>
<td>$14.00</td>
<td>$14.00</td>
</tr>
<tr>
<td><strong>TOTAL PREPAY PURCHASE PRICE</strong></td>
<td>$1,514,131.74</td>
<td>$1,514,131.74</td>
</tr>
<tr>
<td>Less 100% pre-payment at Contract Signing</td>
<td>$1,514,131.74</td>
<td>$1,514,131.74</td>
</tr>
<tr>
<td><strong>BALANCE DUE AT DELIVERY</strong></td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

100% PRE-PAYMENT DISCOUNT SHOWN ABOVE IS AVAILABLE IN TWO WAYS:

a) If your department makes a 100% cash pre-payment at contract signing.

b) If your department signs up for a lease-purchase with Pierce Financial Solutions. This would require no money down and no payments for one (1) year if desired.

* Pricing is Valid until March 11, 2020.

* Discount for the 100% pre-payment option includes discounts for the chassis, interest, aerial (if applicable), and flooring charges.

* Any item added after this option is elected will come at additional cost and will be added to the final invoice.
CITY OF FOUNTAIN VALLEY
CITY COUNCIL
COUNCIL ACTION REQUEST

TO: Honorable Mayor and Members of the City Council

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

DISCUSSION:

The attached Resolution is a follow up to the City Council’s unanimous opposition to Fountain Valley’s Regional Housing Needs Assessment (RHNA) allocation, which is based on:

- The manner in which it was approved by the Southern California Association of Governments (SCAG) Regional Council. At their meeting on November 7, 2019, a substitute motion was made by the City of Riverside introducing a modified RHNA methodology that shifted a significant portion of the 6th cycle RHNA allocation away from developing areas in Riverside and San Bernardino Counties to the largely developed coastal areas, mainly into Orange County. Ignoring the recommendation of its staff and the significant public vetting process, a majority of SCAG’s Regional Council voted to accept the substitute motion without full discussion allowed.

- Its unrealistically high distribution. The modified methodology increased the City’s housing target to 4,756 units, a 1,228.5% increase over the current RHNA allocation (358 units), without regard for feasibility, infrastructure capacity, land availability, community desires, market realities, fiscal considerations, construction costs, and sound planning and growth principals.

- The fact that in combination with state housing laws and the high distribution, Fountain Valley and other Orange County jurisdictions are now effectively set-up to fail to achieve compliance with State housing laws.

The attached Resolution expresses the Council’s support for common-sense legislative amendments to that would enable Fountain Valley to comply with State housing laws. The amendments would credit a portion of the City’s capacity for Accessory Dwelling Units (ADUs) toward the RHNA allocation and provide flexibility/clarity to the process of adopting a compliant housing element.
PUBLIC NOTICE:

The standard City Clerk’s agenda notification process was used for this item.

FINANCIAL ANALYSIS:

There is no fiscal impact associated with approving the proposed Resolution.

ATTORNEY REVIEW:

The Attorney for the City has reviewed the attached Resolution.

ALTERNATIVES:

1. Adopt the proposed Resolution requesting legislative amendments to enable local compliance with state housing laws.

2. Do not adopt the proposed Resolution and provide Staff with direction.

3. Modify the proposed Resolution and provide Staff with direction.

RECOMMENDATION:

Staff recommends that the City Council select Alternative No. 1: Adopt the proposed Resolution requesting legislative amendments to enable local compliance with state housing laws.

Prepared By: Brian James, Planning and Building Director

Approved by: Robert Houston, City Manager

Attachment 1: Resolution requesting legislative amendments to enable local compliance with state housing laws.
RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOUNTAIN VALLEY REQUESTING LEGISLATIVE AMENDMENTS TO ENABLE LOCAL COMPLIANCE WITH STATE HOUSING LAWS

WHEREAS, California State housing law requires that each city and county plan for existing and future housing needs in accordance with the outcome of the Regional Housing Needs Assessment (RHNA) process; and

WHEREAS, the Southern California Association of Governments (SCAG) is responsible for developing a uniform methodology for the distribution of the RHNA allocation among member cities and counties; and

WHEREAS, as required by Government Code 65584.04(d), a transparent and collaborative approach to regional planning involving opportunity for informed stakeholder input and thoughtful deliberation is critical to achieving desirable and equitable outcomes; and

