

REVISION 1: Amend the Subsection entitled “Growth Management Measures” beginning on Page 3-28 within Section 3: Housing Constraints, Resources, and Affirmatively Furthering Fair Housing as follows:

Growth Management Measures

Growth management measures are techniques used by a government to regulate the rate, amount, and type of development. Growth management measures allow cities to grow responsibly and orderly, however, if overly restricted can produce constraints to the development of housing, including accessible and affordable housing.

On November 7, 2000, the Newport Beach electorate approved Measure S, ~~which Measure S~~ amended the Newport Beach City Charter by adding Section 423. ~~Charter Section 423, which~~ requires voter approval of certain major amendments of the Newport Beach General Plan, unless state or federal law precludes a vote of the electorate on the amendment. In the case of Charter Section 423, in general, a major amendment to the General Plan is defined as any proposed amendment of the General Plan one that significantly increases allowed density or intensity is first considered and/or approved by the City Council subsequent to December 15, 2000 and that by increasing increases the number of over 100 peak hour trips (traffic), or over 40,000 square feet of, floor area (intensity), or over 100 dwelling units (density) when compared to the General Plan prior to approval. These thresholds are calculated, as the sum a result of the amendment itself and/or eighty percent (80%) of the increases resulting from other amendments affecting the same neighborhood and that, which were adopted within the preceding ten (10) years, when compared to the General Plan prior to approval.

~~Therefore, an amendment shall not take effect unless it has been submitted to the voters and approved by a majority of those voting on it. When the electorate approved Measure S, Charter Section 423 the electorate encourages the City Council to adopt implementing guidelines that are consistent with the its purpose and intent of Measure S; however, the Guidelines for Implementing Charter Section 423 do not provide guidance as to when a state or federal law precludes a vote on a major amendment of the General Plan. In the case of Charter Section 423, an amendment to the General Plan is defined as any proposed amendment of the General Plan that is first considered and/or approved by the City Council subsequent to December 15, 2000 and that increases the number of peak hour trips (traffic), floor area (intensity), or dwelling units (density) when compared to the General Plan prior to approval.~~

Procedure

The City Council determines if a proposed amendment requires voter approval pursuant to Charter Section 423, based on the following conditions:

- The Amendment modifies the allowed use(s) of the property or area that is the subject of the Amendment such that the proposed use(s) generate(s) more than one hundred (100) morning or evening peak hour trips than are generated by the allowed use(s) before the Amendment; or

- The Amendment authorizes an increase in floor area for the property or area that is the subject of the Amendment that exceeds forty thousand (40,000) square feet when compared to the General Plan before approval of the Amendment; or
- The Amendment authorizes an increase in the number of dwelling units for the property or area that is the subject of the Amendment that exceeds one hundred (100) dwelling units when compared to the General Plan before approval of the Amendment; or
- The increase in morning or evening peak hour trips, floor area or dwelling units resulting from the Amendment when added to eighty percent (80%) of the increases in morning or evening peak hour trips, floor area or dwelling units resulting from Prior Amendments, within the preceding ten (10) years (see definition in Section 2J) exceeds one or more of the voter approval thresholds in Section 423 as specified in Subsection 1, 2 or 3.

If the City Council determines a General Plan Land Use Element Amendment requires voter approval, after approving the Amendment, the City Council then adopts a resolution calling an election on the Amendment. The City Council schedules the election at the next regular municipal election, as specified by the City Charter. The City Attorney then prepares an impartial analysis of the Amendment, which contains information about the Amendment, any related project or land use approval, and the environmental analysis conducted that will help the electorate make an informed decision. In the absence of an ordinance or Charter provision that establishes a procedure for submittal of arguments or rebuttals relative to City measures, the City Council will adopt a resolution that authorizes the filing of arguments and rebuttals in accordance with the general procedures specified in the Elections Code.

It is important to understand that Charter Section 423 only applies to General Plan amendments. Individual housing development projects that do not require a General Plan amendment are already accommodated within the General Plan and zoning framework. They would not be subject to Charter Section 423 and would never require a vote of the electorate.

If a housing development project requires a General Plan amendment, any unit and peak hour traffic increases added to the project through bonus units awarded by the Density Bonus process are not counted toward Charter Section 423 thresholds and a determination whether a vote is required. Ultimately projects that require a vote of the electorate pursuant to Charter Section 423 may require additional costs and be subject to delays due to the election process that may yield uncertain election results.

To implement the Housing Element, the City must move forward with adding housing units that would qualify as a major amendment for purposes of Charter Section 423, which raises the question of whether a vote under Charter Section 423 is precluded by state or federal law. In recent legislation, such as Senate Bill 1333, the legislature has specifically found that the lack of affordable housing is a matter of statewide concern and that state housing laws related to land use, planning and zoning apply to charter cities. Similarly, the court in *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, found that the lack of affordable housing is a matter of statewide concern.

