

NOTICE OF A REGULAR MEETING

Pursuant to Section 54954.2 of the Government Code of the State of California, a Regular meeting of the City of Tracy Planning Commission is hereby called for:

Date/Time: Wednesday, October 14, 2015
7:00 P.M. (or as soon thereafter as possible)

Location: City of Tracy Council Chambers
333 Civic Center Plaza

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Planning Commission on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

REGULAR MEETING AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

DIRECTOR'S REPORT REGARDING THIS AGENDA

ITEMS FROM THE AUDIENCE - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2015-052 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Commission Member to sponsor the item for discussion at a future meeting.*

1. NEW BUSINESS

- A. PUBLIC HEARING TO CONSIDER APPROVING A CONDITIONAL USE PERMIT APPLICATION TO ALLOW A YOGA STUDIO AT 141 W. TENTH STREET (ASSESSOR'S PARCEL NUMBER 235-053-11); APPLICANT IS DALE COSE REPRESENTING FLOW YOGA; PROPERTY OWNER IS PWA PROPERTIES LLC., APPLICATION NUMBER CUP15-0003
- B. CONSIDER RECOMMENDING CHANGES TO THE TRACY MUNICIPAL CODE (ZONING REGULATIONS) REGARDING CONFORMANCE WITH THE GENERAL PLAN HOUSING ELEMENT AND OTHER CONSISTENCY CHANGES (TMC CHAPTER 10.08, ARTICLES 1, 2, 5, 6, 7, 8, 9, 11, AND 23) – APPLICATION NUMBER ZA15-0003

2. ITEMS FROM THE AUDIENCE

3. ITEMS FROM THE COMMISSION

4. ADJOURNMENT

Posted: **October 9, 2015**

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6000), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Development Services Department located at 333 Civic Center Plaza during normal business hours.

AGENDA ITEM 1-A

REQUEST

PUBLIC HEARING TO CONSIDER APPROVING A CONDITIONAL USE PERMIT APPLICATION TO ALLOW A YOGA STUDIO AT 141 W. TENTH STREET (ASSESSOR'S PARCEL NUMBER 235-053-11); APPLICANT IS DALE COSE REPRESENTING FLOW YOGA; PROPERTY OWNER IS PWA PROPERTIES LLC., APPLICATION NUMBER CUP15-0003

DISCUSSION

Site and Project Description

The project site (141 W. Tenth Street) is located in Downtown Tracy at the northeast corner of W. Tenth Street and A Street, in a portion of the former Tracy Press building (Attachment A: Location Map).

The proposal consists of operating a yoga studio in a tenant space of approximately 2,720 square feet. The yoga studio would include a yoga room of approximately 1,200 square feet for group instruction; a smaller, secondary yoga room of approximately 188 square feet for one-on-one instruction; three small rooms of approximately 100 to 140 square feet each for massage therapy and skin care; and a reception area of approximately 540 square feet, which would include retail space for various yoga products (Attachment B: Site Plan/Floor Plan).

The proposed yoga studio would have class sizes of approximately 12 to 20 people with a maximum class size of 25 people. There would be one instructor per class. The classes would last approximately 60 to 75 minutes each. Typical class times would be between 9:00 a.m. and 11:00 a.m. for morning sessions and between 5:00 p.m. and 8:30 p.m. for afternoon/evening sessions. One-on-one yoga instruction would be conducted throughout the day in the smaller yoga room by appointment only.

The site is zoned Central Business District (CBD). The General Plan designation is Downtown. The surrounding areas to the north, west, south, and east are also zoned CBD. The massage therapy, skin care, and retail portions of the business are principally permitted uses in the CBD Zone. Yoga instruction is allowed in the CBD Zone with approval of a Conditional Use Permit.

Land Use Compatibility

The Planning Commission has previously approved other recreational and instructional uses in the CBD Zone, such as the Academy of Performing Arts dance studio at 124 W. Tenth Street. The surrounding uses include a mix of retail, restaurants, and office space. The subject building (former Tracy Press building) is planned for renovations by the current property owners to accommodate multiple new tenants, including potential restaurants, retail, office space, and possibly a social club (Note: The social club will also require approval of a Conditional Use Permit).

The proposed yoga studio would be compatible with the uses permitted on this site and in the surrounding area because the hours of operation and characteristics of the use would not introduce excessive noise, undesirable visual impacts, or other objectionable elements to the area.

If approved, the applicant will use the CBD Zone Parking In-Lieu Fee to satisfy the minimum off-street parking requirements.

Environmental Document

This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332, which pertains to certain infill development projects, because the project is consistent with the General Plan and Zoning; occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; would not result in any significant effects relating to traffic, noise, air quality, or water quality; and can be adequately served by all required utilities and public services. Therefore, no further environmental assessment is necessary.

RECOMMENDATION

Staff recommends that the Planning Commission approve a Conditional Use Permit to allow a yoga studio at 141 W. Tenth Street, Application Number CUP15-0003, based on the findings and subject to the conditions contained in the Planning Commission Resolution dated October 14, 2015.

MOTION

Move that the Planning Commission approve a Conditional Use Permit to allow a yoga studio at 141 W. Tenth Street, Application Number CUP15-0003, based on the findings and subject to the conditions contained in the Planning Commission Resolution dated October 14, 2015.

Prepared by Scott Claar, Senior Planner

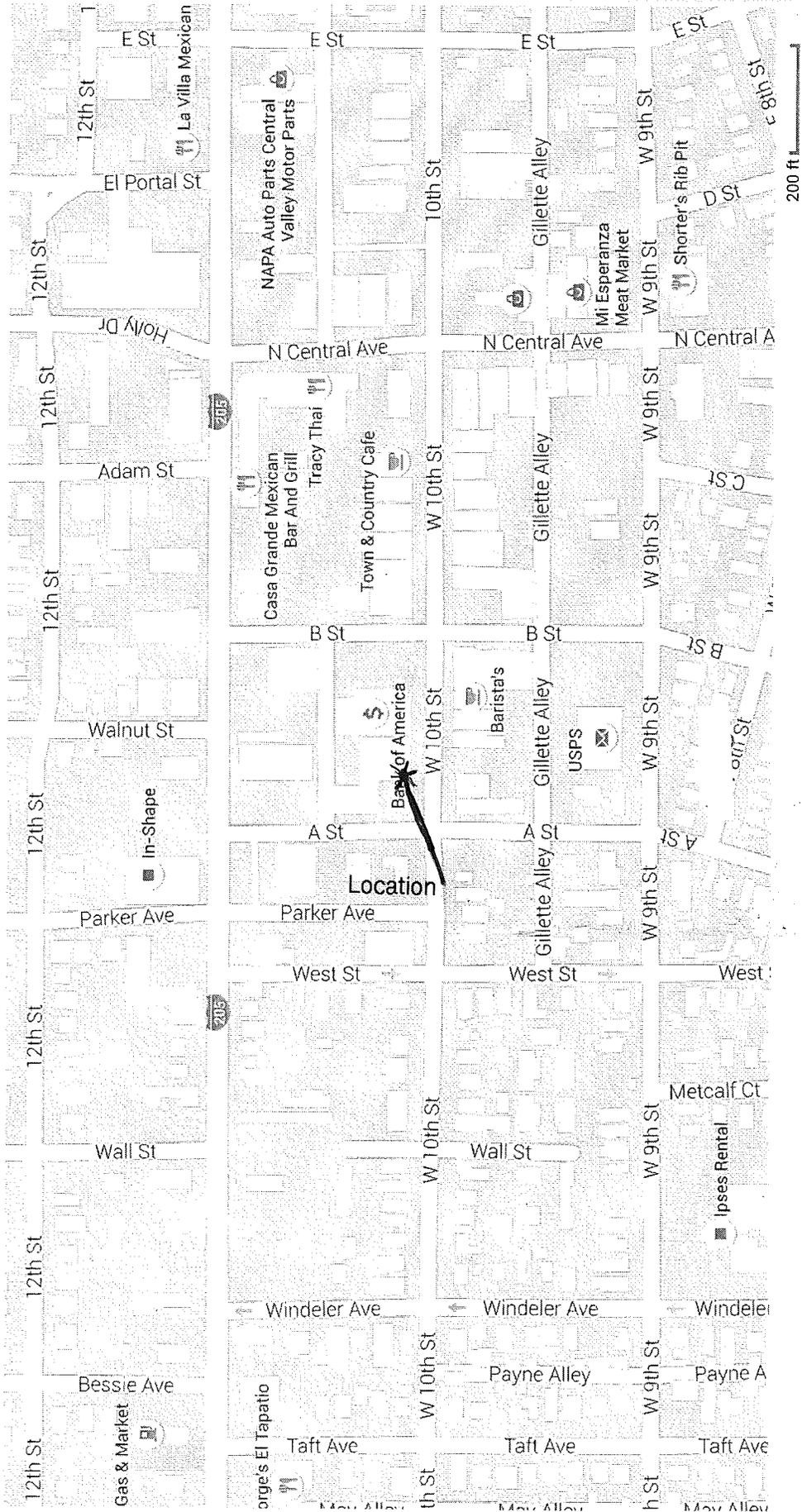
Reviewed by Bill Dean, Assistant Development Services Director

Approved by Andrew Malik, Development Services Director

ATTACHMENTS

- A: Location Map
- B: Site Plan/Floor Plan (Oversized)

ATTACHMENT A



RESOLUTION 2015-_____

APPROVING A CONDITIONAL USE PERMIT TO ALLOW
A YOGA STUDIO AT 141 W. TENTH STREET (APN 235-053-11)
APPLICATION NUMBER CUP15-0003

WHEREAS, On October 14, 2015, Dale Cose, representing Flow Yoga, submitted an application to the Development Services Department for a Conditional Use Permit to allow a yoga studio at 141 W. Tenth Street (APN 235-053-11), Application Number CUP15-0003, and

WHEREAS, The subject property is zoned Central Business District (CBD) and designated Downtown by the City's General Plan, and

WHEREAS, The proposed use is allowed in the CBD Zone with approval of a Conditional Use Permit, and

WHEREAS, In accordance with Section 10.08.4250 of the Tracy Municipal Code, the Planning Commission is empowered to grant or to deny applications for Conditional Use Permits and to impose reasonable conditions upon the granting of use permits, and

WHEREAS, The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332, which pertains to certain infill development projects, because the project is consistent with the General Plan and Zoning; occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; would not result in any significant effects relating to traffic, noise, air quality, or water quality; and can be adequately served by all required utilities and public services, and

WHEREAS, The Planning Commission held a public hearing to review and consider the Conditional Use Permit application on October 14, 2015;

NOW, THEREFORE BE IT RESOLVED, That the Planning Commission does hereby approve a Conditional Use Permit to allow a yoga studio at 141 W. Tenth Street (APN 235-053-11), Application Number CUP15-0003. Approval of Application Number CUP15-0003 is based on the following findings and subject to the conditions as stated in Exhibit "1" attached and made part hereof:

1. There are circumstances or conditions applicable to the land, structure, or use that make the granting of a use permit necessary for the preservation and enjoyment of a substantial property right because the proposed use is not allowed unless the Planning Commission grants approval of a Conditional Use Permit.
2. The proposed location of the conditional use is in accordance with the objectives of Tracy Municipal Code Chapter 10.08 and the CBD Zone because the proposed use is allowed in the CBD Zone if the Planning Commission approves a Conditional Use Permit.
3. The proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to, or inharmonious with, properties or improvements in the vicinity because the proposed use, including hours of operation and characteristics of the use, would be

compatible with the uses permitted on this site and in the surrounding area and would not introduce excessive noise, undesirable visual impacts, or other objectionable elements to the area; and the proposed use will comply with the City of Tracy General Plan and applicable requirements of Chapter 10.08 of the Tracy Municipal Code, including the CBD Zone.

- 4. The proposed use will comply with each of the applicable provisions of Chapter 10.08 of the Tracy Municipal Code, Zoning Ordinance, because subject to approval by the Planning Commission for a Conditional Use Permit, the proposed project will be required to comply with all applicable provisions including, but not limited to, the Tracy Municipal Code, the California Building Code, the City of Tracy Standard Plans, and the Uniform Fire Code.

The foregoing Resolution 2015-_____ was adopted by the Planning Commission on the 14th day of October 2015, by the following vote:

AYES: COMMISSION MEMBERS
 NOES: COMMISSION MEMBERS
 ABSENT: COMMISSION MEMBERS
 ABSTAIN: COMMISSION MEMBERS

CHAIR

ATTEST:

STAFF LIAISON

**CITY OF TRACY
CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT TO ALLOW A YOGA STUDIO
AT 141 W. TENTH STREET
ASSESSOR'S PARCEL NUMBER 235-053-11
APPLICATION NUMBER CUP15-0003**

These Conditions of Approval shall apply to the Conditional Use Permit approval to allow a yoga studio at 141 W. Tenth Street, Assessor's Parcel Number 235-053-11, Application Number CUP15-0003 (hereinafter "Project") proposed by Dale Cose representing Flow Yoga (hereinafter "Applicant").

A. The following definitions shall apply to these Conditions of Approval:

1. "Applicant" means any person, or other legal entity, defined as a "Developer".
2. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, the Development Services Director, or the City Engineer to perform the duties set forth herein.
3. "City Regulations" mean all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
4. "Conditions of Approval" shall mean the conditions of approval applicable to the Conditional Use Permit for Application Number CUP15-0003.
5. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.
6. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
7. "Project" means the Conditional Use Permit approval to allow a yoga studio at 141 W. Tenth Street, Assessor's Parcel Number 235-053-11, Application Number CUP15-0003.
8. "Property" means the real property located at 141 W. Tenth Street, Assessor's Parcel Number 235-053-11, which is the subject of Conditional Use Permit Application Number CUP15-0003.

