

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

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August 6, 2021

Cecilia Gallardo-Daly, Director
Community Development Department
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92672

Dear Cecilia Gallardo-Daly:

RE: Review of the City of San Clemente's 6th Cycle (2021-2029) Draft (Four-Year) Housing Element (Update)

Thank you for submitting the City of San Clemente's (City) draft housing element received for review on June 7, 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 July 26, 2021 with you, City staff and consultants. In addition, HCD considered comments from the Emergency Shelter Coalition, San Clemente Affordable Housing Coalition, Welcoming Neighbors Home Initiative – Tapestry, a Unitarian Universalist Congregation, Kathy Esfahani, Josh Albrektsen, and Paula Wojtaszek pursuant to Government Code section 65585, subdivision (c). HCD also received comments from the Public Law Center, William (Bill) Kreutinger and additional comments from San Clemente Affordable Housing Coalition. However, these comments were received with insufficient time remaining in the review period and HCD will consider these comments in future submittals of the housing element.

The draft element addresses many statutory requirements; 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.

Government Code section 65588, subdivision (e)(4), requires a jurisdiction that failed to adopt its housing element within 120 calendar days from the statutory due date to revise its element every four years until adopting at least two consecutive revisions by the applicable due dates. The City is subject to the four-year revision requirement and has satisfied the first four-year update requirement. Provided the City adopts its 6th cycle housing element by the due date (October 15, 2021), the City will satisfy the second consecutive four-year update and return to an eight-year

update cycle. Please reach out to HCD with any questions regarding timing and meeting the second four-year update requirement.

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 criteria. 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 (APRs) pursuant to Government Code section 65400. Without a compliant housing element, the City will not meet housing element requirements for these and other funding sources.

HCD appreciates the hard work, professionalism, and dedication you and Jennifer Savage provided during the course of our review. We are 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 Marisa Prasse, of our staff, at Marisa.Prasse@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name being more prominent.

Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX CITY OF SAN CLEMENTE

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 (AFFH) 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).)*

The element includes some data and information regarding AFFH but must still add data and analysis to address this statutory requirement, as follows:

Enforcement: The element must include the City's ability to provide enforcement and outreach capacity which can consist of actions such as the City's ability to investigate complaints, obtain remedies, or the City's ability to engage in fair housing testing. The element currently states the number of housing discrimination inquiries complaints in San Clemente between the years of 2015-2020 but must also describe compliance with existing fair housing laws and discuss any fair housing findings, lawsuits, enforcement actions, settlements, or judgements.

Integration and Segregation: The element includes some analysis on integration and segregation at the local level; however, it must also analyze integration and segregation at the regional level for race/ethnicity, disability status, familial status, and income, and then conclude with a summary of issues.

Racial/Ethnic Areas of Concentration of Poverty: The element includes information relative to Racially and Ethnically Concentrated Areas of Poverty (R/ECAP), but the analysis the City should also analyze the racial concentrations as it relates to areas of affluence, locally and regionally, if the City does not have areas of concentrated poverty. The combination in the R/ECAP and areas of affluence analyses will help guide goals and actions to address fair housing issues. The analysis should evaluate the patterns and changes over time and consider other relevant factors, such as public participation, past policies, practices, and investments and demographic trends.

Access to Opportunity: The element provides quantitative data on access to opportunity, but a complete analysis should analyze spatial trends and conclude with a summary of issues.

Disproportionate Housing Needs, Including Displacement: The element does include data on overcrowded households, substandard housing conditions, and cost burdened households, but it must also analyze the data including looking at spatial trends, patterns, and other local knowledge, and conclude with a summary of issues. In addition, element should include an analysis of homelessness and displacement patterns and trends, locally and regionally, and conclude with a summary of issues.

Site Inventory: The element includes a map of the site inventory and states that the proposed sites to meet lower-income regional housing needs allocation (RHNA) are geographically distributed which results in these sites affirmatively furthering fair housing (pg. C26). However, the accompanying analysis shall also be reflective of housing development at all income-levels and evaluate the sites relative to socio-economic patterns. The site inventory analysis should address how the sites are identified to improve conditions (or if sites exacerbate conditions, how a program can mitigate the impact), whether the sites are isolated by income group and should be supported by local data and knowledge.

Contributing Factors: The element must list and prioritize contributing factors to fair housing issues. While the housing element includes a list of contributing factors from the Orange County 2020 Analysis of Impediments to Fair Housing, the contributing factors must be tailored to local conditions in San Clemente and directly relate to the findings of the Assessment of Fair Housing. Contributing factors create, contribute to, perpetuate, or increase the severity of fair housing issues and are fundamental to adequate goals and actions. Examples include community opposition to affordable housing, housing discrimination, land use and zoning laws, lack of regional cooperation, location and type or lack of affordable housing and lack of public or private investment in areas of opportunity or affordable housing choices. The analysis shall result in strategic approaches to inform and connect goals and actions to mitigate contributing factors to affordable housing.