To comply with state laws, the City must have a general plan, which serves as the long-range plan for future physical development in the community. (Government Code § 65000, et seq.) One of the mandatory elements of a general plan is a housing element, which must be updated by the City every eight (8) years and identify sites sufficient to meet the City's share of the Regional Housing Needs Assessment (RHNA) allocation. (Government Code §§ 65302, 65588, 65863.) In determining the RHNA allocation, the council of governments does not take into consideration any zoning or other local land use restrictions, such as Charter Section 423, but is directed by state law to "consider the potential for increased residential development under alternative zoning ordinances and land use restrictions." (Government Code § 65584.04(e)(2)(B).) Furthermore, the City has a continuing obligation to always ensure that adequate sites exist to accommodate lower-income housing development, not just at the beginning of the eight (8)-year Regional Housing Needs Allocation cycle. (Government Code § 65863.)

In this RHNA cycle, the City has been allocated 4,845 new housing units. To comply with state law, the City must not only plan for these units, but the City must also take action to establish the appropriate zoning designations and development standards to allow the private market to develop these units. After developing a plan for these units, the City must submit the Housing Element to the Department of Housing and Community Development for them to find that the Housing Element is in compliance with state law.

But having the California Department of Housing and Community Development find the City's Housing Element is compliant with state law is only one step of many. The City is then required to implement the Housing Element. Under Government Code Section 65585 (i)(1)(A), implementation is not optional, and the California Department of Housing and Community Development is charged with ensuring the City is implementing the Housing Element and taking action to revoke its finding that the Housing Element complies with state law if the City fails to implement the Housing Element. In addition to the loss of local zoning control, permitting authority, and fines of up to \$600,000 per month for not having a compliant Housing Element, state law provides that the Attorney General may appoint an agent to take all necessary actions to bring the City into compliance with state law. (Government Code § 65585(l).)

Because providing residential housing opportunity sites to accommodate the City's RHNA allocation is mandated by state law and the City is required to implement the Housing Element, a Charter Section 423 vote is precluded, and the City will move forward with implementing the Housing Element without a Charter Section 423 vote.

~~The City will implement Charter Section 423 when it amends the Land Use Element of its General Plan to implement Policy Actions 1A through 1F provided in Section 4 of this Housing Element. The increases in housing units and the peak hour traffic to accommodate the City's high RHNA allocation will exceed Charter Section 423 thresholds requiring a vote of the electorate. However, Charter Section 423 includes a statement that it shall not apply if State or Federal law precludes a vote of the electorate on the amendment. As of the adoption of this Housing Element, it is unclear if the State RHNA mandate to accommodate the City's RHNA allocation would preclude a vote pursuant to Charter Section 423.~~

~~It is the duty of the City Council to place the increases in housing and the traffic generated before the voters of Newport Beach consistent with Charter Section 423. The vote will be scheduled in accordance with the California Elections Code and the City Charter after the City Council carefully reviews and approves the Land Use Element amendment and Zoning Strategies that support Policy Actions 1A through~~

~~1G. The City will prepare an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) prior to acting on the Land Use Element amendment and Zoning Strategies.~~

~~In 2006, the City adopted its comprehensive General Plan Update adding 1,166 housing units within its Land Use Element. The update included the housing unit increases to accommodate the City's share of the 4th RNHA cycle. In accordance with Charter Section 423, the update was submitted to the voters and the measure passed. For the 6th cycle Housing Element, like the 2006 vote, the City will initiate an election and pay for all costs associated with the ballot measure. The discussion within Housing Goal #1 in Section 4 details the milestones involved in the Land Use Element amendment vote process. The City may choose to submit multiple ballot measures.~~

~~If the ballot measure passes, Charter Section 423 would not be an impediment in any way to housing development projects supported by the Land Use amendment and Zoning implementation strategies stemming from this Housing Element. The increases in housing units and their related peak hour traffic would also not count against future General Plan amendment applications thereby reducing the impediment that Charter Section 423 represents to future housing developments needing a subsequent General Plan Amendment in the future.~~

~~Making any changes to Charter Section 423 is complicated and uncertain. To attempt modifications that would exempt housing units from potentially requiring a vote is not a viable option. Placing a Charter amendment before the voters would require City Council action that would be contrary to the will of the people as expressed through Measure S in 2000 that resulted in Charter Section 423.~~

~~Based upon public comments received during the preparation of this Housing Element, there is no public support to amend Charter Section 423 to accommodate the housing necessary to satisfy the State RHNA mandate. The City Council publicly debated the prospects of amending Charter Section 423 through its review of this Housing Element, and it is universally believed that placing such a Charter amendment before the voters would be a waste of resources. Additionally, any effort to potentially amend Charter Section 423 would potentially and unnecessarily delay the implementation of this Housing Element. It could create voter fatigue reducing the prospects for success of a vote for the required Land Use Element Amendment to implement this Housing Element pursuant to Charter Section 423.~~