B. Planning Division Conditions of Approval

1. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the

- Planning and Zoning Law (Government Code sections 65000, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines"), Uniform Building Code, and Uniform Fire Code.
2. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
 3. Any violation of State or Federal Law or local ordinances shall be grounds for revocation of the conditional use permit.
 4. Pursuant to Government Code section 65009, including section 65009(e)(1), the City HEREBY NOTIFIES the applicant that any action challenging these conditions must be commenced, in writing, within 90 days of the approval of this conditional use permit.
 5. The project shall be developed and operated in substantial compliance with the site plan/floor plan received by the Development Services Department on August 27, 2015, to the satisfaction of the Development Services Director.
 6. Prior to occupancy, the Applicant shall comply with all requirements of the California State Building Code and Fire Code, to the satisfaction of the City's Chief Building Official.
 7. The Applicant shall pay the Central Business District (CBD) Zone Parking In-Lieu Fee, as applicable, to the satisfaction of the Development Services Director.

AGENDA ITEM 1-B

REQUEST

CONSIDER RECOMMENDING CHANGES TO THE TRACY MUNICIPAL CODE (ZONING REGULATIONS) REGARDING CONFORMANCE WITH THE GENERAL PLAN HOUSING ELEMENT AND OTHER CONSISTENCY CHANGES (TMC CHAPTER 10.08, ARTICLES 1, 2, 5, 6, 7, 8, 9, 11, AND 23) – APPLICATION NUMBER ZA15-0003

DISCUSSION

The City has begun preparation of an updated Housing Element of the General Plan to coincide with the planning cycle 2015 – 2022. Part of that process is to complete implementation items identified in the current 2009 – 2014 planning cycle. The proposal is a City-initiated request to amend the Tracy Municipal Code to amend various sections of the Zoning Ordinance to achieve conformance with the General Plan Housing Element and other consistency changes allowing for the implementation of the Housing Element.

These proposed zoning amendments include provisions for the following:

- (1) Improved clarity for emergency shelters, as required by Senate Bill 2, the 2008 Housing Accountability Act;
- (2) Second units in residential zones where a primary single-family unit already exists;
- (3) Manufactured/mobile homes installed on a permanent foundation in all residential zones where single-family dwellings are permitted;
- (4) Single room occupancy facilities (SROs) in the MDR and HDR zones and with a Conditional Use Permit in the MDC zone;
- (5) Definition of “family” in the Zoning Ordinance to eliminate any requirements on the number of persons constituting a family;
- (6) Requests for reasonable accommodation to land use and zoning decision procedures regulating the siting, funding, development and use of housing for people with disabilities;
- (7) Eliminating the requirement for a conditional use permit for the use of a temporary dwelling during construction; and

Specifically, the request is to amend Sections 10.08.010, 10.08.100, 10.08.270, 10.08.320, 10.08.600, 10.08.610, 10.08.790, 10.08.1080, 10.08.1100, 10.08.1200, 10.08.1280, 10.08.1390, 10.08.1580, 10.08.3140, 10.08.3180, and adding Sections 10.08.302, 10.08.808, 10.08.852, 10.08.861, 10.08.3197 and 10.08.3199 of the Tracy Municipal Code.

The City of Tracy adopted its current Housing Element on May 15, 2012. Contained within the Housing Element is the City's Housing Plan that outlines goals, policies and programs that build upon identified housing needs that were to guide the City through the 2009-2014 planning period. Specifically, Goal 4 in the Housing Element called for mitigating any potential governmental constraints to housing production and affordability.

Pursuant to Program Number 12, it was noted that extremely low income households and households with special needs have limited housing options in Tracy. Housing types appropriate for these groups include: emergency shelters, transitional housing, supportive housing, and single-room occupancy (SRO) units. Currently the City of Tracy's Zoning Ordinance does not specifically itemize such housing types; rather they are more generically identified as "boarding and rooming" houses. Part of the objectives the City of Tracy committed to accomplishing under the 2009-2014 Housing Element, included amending the Zoning Ordinance to specifically address the following:

Emergency Shelters: The City will amend its Zoning Ordinance to permit homeless shelters with a ministerial permit within the MDR and HDR zones. Objective performance standards will be established and these standards will be the same as similar uses in the MDR and HDR zones (Housing Element, Page 121).

Transitional Housing: The City will amend its Zoning Ordinance to differentiate transitional housing in the form of group quarters versus as regular housing developments. For transitional housing facilities that operate as regular housing developments, such housing will be permitted where similar housing is otherwise permitted. For transitional housing facilities that operate as group quarters, such facilities will be permitted as residential care facilities (Housing Element, Page 121).

Supportive Housing: The Zoning Ordinance will be amended to differentiate supportive housing in the form of group quarters versus as regular housing developments. For supportive housing facilities that operate as regular housing developments, such uses will be permitted where similar housing is otherwise permitted. For supportive housing facilities that operate as group quarters, such facilities will be permitted as residential care facilities (Housing Element, Page 121).

Background

Senate Bill 2

The 2008 California Housing Accountability Act (SB 2) mandates that every local government agency identify at least one zoning district where emergency homeless shelters can be located without discretionary review (e.g. use permit). The intention of SB 2 is to pre-plan shelter capacity, streamline the permitting process and provide regulatory certainty to providers seeking to open a new emergency shelter. SB 2 allows local governments to establish objective standards and criteria to protect community interests and promote neighborhood compatibility.

The *May 7, 2008 California Department of Housing and Community Development Memo on Senate Bill 2 (Attachment D)* provides more comprehensive information on SB 2 and its requirements.

Emergency shelters are defined by the California Health and Safety Code (Section 50801(e)) as *“housing with minimal supportive services for homeless persons that is limited in occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an ability to pay.”*

Emergency shelters include housing and support services for veterans, survivors of domestic violence, families, foster children aging out of the system, and other special-needs populations. Most shelters are typically located within the city limits of a community. Area emergency shelters are typically operated by nonprofit organizations that rely on various funding sources for their establishment and operation, and they typically include supportive services.

Emergency shelters are proposed to be a permitted use in the MDC, MDR, HDR zones, but would be subject to specific criteria as contained in the new language being proposed (Section 10.08.3197) as follows:

- (1) Concentration. A boarding and rooming house may not be located closer than 300 feet from another emergency shelter or SRO;
- (2) On-site resident manager. An emergency shelter shall have a resident, on-site manager.

In accordance with SB 2, the following definitions are proposed to be added to the Tracy Municipal Code:

- Emergency homeless shelter: housing for homeless persons with minimal supportive services that is limited to occupancy of six months or less. (Gov't. Code §50801(e).)
- Single-room occupancy facility (“SRO”): a residential building that includes multiple single-room dwelling units that are the primary residence of their occupant or occupants. (24 CFR 92.2.)
- Supportive housing facility: means housing with no limit on the length of stay, that is occupied by persons with disabilities and individuals or families that are homeless at the time approved for occupancy, and that is linked to on-site services that assist the supportive housing resident in retaining the housing, thereby improving the residents health status, and maximizing his or her ability to live and, when possible and applicable, work in the community. Supportive housing that is provided in single-family, two-family, or multi-family dwelling units will be permitted, conditionally permitted or prohibited in the same manner as other single-family, two-family, or multi-family dwelling units under this code.” (Government Code Section 65582(f)).
- Transitional housing facility: means a building configured for rental housing, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time that is not less than six months from beginning of assistance. Transitional housing that is provided in single-family, two-family, or multi-family dwelling units will be permitted, conditionally permitted or prohibited in the same manner as other single-family, two-family, or multi-family dwelling units under this code.” (Health and Safety Code 50675.2(h)).

In addition to the implementation of SB2, the Housing Plan (Section VI) also contained additional items necessary for the implementation of the Housing Element, which are also included as part of this Zoning Ordinance Amendment. Each of these recommended changes is also required by State law, either by statute or otherwise, and therefore, all of the amendments can be described as technical, cleanup items. A summary of each of the amendments is provided below:

Single Room Occupancy: The City will amend its Zoning Ordinance to permit SROs in the MDR and HDR zones and with a Conditional Use Permit in the MDC zone.

Second Units: The City will amend its Zoning Ordinance to permit second units in residential zones where a primary single-family unit already exists. Current Zoning Ordinance regulations only allow second units in the Low Density Residential Zone on lots at least 8,000 square feet in area. State law (Gov. Code Section 65852.2) now requires cities to allow second units in any zone that permits single family homes. The size of a detached second unit is limited to 1,200 square feet; and an attached second unit will be limited to no more than 30% of the size of the primary unit.

Manufactured Homes: The City will amend its Zoning Ordinance to allow manufactured/mobile homes installed on a permanent foundation in all residential zones where single-family dwellings are permitted.

Definition of Family: General Plan Housing Element Goal 5.0 states:

“Continue to promote equal housing opportunity in the City’s housing market regardless of age, race, color, national origin, ancestry, sex, disability, marital status, source of income, sexual orientation, and any other arbitrary factors.”

The revised definition is also in response to case law which renders Tracy’s current definition in need of update. Housing Element Program 14 requires the City to amend its definition of a family in the Zoning Ordinance to eliminate any requirements on the number of persons constituting a family.

The proposed definition of “family” is as follows:

"Family" means one or more persons occupying a single dwelling unit, under no more than one written or oral rental agreement.”

Reasonable Accommodation: Housing Element Program 15, as it pertains to Reasonable Accommodation, states:

“The Fair Housing Act, as amended in 1988, requires that cities and counties provide reasonable accommodation to rules, policies, practices, and procedures where such accommodation may be necessary to afford individuals with disabilities equal housing opportunities. While fair housing laws intend that all people have equal access to housing, the law also recognizes that people with disabilities may need extra tools to achieve equality. Reasonable accommodation is one of the tools intended to further housing opportunities for

people with disabilities. Reasonable accommodation provides a means of requesting from the local government flexibility in the application of land use and zoning regulations or, in some instances, even a waiver of certain restrictions or requirements because it is necessary to achieve equal access to housing. Cities and counties are required to consider requests for accommodations related to housing for people with disabilities and provide the accommodation when it is determined to be “reasonable” based on fair housing laws and the case law interpreting the statutes.”

Housing Element Program 15 calls for amending the Tracy Municipal Code to address reasonable accommodation to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities within one year of adoption of the Housing Element.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed amendments to the Tracy Municipal Code amending various Sections of the Zoning Ordinance so as to achieve conformance with the General Plan Housing Element and other consistency changes allowing for implementation of the Housing Element as noted in Exhibit B to provide for the implementation of the 2009-2014 Housing Element and the enactment and implementation of SB 2.

Reason for Recommendation:

1. The proposed project implements the Housing Accountability Act (SB2). Every local jurisdiction in California must comply with SB2. It is also a prerequisite for Housing Element certification. If the City of Tracy does not adopt the revisions to the Zoning Ordinance to provide for emergency shelters, supportive housing and transitional housing facilities implementing SB2, a legal mandate will not be satisfied and the 2015 – 2022 Housing Element, nearing completion, will not be certified by HCD.
2. The amendments to the Zoning Ordinance relative to second units, the placement of manufactured homes in all residential zones, single room occupancy units, revision of the definition of family and the provision for reasonable accommodation will provide for the implementation of the current Housing Element and further illustrate to the State Department of Housing and Community Development (HCD) that the City of Tracy followed through with its commitments to its housing goals, policies and programs.
3. The proposed revisions to the Zoning Ordinance would include “by-right” of emergency homeless shelters in the MDR and the HDR zones and with a Conditional Use Permit in the MDC Zone. Transitional and Supportive Housing will be expressly permitted in any zone where residential uses are permitted. This is a clarification to include the expressions “emergency shelter,” “supportive housing,” and “transitional housing” in the City’s zoning regulations in compliance with State law, and as a means of providing additional clarity to the community-at-large, and various housing related service providers.

4. The proposed revisions to the Zoning Ordinance include operation standards for emergency shelters to address potential neighborhood impacts, and to achieve consistency with state law.
5. The project will not have a significant effect on the environment. Pursuant to Section 15183(a) of the California Environmental Quality Act (CEQA), which states in part "...CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review...". On May 15, 2012, the Tracy City Council adopted an updated Housing Element to its General Plan and that housing Element anticipated certain amendments to the City's Zoning Ordinance. Through the proposed action/project, the City is implementing the policies of the previously adopted Housing Element in 2012. The proposal is merely following through with implementation language for programs contained in the adopted Housing Element, with no new development being proposed as part of this project.

MOTION

Move that the Planning Commission recommend that the City Council introduce the Ordinance (Attachment B) amending Tracy Municipal Code Chapter 10.08, Articles 1, 2, 5, 6, 7, 8, 9, 11, and 23 regarding conformance with General Plan Housing Element and other consistency items that call for implementing the Housing Element Policies and Programs.

Prepared by: Nash Gonzalez, Contract Planner

Reviewed by: Bill Dean, Assistant Development Services Director

Approved by: Andrew Malik, Development Services Director

ATTACHMENTS

Attachment A – Tracy Municipal Code Chapter 10.08, Articles 1, 2, 5, 6, 7, 8, 9, 11, 23

Attachment B – Proposed Planning Commission Resolution Proposed
Exhibit 1 - Ordinance Regarding Conformance with General Plan Housing
Element and Other Consistency Changes

Attachment C – May 7, 2008 California Department of Housing and Community Development
Memo on SB2

ATTACHMENT A

The following is a list of existing sections that are proposed to be amended and are shown as they currently exist in Title 10

10.08.010 - Title.

This chapter, which shall be known as the "zoning regulations", may be cited as such, will be referred to hereafter as "this chapter", and sections or portions hereinafter referred to shall refer to sections or portions of this chapter.

(Prior code § 10-2.101)

10.08.1000 - Establishment of zones by map.

The location and boundaries of the various zones are as shown on the "Official Zoning Map of the City of Tracy", on file in the office of the Community Development Director. Said map and all notations, references, and other information shown thereon are hereby made a part of this chapter.

(Prior code § 10-2.403)

10.08.270 - Dwelling.

"Dwelling" shall mean a building, or portion thereof, designed or used for residential occupancy, including one-family, two-family, and multi-family structures, but shall not include boarding, rooming, or lodging houses, tents, trailer parks or mobile home motels, motor courts, motor lodges, cottages, camps, or similar structures designed or used primarily for transient residents.