Goals, Priorities, Metrics, and Milestones: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Currently, the element identifies programs to encourage and promote affordable housing; however, most of these programs do not appear to facilitate any meaningful change nor address AFFH requirements. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

Given that most of the City is considered a high-income community, the element could focus on programs that enhance housing mobility and encourage development of more housing choices and affordable housing in an inclusive manner. Programs also need to be based on identified contributing factors, be significant and meaningful. The element must add and revise programs based on a complete analysis and listing and prioritization of contributing factors to fair housing issues.

Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

For more information, please see HCD's guidance at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

While the element quantifies existing and projected extremely low-income (ELI) households, it must also analyze their housing needs. The analysis of ELI housing needs should consider tenure and rates of overcrowding and overpayment. To assist the analysis, see the enclosed data and sample analysis at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>.

3. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

The element identifies the age of the housing stock (pg. 16). However, it must include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>.

4. *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).)*

Aggregated Sites – Multiple Parcels Comprising Sites: Many sites listed in the sites inventory are comprised of multiple parcels. While the element may aggregate parcels, it must also list each parcel-by-parcel number or unique reference, parcel size, zoning, general plan designation, describe any existing uses for any nonvacant sites, and include a calculation of the realistic capacity of each parcel. Table 4-4 on page 77 should be adjusted accordingly for Sites H and I. For additional information and sample sites inventory, see the Building Blocks at [Building Blocks: Site Inventory Analysis -Inventory of Land Suitable \(ca.gov\)](#).

Small Sites: Many identified sites are smaller than half an acre. Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income

households unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing. As a result, if utilizing these sites toward the housing need for lower-income households, the element must include analysis and programs as appropriate. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>.

Environmental and Other Constraints: The inventory identifies several sites that appear, upon cursory review, with conditions which may impede or preclude development in the planning period. Examples include residential Sites F, J, K, P and candidate rezone Site U. As a result, the element should include description and analysis of potential constraints to demonstrate the suitability of sites in the planning period.

Realistic Capacity: The element assumes residential development on sites zoned for nonresidential uses. To support this assumption, the element notes interest in residential development and two recent developments as well as general plan incentives but should also discuss whether 100 percent nonresidential development has occurred on mixed-use sites and adjust calculations of residential capacity as appropriate.

Suitability of Nonvacant Sites: The element describes nonvacant sites were identified based on low existing (versus allowable) floor area ratios, building structures that are older than 30 years, and existing uses are either operating at marginal level or have surface parking areas with the potential to accommodate housing development. To demonstrate the potential for additional development on these sites, the element should include trends to support these assumptions, list the actual values of these factors for identified sites and should expand discussion similar to Sites M, N and O, particularly for candidate sites for rezoning.

The City does not appear to rely on nonvacant sites to accommodate over 50 percent of the RHNA for lower-income households. For your information, based on the outcomes of a complete analysis of sites, future versions may trigger this requirement to make findings based on substantial evidence that the existing uses are not an impediment and will likely discontinue in the planning period.

Accessory Dwelling Units (ADUs): The element incorrectly calculates ADU potential for the planning period by considering a rate of 20 ADUs per year for a total of 160 ADUs for the planning period. The number of permitted units per year in 2018, 2019, and 2020 stated in the element (19, 4, and 20 respectively) do not align with the number shown on the City's APRs submitted to HCD (13 in 2018, 13 in 2019, and 14 in 2020). The average number of ADUs permitted from 2018-2020 according to the City's APR is approximately 13 ADUs per year, or about 107 projected ADUs during the planning period. The City must reconcile these numbers and adjust assumptions accordingly.

Electronic Site Inventory: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

Sites with Zoning for a Variety of Housing Types – Emergency Shelters: The element must describe the characteristics and suitability of the zone(s) for emergency shelters. In particular, the element should analyze the limit of 35 beds per shelter as a constraint, the lack of interest in developing an emergency shelter in the last planning period, and the efficacy of the ride share program. In addition, as per public comments, given any past or current litigation involving the Rancho San Clemente Business Park, the element should analyze the suitability of the sites identified, challenges, and constraints, and if deemed unsuitable, identify additional sites where emergency shelters can be accommodated by-right. For additional information, see the *Building Blocks* at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf and the SB 2 Technical Assistance Memo at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf.

