

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

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January 14, 2022

Seimone Jurjis, Director
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Dear Seimone Jurjis:

RE: City of Newport Beach's Revised 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Newport Beach's (City) draft housing element received for review on November 17, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on January 10, 2022, with you, Deputy Community Development Director Jim Campbell, Senior Planner Ben Zdeba, and consultant Dave Barquist. In addition, HCD considered comments from the Public Law Center pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many of the statutory requirements noted in HCD's October 12, 2021 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes revisions needed to comply with State Housing Element Law.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criterion. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at:

http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and
http://opr.ca.gov/docs/Final_6.26.15.pdf.

HCD is committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Colin Cross, of our staff, at colin.cross@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Planning Manager

Enclosure

APPENDIX CITY OF NEWPORT BEACH

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

Regional Patterns and Trends: The element is revised to include regional analyses for some categories of analysis. However, the element still does not analyze regional patterns and trends for *all* categories and subcategories of analysis. In particular, the element should be revised to include a full regional analysis for access to educational, economic, and environmental opportunity; substandard housing; homelessness; and displacement risk. For example, for some topics the element provides a map of surrounding jurisdictions but does not analyze them or make conclusions; for other topics it does not address the regional component at all. A complete regional analysis should compare conditions at the local level to the rest of the region. This analysis could compare the locality at a county level or other subregional geography.

Segregation and Integration: The element is revised to include maps of disability status, familial status, and income, but generally does not identify local patterns and trends on these topics. A full analysis should go beyond mere reporting of data and should identify local patterns and trends throughout the jurisdiction. Patterns at a local level must address the extent to which some neighborhoods differ from others and any relevant factors that may determine that outcome. This analysis should lead to a summary of fair housing issues that can inform contributing factors, goals, priorities, strategies, and actions.

Access to Opportunity: The element includes analysis that addresses most requirements for access to opportunity. However, the element's discussion of environmental opportunity merely describes CalEnviroScreen and provides a map. A full analysis should identify patterns and trends throughout the jurisdiction and should lead to a summary of fair housing issues that can inform contributing factors, goals, priorities, strategies and actions. For example, the element could evaluate the City's

environmental justice efforts pursuant to Senate Bill (SB) 1000, and discuss any relevant observations, actions, or anticipated outcomes.

Disproportionate Housing Needs: For cost burden and overcrowding, the element is revised to include several maps, but the analysis of trends and patterns remains limited. The element is also not revised to address substandard housing or homelessness. Please refer to HCD's October 12, 2021 review to meet these requirements. In addition, the element's discussion of displacement risk describes the Urban Displacement Project methodology and provides a map, but its analysis of this topic is limited to a statement that "nearly all of Newport Beach is considered Stable/Advanced Exclusive," without identifying trends or patterns in detail (p. 3-102). The element should describe what trends, patterns, and other local factors have led to this conclusion, and how this finding may inform the City's strategies and actions. For example, the element could discuss how the City will use these findings to generate new housing opportunity in high-resource areas.

Local Data and Knowledge: The element is not revised to address this finding. Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

Site Inventory: The element's analysis of the site inventory is revised to meet some requirements. However, it must still provide a full analysis of whether sites improve or exacerbate conditions or whether the sites are isolated by income group. Furthermore, the element does not analyze the inventory with respect to disproportionate housing needs, and its analysis with respect to access to opportunity is limited to a graphic overlaying the inventory on the TCAC/HCD Opportunity Map and the reporting of related data. A complete analysis should address how the identified sites impact existing patterns and trends for all components of the assessment of fair housing.

Contributing Factors: The element is revised to add several contributing factors to fair housing issues. However, it is not clear how these contributing factors respond to the findings of the analysis. The element should ensure that its contributing factors are responsive to the unique fair housing conditions of the jurisdiction and should prioritize these contributing factors. Additionally, as noted, the element does not contain a complete assessment of fair housing. Depending on the results of a complete analysis, the element may need to add or revise contributing factors as appropriate.

Strategies and Actions: Policy Action 4A (Affirmatively Furthering Fair Housing (AFFH)) is revised to include several additional actions. However, the element relies solely on actions which are not transformative, meaningful, or specific. Some of these are vague in nature (e.g., "Specific actions to enhance the construction of affordable housing", "Exploration of establishing additional or augmented assistance programs", etc.) [p. 4-15], and none is drawn from the findings of the analysis. The element must be revised to include programs that are transformative, meaningful, and specific, and which include quantifiable objectives and concrete actions. These programs should respond directly to the contributing factors from the assessment of fair housing. Programs must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Realistic Capacity: The element is revised to support its realistic capacity assumptions by relating the assumptions to trends in residential development. However, the element must still adjust for the likelihood of 100 percent nonresidential development. For more information, please refer to HCD's October 12, 2021 review.