- (a) "Dwelling, one-family" shall mean a detached building arranged, designed, or used for, and intended to be occupied by, not more than one family, and which building has not more than one primary kitchen and not less than one bathroom.
- (b) "Dwelling, two-family" shall mean a dwelling designed for occupancy by two (2) families living independently of each other and containing two (2) dwelling units.
- (c) "Dwelling, multiple-family" shall mean a dwelling designed for occupancy by three (3) or more families living independently of each other and containing three (3) or more dwelling units.

(Prior code § 10-2.2224)

10.08.320 - Family.

"Family" shall mean any number of persons living or cooking together on the premises as a single dwelling unit, but it shall not include a group of more than four (4) individuals not related by blood or marriage or legal adoption.

(Prior code § 10-2.228)

10.08.600 - Manufactured housing.

"Manufactured housing" shall mean a home which conforms to the National Manufactured Housing Construction and Safety Standards Act of 1944.

(Prior code § 10-2.254.1)

10.08.610 - Mobile home.

"Mobile home" shall mean a vehicle or trailer designed or used as permanent or semipermanent housing for human habitation, including any kind of mobile living or sleeping quarters.

(Prior code § 10-2.255)

10.08.790 - Secondary residential unit.

"Secondary residential unit" shall mean a separate residential unit containing sleeping, kitchen, and bathroom facilities; created on a Low Density Residential Zone (LDR) lot which already contains one legally created residential unit. A secondary residential unit may be created by the conversion of a portion of, or an addition to, an existing dwelling or by the construction of a new structure.

(Prior code § 10-2.270.1)

10.08.1080 Use Group 21

Use Group No. 21: Single-family uses.

Use Group No. 21:	RE	MDR
Single-family uses	LDR	HDR
(a) Single-family dwelling units.	LDC	

Use Group No. 29: Accessory uses.

Use Group No. 29:	RE	LDC
Accessory uses (when	LDR	MDR
located on the same	LDC	HDR
parcel as the principal	MDR	CBD
use and the principal	HDR	
use is conforming)	POM	
	RMH	
(a) Buildings or	CS	
structures, minor, found	NS	
in connection with the	CBD	
principal use or required	GHC	
by the residents or operators	M-1	
of the use for the	M-2	
normal and usual conduct of the use or the maintenance	HS	
of buildings and grounds		
(b) Facilities and equipment in connection with such schools and other institutions as are permitted in the zone (installation and operation);		
*(c) Home occupations, incidental, such as handicraft, dressmaking, millinery, laundering, preserving, and home cooking;		
(d) Parking spaces:		
(1) Garages, carports, and parking areas, private; and		
(2) Off-street parking and loading spaces to serve property in the zone in which located;		
(e) Proprietor-owner living accommodations on the site and located a minimum of fifty (50') feet back of the front property line;		
(f) Recreation facilities:		
(1) Recreation, refreshment, and service buildings in public parks; and		
(2) Swimming pools, tennis courts, and similar recreation facilities, private;		
(g) Renting of rooms and/or the providing of table board in a dwelling as an incidental use to its occupancy as a dwelling provided not more than three (3) paying guests are accommodated;		
(h) Retail sales of agricultural products grown on the premises provided no building or structure is maintained specifically for such purposes;		
(i) Signs (size, number, placement, and illumination regulated by Article 35 of this chapter);		
(j) Storage of not more than one house trailer in an enclosed building;		
(k) Studies or studios of physicians, surgeons, dentists, artists, attorneys, architects, engineers, teachers, or other members of a recognized profession; and		

(l) Walls and screen plantings:		
(1) Fences and walls; and		
(2) Hedges, trees, shrubs, and other ornamental plantings)		
(m) Day care homes (See sections 10.08.255 and 10.08.3195)		

10.08.1100 - Permitted uses (RE).

(a) Only uses which are included in the following Use Groups shall be permitted without conditional approval in the RE Zone:

Group 1	Minor public service uses;
Group 4	Temporary buildings and uses;
Group 21	Single-family uses;
Group 28	Household pets and small animals;
Group 29	Accessory uses when located on the same parcel as the principal use; and
Group 30	Educational, cultural, institutional, and recreational uses serving local residential areas (neighborhood).

(b) The following conditional uses shall be permitted in the RE Zone subject to the granting of a use permit as provided in Sections [10.08.4250](#) through [10.08.4420](#) of [Article 34](#) of this chapter;

- (1) Mobile home parks and mobile home park subdivisions;
- (2) Off-street parking to serve adjacent commercial and office uses;
- (3) Churches and church-related uses;
- (4) Educational, cultural, institutional, and recreational uses;
- (5) Private schools, nursery schools, and day care centers;
- (6) Hospitals, convalescent hospitals, rest homes, and nursing homes;
- (7) Board and care facilities; and
- (8) Those uses permitted in Use Group 2.

(Prior code § 10-2.601)

10.08.1200 - Permitted uses (LDR).

(a) The following uses shall be permitted in the LDR Zone:

- (1) One-family dwellings;
- (2) Mobile homes on individual lots;
- (3) Crop and tree farming; and
- (4) Public parks, buildings, and schools.

(b) The following conditional uses shall be permitted in the LDR Zone subject to the granting of a use permit as provided in Sections [10.08.4250](#) through [10.08.4420](#) of [Article 34](#) of this chapter:

- (1) Mobile home parks and mobile home park subdivisions;

- (2) Secondary residential units;
- (3) Off-street parking to serve adjacent commercial and office uses;
- (4) Churches and church-related uses;
- (5) Educational, cultural, institutional, and recreational uses;
- (6) Private schools, nursery schools, and day care centers;
- (7) Hospitals, convalescent hospitals, and rest and nursing homes;
- (8) Board and care facilities;
- (9) Planned residential developments of one-family dwellings on individual lots; and
- (10) Mortuaries.

(Prior code § 10-2.701)

10.08.1280 - Permitted uses (MDC).

(a) The following uses shall be permitted in the MDC Zone:

- (1) One-family, two-family, and three-family dwellings and dwelling groups composed of such dwellings;
- (2) Boarding and rooming houses;
- (3) Crop and tree farming;
- (4) Public parks, buildings, and schools; and
- (5) Accessory uses and structures as provided in [Section 10.08.1080](#) of Article 5 of this chapter.

(b) The following conditional uses shall be permitted in the MDC Zone subject to the granting of a use permit as provided in Sections [10.08.4250](#) through [10.08.4420](#) of [Article 34](#) of this chapter:

- (1) Mobile home parks and mobile home park subdivisions;
- (2) Condominiums and planned residential developments of one- and two-family dwellings;
- (3) Attached single-family dwellings;
- (4) Off-street parking to serve adjacent commercial and office uses;
- (5) Churches and church related uses;
- (6) Educational, cultural, institutional, and recreational uses;
- (7) Private schools, nursery schools, and day care centers;
- (8) Hospitals, convalescent hospitals, rest homes, and nursing homes;
- (9) Board and care facilities; and
- (10) Mortuaries.

(Prior code § 10-2.801)

10.08.1390 - Permitted uses (MDR).

(a) The following uses shall be permitted in the MDR Zone:

- (1) One-family, two-family, and multiple-family dwellings, dwelling groups, and apartment houses;
- (2) Boarding and rooming houses;
- (3) Crop and tree farming;
- (4) Public parks, buildings, and schools; and

- (5) Accessory uses as provided in [Section 10.08.1080](#) of Article 5 of this chapter.
- (b) The following conditional uses shall be permitted in the MDR Zone subject to the granting of a use permit as provided in Sections [10.08.4250](#) through [10.08.4420](#) of [Article 34](#) of this chapter:
 - (1) Mobile home parks and mobile home park subdivisions;
 - (2) Condominiums and planned residential developments;
 - (3) Attached single-family dwellings;
 - (4) Off-street parking to serve adjacent commercial and office uses;
 - (5) Churches and church-related uses;
 - (6) Educational, cultural, institutional, and recreational uses;
 - (7) Private schools, nursery schools, and day care centers;
 - (8) Hospitals, convalescent hospitals, and rest and nursing homes;
 - (9) Board and care facilities; and
 - (10) Mortuaries.

(Prior code § 10-2.901)

10.08.1580 - Permitted uses (HDR).

- (a) The following uses shall be permitted in the HDR Zone:
 - (1) One-family, two-family, and multiple-family dwellings, dwelling groups, and apartment houses;
 - (2) Boarding and rooming houses;
 - (3) Crop and tree farming;
 - (4) Public parks, buildings, and schools; and
 - (5) Accessory uses as provided in [Section 10.08.1080](#) of Article 5 of this chapter.
- (b) The following conditional uses shall be permitted in the HDR Zone subject to the granting of a use permit as provided in Sections [10.08.4250](#) through [10.08.4420](#) of [Article 34](#) of this chapter:
 - (1) Mobile home parks and mobile home park subdivisions;
 - (2) Condominiums and planned residential developments;
 - (3) Attached single-family dwellings;
 - (4) Off-street parking to serve adjacent commercial and office uses;
 - (5) Churches and church-related uses;
 - (6) Educational, cultural, institutional, and recreational uses;
 - (7) Private schools, nursery schools, and day care centers;
 - (8) Board and care facilities;
 - (9) Hospitals, convalescent hospitals, rest homes, and nursing homes; and
 - (10) Mortuaries.

(Prior code § 10-2.1101)

10.08.3140 - Permitted locations of mobile homes, travel trailers, motor homes, and campers.

- (a) Mobile homes, travel trailers, motor homes, and campers used as permanent residences shall be located in properly zoned mobile home parks. Utility connections for water, sewers, or power shall be prima facie evidence of occupancy as a residence, except for

the temporary (twenty-four (24) hours) use of power to recharge batteries or service appliances.

- (b) Travel trailers, mobile homes, office trailers, and mobile offices may be permitted on a temporary basis for the purpose of establishing a business in the POM, CBD, CS, GHC, HS, M-1, and M-2 Zones as follows:
- (1) A temporary permit authorized by the Commission, valid for six (6) months, shall be required for such use.
 - (2) Such temporary permit may be renewed for two (2) additional six (6) month periods, for a maximum of eighteen (18) months, at the discretion of the Commission, except as set forth in subsection (3) of this subsection.
 - (3) Additional temporary permits for six (6) month periods beyond the initial eighteen (18) month period may be authorized by the Commission:
 - (i) If the progress of the applicant toward establishing a permanent business facility is being delayed by the action of a public agency, the temporary permit may be renewed indefinitely; or
 - (ii) If the applicant has an approved development plan for a permanent business facility and can demonstrate that progress is being made to implement such plan, the temporary permit may be extended to a maximum twenty-four (24) month period from the date of the initial approval.
- (c) Mobile homes, travel trailers, motor homes, and campers may be stored anywhere on a lot provided:
- (1) No utility service is connected to the vehicle, except for the temporary (twenty-four (24) hours) use of power to recharge batteries or service appliances; and
 - (2) The vehicle is not located in a clear zone.
- (d) A motor home or mounted camper which is normally used for every day transportation, is mounted on a pickup of greater than three-fourths ($\frac{3}{4}$) ton, is not more than seventy-eight (78') inches in height measured from the surface of the street, and is not more than seventy-two (72') inches in width shall be exempt from the provisions of this section.
- (e) Mobile homes, travel trailers, motor homes, and campers existing on August 21, 1973, shall conform to the requirements of this section within the time frame established by the State for amortizing mobile homes which allows nine (9) years from the date of manufacture to amortize a 193-inch by 480-inch or smaller mobile home and eighteen (18) years from the date of manufacture to amortize larger units, but in no event shall it be less than three (3) years.
- (f) A mobile home to be utilized as a dwelling in a residential zone while a one-family dwelling is under construction on the same lot shall be a conditional use for which a use permit shall be secured as provided in Sections [10.08.4250](#) through [10.08.4410](#) of [Article 34](#) of this chapter. In addition, the following provisions shall apply:
- (1) Such mobile home may only be so located and occupied while actual construction activities are taking place upon such lot; in no case may the period of such placement and use exceed one year.
 - (2) Such mobile home may only be occupied by the property owner; who is also the builder designated on the building permit, and family.
 - (3) Surety adequate to ensure the timely removal and compliance with the conditions of the use permit may be required.
 - (4) The minimum yards for the zone shall be maintained, unless otherwise specified in the use permit.

- (5) Additional conditions necessary and appropriate to ensure compatibility with surrounding development, existing and contemplated, may be imposed.

(Prior code § 10-2.2312)

10.08.3180 - Secondary residential units.

In addition to appropriate conditions which may be included in the use permit which must be secured as provided in sections [10.08.4250](#) through [10.08.4410](#) of [article 34](#) of this chapter, the following provisions and conditions shall apply to a secondary residential unit:

- (a) The unit shall be exclusively for rental occupancy or occupancy by other family members; sale or ownership separate from the principal dwelling shall be prohibited.
- (b) The lot upon which the unit is to be located shall have an area of at least 8,000 square feet.
- (c) The exterior of the unit shall be constructed of the same general materials as the principal dwelling.
- (d) The unit shall conform to all yard, coverage, and height requirements for the principal dwelling.
- (e) At least one additional off-street parking space shall be required.
- (f) The floor area shall be no less than 300 square feet or more than 460 square feet.

(Prior code § 10-2.2316)

The proposal will add the following sections to Title 10:

10.08.302 Emergency Homeless Shelter.

“Emergency Homeless Shelter” means housing for homeless persons with minimal supportive services that is limited to occupancy of six months or less (Health and Safety Code § 50801(e).)”

10.08.808 Single-Room Occupancy Facility (“SRO”).

“Single-Room Occupancy Facility (“SRO”), means a residential building that includes multiple single-room dwelling units that are the primary residence of their occupant or occupants (24 CFR 92.2).”