WHEREAS, SCAG staff’s process to develop the allocation methodology for the 6th cycle RHNA, covering the planning period from October 2021 through October 2025, included multiple opportunities for stakeholder engagement, including detailed analysis of three draft allocation methodologies during a series of public meetings and hearings over an approximately year-long effort; and

WHEREAS, based in part on stakeholder input, SCAG staff developed a single recommended RHNA allocation methodology, which was introduced in September 2019 at a public workshop, subsequently reviewed and approved by both the SCAG RHNA Subcommittee and the SCAG Community, Economic and Human Development (CEHD) Committee, and finally recommended for SCAG Regional Council approval before submittal to the California Department of Housing and Community Development (HCD); and

WHEREAS, at the November 7, 2019, meeting of the SCAG Regional Council to consider the recommended RHNA allocation methodology, a substitute motion was made by the City of Riverside introducing a modified RHNA methodology, which effectively shifted a significant portion of the 6th cycle RHNA allocation away from developing areas in Riverside and San Bernardino Counties to the largely developed coastal areas, mainly into Orange County; and

WHEREAS, the modified RHNA allocation methodology was approved for submittal to HCD by the SCAG Regional Council on a contested vote of 43-19 (opposed by all Orange County SCAG representatives) in violation of procedural by-laws and despite a lack of detailed regarding the associated impacts of the proposed methodology changes, supporting documentation, and opportunity for informed input; and

WHEREAS, the modified methodology fails to account for local input and growth forecast data and, due to the late introduction by substitute motion, was unable to be analyzed for potential impacts by SCAG staff before the vote of the Regional Council; and
WHEREAS, the modified methodology would increase the City's housing target by 1,228.5% over the current RHNA allocation without regard for feasibility, infrastructure capacity, land availability, community desires, market realities, fiscal considerations, construction costs, and sound planning and growth principals; and

WHEREAS, the ramifications of this abrupt, unvetted, and non-transparent shift in methodologies must also be viewed in the context of recently passed State housing laws with which local jurisdictions are obligated to comply. These include SB 35 streamlining requirements that preempt local land use authority over residential development applications proposing affordable housing for jurisdictions that fail to make sufficient progress toward meeting their RHNA allocations; and

WHEREAS, pursuant to Government Code Section 65584.04(i), HCD is required to review the draft RHNA methodology submitted by SCAG to determine whether the methodology furthers the statutory objectives described in Government Code Section 65584(d); and

WHEREAS, despite the fact that these serious procedural and practical issues were communicated to the State by Fountain Valley and numerous other coastal communities, on January 13, 2020, HCD found that the draft SCAG RHNA Methodology furthers the five statutory objectives of RHNA; and

WHEREAS, on January 1, 2020, a package of new housing bills became effective that greatly expanded the ability to develop accessory dwelling units (ADUs). The new laws allow three units on every single-family lot (the main house, an ADU, and a Junior ADU) and ADUs in multi-family developments. These laws create a capacity for roughly 26,000 new units in the City of Fountain Valley; and

WHEREAS, the only feasible scenario in which the RHNA allocation will be achieved is if HCD allows cities to assume ADUs to accommodate a significant proportion of the City's RHNA allocation; and

WHEREAS, the City of Fountain Valley is in full compliance with the 5th cycle housing element and RHNA allocation and all State housing laws and has not denied an application for housing or ADUs; and

WHEREAS, the City of Fountain Valley is expending significant local resources to address housing and recently approved an application for the development of 50 units of affordable housing to the extremely, very, and low income categories and an affordable housing agreement to loan the developer $8.2 million dollars from the Low Moderate Income Housing Asset Fund (equating to 75% of the fund's total assets) for property acquisition and development costs. Unfortunately, this project was not awarded the desired 9% tax credits from the State Tax Credit Allocation Committee (TCAC) in 2019 and is in the process of re-applying; and

WHEREAS, because the modified RHNA allocation methodology approved by the SCAG Regional Council and by HCD sets forth unrealistic requirements, the City of Fountain Valley and other Orange County jurisdictions are now effectively set up to fail to achieve compliance with State housing laws unless common-sense amendments are made; and

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

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1

The recitals provided in this Resolution are true and correct and are incorporated into the operative part of this Resolution.

