

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

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September 18, 2025

Grace Leung
City Manager
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Dear Grace Leung:

**RE: Circulating Initiative for a Ballot Measure and Housing Element Compliance –
Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) is aware of a potential initiative petition in the City of Newport Beach (City) to place a measure on the ballot. According to the City, the Newport Beach Stewardship Association recently submitted a notice of intention to circulate an initiative petition titled the Responsible Housing Initiative. HCD understands that the proposed initiative measure ("Initiative") proposes to amend the Land Use Element of the City's general plan, specifically Policy LU 4.4 (Rezoning to Accommodate Housing Opportunities), in a manner that would reduce the City's capacity to accommodate its Regional Housing Needs Allocation (RHNA).

The purpose of this letter is to provide technical assistance in response to an inquiry from the City related to the potential effect of the initiative on currently submitted preliminary applications and housing element law. In summary, preliminary applications, as described in the Permit Streamlining Act (Gov. Code, § 65941.1), would vest standards in place prior to the potential passage of the Initiative.¹ In addition, the Initiative, if passed as written, would compel HCD to initiate a review of the City's Housing Element compliance and require the City to amend its Housing Element.

Background

As you are aware, HCD found the City's housing element in substantial compliance on October 5, 2022 and again on November 21, 2024 following the City's adoption of an amended housing element. The City's RHNA allocation was 4,845 new units for the 6th Cycle Housing Element, composed of 1,456 very low, 930 low, 1,050 moderate and 1,409 above moderate-income housing units. The City's 6th Cycle Housing Element identified 8,174 housing opportunity sites composed of 2,714 very low, 1,209 low, 5,072

¹ Gov. Code, § 65589.5, subd. (o)(1).

moderate, and 5,558 above moderate-income housing units to meet its RHNA obligations. To effectuate the certified Housing Element, the City amended Land Use Element Policy LU 4.4 (Rezoning to Accommodate Housing Opportunities) ("Policy LU 4.4") of the Newport Beach General Plan ("General Plan") in July 2024 to meet its RHNA obligations.

HCD understands that the Initiative proposes to amend the Land Use Element of the City's general plan as follows:

- Reduce the total housing units accommodated in Policy LU 4.4 (Rezoning to Accommodate Housing Opportunities) from 8,174 housing units to 2,900 housing units.
- Limit the 2,900 housing units accommodated in Policy LU 4.4 to extremely low, very low-, low-, and moderate-income households (effectively establishing a 100 percent inclusionary requirement where no market rate units could be included).
- Limit the number of new units allowed under Policy LU 4.4 by area. Once the designated caps are reached in a particular area, no further housing development would be allowed in that area.
- Make amendments to the Land Use Element of the General Plan after the elections official certifies the citywide vote.
- Direct the City to take all administrative actions necessary to implement the Initiative, including amending the Newport Beach Zoning Code to reflect the new housing intensities established by the Initiative.

Preliminary Applications as Described in the Housing Accountability Act (HAA) and the Permit Streamlining Act (PSA)

Projects for which preliminary applications are submitted to the City prior to enactment of the Initiative shall be subject only to the ordinances, policies, and standards adopted and in place when the preliminary application was submitted to the City. Government Code Section 65589.6, subdivision (o)(1) states "a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application... was submitted."² For purposes of subdivision (o) of Government Code section 65589.5, "ordinances, policies, and standards" include general plan, community plan, specific plan, zoning, design review standards and

² Note that Gov. Code, § 65589.5, subd. (o)(2), includes a limited set of circumstances under which a project may be subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant. None of those circumstances appear to apply in this case.

criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.³

Relationship to the City's Compliant Housing Element

As you know, State Housing Element Law contains numerous requirements for a housing element to be found in substantial compliance by HCD. Among other requirements, the element must include "[a]n inventory of land suitable and available for residential development, including... sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need... and an analysis of the relationship of zoning... to these sites."⁴ The element must also include "an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels."⁵

HCD "shall review any action or failure to act by [the City] that it determines is inconsistent with an adopted housing element..., including any failure to implement any program actions included in the housing element..." If HCD "finds that the action or failure to act by [the City] does not substantially comply with this article," HCD may revoke its finding that the City's housing element is in compliance with Housing Element Law until it determines that the City has come into compliance with state law.⁶