10.08.852 Supportive Housing Facility

“Supportive Housing Facility” means housing with no limit on the length of stay, that is occupied by persons with disabilities and individuals or families that are homeless at the time approved for occupancy, and that is linked to on-site services that assist the supportive housing resident in retaining the housing, thereby improving the residents health status, and maximizing his or her ability to live and, when possible and applicable, work in the community. Supportive housing that is provided in single-family, two-family, or multi-family dwelling units will be permitted, conditionally permitted or prohibited in the same manner as other single-family, two-family, or multi-family dwelling units under this code.” (Government Code Section 65582(f)).

10.08.861 Transitional Housing Facility

“Transitional Housing Facility” means a building configured for rental housing, but operated under program requirements that call for the termination of assistance and

recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time that is not less than six months from beginning of assistance. Transitional housing that is provided in single-family, two-family, or multi-family dwelling units will be permitted, conditionally permitted or prohibited in the same manner as other single-family, two-family, or multi-family dwelling units under this code.” (Health and Safety Code 50675.2(h)).

10.08.3197 Standards for Emergency Homeless Shelter and Single-Room Occupancy Facilities (“SROs”).

(a) General. Emergency homeless shelters are permitted in the MDR, HDR and MDC Zoning Districts. Single-room occupancy facilities (“SROs”) are permitted in the MDR and HDR Zoning Districts. However, within the MDC zones, SROs are permitted only upon the issuance of a conditional use permit subject to the requirements of this Section.

(b) Requirements.

(1) Concentration. An emergency homeless shelter or SRO may not be located closer than 300 feet from another emergency homeless shelter or SRO.

(2) On-site resident manager. An emergency homeless shelter shall have a resident, on-site manager.

10.08.3199 Reasonable accommodation.

(a) Purpose. It is the City’s policy to provide individuals with disabilities reasonable accommodation in regulations and procedures to ensure equal access to housing, and to facilitate the development of housing. The purpose of this chapter is to provide a procedure under which a disabled person may request a reasonable accommodation in the application of zoning requirements.

This chapter is based on requirements of the federal and state fair housing laws, and implements the City of Tracy General Plan Housing Element. It is distinct from the requirements for a variance set forth in Government Code Section 65906 and TMC Section 10.08.3630 and following, Variances.

(b) Definitions. In this chapter:

“Disabled person” means a person who has a medical, physical or mental condition that limits a major life activity, as those terms are defined in Government Code Section 12926, anyone who is regarded as having such a condition or anyone who has a record of having such a condition. It includes a person or persons, or an authorized representative of a disabled person. The term “disabled person” does not include a person who is currently using illegal substances, unless he or she has a separate disability. (42 U.S.C. § 3602(h).)

“Fair housing laws” means (1) the Federal Fair Housing Act (42 U.S.C. § 3601 and following) and (2) the California Fair Employment and Housing Act (Government Code Section 12955 and following), including amendments to them.

“Reasonable accommodation” means providing disabled persons flexibility in the application of land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to housing opportunities. It may include such things as yard area modifications for ramps, handrails or other such accessibility improvements; hardscape additions, such as widened driveways, parking area or walkways; building additions for accessibility; tree removal; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. Reasonable accommodation does not include an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city’s land use and zoning program.

(c) Requesting reasonable accommodation.

(1) Request. A disabled person may request a reasonable accommodation in the application of the City’s land use and zoning regulations. Such a request may include a modification or exception to the requirements for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers. A reasonable accommodation cannot waive a requirement for a conditional use permit when otherwise required or result in approval of uses otherwise prohibited by the City’s land use and zoning regulations.

(2) Availability of information. Information regarding this reasonable accommodation procedure shall be prominently displayed at the public information counters in the planning division, advising the public of the availability of the procedure for eligible applicants, and be made available in any other manner as determined by the Director.

(3) Assistance. If an applicant needs assistance in making the request, the Director will endeavor to provide the assistance necessary to ensure that the process is available to the applicant.

(4) Balancing rights and requirements. The City will attempt to balance:

A. the privacy rights and reasonable request of an applicant for confidentiality, with

B. the land use requirements for notice and public hearing, factual findings and rights to appeal, in the city’s requests for information, considering an application, preparing written findings and maintaining records for a request for reasonable accommodation.

(d) Application requirements.

(1) Application. The applicant shall submit a request for reasonable accommodation on a form provided by the Director. The application shall include the following information:

A. The applicant’s name, address and telephone number;

B. Address of the property for which the request is being made;

- C. The name and address of the property owner, and the owner's written consent to the application;
- D. The current use of the property;
- E. The basis for the claim that the individual is considered disabled under the fair housing laws: identification and description of the disability which is the basis for the request for accommodation, including current, written medical certification and description of disability and its effects on the person's medical, physical or mental limitations;
- F. The rule, policy, practice and/or procedure of the city for which the request for accommodation is being made, including the zoning code regulation from which reasonable accommodation is being requested;
- G. The type of accommodation sought;
- H. The reason(s) why the accommodation is reasonable and necessary for the needs of the disabled person(s). Where appropriate, include a summary of any potential means and alternatives considered in evaluating the need for the accommodation;
- I. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and
- J. Other supportive information deemed necessary by the Director to facilitate proper consideration of the request, consistent with fair housing laws.

(2) Review with other land use applications. If the project for which the reasonable accommodation is being requested also requires some other discretionary approval (such as conditional use permit or development review), then the applicant shall submit the reasonable accommodation application first for a determination by the Director, before proceeding with the other applications.

(3) Fee. The fee for an application for reasonable accommodation shall be established by resolution of the City Council.

(e) Approval authority – Notice – Decision.

(1) Approval authority.

A. Director of Development Services. The Director has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, except as noted in subsection (e)(1)B of this Section. The Director may refer the matter to the Planning Commission.

B. Planning Commission. The Planning Commission has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, when referred by the

Director, or on appeal.

(2) Notice. No advance notice or public hearing is required for consideration of reasonable accommodation requests by the Director, except when the request includes any encroachment into the front yard setback area; results in a building size increase above what is allowed in the applicable zoning district with respect to height, lot coverage and floor area ratio maximums; or whenever a reduction in required parking is requested.

A request for reasonable accommodation subject to review by the Planning Commission requires advance notice and a public hearing under Government Code section 65090.

(3) Decision. The Director shall render a decision or refer the matter to the Planning Commission within 30 days after the application is complete, and shall approve, approve with conditions or deny the application, based on the findings set forth in subsection (f) below.

If the application for reasonable accommodation is referred to, or reviewed by, the Planning Commission, a decision to approve, approve with conditions or deny the application shall be rendered within 20 working days after the close of the public meeting, based on the findings set forth in subsection (f) below.

(f) Findings – Other requirements.

(1) Findings. The reviewing authority shall approve the application, with or without conditions, if it can make the following findings:

A. The housing will be used by a disabled person;

B. The requested accommodation is necessary to make specific housing available to a disabled person;

C. The requested accommodation would not impose an undue financial or administrative burden on the city; and

D. The requested accommodation would not require a fundamental alteration in the nature of a city program or law, including land use and zoning.

(2) Other requirements.

A. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.

B. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.

C. Where appropriate, the reviewing authority may condition its approval on any or all of the following:

- i. Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;
- ii. Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
- iii. Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
- iv. Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
- v. Measures to reduce the impact on surrounding properties;
- vi. Measures in consideration of the physical attributes of the property and structures;
- vii. Other reasonable accommodations that may provide an equivalent level of benefit and/or that will not result in an encroachment into required setbacks, exceedance of maximum height, lot coverage or floor area ratio requirements specified for the zone district; and
- viii. Other conditions necessary to protect the public health, safety or welfare.

(g) Appeal. A decision by the Director may be appealed to the Planning Commission and a decision of the Planning Commission may be appealed to the City Council in accordance with the appeal procedures of TMC Sections 10.08.4040. “

RESOLUTION 2015-_____

RECOMMENDING CITY COUNCIL APPROVAL OF TRACY MUNICIPAL CODE AMENDMENTS TO IMPLEMENT GENERAL PLAN HOUSING ELEMENT PROGRAMS AND RELATED UPDATES AND CLARIFYING ITEMS, MORE SPECIFICALLY, THE PROPOSED AMENDMENTS INCLUDE PROVISIONS FOR THE TITLE OF ZONING REGULATIONS, BOARDING AND ROOMING HOUSE, EMERGENCY SHELTERS, SINGLE-ROOM OCCUPANCY FACILITIES, SUPPORTIVE HOUSING, TRANSITIONAL HOUSING, DWELLING UNIT DEFINITIONS, DEFINITION OF FAMILY, MANUFACTURED/MOBILE HOMES, SECOND UNITS, CONDITIONAL USE PERMIT FOR TEMPORARY DWELLING DURING CONSTRUCTION, AND REQUESTS FOR REASONABLE ACCOMMODATION TO ZONING REQUIREMENTS FOR DISABLED PERSON
(TMC CHAPTER 10.08, ARTICLES 1, 2, 5, 6, 7, 8, 9, 11, AND 23)
APPLICATION NUMBER ZA15-0003

WHEREAS, The City Council adopted an updated Housing Element to its General Plan on May 15, 2012 (Resolution No. 2012-091) and that the Housing Element anticipated certain amendments to the City's Zoning Ordinance, which are proposed under Application Number ZA 15-0003, and

WHEREAS, Each City is required to update its Zoning Ordinance to conform to the General Plan within a reasonable time (Government Code Section 65860(c)), and

WHEREAS, The project will not have a significant effect on the environment, where pursuant to Section 15183(a) of the California Environmental Quality Act (CEQA), such projects that are consistent with the development densities established by existing zoning, community plans, or general plan policies for which an EIR was certified shall not require additional environmental review. On May 15, 2012, the Tracy City Council adopted an updated Housing Element to its General Plan and the Housing Element anticipated certain amendments to the City's Zoning Ordinance that this project is to accomplish, and

WHEREAS, Government Code Section 65583 requires that the Housing Element addresses, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities, with the proposed Zoning Ordinance Amendment achieving the intent of Government Code Section 65583, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on October 14, 2015;

NOW, THEREFORE BE IT RESOLVED, The Planning Commission hereby recommends that the City Council introduce the Ordinance (Exhibit 1) amending Tracy Municipal Code Chapter 10.08, Articles 1, 2, 5, 6, 7, 8, 9, 11, and 23, regarding conformance with General Plan Housing Element and other consistency items that call for implementing the Housing Element Policies and Programs, specifically title of zoning regulations, boarding and rooming house, emergency shelters, single-room occupancy facilities, supportive housing, transitional housing, dwelling unit

definitions, definition of “family”, manufactured/mobile homes, second units, conditional use permit for temporary dwelling during construction, and requests for reasonable accommodation to zoning requirements for disabled person, Application Number ZA15-0003, as stated in Exhibit 1 attached and made part hereof and based on the following findings:

1. The proposed Zoning Ordinance Amendments implement the Housing Accountability Act (SB 2). Every local jurisdiction in California is required to comply with SB2, as it is a prerequisite for Housing Element certification. If the City of Tracy does not adopt the revisions to the Zoning Ordinance to provide for emergency shelters, supportive and transitional housing facilities implementing SB2, a legal mandate will not be satisfied and the 2015-2022 Housing Element, nearing completion, will not be certified by the Department of Housing and Community Development (HCD). Additionally, the Zoning Ordinance Amendment will provide for the implementation of the current Housing Element and further illustrate to the State Department of Housing and Community Development (HCD) that the City of Tracy followed through with its commitments to its housing goals, policies and programs.
2. The proposed revisions to the Zoning Ordinance would include “by-right” of emergency homeless shelters in the MDR and the HDR zones and with a Conditional Use Permit in the MDC Zone. Transitional and Supportive Housing will be expressly permitted in any zone where residential uses are permitted. This is a clarification to include the expressions “emergency shelter,” “supportive housing,” and “transitional housing” in the City’s zoning regulations in compliance with State law, and as a means of providing additional clarity to the community-at-large, and various housing related service providers.
3. The project is consistent with the City of Tracy General Plan and the 2009-2014 Housing Element, in that the proposal provides for the implementation of the goals, policies and programs contained in the Housing Element. The proposal is a City-initiated request to amend the Tracy Municipal Code to amend various sections of the Zoning Ordinance to achieve conformance with the General Plan Housing Element and other consistency changes allowing for the implementation of the Housing Element.
4. The project will not have a significant effect on the environment. Pursuant to Section 15183(a) of the California Environmental Quality Act (CEQA), which states in part “...CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review...”. On May 15, 2012, the Tracy City Council adopted an updated Housing Element to its General Plan and that housing Element anticipated certain amendments to the City’s Zoning Ordinance. Through the proposed action/project, the City is implementing the policies of the previously adopted Housing Element in 2012. The proposal is merely following through with implementation language for programs contained in the adopted Housing Element, with no new development being proposed as part of this project. Therefore, no further environmental assessment is necessary.

The foregoing Resolution 2015-_____ was adopted by the Planning Commission on the 14th day of October 2015, by the following vote:

AYES: COMMISSION MEMBERS
NOES: COMMISSION MEMBERS
ABSENT: COMMISSION MEMBERS
ABSTAIN: COMMISSION MEMBERS

CHAIR

ATTEST:

STAFF LIAISON

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING
SECTIONS 10.08.010, 10.08.100, 10.08.270, 10.08.320, 10.08.600, 10.08.610, 10.08.790,
10.08.1080, 10.08.1100, 10.08.1200, 10.08.1280, 10.08.1390, 10.08.1580, 10.08.3140,
10.08.3180, AND ADDING SECTIONS 10.08.302, 10.08.808, 10.08.852, 10.08.861, 10.08.3197
and 10.08.3199 OF THE TRACY MUNICIPAL CODE RELATING TO CONFORMANCE WITH
THE GENERAL PLAN HOUSING ELEMENT
AND OTHER CONSISTENCY CHANGES

WHEREAS, The City Council adopted an updated Housing Element to its General Plan on May 15, 2012 (Resolution No. 2012-091) and that Housing Element anticipated certain amendments to the City's Zoning Ordinance, and

WHEREAS, Each City is required to update its Zoning Ordinance to conform to the General Plan within a reasonable time (Government Code section 65860(c)), and

WHEREAS, The project will not have a significant effect on the environment, where pursuant to Section 15183(a) of the California Environmental Quality Act (CEQA), such projects that are consistent with the development densities established by existing zoning, community plans, or general plan policies for which an EIR was certified shall not require additional environmental review. On May 15, 2012, the Tracy City Council adopted an updated Housing Element to its General Plan and the Housing Element anticipated certain amendments to the City's Zoning Ordinance that this project is to accomplish, and

WHEREAS, The Planning Commission considered the amendments at a regular meeting held on October 14, 2015, and recommended approval to the City Council; and

WHEREAS, The City Council considered the amendments at a regular meeting of the Council held on _____, 2015.