SECTION 2

As evidenced by full compliance with housing laws, full support of housing development, and financial assistance to further affordable housing goals, the City Council is a strong advocate for the development of housing, including affordable housing. The City Council is also a strong advocate for local control and intelligent planning as the best means to protect the City of Fountain Valley, its residents and businesses, ensure sound growth, comply with regional planning efforts, and promote the various goals and priorities of the community.

The proposed legislative amendments contained in Exhibit A provide a common-sense approach to achieve ambitious State Housing goals and allow local compliance with State housing laws.

SECTION 4

The City Council hereby supports the proposed legislative amendments contained in Exhibit A and authorizes the distribution of the proposed amendments to appropriate officials.

PASSED, APPROVED and ADOPTED this 3rd day of March, 2020, by the following vote:

AYES: ______________________
NAYS: ______________________
ABSENT: ______________________
ABSTAIN: ______________________

Cheryl Brothers, Mayor

ATTEST:

____________________________
Rick Miller, City Clerk

APPROVED AS TO FORM
Colin Burns
Attorney for the City
March 3, 2020

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

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

Dear Senator Umberg:

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

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

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

The proposed legislative amendments include:

- Allowing cities to count accessory dwelling units (“ADUs”) as affordable units provided the ADU meets certain objective standards;
- Eliminating barriers to applying alternative methodologies for achieving compliance with state obligations to provide an adequate number of housing units;
- Establishing objective standards of what constitutes “site eligibility” as cities are zoning for housing units in the preparation of 6th Cycle Housing Element;
- Providing a statutory exemption under the California Environmental Quality Act (“CEQA”) for the preparation and completion of a certified 6th Cycle Housing Element; and
- Extending the deadline to submit a 6th Cycle Housing Element to the California Department of Housing Community Development (“HCD”) for certification.
The last two amendments would sunset upon completion of the 6th Cycle Housing Element. The proposed legislative amendments are explained in greater detail below, with specific revisions to state law reflected in Attachments B through D.

On behalf of the City Council of Fountain Valley, I would like to thank you for your assistance in this matter. If you have any questions or would like to meet discuss in more detail, please let me know.

Sincerely,

Cheryl Brothers
Mayor

CC.
Assemblyman Tyler Diep
Assemblywoman Petrie-Norris
Senator John Moorlach
Senator Ling Ling Chang
League of California Cities
Orange County Business Council
Southern California Association of Governments
ACC-OC

Attachments:
A. Background and Summary of Proposed Amendments
B. Proposed amendments to Government Code Section 65583.1 providing cities objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.
C. Proposed amendments to Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements.
D. Proposed amendments to Government Code Section 65583.2(g) to provide objective standards of what constitutes “substantial evidence.”
ATTACHMENT A
BACKGROUND AND SUMMARY OF AMENDMENTS

BACKGROUND

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

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

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

SB 330 – among other provisions – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards, or conditions that would change current zoning and general plan designations of properties where housing is allowed in order to "lessen the intensity of housing," such as by reducing height, density or floor area ratio; requiring new or increased open space, lot size, setbacks or frontage; or limiting maximum lot coverage. Moreover, the bill stipulates that any such amendment that took effect after January 1, 2018, would be null and void as a matter of law. SB 330 also bans jurisdictions from placing a moratorium or similar restrictions on housing development, from imposing subjective design standards established after Jan. 1, 2020, and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural.
General Plan housing element updates have also been affected by AB1397 and SB166, which establish the “No Net Loss” provisions to make sure that housing elements identify sufficient sites to accommodate the jurisdiction’s RHNA or include programs to ensure that sites will be available throughout the planning period. Under the “No Net Loss” requirements, a city may not reduce residential density or allow development at a lower residential density unless the city makes findings supported by substantial evidence that the reduction is consistent with the general plan and there are remaining sites identified in the housing element adequate to meet the city’s outstanding RHNA.

As also discussed below, the Governor signed AB881, AB68, SB13, and AB671 on October 10, 2019, which was effectively a sweeping legislative overhaul of the production of accessory dwelling units.