The Initiative would cause the City to take actions inconsistent with its adopted, certified housing element. In particular, the Initiative would a) change the capacity assumptions on sites identified to accommodate the City's housing element and b) impose an requirement that all housing development projects attempting to utilize the Housing Opportunity overlay zones must consist entirely of below market rate, affordable housing units. The reduction of site capacity and zoning changes would constitute a major change to the housing element. In addition, the enactment of the affordability requirement on those affected sites is currently analyzed as a potential governmental constraint in the City's adopted housing element.⁷ The adoption of such a measure could impact economic feasibility of housing development projects that do not utilize affordable housing funding sources and would necessitate a review of the City's compliance with Housing Element Law and may result in the revocation of HCD's finding of compliance.⁸

³ Gov. Code, § 65589.5, subd. (o)(4).

⁴ Gov. Code, § 65583, subd. (a)(3).

⁵ Gov. Code, § 65583, subd. (a)(5).

⁶ Gov. Code, § 65585, subd. (i).

⁷ Gov. Code, § 65583, subd. (a)(5).

⁸ Gov. Code, § 65585, subd. (i)(1)(B).

Process for Amending the Adopted, Substantially Compliant Housing Element

Notwithstanding potential HCD review of the City's compliance with Housing Element Law immediately after the effective date of the Initiative (if it were to pass), the Initiative would direct the City to take all administrative actions necessary to implement the Initiative — including necessitating revisions to the City's Housing Element.

Pursuant to Government Code section 65585, prior to making any amendments to the housing element (including amending the sites inventory, or amending program commitments), the City must submit a draft of those changes to HCD at least 60 days prior to adoption.⁹ HCD must then review those amendments to ensure substantial compliance with housing element requirements and report its findings to the City.¹⁰ The City must then consider those findings prior to adoption. Please be aware, the City is also responsible for providing adequate opportunity for public participation and review, no less than seven days prior to submittal of a draft to HCD.¹¹ As part of this review, HCD will review any changes to the housing element to ensure that sites are suitable and available for housing development within the planning period and meet all the requirements of Government Code sections 65583 and 65583.2. In addition, the element must demonstrate that any new development standards resulting from the initiative do not pose a constraint to the development of housing.¹²

Consequences of Housing Element Noncompliance

Various consequences may apply when a city does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General (AGO), court imposed financial penalties, the loss of local land use authority to a court-appointed agent, and the application of the "builder's remedy."¹³ In addition, pursuant to SB 1037 (Statutes of 2024), further penalties such as a minimum of \$10,000 per month and associated attorney costs are now authorized for any action brought by the AGO or HCD to enforce the adoption of housing element revisions.¹⁴

Moratoria Under the Housing Crisis Act

The Housing Crisis Act (HCA), codified at Government Code Section 66300 et seq., imposes a broad prohibition against "a moratorium or similar restriction or limitation on housing development... within all or a portion of the (City)."¹⁵

⁹ Gov. Code, § 65585, subd. (b)(1).

¹⁰ Gov. Code, § 65585, subds. (b)(3), (d).

¹¹ Gov. Code, § 65585, subd. (b)(1).

¹² Gov. Code, § 65583, subd. (a)(5).

¹³ Gov. Code, §§ 65585, subds. (j), (l); 65589.5, subds. (d)(6), (f)(6), and (h)(11).

¹⁴ Gov. Code, § 65009.1, subds. (a)(1) and (a)(2)

¹⁵ Gov. Code, § 66300, subd. (b)(1)(B).

The Initiative, as written, appears to impose a cap on the number of housing units that may be permitted in the Housing Overlay Zoning Districts. The Initiative states, “once the maximum number of units have been approved under the applicable focus area’s Development Limit, no housing opportunity overlay zoning district or other land use regulatory policies or programs developed pursuant to this Policy (LU 4.4) shall be available for future development in that focus area.” While the HCA’s ban on housing moratoria does allow an exception when a moratorium is necessary to protect health and safety, nothing in the Initiative even attempts to justify the moratorium here.

Conclusion

HCD appreciates the opportunity to provide technical assistance to implement the provisions of Housing Element Law and other state housing laws over which HCD has enforcement authority.¹⁶ We look forward to continued cooperation with City staff as the City continues to implement its housing element. If you have questions or need additional information, please contact Brandon Yung at Brandon.Yung@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long, sweeping horizontal stroke extending to the right.

Melinda Coy
Housing Accountability Unit Chief

¹⁶ Gov. Code, § 65585, subd. (j).