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 (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... (Gov. Code, § 65583, subd. (a)(5).)*

Land-Use Controls: The element must identify and analyze all relevant land-use controls impacts as potential constraints on a variety of housing types (e.g., multifamily rental housing, mobile homes, transitional housing). The analysis must also evaluate the cumulative impacts of land-use controls on the cost and supply of housing, including the ability to achieve maximum densities and cost and supply of housing. The analysis should also describe past or current efforts to remove identified governmental constraints. The element should address height limits and lot coverage in mixed-use and affordable housing overlay areas, the cumulative impacts of land use controls, and should include programs to address or remove the identified constraints.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning and development standards for each parcel on the jurisdiction's website, and add programs if needed, pursuant to Government Code section 65940.1, subdivision (a)(1).

Local Processing and Permit Procedures: The element indicates multifamily development with 5 or more units in zones permitting multifamily development requires a Conditional Use Permit (CUP). Requiring an exception process for multifamily uses in multifamily zones significantly impacts certainty, timing and costs. The element must include a program to address this constraint.

In addition, the element must describe and analyze its written procedures for compliance with SB35 (Chapter 366, Statutes of 2017) to streamline ministerial approval for eligible projects. For additional information, see the Updated Streamlined Ministerial Approval Process Government Code Section 65913.4 Guidelines at <https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf>.

Constraints on Housing for Persons with Disabilities: The element currently details that residential care facilities serving six or fewer persons are permitted in all residential zones. However, residential care facilities serving seven or more persons are limited to the same zones with the approval of a conditional use permit. The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes for seven or more persons objectively to facilitate approval certainty.

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, 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 RHNA 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).)*

Developed Densities and Permit Times: The element must be revised to include analysis of requests to develop housing at densities below those anticipated in the sites inventory and add programs if appropriate.

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).)

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised, especially regarding timelines, including the following: 3 (Lot Consolidation), 5 (Affordable Housing Overlay), 6 (Inclusionary Housing Program), 8 (Accessory Dwelling Units), 10 (Acquisition of Market Rate Housing), 12 (Affirmatively Furthering Fair Housing), 15 (Emergency Shelter Overlay), and 16 (Neighborhood Revitalization). In addition, Program 7 (Affordable Housing Development) should be revised to expand the last bullet point beyond acquisition and rehabilitation to include new construction when meeting with non-profit developers and housing organizations.

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 RHNA 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 A4, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were 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, Program 15 should be revised based on a complete analysis as described in Finding A4 and should be expanded as appropriate based on public comments and findings in the review of past programs such as "general lack of interest to use the overlay".

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 A5 and A6, 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).)

Program to AFFH: While the element includes Program 12, which describes how the City provides fair housing outreach and landlord education, it must also include further actions that promote AFFH opportunities. As noted in Finding B.1, the AFFH program should go beyond status quo actions, and should generally address housing mobility, encourage new housing development in high resource areas, improve place-based strategies, and protect existing residents from displacement. For example, the element could include a program committing to implement Government Code section 8899.50, subdivision (b), which requires the City to administer its programs and activities relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with its obligation to AFFH. For your information, pursuant to Government Code section 8899.50, “affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, AFFH means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to AFFH extends to all public agency’s activities and programs relating to housing and community development.

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 identifies housing units at-risk of converting to market-rate and includes Program 17 to monitor the units to ensure tenants receive proper notifications. However, Program 17 must be revised to include specific and proactive actions to preserve the at-risk units. For example, the program should include tenant education and assistance and assistance with funding such as supporting applications by non-profits for funding to purchase at-risk units.

C. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

The element must include quantified objectives to establish an estimate of housing units by income category that can be constructed, rehabilitated, and conserved over the planning period. While the element includes these objectives by income group, the element should consider expanding these objectives to include all at-risk units and other anticipated conservation achievements such as those under Program 10 (Acquisition of Market Rate Housing).

D. 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 includes a general summary of the public participation process, it must also demonstrate how public comments were considered and incorporated in the element. For additional information, see the Building Blocks at [Building Blocks: Getting Started - Public Participation \(ca.gov\)](#) .

E. Consistency with General Plan

The housing element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

For your information, some general plan element updates are triggered by housing element adoption. For example, a jurisdiction must address environmental justice in its general plan by the adoption of an environmental justice element, or by the integration of environmental justice goals, policies, and objectives into other general plan elements upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. (Gov. Code, § 65302, subd. (h).) In addition, the safety and conservation elements of the general plan must include analysis and policies regarding fire and flood hazard management and be revised upon each housing element revision. (Gov. Code, § 65302, subd. (g).) Also, the land-use element must identify and analyze disadvantaged communities (unincorporated island or fringe communities within spheres of influence areas or isolated long established legacy communities) on, or before, the housing element's adoption due date. (Gov. Code, § 65302.10, subd. (b).) 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.