The Tracy City Council hereby ordains as follows:

SECTION 1. The Zoning Ordinance of the Tracy Municipal Code is amended as set forth in Exhibit A, attached.

SECTION 2. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 3. A summary of this ordinance shall be published in a newspaper of general circulation and a certified copy of the full text posted in the office of the City Clerk at least five days before the City Council meeting at which the proposed ordinance is to be adopted. Within 15 days after adoption, the City Clerk shall publish a summary in the Tri-Valley Herald, and shall post in her office a certified copy, of the ordinance with the names of those Council Members voting for and against the ordinance. (Government Code section 36933(c)(1).)

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the _____ day of _____, 2015, and finally adopted on the _____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. _____
Exhibit A

SECTION 1: Section 10.08.010, Title, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

“10.08.010 - Title.

This chapter, which shall be known as the "zoning regulations" or "zoning ordinance", may be cited as such, will be referred to hereafter as "this chapter", and sections or portions hereinafter referred to shall refer to sections or portions of this chapter."

SECTION 2: Section 10.08.100, Boarding and rooming house, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

“10.08.100 - Boarding and rooming house.

"Boarding and rooming house" shall mean a building, or portion thereof of a building, which is used to accommodate, for compensation, three (3) or more boarders and roomers. Members of the occupant's immediate family who might be occupying such building shall not be defined as boarders or roomers. For the purposes of this section, "compensation" includes compensation in money, services, or other things of value.

SECTION 3: A new Section 10.08.302. Emergency Homeless Shelter, is added to Title 10 (Planning and Zoning) of the Tracy Municipal Code to read as follows:

“10.08.302 Emergency Homeless Shelter.

"Emergency Homeless Shelter" means housing for homeless persons with minimal supportive services that is limited to occupancy of six months or less (Health and Safety Code § 50801(e).)"

SECTION 4: A new Section 10.08.808, Single-Room Occupancy Facility ("SRO"), is added to Title 10 (Planning and Zoning) of the Tracy Municipal Code to read as follows:

“10.08.808 Single-Room Occupancy Facility ("SRO").

"Single-Room Occupancy Facility ("SRO"), means a residential building that includes multiple single-room dwelling units that are the primary residence of their occupant or occupants (24 CFR 92.2.)."

SECTION 5: A new Section 10.08.852, Supportive Housing Facility, is added to Title 10 (Planning and Zoning) of the Tracy Municipal Code to read as follows:

“10.08.852 Supportive Housing Facility

"Supportive Housing Facility" means housing with no limit on the length of stay, that is occupied by persons with disabilities and individuals or families that are homeless at the time approved for occupancy, and that is linked to on-site services that assist the supportive housing resident in retaining the housing, thereby improving the residents

health status, and maximizing his or her ability to live and, when possible and applicable, work in the community. Supportive housing that is provided in single-family, two-family, or multi-family dwelling units will be permitted, conditionally permitted or prohibited in the same manner as other single-family, two-family, or multi-family dwelling units under this code.” (Government Code Section 65582(f)).

SECTION 6: A new Section 10.08.861, Transitional Housing Facility, is added to Title 10 (Planning and Zoning) of the Tracy Municipal Code to read as follows:

“10.08.861 Transitional Housing Facility

“Transitional Housing Facility” means a building configured for rental housing, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time that is not less than six months from beginning of assistance. Transitional housing that is provided in single-family, two-family, or multi-family dwelling units will be permitted, conditionally permitted or prohibited in the same manner as other single-family, two-family, or multi-family dwelling units under this code.” (Health and Safety Code 50675.2(h)).

SECTION 7: Section 10.08.270, Dwelling, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is retitled and amended to read as follows:

“10.08.270 – Dwelling, Dwelling unit, Unit.

"Dwelling," "Dwelling unit" or "Unit" shall means a building, or portion thereof, designed or used for residential occupancy of indefinite duration, including one single-family, two-family, and multi-family structures buildings. These terms do not but shall not include buildings used for boarding, rooming, or lodging houses, tents, trailer parks or mobile home, motels, motor courts, motor lodges, cottages, camps, or similar structures designed or used primarily for transient residents.

(a) "Dwelling, one single-family" shall means a detached building arranged, designed, or used for, and intended to be occupied by, not more than one family, and which building has not more than one primary kitchen and not less than one bathroom.

(b) "Dwelling, two-family" shall means a dwelling building designed for occupancy by two (2) families living independently of each other and containing two dwelling units.

(c) "Dwelling, multiple-family" shall mean a dwelling building designed for occupancy by three (3) or more families living independently of each other and containing three (3) or more dwelling units”.

SECTION 8: Section 10.08.320, Family, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

"10.08.320 - Family.

~~"Family" means one or more persons occupying a single dwelling unit, under no more than one written or oral rental agreement." shall mean any number of persons living or cooking together on the premises as a single dwelling unit, but it shall not include a group of more than four (4) individuals not related by blood or marriage or legal adoption.~~

SECTION 9: Section 10.08.600, Manufactured home, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is retitled and amended to read as follows:

"10.08.600 - Manufactured home.

~~"Manufactured housing shall mean a home which conforms to the National Manufactured Housing Construction and Safety Standards Act of 1944.~~
"Manufactured home" means a building that is transportable in one or more sections, is eight feet or more in width, or 40 feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in it.
"Manufactured home" includes: (1) a mobile home; and (2) any building that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following). (Hlth. & Saf. Code §§ 18007 and 18008.)"

SECTION 10: Section 10.08.610, Mobile home, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

"10.08.610 - Mobile home.

~~(See "Manufactured home.") "Mobile home" shall mean a vehicle or trailer designed or used as permanent or semipermanent housing for human habitation, including any kind of mobile living or sleeping quarters.~~

SECTION 11: Section 10.08.790, Secondary residential unit [Definition] of Title 10 (Planning and Zoning) of the Tracy Municipal Code is retitled and amended to read as follows:

"10.08.790 – Secondary residential unit.

"Second unit Secondary residential unit" shall means an attached or detached separate residential building, manufactured home, or efficiency unit on a lot containing a single-family dwelling, and unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, containing sleeping, eating, cooking and sanitation on the same lot as the single-family dwelling, kitchen, and bathroom facilities; created on a Low Density Residential Zone (LDR) lot which already contains one legally created residential unit. A secondary residential unit may be created

~~by the conversion of a portion of, or an addition to, an existing dwelling or by the construction of a new structure. (Gov't. Code §65852.2(i). See TMC §10.08.3180.)"~~

SECTION 12. Use Group No. 21, Single-family uses, of Section 10.08.1080, Permitted uses, of Title 10 (Planning and Zoning) of the Tracy Municipal Code, is amended to read as follows:

"Use Group No. 21: Single-family uses.

	Permitted in Zones	
Use Group No. 21:	RE	MDR
Single-family uses	LDR	HDR
(a) Single-family dwelling units; Second unit, subject to TMC section 10.08.3180; Manufactured home	MDR	
	HDR	
	LDC	

SECTION 13. Subsection (a) of Section 10.08.1100, Permitted Uses (RE) [Residential Estate] of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

10.08.1100 - Permitted uses (RE).

"(a) Only uses which are included in the following Use Groups shall be permitted without conditional approval in the RE Zone:

Group 1	Minor public service uses;
Group 4	Temporary buildings and uses;
Group 21	Single-family use; <u>Second unit, subject to TMC section 10.08.3180;</u>
Group 28	Household pets and small animals;
Group 29	Accessory use when located on the same parcel as the principal use; and
Group 30	Educational, cultural, institutional and recreational uses serving local residential areas (neighborhood).

SECTION 14. Section 10.08.1200, Permitted Uses (LDR) [Low Density Residential] of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

"10.08.1200 - Permitted uses (LDR).

- (a) The following uses shall be permitted in the LDR Zone:
- (1) ~~One~~ Single-family dwelling; Second unit, subject to TMC section 10.08.3180;
 - (2) ~~Mobile homes on an~~ individual lots;
 - (3) Crop and tree farming; and
 - (4) ~~Public parks, buildings and or~~ schools.

(b) The following conditional uses shall be permitted in the LDR Zone subject to the granting of a use permit as provided in Sections 10.08.4250 through 10.08.4420 of Article 34 of this chapter:

- (1) Mobile home parks ~~and or~~ mobile home park subdivisions;
- (2) ~~(not used) Secondary residential units;~~
- (3) Off-street parking to serve an adjacent commercial or office uses;
- (4) Churches and church-related uses;
- (5) Educational, cultural, institutional ~~and or~~ recreational uses;
- (6) Private schools, nursery schools, ~~and or~~ day care centers;
- (7) Hospitals, convalescent hospitals, ~~and or~~ rest and nursing homes;
- (8) Board and care facilities;
- (9) Planned residential development of ~~one~~ single-family dwellings on an individual lots; and
- (10) Mortuaries."

SECTION 15. Section 10.08.1280, Permitted Uses (MDC) [Medium Density Cluster] of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:
"10.08.1280 - Permitted uses (MDC).

(a) The following uses shall be permitted in the MDC Zone:

- (1) ~~One~~ Single-family, two-family, and or three-family dwellings and or dwelling groups composed of such dwellings; Second unit, subject to TMC section 10.08.3180;
- (2) Boarding and rooming houses;
- (3) Emergency Homeless Shelter, subject to TMC Section 10.08.3197;
- (4) Crop and tree farming;
- (5) Public parks, ~~and~~ buildings or schools; and
- (6) Accessory uses ~~and or~~ structures as provided in Section 10.08.1080 of Article 5 of this chapter.

(b) The following conditional uses shall be permitted in the MDC Zone subject to the granting of a use permit as provided in Sections 10.08.4250 through 10.08.4420 of Article 34 of this chapter:

- (1) Mobile home parks ~~and or~~ mobile home park subdivisions;
- (2) Condominiums ~~and or~~ planned residential developments of one- and two-family dwellings;
- (3) ~~(not used) Attached single family dwellings;~~
- (4) Off-street parking to serve an adjacent commercial ~~and or~~ office uses;
- (5) Churches and church related uses;
- (6) Educational, cultural, institutional, ~~and or~~ recreational uses;
- (7) Private schools, nursery schools, ~~and or~~ day care centers;
- (8) Hospitals, convalescent hospitals, rest homes ~~and or~~ nursing homes;
- (9) Board and care facilities; and
- (10) Mortuaries."
- (11) Single-Room Occupancy Facility ("SROs"), subject to TMC Section 10.08.3197

SECTION 16. Section 10.08.1390, Permitted Uses (MDR) [Medium Density Residential] of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

"10.08.1390 - Permitted uses (MDR).

- (a) The following uses shall be permitted in the MDR Zone:
- (1) ~~One~~ Single-family, two-family, ~~and or~~ multiple-family dwellings, dwelling groups, ~~and or~~ apartment houses; Second unit, subject to TMC section 10.08.3180;
 - (2) Boarding and rooming houses;
 - (3) Emergency Homeless Shelter, subject to TMC Section 10.08.3197;
 - (4) Single-Room Occupancy Facility ("SROs"), subject to TMC Section 10.08.3197
 - (5) Crop and tree farming;
 - (6) Public parks, buildings, or schools; and
 - (7) Accessory uses as provided in section 10.08.1080 of Article 5 of this chapter.
- (b) The following conditional uses shall be permitted in the MDR Zone subject to the granting of a use permit as provided in Sections 10.08.4250 through 10.08.4420 of Article 34 of this chapter:
- (1) Mobile home parks ~~and or~~ mobile home park subdivisions;
 - (2) Condominiums ~~and or~~ planned residential developments;
 - (3) (not used) -Attached single family dwellings;
 - (4) Off-street parking to serve an adjacent commercial ~~and or~~ office uses;
 - (5) Churches and church-related uses;
 - (6) Educational, cultural, institutional, ~~and or~~ recreational uses;
 - (7) Private schools, nursery schools, ~~and or~~ day care centers;
 - (8) Hospitals, convalescent hospitals ~~and or~~ rest and nursing homes;
 - (9) Board and care facilities; and
 - (10) ~~Mortuaries~~ Mortuary"

SECTION 17. Section 10.08.1580, Permitted Uses (HDR) [High Density Residential] of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

"10.08.1580 - Permitted uses (HDR).

- (a) The following uses shall be permitted in the HDR Zone:
- (1) ~~One~~ Single-family, two-family, ~~and or~~ multiple-family dwellings, dwelling groups, ~~and or~~ apartment houses; Second unit, subject to TMC section 10.08.3180;
 - (2) Boarding and rooming house;
 - (3) Emergency Homeless Shelter, subject to TMC Section 10.08.3197;
 - (4) Single-Room Occupancy Facility ("SROs"), subject to TMC Section 10.08.3197
 - ~~(3)~~(5) Crop and tree farming;
 - ~~(4)~~(6) Public parks, buildings, ~~and or~~ schools; and
 - ~~(5)~~(7) Accessory uses as provided in Section 10.08.1080 of Article 5 of this

chapter.

(b) The following conditional uses shall be permitted in the HDR Zone subject to the granting of a use permit as provided in Sections 10.08.4250 through 10.08.4420 of Article 34 of this chapter:

- (1) Mobile home parks ~~and or~~ mobile home park subdivisions;
- (2) Condominiums ~~and or~~ planned residential developments;
- (3) (not used) ~~Attached single family dwellings;~~
- (4) Off-street parking to serve an adjacent commercial ~~and or~~ office uses;
- (5) Churches and church-related uses;
- (6) Educational, cultural, institutional, ~~and or~~ recreational uses;
- (7) Private schools, nursery schools, ~~and or~~ day care centers;
- (8) Board and care facilities;
- (9) Hospitals, convalescent hospitals, rest homes or nursing homes; and
- (10) Mortuaries."