In addition, the element claims that "an assumption of approximately 50 percent redevelopment" has been applied to the Coyote Canyon Focus Area, but then appears to assume the maximum of 1,320 units on the site despite this claim (p. B-73). The element should ensure a clear statement of capacity assumptions is made for each site.

Suitability of Nonvacant Sites: The element is revised to demonstrate trends in redevelopment and connect the inventory's assumptions to those trends. However, certain identified nonvacant sites in the Newport Center Focus Area require further support. For example, this section of the inventory contains several tennis courts, a country club, a church, and other uses. The element should provide further information demonstrating the likelihood of redevelopment for sites in this area.

Substantial Evidence: For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (i.e., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the regional housing needs allocation (RHNA).

Small and Large Sites: The element is revised to include some examples of small sites that were consolidated. However, it must also provide analysis demonstrating the potential for lot consolidation. For example, the analysis could describe the City's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for redevelopment, recent trends of lot consolidation, and/or information on the owners of each aggregated site.

The element is revised to provide an analysis of environmental constraints for the large sites in the Coyote Canyon area, but otherwise does not address this finding. Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

Banning Ranch: The element is revised to include further detail about the background and potential constraints of the Banning Ranch site, including the City's past and current efforts to make the site available. However, HCD understands that this area is

unlikely to support residential development in the planning period as the property is soon expected to be set aside as open space, and the element does not provide compelling evidence to the contrary. Please note that while the City may choose to keep the site in its inventory, unless compelling information, analysis, and programs are added, HCD will not utilize the Banning Ranch site towards the City's RHNA. The element should adjust its assumptions as appropriate.

Zoning for a Variety of Housing Types:

- *Single-room Occupancy (SROs):* The element is revised to list the zones where SROs are a permitted use but does not clarify the City's process for SROs in these zones. The analysis could discuss whether the City has special permits, development standards, approval findings or other features of the permit process that may pose a potential constraint. Programs should be added or modified as appropriate.
3. *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 (7), 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 Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). 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. (Gov. Code, § 65583, subd. (a)(5).)*

Housing for Persons with Disabilities: The element is revised to include further language regarding residential care facilities, which largely seeks to justify the City's policy of a Conditional Use Permit (CUP) for residential care facilities of seven or more persons. These revisions do not describe or analyze the CUP process itself. Such permits have the potential to subject housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. The element should analyze the process as a potential constraint on housing for persons with disabilities, considering the process' impact on approval certainty, timing, supply, and other relevant factors. Depending on the results of a complete analysis, the element should add or modify programs to ensure zoning permits group homes objectively and with approval certainty.

4. *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, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by*

subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)

Density and Timing: The element is not revised to address this finding. Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that 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. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

The element is not revised to address this finding. Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

2. *Identify actions that will be taken to make sites available during the planning period 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 Government Code 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. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning was not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Zoning to Accommodate a Shortfall of Sites for Lower-Income: The element is revised to detail the necessary actions pursuant to City Charter 423. However, the element is not revised to address HCD's finding regarding the by-right provisions for rezones found in Government Code 65583.2, subdivisions (h) & (i). Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

Sites Identified in Prior Planning Periods: The element is not revised to address this finding. Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

Accessory Dwelling Unit (ADU) Monitoring: Policy Action 11 is added to commit the City to ADU monitoring by income category. However, this program only commits the City to *considering* additional actions if not meeting the RHNA targets for ADUs identified in the element. The element should be revised to commit the City to implementing specified additional actions by a date certain if not meeting RHNA targets.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. 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. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings A3 and A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element does not contain programs that satisfy the AFFH requirements for specific and meaningful actions to overcome fair housing issues. Based on a complete analysis, the element must add or revise programs.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) 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 (9) 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. (Gov. Code, § 65583, subd. (c)(6).)*

The element is not revised to address this finding. Please refer to HCD's October 12, 2021 review to meet this statutory requirement.

C. Public Participation

Local governments 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 element shall describe this effort. (Gov. Code, § 65583, subd.(c)(8).)

While the element profiles the strategies undertaken to achieve public participation, it must also describe how the City reached all economic segments of the population in conducting outreach related to its survey and workshops, particularly lower-income households. The revised element still does not clarify whether and how any nongovernmental organizations and other parties were notified; the element should be revised to include a list of organizations contacted for purposes of public involvement. Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.