REVISION 2: Amend the Subsection entitled “Implementation Actions” beginning on Page 4-2 within Section 4: Housing Plan as follows:

Implementation Actions

Adequate Sites to Accommodate 2021-2029 RHNA

The City of Newport Beach has a total Regional Housing Needs Assessment (RHNA) allocation of 4,845 units. State law requires the City of Newport Beach to identify adequate sites to accommodate its fair share allocation for the 6th Cycle Housing Element. This City has identified a variety of candidate sites through extensive analysis in collaboration with the community and stakeholders through Newport Together’s “Listen and Learn” process, multiple meetings of the City’s Housing Element Update Advisory Committee (Committee), participation by interested residents at a variety of public meetings, workshops, and consultation with property owners. The City of Newport Beach has identified an adequate amount of land that was determined by the Committee as “Feasible” or “Potentially Feasible” for future development. Only a portion of these candidate sites will be necessary to accommodate the City’s RHNA planning obligation. These sites have undergone a rigorous process to evaluate site features, development potential, developer/owner interest and other factors to deem them appropriate for housing during the 2021-2029 Planning Period.

As part of the analysis of adequate sites, the City has comprehensively reviewed opportunity sites citywide and ~~have~~ ~~has~~ ~~identify~~ ~~identified~~ eight primary areas of opportunity:

- Airport Area Environs
- West Newport Mesa
- Banning Ranch
- Coyote Canyon
- Dover/Westcliff
- Newport Center
- 5th Cycle Housing Element Sites
- Accessory Dwelling Units

Since the City has identified several opportunity sites in the 5th Cycle Housing Element that will be utilized in the 6th Cycle Housing Element, additional policy considerations are stated in this Policy Program.

These opportunities sites are described in map and tabular format in Appendix B of this Housing Element. Each of the opportunity areas described in this Housing Element have been assigned a targeted acreage, and a targeted number of new housing units (see following implementing Policy Action statements). Collectively, these targets must meet the unmet RHNA need as required by ~~s~~State law. It is expected there may be deviations from the targets with future implementing zoning actions. New opportunity sites may be identified, and other sites may be deemed ~~unsuitable~~~~unsuitable~~, or densities may be modified, all based on new information received over time. The City may adopt future zoning strategies that are more or less than the identified targets in this Housing Element provided the total unmet RHNA need by income category is accommodated within state-defined deadlines. If future zoning strategies deviate from the targets expressed in this Housing Element but still meet the requirement to identify adequate sites to accommodate unmet RHNA need, no amendment to the Housing Element would be required and deviations of any magnitude may be considered subject to the City Council’s review and approval in consultation with the Community.

All sites proposed for rezoning through implementation of Policy Actions 1A through 1F provided in Section 4 of this Housing Element will require a companion Land Use Element amendment that will be subject to a vote of the electorate pursuant to Charter Section 423. The City will initiate an election and conduct community outreach to educate the public on the benefits of higher density housing and pay for all costs associated with the ballot measure(s). The table below presents a timeline for the process including the vote. If the vote fails, the City will propose alternative Policy Actions and call for a second election. If the second vote fails to pass, the City Council will seek a legal opinion from the State Attorney General's Office as to how to proceed.

Milestones for Housing Element Adoption, Implementation and Charter Section 423 Election

Anticipated Date	Action	Requirements
February 2022	Housing Element Adoption	Public Hearing
February 2022- September 2023	Preparation of Land Use Element amendment(s), Zoning to implement Policy Actions 1A – 1F, and completion of Environmental Impact Report	Community meetings and Public Hearings
September 2023	Initiate ballot measure for Charter Section 423 vote	133 days prior to election date
March 2024	Charter Section 423 election date for voter approval on proposed Land Use Element Amendment	
If Charter 423 vote fails:		
	Amend Housing Element for HCD review and amend Land Use Element and adopt corresponding zoning strategies after conducting environmental review	Community meetings and Public Hearings
	Conduct second Charter Section 423 election on revised amendments	
If second Charter 423 fails:		
	Request opinion from State Attorney General's Office as to City's options	

For all Rezone Policy Actions 1A to 1F, Pursuant to Government Code 65583.2, subdivisions (h) & (i), which rezone sites to accommodate the City's shortfall in satisfying the RHNA, the City commits to the following:

- permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a CUP, planned unit development permit, or other discretionary review or approval.
- accommodate a minimum of 16 units per site;
- require a minimum density of 20 units per acre; and
- at least 50 percent of the lower-income need must be accommodated on sites designated
- for residential use only or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites:
 - allow 100 percent residential use, and
 - require residential use occupy 50 percent of the total floor area of a mixed-use project.