SECTION 18. The text of Subsection (a) of Use Group No. 29, Accessory uses, of Section 10.08.1080, Permitted uses, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended to read as follows:

"Accessory uses (when located on the same parcel as the principal use and the principal use is conforming)

(a) Buildings or structures, minor, found in connection with the principal use or required by the residents or operators of the use for the normal and usual conduct of the use or the maintenance of buildings and grounds. (A second unit is not an "accessory use" or an accessory building. See TMC Section 10.08.3180.)"

SECTION 19. Section 10.08.3140, Permitted locations of mobile homes, travel trailers, motor homes, and campers, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is retitled and amended to read as follows:

"10.08.3140 - Permitted locations of travel trailers, motor homes, and campers.

~~(a) — Mobile homes, travel trailers, motor homes, and campers used as permanent residences shall be located in properly zoned mobile home parks. Utility connections for water, sewers, or power shall be prima facie evidence of occupancy as a residence, except for the temporary (twenty four (24) hours) use of power to recharge batteries or service appliances.~~

(b a) Temporary locations. Travel trailers, ~~mobile homes~~, office trailers, and mobile offices may be permitted on a temporary basis for the purpose of establishing a business in the POM, CBD, CS, GHC, HS, M-1, and M-2 Zones as follows:

- (1) A temporary permit authorized by the Commission, valid for six months, shall be required for such use.

(2) Such temporary permit may be renewed for two ~~(2)~~ additional six ~~(6)~~ month periods, for a maximum of ~~eighteen (18)~~ months, at the discretion of the Commission, except as set forth in subsection (3) of this subsection.

(3) Additional temporary permits for six ~~(6)~~ month periods beyond the initial ~~eighteen (18)~~ month period may be authorized by the Commission:

(i) If the progress of the applicant toward establishing a permanent business facility is being delayed by the action of a public agency, the temporary permit may be renewed indefinitely; or

(ii) If the applicant has an approved development plan for a permanent business facility and can demonstrate that progress is being made to implement such plan, the temporary permit may be extended to a maximum ~~twenty four (24)~~ month period from the date of the initial approval.

(e b) Storage. ~~Mobile homes, t~~Travel trailers, motor homes, and campers may be stored anywhere on a lot provided:

(1) No utility service is connected to the vehicle, except for the temporary ~~twenty four (24)~~ hours use of power to recharge batteries or service appliances; and

(2) The vehicle is not located in a clear zone.

(d c) Exemption. A motor home or mounted camper which is normally used for every day transportation, is mounted on a pickup of greater than ~~three-fourths (3/4)~~ ton, is not more than ~~seventy eight (78')~~ inches in height measured from the surface of the street, and is not more than ~~seventy two (72')~~ inches in width ~~shall be~~ is exempt from the provisions of this section.

(e d) Amortizing. ~~Mobile homes, t~~Travel trailers, motor homes, and campers existing on August 21, 1973, shall conform to the requirements of this section within the time frame established by the State for amortizing mobile homes which allows nine ~~(9)~~ years from the date of manufacture to amortize a 193 inch by 480 inch or smaller mobile home and ~~eighteen (18)~~ years from the date of manufacture to amortize larger units, but in no event shall it be less than three ~~(3)~~ years.

(f e) Temporary dwelling during construction. ~~A mobile home travel trailer, motor home or camper to be utilized used as a dwelling in a residential zone while a one single-family dwelling is under construction on the same lot shall be is a conditional use for which a use permit is required. permitted use during construction with a valid building permit for the proposed residence. The temporary dwelling must be removed from the property within 10 days of receiving a final occupancy or final inspection for the residence. (See Sections 10.08.4250 through 10.08.4410 of Article 34 of this chapter.)~~ In addition, the following provisions shall apply:

(1) ~~Such mobile~~ The trailer, motor home or camper may only be so located and occupied while actual construction activities are taking place upon ~~such the~~ the lot; in no case may the period of such placement and use exceed one year.

- (2) ~~Such mobile~~ The trailer, motor home or camper may only be occupied by the property owner; who is also the builder designated on the building permit, and family.
- (3) ~~Surety adequate to ensure the timely removal and compliance with the conditions of the use permit may be required.~~
- (4) The minimum yards for the zone shall be maintained, ~~unless otherwise specified in the use permit.~~
- (5) ~~Additional conditions necessary and appropriate to ensure compatibility with surrounding development, existing and contemplated, may be imposed."~~

SECTION 20. Section 10.08.3180, Secondary units, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is retitled and amended to read as follows:

"10.08.3180 – Secondary residential units.

(a) Second Unit. A second unit is permitted on any residentially zoned lot having an existing single-family dwelling (the "primary dwelling") if the proposed unit complies with the standards in Subsection B. (See Definition at TMC §10.08.790.) A second unit may be created by the conversion of a portion of, or an addition to, the primary dwelling or by the construction of a new structure.

~~In addition to appropriate conditions which may be included in the use permit which must be secured as provided in sections 10.08.4250 through 10.08.4410 of article 34 of this chapter, the following provisions and conditions shall apply to a secondary residential unit:~~

(b) Standards. These standards apply to a second unit.

(1) ~~There may be only one second unit on a lot. The unit shall be exclusively for rental occupancy or occupancy by other family members; The second unit may not be sold separately sale or ownership separate from the principal primary dwelling shall be prohibited.~~

(2) ~~The primary dwelling must be an allowed use in the zoning district.~~

(3) ~~The size of a detached second unit shall not exceed 1,200 square feet. The size of an attached second unit shall not exceed 30% of the living area of the primary unit.~~

(4) ~~The lot upon which the unit is to be located shall have an area of at least 8,000 square feet. The second unit shall conform to the yard setback, lot coverage and building height requirements of the zoning district in which it is located.~~

(5) The minimum distance between a second unit and a primary dwelling or a second unit and an accessory building is six feet.

(c) ~~The exterior of the unit shall be constructed of the same general materials as the principal dwelling.~~

(d) ~~The unit shall conform to all yard, coverage, and height requirements for the principal dwelling.~~

(e) ~~(56)~~ At least one One additional off-street parking space shall be is required.”
(Gov. Code Section § 65852.2).

(f) ~~The floor area shall be no less than 300 square feet or more than 460 square feet.~~

SECTION 21. A new section 10.08.3197, Standards for Emergency Homeless Shelter and Single-Room Occupancy Facilities (“SROs”) is added to Title 10 (Planning and Zoning) of the Tracy Municipal Code to read as follows:

“10.08.3197 Standards for Emergency Homeless Shelter and Single-Room Occupancy Facilities (“SROs”).

(a) General. Emergency homeless shelters are permitted in the MDR, HDR and MDC Zoning Districts. Single-room occupancy facilities (“SROs”) are permitted in the MDR and HDR Zoning Districts. However, within the MDC zones, SROs are permitted only upon the issuance of a conditional use permit subject to the requirements of this Section.

(b) Requirements for Emergency Homeless Shelter.

(1) Concentration. An emergency homeless shelter may not be located closer than 300 feet from another emergency homeless shelter.

(2) On-site resident manager. An emergency homeless shelter shall have a resident, on-site manager.

SECTION 22. A new section 10.08.3199, Reasonable accommodation, is added to Title 10 (Planning and Zoning) of the Tracy Municipal Code to read as follows:

“10.08.3199 Reasonable accommodation.

(a) Purpose. It is the City’s policy to provide individuals with disabilities reasonable accommodation in regulations and procedures to ensure equal access to housing, and to facilitate the development of housing. The purpose of this chapter is to provide a procedure under which a disabled person may request a reasonable accommodation in the application of zoning requirements.

This chapter is based on requirements of the federal and state fair housing laws, and implements the City of Tracy General Plan Housing Element. It is distinct from the requirements for a variance set forth in Government Code Section 65906 and TMC Section 10.08.3630 and following, Variances.

(b) Definitions. In this chapter:

“Disabled person” means a person who has a medical, physical or mental condition that limits a major life activity, as those terms are defined in Government Code Section 12926, anyone who is regarded as having such a condition or anyone who has a record of having such a condition. It includes a person or

persons, or an authorized representative of a disabled person. The term “disabled person” does not include a person who is currently using illegal substances, unless he or she has a separate disability. (42 U.S.C. § 3602(h).)

“Fair housing laws” means (1) the Federal Fair Housing Act (42 U.S.C. § 3601 and following) and (2) the California Fair Employment and Housing Act (Government Code Section 12955 and following), including amendments to them.

“Reasonable accommodation” means providing disabled persons flexibility in the application of land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to housing opportunities. It may include such things as yard area modifications for ramps, handrails or other such accessibility improvements; hardscape additions, such as widened driveways, parking area or walkways; building additions for accessibility; tree removal; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. Reasonable accommodation does not include an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city’s land use and zoning program.

(c) Requesting reasonable accommodation.

(1) Request. A disabled person may request a reasonable accommodation in the application of the City’s land use and zoning regulations. Such a request may include a modification or exception to the requirements for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers. A reasonable accommodation cannot waive a requirement for a conditional use permit when otherwise required or result in approval of uses otherwise prohibited by the City’s land use and zoning regulations.

(2) Availability of information. Information regarding this reasonable accommodation procedure shall be prominently displayed at the public information counters in the planning division, advising the public of the availability of the procedure for eligible applicants, and be made available in any other manner as determined by the Director.

(3) Assistance. If an applicant needs assistance in making the request, the Director will endeavor to provide the assistance necessary to ensure that the process is available to the applicant.

(4) Balancing rights and requirements. The City will attempt to balance:

A. the privacy rights and reasonable request of an applicant for confidentiality, with

B. the land use requirements for notice and public hearing, factual findings and rights to appeal, in the city’s requests for information, considering an application, preparing written findings and maintaining records for a request for reasonable accommodation.

(d) Application requirements.

(1) Application. The applicant shall submit a request for reasonable accommodation on a form provided by the Director. The application shall include the following information:

- A. The applicant's name, address and telephone number;
- B. Address of the property for which the request is being made;
- C. The name and address of the property owner, and the owner's written consent to the application;
- D. The current use of the property;
- E. The basis for the claim that the individual is considered disabled under the fair housing laws: identification and description of the disability which is the basis for the request for accommodation, including current, written medical certification and description of disability and its effects on the person's medical, physical or mental limitations;
- F. The rule, policy, practice and/or procedure of the city for which the request for accommodation is being made, including the zoning code regulation from which reasonable accommodation is being requested;
- G. The type of accommodation sought;
- H. The reason(s) why the accommodation is reasonable and necessary for the needs of the disabled person(s). Where appropriate, include a summary of any potential means and alternatives considered in evaluating the need for the accommodation;
- I. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and
- J. Other supportive information deemed necessary by the Director to facilitate proper consideration of the request, consistent with fair housing laws.

(2) Review with other land use applications. If the project for which the reasonable accommodation is being requested also requires some other discretionary approval (such as conditional use permit or development review), then the applicant shall submit the reasonable accommodation application first for a determination by the Director, before proceeding with the other applications.

(3) Fee. The fee for an application for reasonable accommodation shall be established by resolution of the City Council.

(e) Approval authority – Notice – Decision.

(1) Approval authority.

A. Director of Development Services. The Director has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, except as noted in subsection (e)(1)B of this Section. The Director may refer the matter to the Planning Commission.

B. Planning Commission. The Planning Commission has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, when referred by the Director, or on appeal.

(2) Notice. No advance notice or public hearing is required for consideration of reasonable accommodation requests by the Director, except when the request includes any encroachment into the front yard setback area; results in a building size increase above what is allowed in the applicable zoning district with respect to height, lot coverage and floor area ratio maximums; or whenever a reduction in required parking is requested.

A request for reasonable accommodation subject to review by the Planning Commission requires advance notice and a public hearing under Government Code section 65090.

(3) Decision. The Director shall render a decision or refer the matter to the Planning Commission within 30 days after the application is complete, and shall approve, approve with conditions or deny the application, based on the findings set forth in subsection (f) below.

If the application for reasonable accommodation is referred to, or reviewed by, the Planning Commission, a decision to approve, approve with conditions or deny the application shall be rendered within 20 working days after the close of the public meeting, based on the findings set forth in subsection (f) below.

(f) Findings – Other requirements.

(1) Findings. The reviewing authority shall approve the application, with or without conditions, if it can make the following findings:

A. The housing will be used by a disabled person;

B. The requested accommodation is necessary to make specific housing available to a disabled person;

C. The requested accommodation would not impose an undue financial or administrative burden on the city; and

D. The requested accommodation would not require a fundamental alteration in the nature of a city program or law, including land use and zoning.

(2) Other requirements.

A. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.

B. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.

C. Where appropriate, the reviewing authority may condition its approval on any or all of the following:

i. Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;

ii. Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;

iii. Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;

iv. Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;

v. Measures to reduce the impact on surrounding properties;

vi. Measures in consideration of the physical attributes of the property and structures;

vii. Other reasonable accommodations that may provide an equivalent level of benefit and/or that will not result in an encroachment into required setbacks, exceedance of maximum height, lot coverage or floor area ratio requirements specified for the zone district; and

viii. Other conditions necessary to protect the public

health, safety or welfare.

(g) Appeal. _____ A decision by the Director may be appealed to the Planning Commission and a decision of the Planning Commission may be appealed to the City Council in accordance with the appeal procedures of TMC Sections 10.08.4040. “

Note: Underlined text denotes additions, while strikethrough denotes that text proposed to be deleted from the current ordinance.