State agencies have also adopted regulations affecting housing. For example, pursuant to SB743, new CEQA Guidelines adopted by the State in December 2018 established vehicle miles travelled (VMT) as the metric to be used for evaluating traffic impacts under CEQA, effective July 1, 2020. To comply with the new CEQA Guidelines, the City of Fountain Valley will be required to set new thresholds for assessing transportation impacts based on VMT, consistent with technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures issued by the Governor’s Office of Planning and Research. Additionally, California’s Department of Housing and Community Development (“HCD”) has adopted regulations implementing SB35’s streamlining of affordable housing approval. Eligible projects are now exempt from environmental review under CEQA and the process does not allow public hearings.

**Fountain Valley’s Commitment to Complying with State Housing Laws**

The repeated justification for this comprehensive housing reform aimed at removing local control over zoning and housing approval is a perception that cities have been the barrier to housing development. That simply is not the reality in Fountain Valley. The only “sin” that Fountain Valley has committed was to largely build itself out – for housing – between 1965 and 1980. At this point, the City of nine square miles (including the Mile Square Park) has 58 vacant acres remaining. Despite its limited available and developable lands, Fountain Valley is in full compliance with the 5th cycle housing element, all State housing laws, and has not denied an application for new housing or accessory dwelling unit.

During the current Housing Element cycle, the City has issued building permits for 178 housing units, which represents 64% of its current RHNA target (358). In addition, there are 46 accessory dwelling units and a new 12 unit development currently in plan-check. The City has also approved an application for the development of 50 units of affordable housing to the extremely, very, and low income categories and an affordable housing agreement to loan the developer $8.2 million dollars from the Low Moderate Income Housing Asset Fund (equating to 75% of the fund’s total assets) for property acquisition and development costs. Unfortunately, this project was not awarded the desired 9% tax credits from the State Tax Credit Allocation Committee (TCAC) in 2019 and is in the process of re-applying.

**Open RHNA Process Subverted**

SCAG is responsible for developing a uniform methodology for the distribution of HCD’s RHNA allocation to member jurisdictions. The process for developing the methodology to distribute the RHNA allocation is required to be transparent and collaborative. SCAG staff followed this requirement and, over the past
year, provided multiple opportunities for engagement, including detailed analysis of three draft allocation methodologies. Based in part on stakeholder input, SCAG staff developed a single recommended RHNA allocation methodology, which was introduced in September 2019 at a public workshop, subsequently reviewed and approved by both the SCAG RHNA Subcommittee and the SCAG Community, Economic and Human Development (CEHD) Committee, and finally recommended for SCAG Regional Council approval before submittal to HCD.

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

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

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

**SUMMARY OF PROPOSED LEGISLATIVE AMENDMENTS WITH JUSTIFICATION**

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

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

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

Currently, Government Code Section 65583.1 provides HCD full discretion to determine how ADUs count towards RHNA and includes criteria based on past production. This standard does not consider the development potential introduced by new statutes and may result in cities unable to count the true ADU development potential that new housing laws allow. Revisions to Section 65583.1 are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements and to establish reasonable assumptions for determining the percentage of ADUs that count towards lower-income requirements.

The proposed amendment would establish objective measures for estimating both ADU production and affordability levels for RHNA purposes. Since cities and counties are most knowledgeable of development trends within their jurisdictions, HCD would be directed to accept local estimates of future ADU production for purposes of their Housing Element sites inventories. With regard to ADU affordability levels, the proposed amendment would establish an automatically accepted assumption that the income levels of ADU occupants are distributed in the same ratio as all renter households in the jurisdiction as reported by the Department of Housing and Urban Development unless more specific evidence is available.

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

2. **Amending Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing alternative adequate sites toward RHNA requirements.**

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

Use of the “alternate sites” option could prove to be a feasible option to provide a net increase in affordable units in high cost markets and high resource cities such as Fountain Valley and other similar highly urbanized coastal communities. Affordable housing developers must compete with luxury housing developers for housing opportunity sites, resulting in the need for substantial land acquisition subsidies to create feasible projects. Given significantly higher land costs, it is more feasible to rehabilitate and convert existing market-rate units for affordable housing than constructing new affordable housing units. Whether the units are new or rehabilitated, providing a net increase of
affordable housing units in high resource areas should be encouraged and supported by expanding cities’ and counties’ ability to utilize these more flexible compliance options.

