

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

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April 11, 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 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Newport Beach's (City) housing element adopted February 8, 2022 and received for review on February 11, 2022. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on April 7, 2022 with you, Deputy Community Development Director. Jim Campbell; Senior Planner Ben Zdeba; Senior Planner Jaime Murillo; and consultant Dave Barquist. In addition, HCD considered comments from the Public Law Center pursuant to Government Code Section 65585, subdivision (c).

The adopted housing element addresses some statutory requirements described in HCD's January 14, 2022 review; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

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).)*

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... (Gov. Code, § 65583, subd. (c)(5).)

Local Data and Knowledge: The element is revised to include a brief description of the City's history and several data points drawn from the American Community Survey (ACS) (p. 3-62). Data and knowledge drawn from the ACS and other similar sources from the federal or state level are not adequate to meet this requirement. The element must support its Affirmatively Furthering Fair Housing (AFFH) analysis

with data and knowledge sourced at the local level, including but not limited to information obtained through community engagement.

Site Inventory: The element is revised to state that the site inventory’s “concentrations of low and very low-income sites located in the northern, western, and central areas of the City would not exacerbate the current conditions in these areas,” and includes some descriptions of how the inventory is related to existing patterns and trends (p. 3-123). However, the analysis of the site inventory raises several issues which may exacerbate fair housing conditions, including but not limited to the following examples. For example, the maps on pages 3-120 and 3-122 seem to indicate that the concentrations of lower-income RHNA sites are located in areas with high lower-income populations and high percentages of minority populations; the element does not describe the impact of these concentrations. Furthermore, the element notes that the Airport Environs Area, which appears to have a high concentration of lower-income RHNA units, has a high pollution burden. These examples demonstrate that the site inventory may exacerbate fair housing conditions, but the element does not commit to actions that would mitigate those exacerbated conditions. The element should be revised to clearly describe any isolation of RHNA and any fair housing conditions exacerbated by the inventory, and commit to programs which mitigate those exacerbated conditions. HCD can provide samples under separate cover.

Goals, Actions, Metrics and Milestones: Policy Action 4A (Affirmatively Furthering Fair Housing (AFFH)) is revised to include several additional actions. However, the element still does not contain programs which are specific, meaningful, and transformative. For example, the element must address the following:

- Several programs, including but not limited to the following examples, fail to provide a specific commitment to any policy action, instead committing to exploratory actions or broad, high-level goals. For example, Action 3 simply commits to exploring and implementing where feasible “policies and procedures that combat the displacement of low-income residents and communities of color”; similarly, Action 6 commits to establishing “policies and programs supportive to local employment opportunity (sic)” (p. 4-20). Neither of these program actions enumerates specific or measurable policy commitments.
- Other actions simply commit to compliance with state law. For example, Action 1 commits to the adoption of an Environmental Justice element as is already required of the City. This does not meet the requirements for meaningful and transformative AFFH actions which respond to the City’s contributing factors.
- The remainder of the actions contained in Policy Action 4A, including Actions 2, 4, 5, 7, and 8, are limited to outreach. While HCD applauds targeted and proactive outreach activities, these alone are not adequate to

satisfy the requirements for meaningful and transformative programs. In addition to outreach, program actions should address fair housing topics such as housing mobility, place-based strategies, and anti-displacement.

- Programs must also respond to the contributing factors and identified fair housing issues. For example, the element finds that 12 Newport Beach Census Tracts meet the definition of Racially Concentrated Areas of Affluence (RCAA), but it contains no program actions to address this. The element also notes that the City has “little mobility and fewer options in terms of rentership” (p. 3-106), but it does not include specific actions to increase housing mobility.

AFFH program actions should provide specific policy commitments, go beyond compliance with state law, address fair housing topics beyond outreach, and respond to the identified contributing factors. HCD can provide samples and other guidance under separate cover.

In addition, AFFH program actions must include meaningful metrics and milestones for measuring progress towards identified fair housing goals during the planning period. Examples include, but are not limited to, a program to incentivize voucher use in higher opportunity areas which commits to objectives for the number of households assisted, or a program to establish anti-displacement policies which targets a decrease in the percentage of households that are considered vulnerable according to the Urban Displacement Project. HCD can provide samples under separate cover.

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).)*

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. (Gov. Code, § 65583, subd. (c)(1).)

Realistic Capacity: The element must still account for the likelihood of 100 percent nonresidential development in mixed-use zones. The analysis should describe whether 100 percent nonresidential uses are allowed in these zones and any relevant programs or policies the City is undertaking to facilitate residential development in nonresidential zones. For example, based on our conversation and

on the sample projects in the Appendix, HCD understands that the City has seen limited commercial development and may also grant relief from certain commercial requirements. The element should be revised to include this information and relate development trends in zones allowing 100 percent non-residential uses to the inventory's residential capacity assumptions. Based on the outcomes of this analysis, the element must add or modify programs 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).)*

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).)

Housing for Persons with Disabilities: The element is revised to expand its discussion of the City's Conditional Use Permit (CUP) process (p. 3-42), and to include Policy Action 3-P which commits to reviewing applicable regulations and amending if necessary (p. 4-17). These revisions do not analyze whether the CUP is a constraint specifically for residential care facilities and on housing for persons with disabilities. In particular, the revised element does not address the fact that the City's Municipal Code Section 20.52.030.H.4 requires residential care facilities to be compatible with neighborhood character and specifically provides guidance on limiting them. This requirement subjects housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the surrounding neighborhood, unlike other residential uses. HCD noted in its prior reviews that such standards would be deemed a constraint, and the element does not make mention of these provisions or demonstrate otherwise. HCD

considers the “neighborhood character” requirement a constraint and Policy Action 3-P must be revised to commit specifically to removing this constraint.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted to comply with the above requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), Policy Actions 1A through 1F to rezone to accommodate the regional housing needs allocation must 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).

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 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 Program Manager