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

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**MEMORANDUM**

Updated: April 10, 2013

DATE: May 7, 2008

TO: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 2 -- Legislation Effective January 1, 2008:
*Local Planning and Approval for Emergency Shelters and
Transitional and Supportive Housing***

Chapter 633, Statutes of 2007 (SB 2) clarifies and strengthens housing element law to ensure zoning encourages and facilitates emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act. The law will facilitate efforts to address the critical needs of homeless populations and persons with special needs throughout all communities in California. Generally, SB 2 amends housing element law regarding planning and approval for emergency shelters and transitional and supportive housing as follows:

Planning (Government Code Section 65583)

- At least one zone shall be identified to permit emergency shelters without a conditional use permit or other discretionary action.
- Sufficient capacity must be identified to accommodate the need for emergency shelters and at least one year-round emergency shelter.
- Existing or proposed permit procedures, development and management standards must be objective and encourage and facilitate the development of or conversion to emergency shelters.
- Emergency shelters shall only be subject to development and management standards that apply to residential or commercial within the same zone.
- Written and objective standards may be applied as specified in statute, including maximum number of beds, provision of onsite management, length of stay and security.
- Includes flexibility for jurisdictions to meet zoning requirements with existing ordinances or demonstrate the need for emergency shelters can be accommodated in existing shelters or through a multi-jurisdictional agreement.

Chapter 633, Statutes of 2007 (SB 2)

Page 2

- Transitional and supportive housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone.

Local Approval (Government Code Section 65589.5: Housing Accountability Act)

- Limits denial of emergency shelters, transitional housing or supportive housing by requiring specific findings.
- Some findings shall not be utilized if new planning requirements of SB 2 are not met; such as identifying a zone without a conditional use permit,

Attached is a briefing paper informing local governments of SB 2, providing assistance in evaluating these new provisions to effectively implement this important new State law; in addition to a copy of the legislation. Electronic copies of these can be found on the Department's website at www.hcd.ca.gov or the Senate's website at www.senate.ca.gov. You may also obtain copies of published bills from the Legislative Bill Room by calling (916) 445-2323. If you have any questions, or seek additional technical assistance, please contact Paul McDougall, HPD Manager, at (916) 445-4728.

Attachments

Chapter 633, Statutes of 2007 (Senate Bill 2)

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Introduction

Homeless Needs

Homelessness in California is a continuing and growing crisis. On any given day, there are at least 361,000 homeless individuals in California – or 1.1 percent of the State’s total population. Of this number, two-thirds are estimated to be single adults, while the other third are families. Some 30 percent of California’s homeless – 108,000 – are so-called “chronic” homeless who have been homeless for six months or more. This population tends to be comprised of single adults who face such obstacles as mental illness, substance abuse problems and chronic physical health problems or disabilities that prevent them from working. Homeless individuals and families are without permanent housing largely because of a lack of affordable housing, often compounded by limited education or skills, mental illness and substance abuse issues, domestic violence and the lack of family or other support networks.¹

California’s homelessness crisis demands the effective involvement of both the public and private sectors. A housing element can be an effective and powerful tool in combating homelessness. Passage of SB 2 strengthened the law to increase its effectiveness in addressing the needs of California’s homeless population. The upcoming housing element update presents an important opportunity to make ending homelessness a critical priority.

Purpose and Objectives of SB 2

The framework of SB 2 resulted from a collaborative effort by key stakeholders including housing and homeless advocates and providers, local governments, planners, and the building industry. SB 2 strengthens existing housing element requirements to provide the opportunity for the development of emergency shelters and transitional and supportive housing. SB 2 ensures zoning, development and management standards and permit procedures encourage emergency shelters while allowing flexibility for existing local strategies and cooperative efforts.

SB 2 focuses on the impacts of zoning requirements on the development of emergency shelters. While the new statute requires that every local government zone for the development of emergency shelters, it does not restrict how local governments allocate resources to address local priority needs. For example, nothing in SB 2 prohibits communities from also adopting a “Housing First” strategy to provide homeless persons with housing immediately and then providing services as needed.

¹ *Governor’s Interagency Task Force on Homelessness, Progress Report and Work Plan for 2003*. Health and Human Services Agency and Business, Transportation and Housing Agency, December 2002

Section 1

Planning

(Government Code Section 65583)

Identifying and Analyzing Needs and Resources

Current law, Government Code Section 65583(a)(7), requires an identification and analysis of the needs of homeless persons and families. The analysis is an essential component of an effective housing element; however data sources can be limited and vary in estimates of need. As a result, an analysis should consider a variety of data sources and include proactive outreach with service providers to examine the degree and characteristics of homeless needs in the community and surrounding communities. A thorough analysis includes:

- An estimate or count of the daily average number of persons lacking shelter. Wherever possible, and to better describe the characteristics of needs, this figure could be divided into single males, single females and families (one or more adults with children) as the needs of each subgroup differ significantly.
- As local data or other existing sources permit (see list below), a description of the percentage of the homeless population who are mentally ill, developmentally disabled, veterans, runaway or emancipated foster youth, substance abusers, survivors of domestic violence, and other subpopulations of homeless considered significant by the jurisdiction.
- An inventory of the resources available within the community including shelters, transitional housing and supportive housing units by type. The analysis should estimate the number and type of existing shelter beds, and units of transitional and supportive housing available.
- Assess the degree of unmet homeless needs, including the extent of need for emergency shelters. As part of this analysis, SB 2 now clarifies the need assessment for emergency shelters must consider seasonal and year-round need. In recognition of local efforts to encourage supportive housing, SB 2 allows jurisdictions with 10 Year Plans to End Chronic Homelessness to reduce the need for emergency shelters by the number of supportive housing units identified in an adopted 10-year plan and that are either vacant or funding has been identified to allow construction in the housing element planning period.

Resources to identify and analyze homeless needs, include:

- Consolidated plans
- Continuum of care plans
- 10 Year Plans to End Chronic Homelessness
- Interagency Council on Homelessness, Guide to Developing Plans and Examples (<http://www.ich.gov/slocal/index.html>)

- Local service providers such as continuum of care providers, local homeless shelter and service providers, food programs, operators of transitional housing programs, local drug and alcohol program service providers, county mental health and social service departments, local Salvation Army, Goodwill Industries, churches and schools, and
- 15 countywide Designated Local Boards certified by the Department's Emergency Housing and Assistance Program (<http://www.hcd.ca.gov/fa/ehap/cntys-with-dlb.html>).

Identifying Zoning for Emergency Shelters

Prior to enactment of SB 2, housing element law required local governments to identify zoning to encourage and facilitate the development of emergency shelters. SB 2 strengthened these requirements. Most prominently, housing element law now requires the identification of a zone(s) where emergency shelters are permitted without a conditional use permit or other discretionary action. To address this requirement, a local government may amend an existing zoning district, establish a new zoning district or establish an overlay zone for existing zoning districts. For example, some communities may amend one or more existing commercial zoning districts to allow emergency shelters without discretionary approval. The zone(s) must provide sufficient opportunities for new emergency shelters in the planning period to meet the need identified in the analysis and must in any case accommodate at least one year-round emergency shelter (see more detailed discussion below).



Cloverfield Services Center – Emergency Shelter by OPCC in Santa Monica, CA
Photo courtesy of OPCC in Santa Monica

When identifying a zone or analyzing an existing zone for emergency shelters, the element should address the compatibility and suitability of the zone. The element should consider what other uses are permitted in the zone and whether the zone is suitable for residential or emergency shelters. For example, an industrial zone with heavy manufacturing may have environmental conditions rendering it unsuitable for residential or shelter uses. In some localities, manufacturing or industrial zones may be in transition, where older industrial uses are redeveloping to residential, office or commercial. Transitioning zones may be compatible

with residential uses and suitable for emergency shelters. Also, a commercial zone allowing residential or residential compatible services (i.e., social services, offices) would be suitable for shelters. For example, Sacramento County permits emergency shelters in its commercial zone along with other residential uses and uses such as retail that are compatible with residential.

SB 2 clarifies existing law by requiring zoning identified for emergency shelters to include sufficient capacity to accommodate the need. The identified zone(s) must have sufficient capacity, when taken as a whole, to meet the need for shelters identified in the housing element, and have a realistic potential for development or reuse opportunities in the planning period. Further, capacity for emergency shelters must be suitable and available and account for physical features (flooding, seismic hazards, chemical contamination, other environmental constraints, and slope instability or erosion) and location (proximity to transit, job centers, and public and community services). The element should also address available acreage (vacant or underutilized) and the realistic capacity for emergency shelters in the zone. For example, if a jurisdiction identifies the public institution zoning district as the zone where emergency shelters will be allowed without a conditional use permit, the element should demonstrate sufficient acreage within the zoning district that could accommodate the actual development of an emergency shelter. The element could also discuss the potential for reuse or conversion of existing buildings to emergency shelters.

SB 2 ensures that each local government shares the responsibility to provide opportunities for the development of emergency shelters. Regardless of the extent of need identified in the element, local governments must provide zoning to allow at least one year round emergency shelter, unless the need for emergency shelters is accommodated through existing shelters or a multi-jurisdictional agreement (see discussion below). This is especially important given the fact that the homeless population is not always visible in the community; is sometimes transitory; data resources are frequently inadequate and the availability and adequacy of services and programs vary significantly by community and can impact the homeless count.

If a local government's existing zoning does not allow emergency shelters without a conditional use permit or other discretionary action, the housing element must include a program to identify a specific zone(s) and amend the zoning code within one year of adoption of the housing element (65583(a)(4)). The only exceptions permitted to the non-discretionary zoning requirement are where a jurisdiction demonstrates their homeless needs can be accommodated in existing shelters; or where the jurisdiction meets all of its need through a multi-jurisdictional agreement (discussed in later sections).

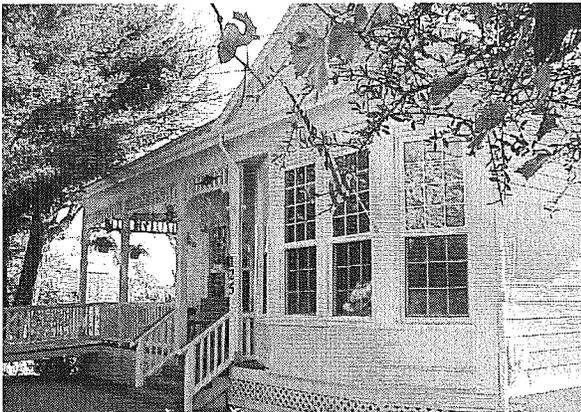
Where a local government has identified a zone and sufficient capacity to encourage emergency shelters consistent with the provisions of SB 2, a local government may also identify additional zones for the development of emergency shelters that require a conditional use permit.

Permitting Emergency Shelters without Discretionary Action

To comply with SB 2, localities must have or adopt a zoning classification that permits emergency shelters in a non-discretionary manner (localities may however apply development standards pursuant to Section 65583(a)(4)). In such zones, permitted uses, development standards and permit procedures must include:

- Objective development standards that encourage and facilitate the approval of emergency shelters.
- Decision-making criteria such as standards that do not require discretionary judgment.
- Standards that do not render emergency shelters infeasible, and only address the use as an emergency shelter, not the perceived characteristics of potential occupants.

Requiring a variance, minor use permit, special use permit or any other discretionary process does not constitute a non-discretionary process. However, local governments may apply non-discretionary design review standards.



Emergency Shelter – Jackson, California
Photo courtesy of Amador-Tuolumne Community Action

A local government should not require public notice of its consideration of emergency shelter proposals unless it provides public notice of other non-discretionary actions. For example, if a local government permits new construction of a single-family residence without discretionary action and public notice is not given for these applications, then a local government should employ the same procedures for emergency shelter applications. The appropriate point for public comment and discretionary action is when zoning is being amended or adopted for emergency shelters, not on a project-by-project basis.

Development Standards to Encourage and Facilitate Emergency Shelters

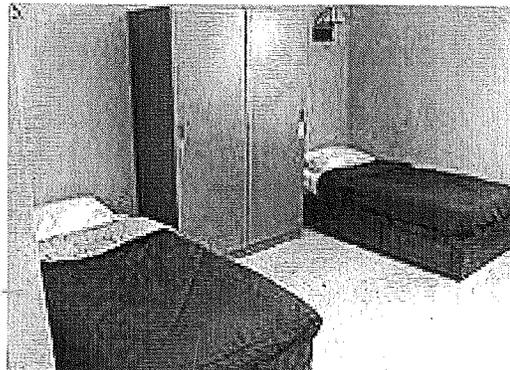
SB 2 requires that emergency shelters only be subject to those development and management standards that apply to residential or commercial use within the same zone, except the local government may apply certain objective standards discussed on the next page (Government Code Section 65583(a)(4)). For example, a light commercial zone might permit a range of wholesaler, service repair and business services subject to buildable area and lot area requirements. In this case, the emergency shelter may be subject only to the same buildable area and lot area requirements. The same zone might permit residential uses subject to certain development standard (i.e., lot area, heights, and setbacks) requirements. In this case, emergency shelters should only be subject to the same development standards.

To demonstrate that processing procedures and standards are objective and encourage and facilitate development of emergency shelters, the housing element must address how:

- zoning explicitly allows the use (meaning the use is specifically described in the zoning code);
- development standards and permit procedures do not render the use infeasible;
- zoning, development and management standards, permit procedures and other applicable land-use regulations promote the use through objective; and predictable standards.

SB 2 allows flexibility for local governments to apply written, objective development and management standards for emergency shelters as described in statute and below.

- The maximum number of beds or persons permitted to be served nightly by the facility.
- Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
- The size and location of exterior and interior on-site waiting and client intake areas.
- The provision of on-site management.
- The proximity to other emergency shelters provided that emergency shelters are not required to be more than 300 feet apart.
- The length of stay.
- Lighting.
- Security during hours that the emergency shelter is in operation.



These standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. For example, a standard establishing the maximum number of beds should act to encourage the development of an emergency shelter; local governments should establish flexible ranges for hours of operation; length of stay provision should be consistent with financing programs or statutory definitions limiting occupancy to six months (Health and Safety Code Section 50801) and should not unduly impair shelter operations. Appropriate management standards are reasonable and limited to ensure the operation and maintenance of the property.