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

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

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

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

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

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

Cities like Fountain Valley are also at risk of losing vital commercial corridors without clarifying criteria. Fountain Valley could certainly incentivize mixed-use residential by modifying the General Plan and zoning in areas where there now exist one- or two-story commercial buildings to include multi-story mixed-use property. It may be nigh impossible, though, for each property owner of these low-rise commercial buildings to commit in the next six months to building mixed-use housing over the next eight years. But cities can and should get credit for allowing a mixture of commercial and residential uses where none presently exists. As noted, cities cannot dictate market conditions or owner preference, but certainly can afford opportunity, which should satisfy the housing mandates.

Demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. It is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market-friendly State guidance for implementing reasonable local policies that facilitate housing development. This legislative amendment would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development.

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

4. Creating a statutory exemption under the California Environmental Quality Act ("CEQA") for the completion of the 6th Cycle Housing Element.

The added time to prepare and adopt required CEQA documentation to support substantially increased densities and associated traffic level of service impacts with the significant increase in RHNA allocations – which are mandated by the State – adds significant time and cost for completion of the 6th Cycle Housing Element. Given Governor Newsom's declaration of a housing crisis and the California Legislature's enactment of numerous unprecedented reforms to housing law, the California Legislature should consider creating a statutory exemption for local jurisdictions' preparation of the 6th Cycle Housing Element. Statutory exemptions have been enacted for a number of planning efforts not subject to a declared housing crisis by the Governor, such as for sport stadiums. If an exemption is appropriate for sports stadiums, then it should also be appropriate for the housing crisis. Given the anticipated significant increases in density that cities and counties will need to accommodate in this 6th Cycle Housing Element, the need for CEQA reform is of great importance.
5. **Granting a two (2) year extension for cities to submit the 6th Cycle Housing Element to HCD.**

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

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

(A) **(i)** For local governments described in subparagraphs (A), (B), and (C) of paragraph (2), 18 months after adoption of every second regional transportation plan update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element, or as otherwise provided in law.

**(ii)** For local governments within the regional jurisdiction of the Southern California Association of Governments, the sixth revision of the housing element shall be due October 21, 2023.
ATTACHMENT B

Proposed amendments to Government Code Section 65583.1 providing cities objective standards for counting Accessory Dwelling Units (ADUs) towards RHNA requirements

Justification

In light of recent changes in state law related to accessory dwelling units that require jurisdictions to now allow up three units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially subsequent to the passing of recent statutes. To illustrate, the new laws have created a capacity for over 26,000 new and additional units in the City of Fountain Valley — more than enough to satisfy several RHNA cycles. Furthermore, the waiver of parking and owner occupancy requirements has eliminated the most significant barriers to the development of ADUs and increased the realistic development capacity of every jurisdiction. Therefore, it is essential that jurisdictions be allowed to utilize the development potential of ADUs towards accommodating their RHNA.

Currently Government Code Section 65583.1 provides HCD full discretion in determining how ADUs count towards RHNA and includes criteria based on past production. In most cities and counties, regulations for ADUs were much more restrictive prior to recent changes in law were adopted. Therefore, past production should not be utilized as the primary factor in estimating future ADU development potential. Revisions to the law are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements.

ADU capacity should be based on the existing site capacities when applying development standards required pursuant to state law. Because the current methodologies used to determine ADU yields do not reflect the considerable increase in ADU potential and the new limitations cities and counties have in restricting new ADU development, a new methodology is justified.

Clearly, not all of Fountain Valley’s potential 26,000 ADUs will be built in the eight year planning period, but a percentage will be. This is being evidenced by the ever increasing interest and submittal of applications for ADUs. In addition, not all of the ADUs will be rented at an above moderate rate. Many will be provided to family members for free or at a significantly reduced rate, as is evidenced by conversations with applicants. Based on recent rent surveys, many ADUs are in fact being rented at affordable levels. It would be irresponsible for HCD not to acknowledge these facts in future housing projections.
In the absence of affordability information, it is recommended that the statute establish reasonable assumptions for determining the percentage of ADUs that count towards a jurisdiction’s lower-income requirements. The suggested method is currently required under SB 330 (Government Code Section 66300(d)(2)) and Density Bonus Law (Government Code Section 65915) when reviewing the replacement housing requirements for housing development projects regulated by these laws. The laws state that when any existing dwelling units are occupied by lower-income households, a proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be a rebuttable presumption that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database.