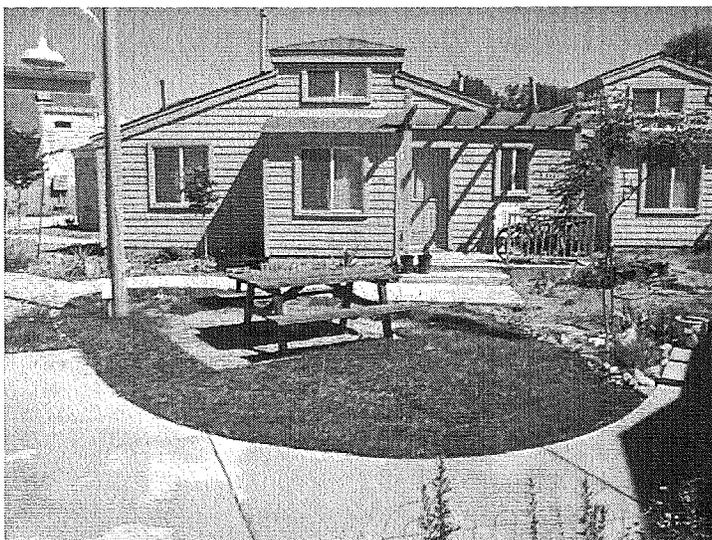


Encouraging Multi-Jurisdictional Cooperation and Coordination

SB 2 recognizes and encourages multi-jurisdictional coordination by allowing local governments to satisfy all or part of their obligation to zone for emergency shelters by adopting and implementing a multi-jurisdictional agreement, with a maximum of two adjacent communities. The agreement must commit the participating jurisdictions to develop at least one year-round shelter within two years of the beginning of the housing element planning period. For example, jurisdictions in Southern California Association of Governments (SCAG) region with a statutory due date of June 30, 2008 would need to ensure the development of shelter(s) by June 30, 2010. To utilize this provision, local governments must adopt an agreement that allocates a portion of the new shelter capacity to each jurisdiction as credit towards the jurisdiction's emergency shelter need. The housing element for each participating local government must describe how the capacity was allocated. In addition, the housing element of each participating jurisdiction must describe:

- How the joint facility will address the local governments need for emergency shelters.
- The local government's contribution for both the development and ongoing operation and management of the shelter.
- The amount and source of the funding to be contributed to the shelter.
- How the aggregate capacity claimed by all of the participating jurisdictions does not exceed the actual capacity of the shelter facility.

If the local government can demonstrate that the multi-jurisdictional agreement can accommodate the jurisdiction's need for emergency shelter, the jurisdiction is authorized to comply with the zoning requirements for emergency shelters by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit.

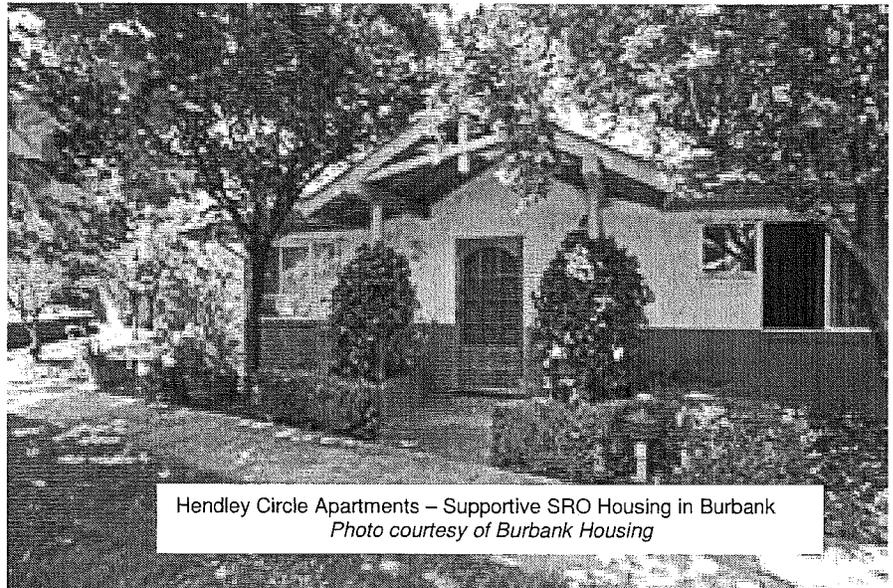


Quinn Cottages, Transitional Housing in Sacramento, CA
Photo courtesy of Cottage Housing, Inc.

Existing Ordinances and Existing Shelters that Accommodate Need

Existing Ordinances Permitting Emergency Shelters

Many local governments have a record of effective actions to address the homeless needs in their community. SB 2 recognizes and provides flexibility for jurisdictions that have already adopted an ordinance(s) that complies with the new zoning requirements. For those local governments with existing ordinances and zoning consistent with requirements of SB 2, no further action will be required to identify zones available



for emergency shelters. The housing element must however, describe how the existing ordinance, policies and standards are consistent with the requirements of SB 2.

Existing Shelters That Accommodate the Need for Emergency Shelters

Local governments that can demonstrate, to the satisfaction of the Department, the existence of one or more emergency shelters either within the jurisdiction or pursuant to a multi-jurisdictional agreement that can accommodate the need for emergency shelters identified in the housing element may comply with the zoning requirements of SB 2 by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit. To demonstrate homeless needs can be accommodated in existing shelters, an element must at minimum list existing shelters including the total number of beds and the number vacant. The analysis should support and document the estimate of vacant beds and must consider seasonal fluctuations in the need for emergency shelters.

Transitional and Supportive Housing

Transitional housing is defined in Section 50675.2 of the Health & Safety Code as rental housing for stays of at least six months but where the units are re-circulated to another program recipient after a set period. Transitional housing may be designated for a homeless individual or family transitioning to permanent housing. This housing can take several forms,

such as single family or multifamily units, and may include supportive services to allow individuals to gain necessary life skills in support of independent living. *Supportive housing* as defined at Section 50675.14 of the Health & Safety Code has no limit on the length of stay, is linked to onsite or offsite services, and is occupied by a target population as defined in Health & Safety Code Section 53260. Services typically include assistance designed to meet the needs of the target population in retaining housing, living and working in the community, and/or improving health and may include case management, mental health treatment, and life skills.

The housing element must demonstrate that transitional housing and supportive housing are permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone (Government Code Section 65583(a)(5)). In other words, transitional housing and supportive housing are permitted in all zones allowing residential uses and are not subject to any restrictions (e.g., occupancy limit) not imposed on similar dwellings (e.g., single family home, apartments) in the same zone in which the transitional housing and supportive housing is located. For example, transitional housing located in an apartment building in a multifamily zone is permitted in the same manner as an apartment building in the same zone and supportive housing located in a single family home in a single family zone is permitted in the same manner as a single family home in the same zone.

If jurisdictions do not explicitly permit transitional and supportive housing as previously described, the element must include a program to ensure zoning treats transitional and supportive housing as a residential use, subject only to those restrictions on residential uses contained in the same type of structure.

Housing Element Policies and Programs

Effective programs reflect the results of the local housing need analyses, identification of available resources, including land and financing, and the mitigation of identified governmental and nongovernmental constraints. Programs consist of specific action steps the locality will take to implement its policies and achieve goals and objectives. Programs must include a specific timeframe for implementation, identify the agencies or officials responsible for implementation, and describe the jurisdiction's specific role in implementation.



Gish Apartments – Supportive Housing, San Jose, CA
Photo courtesy of First Community Housing and Bernard Andre

Where a jurisdiction does not provide an analysis demonstrating compliance with the provisions of SB 2 through existing zoning, the element must have a program(s) to address the results of that analysis. For example, if the element does not identify an existing zone to

permit emergency shelters without a conditional use permit or other discretionary action, the element must include a program to establish the appropriate zoning, unless the jurisdiction has satisfied its needs through existing emergency shelters or a multi-jurisdictional agreement. If development and management standards do not encourage and facilitate emergency shelters or zoning does not treat transitional and supportive housing as a residential use, the element must include a program(s) to amend existing zoning or processing requirements to comply with SB 2.

Programs to address the requirements of SB 2 for emergency shelters must be implemented within one year of adoption of the housing element. Programs to address requirements for transitional and supportive housing should be implemented early in the planning period. Further, since the program for emergency shelters must be implemented within one year of adoption, the housing element should provide analysis to support and assure effective implementation of the program. For example, the analysis should examine the suitability of zones to be included in the program and whether sufficient and suitable capacity is available. The same type of analysis could evaluate development and management standards that will be considered as part of establishing or amending zoning. This analysis should demonstrate the necessary commitment to ensure zoning, permit procedures and development standards encourage and facilitate emergency shelters.

******* UPDATED*******

Please be aware, if the adopted housing element from the previous cycle (4th cycle) included a program to address the requirements of SB 2 for emergency shelters, and the required timeframe has lapsed, the Department will not be able to find future housing elements in compliance until the required rezoning is complete and the element is amended to reflect that rezoning.

Timing: When SB 2 Applies

In accordance with Government Code Section 65583(e), any draft housing element submitted to the Department after March 31, 2008 will be required to comply with SB 2.

Section 2

Local Approval

(Government Code Section 65589.5)

The Housing Accountability Act

To promote predictability for the development of housing affordable to lower- and moderate-income households, the Housing Accountability Act (Government Code Section 65589.5) prohibits a jurisdiction from disapproving a housing development project, including housing for farmworkers and for very low-, low-, or moderate-income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low-, low-, or moderate-income households, including through the use of design review standards, unless it makes at least one of five specific written findings based on substantial evidence in the record (Government Code Section 65589.5).

SB 2 adds emergency shelters to the list of uses protected under the Housing Accountability Act. In addition, SB 2 clarifies that the definition of a housing development project includes transitional or supportive housing (see Attachment 1: SB 2 - changes are underlined).

Zoning Inconsistency

Pursuant to the Housing Accountability Act, a local government is prohibited from making the finding regarding zoning and general plan inconsistency (Section 65589.5(d)(5)) to disapprove a development if the jurisdiction identified the site in its general plan (e.g., housing or land-use element) as appropriate for residential use at the density proposed or failed to identify adequate sites to accommodate its share of the regional housing need for all income groups. In addition to extending these provisions to emergency shelters and transitional housing, SB 2 prohibits the use of the zoning and general plan inconsistency finding to disapprove an emergency shelter if the jurisdictions have:

- not identified a zone(s) where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit,
- not demonstrated the identified zone(s) include sufficient capacity to accommodate the need for emergency shelter, or
- not demonstrated the identified zone(s) can accommodate at least one emergency shelter.

This provision applies to any site identified in any element of the general plan for industrial, commercial, or multifamily residential uses. In any court action, the burden of proof is on the local jurisdiction to demonstrate its housing element satisfies the above requirements of SB 2.

Attachment 1

Statutory Changes to Housing Element Law (*underline version*)

Attachment 1

Changes to State Housing Element Law **Chapter 633, Statutes of 2007 (SB 2)** *(changes indicated in strikeouts and underlines)*

65582. As used in this article, the following definitions apply:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Emergency shelter" has the same meaning as defined in subdivision (e) of Section 50801 of the Health and Safety Code.

(e) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

(f) "Supportive housing" has the same meaning as defined in subdivision (b) of Section 50675.14 of the Health and Safety Code.

(g) "Transitional housing" has the same meaning as defined in subdivision (h) of Section 50675.2 of the Health and Safety Code.

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, ~~and mobilehomes,~~ and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.
(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in

the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph Transitional housing and supportive housing shall be ~~considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.~~

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

~~(6)~~ An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be ~~assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.~~

(8) An analysis of opportunities for energy conservation with respect to residential development.

~~(8)~~ An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2.

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (89) of subdivision (a).

The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (89) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.

(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.

(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

(A) How the joint facility will meet the jurisdiction's emergency shelter need.

(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.

(C) The amount and source of the funding that the jurisdiction contributes to the facility.

(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, ~~where~~when a city, county, or city and county submits a first draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, ~~where~~when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

Housing Accountability Act

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California. (2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and Environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate- income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional

housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

~~(e) This section does not relieve the local agency (C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.~~

~~(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). ThisNeither shall anything in this section also does notbe construed to relieve the local agency local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).~~

~~(f) This(1) Nothing in this section does notshall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project. This. (2) Nothing in this section does notshall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.~~

~~(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.~~

~~(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.~~

~~(h) The following definitions apply for the purposes of this section:~~

~~(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.~~

~~(2) "Housing development project" means a use consisting of either any of the following:~~

~~(A) Residential units only.~~

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development or emergency shelter may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in paragraph subdivision (k), the court in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of

preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

Attachment 2

Definitions

Attachment 2

Definitions

Emergency Shelters (Health and Safety Code Section 50801(e))

"Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Transitional Housing (Health and Safety Code Section 50675.2)(h)

"Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

Supportive Housing (Health and Safety Code 50675.14(b))

Housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260, and that is linked to on- or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Target Population Definition per HSC 53260(d)

(d) "Target population" means adults with low-income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.

Attachment 3

Helpful Links

Attachment 3

Helpful Links

National Alliance to End Homelessness

<http://www.endhomelessness.org/section/tools/tenyearplan>

Interagency Council on Homelessness

<http://www.ich.gov/>

Interagency Council on Homelessness, Guide to Developing Plans and Examples

<http://www.ich.gov/slocal/index.html>

U.S. Department of Health and Human Services, Homelessness Resource Center

[http://www.nrchmi.samhsa.gov/\(X\(1\)S\(axpyp555dhn54z45qhpqvnj4\)\)/Default.aspx?AspxAutoDetectCookieSupport=1](http://www.nrchmi.samhsa.gov/(X(1)S(axpyp555dhn54z45qhpqvnj4))/Default.aspx?AspxAutoDetectCookieSupport=1)

The National Coalition for the Homeless – Local Resources in California

<http://www.nationalhomeless.org/resources/local/california.html>

HCD Selected Bibliography on Homeless Issues

<http://www.hcd.ca.gov/hpd/biblio.html>

Building Blocks for Effective Housing Elements

(links to funding resources, data, policy and research on homelessness)

http://www.hcd.ca.gov/hpd/housing_element/index.html