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

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

**Example Breakdown of a Jurisdiction’s Renter Household Income Distribution**

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Renter Households</th>
<th>Percentage of Total Renter Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Low Income</td>
<td>4,400</td>
<td>26%</td>
</tr>
<tr>
<td>Low Income</td>
<td>2,400</td>
<td>14.6%</td>
</tr>
<tr>
<td>Moderate Income</td>
<td>1,100</td>
<td>6.7%</td>
</tr>
<tr>
<td>Above Moderate Income</td>
<td>8,500</td>
<td>52%</td>
</tr>
<tr>
<td>Total</td>
<td>16,400</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Determined ADU Capacity</th>
<th>ADU Capacity Assumed to Accommodate Very Low-Income Housing Need</th>
<th>ADU Capacity Assumed to Accommodate Low-Income Housing Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000</td>
<td>260 (26%)</td>
<td>146 (14.6%)</td>
</tr>
</tbody>
</table>
Proposed Government Code Amendment to Section 65583.1 (Amend to provide objective standards for counting ADUs in sites analysis)

(a)(1) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may shall allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories.

(2) The department may shall also allow a city or county to identify adequate sites for accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. When ADUs are utilized to meet greater than 50 percent of a jurisdiction's lower-income need, the Housing Element shall provide supplementary policies, programs and actions that further encourage or incentivize ADU development for lower-income households. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(3) For the purposes of determining the affordability level of potential accessory dwelling units and/or junior accessory dwelling units that can accommodate a jurisdiction’s RHNA need affordable to lower-income households, the department shall take into account the jurisdiction’s need for these units in the community, the resources or incentives available for their development, and any other relevant factors, justified by a local jurisdiction. At minimum, it shall be presumed that very low- and low-income renter households would occupy accessory units in the same proportion of very low- and low-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database.
ATTACHMENT C

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

Justification

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

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

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

   b. The definition of “committed assistance” is problematic because it requires a local government to actually provide financial assistance. For jurisdictions where a project’s inclusionary housing requirement is satisfied through the preservation or conversion of existing units to affordable housing, the affordable units provided would not be eligible under this statute. Therefore, the definition of “committed assistance” should be revised to eliminate sole reliance on financial commitment from a local government and clarify that private entities satisfying local jurisdiction’s affordable housing requirements would also comply.
2. Required affordability terms for units vary as follows: 55 years for converted units; 40 years for preserved units; and 20 years for rehabilitated units. For a new housing development, terms of 40 or 55 years is reasonable; however, these terms are particularly long and have the potential to make the conversion or preservation of older, existing developments infeasible due to cost. The minimum terms of affordability should be reduced to 20 years unless a longer term is required by another supplementary funding source.

3. Qualifications for Preservation of Units only allow credit if the existing affordable units are set to expire within the next five years. This should be revised to 10 years to allow for the additional time to negotiate typically complicated transactional details, particularly since committed assistance is currently required within the first two years of the planning period (see comment 1a above).

4. 25 percent limitation - The statute permits a maximum 25 percent of a jurisdiction’s adequate sites requirement to be met through this requirement. This is very limiting and discourages jurisdictions from implementing this statute. Given the high land costs in coastal areas of California and significant increase in RHNA allocations to these jurisdiction’s based on proximity to jobs and transit, this statute should encourage and promote rehabilitation, conversion and preservation as a realistic option for meeting RHNA requirements. By increasing the 25 percent limitation to 50 percent and removing onerous and unobtainable prerequisites for qualification, affordable units have a greater likelihood of being constructed in these high cost markets through conversion and preservation of existing housing stock.

**Proposed Amendment to Government Code Section 65583.1 (c)**

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to **25.50** percent of the community’s obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:
(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

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

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

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

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

(i) The unit is made available for rent at a cost affordable to low- or very low income households.
(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:
   (I) Low-income households, if the unit will be made affordable to low-income households.
   (II) Very low income households, if the unit will be made affordable to very low income households.
(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government or private entity has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than
the equivalent of four months’ rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years unless a longer period is required by other supplementary financial assistance programs.

(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 years unless a longer period is required by other supplementary financial assistance programs.

(ii) The unit is within an “assisted housing development,” as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low-income households. A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, “committed assistance” means that the city or county, or a private entity satisfying a city or county’s housing requirements, enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy during the planning period within two years of the execution of the agreement. “Committed assistance” does not include tenant-based rental assistance.

(5) For purposes of this subdivision, “net increase” includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.
(6) For purposes of this subdivision, “the time the unit is identified” means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

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

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

Proposed amendments to Government Code Section 65583.2(g) to provide objective standards of what constitutes “substantial evidence”

Justification

State law requires cities and counties to submit draft and adopted Housing Elements to HCD for review, and HCD is required to review Housing Elements and issue written findings regarding whether the Housing Element substantially complies with the requirements of State law. A finding of substantial compliance by HCD is referred to as “certification” of the Housing Element.

Housing Element certification is important for two major reasons: 1) eligibility for some grant funds (e.g., SB 2) is contingent upon certification; and 2) in the event of a legal challenge to a Housing Element there is a rebuttable presumption of the validity of the Housing Element if HCD has found that the element substantially complies with State law (Government Code 65589.3).

For these reasons, Housing Element certification has very high financial consequences for cities and counties, and the Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant.

One of the most important aspects of Housing Element law is the requirement to demonstrate “adequate sites” with realistic development potential that could accommodate the jurisdiction’s RHNA allocation at each income level (very-low, low, moderate and above-moderate). Recent changes to State law have resulted in much higher RHNA allocations than in past cycles due to the addition of “existing need” to the allocation. For example, HCD’s 6th cycle RHNA allocation to the SCAG region is more than three times the 5th cycle and nearly double the 4th cycle. In Fountain Valley, the housing target increased by 1,228.5% over the current RHNA allocation (358 units). As a result, many highly urbanized cities will have RHNA allocations that far exceed their capacity for housing development on vacant land, and redevelopment of existing uses on non-vacant (or “underutilized”) sites would be required in order to accommodate their RHNA allocations.

Recent amendments to Housing Element law establishes additional criteria for underutilized sites to be considered suitable for “RHNA credit.” Under Sec. 65583.2(g)(2), if a city relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed to an impediment to additional residential development, absent findings based on “substantial evidence” that the use is likely to be discontinued during the planning period (emphasis added). Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA growth estimates, the substantial evidence
requirement that development is "likely" to occur on all of the underutilized sites in the Housing Element inventory results the inability to demonstrate adequate sites. Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

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

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

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

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

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

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

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

(4) Pursuant to paragraph (2), any of the following conditions shall be deemed to satisfy the requirement for substantial evidence that the existing use is likely to be discontinued during the planning period:
   (A) The existing improvement-to-land-value (I/L) ratio is less than 1.0 for commercial and multi-family properties or less than 0.5 for single-family properties according to the most recent available property assessment roll; or
   (B) The site is designated a Moderate, High or Highest Resource area in the most recent Tax Credit Allocation Committee of the California Treasurer’s office (TCAC) Opportunity Map; or
   (C) Zoning for the site allows residential development of at least 100 percent additional floor area than existing structures on the site and housing developments in which at least 20 percent of the units are affordable to lower-income households are permitted by-right; or
   (D) The use of non-vacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

References


(This landmark study by University of California, Berkeley researchers identified the metric of “improvement-to-land-value (I/L) as a means of identifying infill development potential of underutilized sites.)


(This study, initiated by HCD and the California Tax Credit Allocation Committee (TCAC), was conducted by a group of independent organizations and research centers that would become the California Fair Housing Task Force. The purpose of the study was to provide research, evidence-based policy recommendations, and other strategic recommendations to HCD and other related state agencies/departments to further fair housing goals. TCAC and HCD asked the Task Force to create a statewide opportunity mapping tool that could be adopted into TCAC regulations to accompany regulations to incentivize development of large-family, new construction developments with 9 percent LIHTCs in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families.)