

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

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April 1, 2025

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

Dear Grace Leung:

RE: Adopted Housing Element Revision Process – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) writes to provide technical assistance to the City of Newport Beach (City) on its obligations under Housing Element Law.¹ HCD is aware that the plaintiff in *Still Protecting Our Newport v. City of Newport Beach*, Orange County Superior Court Case No. 30-2024-01417895-CU-WM-CXC (the Litigation), applied for a temporary restraining order (TRO) and order to show cause on why a preliminary injunction should not issue. Still Protecting Our Newport (SPON) seeks to enjoin the City “from approving any development projects pursuant to its Sixth Cycle Housing Element ... until the Court holds a hearing on” SPON’s requested preliminary injunction.²

HCD has reviewed the Ex Parte Application as well as materials regarding a proposed housing development project at the North Newport Center site, which the Planning Commission approved on March 6, 2025. According to the Ex Parte Application, the City Council is scheduled to vote on the project, which includes amendments to the City’s zoning code necessary to accommodate new housing.

With the litigation, SPON claims that the City violated Section 423 of its City Charter by updating its General Plan’s Land Use Element to implement the City’s Sixth Cycle Housing Element (Housing Element) *without* first obtaining approval from the City’s electors. According to SPON, actions taken to implement the Housing Element, including the approval of new housing envisioned by the Housing Element, should be

¹ Gov. Code, § 65580 et seq.

² Ex Parte Application at p. 1.

enjoined because the City did not comply with Section 423 in updating the Land Use Element.

After careful review, it is apparent to HCD that, if the court were to provide SPON with the relief it seeks, the City would be compelled to violate or ignore its obligations under Housing Element Law. This would expose the City to various statutory fines and penalties. State law accordingly precludes the City from conditioning its implementation of its Housing Element on surviving a Section 423 vote.

In addition, the Housing Accountability Act (HAA) precludes the City from applying its old general plan to the proposed development project on the North Newport Center site.

A. Housing Element Law Obligates the City to Accommodate the Development of New Housing Notwithstanding Its Greenlight Measure.

Housing Element Law requires the City, through its legislative body, to adopt certain measures to accommodate its housing needs, and those measures must be adopted on a timetable set forth in the statute.³ These timelines are obligatory, not permissive, and thus the City has no discretion to ignore them.⁴

HCD is aware that many localities have what are sometimes referred to as “greenlight measures,” which generally prohibit local legislative bodies from adopting upzoning legislation without first obtaining authorization from the electorate. The City has such a measure in Section 423 of Article IV of its City Charter (“Section 423”). Under Section 423, “[v]oter approval is required for any major amendment to the Newport Beach General Plan.” A “major amendment” includes any provision increasing housing density by over 100 units. However, Section 423 specifies that it “shall not apply if state or federal law precludes a vote of the voters on the amendment.”

Here, the City’s legislative body had until February 12, 2025 to adopt implementing legislation required under Housing Element Law.⁵ It is now April 1, 2025. Were the City to revoke the legislative actions it has taken to implement its housing element or fail to proceed with the project at issue in SPON’s TRO application, it would violate state law. Housing Element Law authorizes HCD to review “any action or failure to act” by the City that HCD determines “is inconsistent with an adopted housing element or Section 65583,” and this includes any failure by the City “to implement any program actions

³ See Gov. Code, §§ 65583, 65585, 65588.

⁴ See *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 340 (obligatory statutory deadlines, even if directory, must be followed, and failure to follow them can subject a public agency to liability).

⁵ See Gov. Code, § 65583.4.

included in the housing element pursuant to Section 65583.”⁶ The relief that SPON seeks in this litigation would, simply put, force the City to violate Housing Element Law.

Violating Housing Element Law exposes the City to serious legal consequences. For instance, HCD will begin enforcement actions authorized by Government Code section 65585, subdivision (i) which would likely result in revocation of its previously issued finding that the City’s housing element substantially complies with Housing Element Law.⁷ That would impose the “Builder’s Remedy” on the City.⁸ HCD could also initiate an enforcement action, potentially exposing the City to substantial fines and penalties.⁹ Remedies for general plan noncompliance could further curtail the City’s authority over its land use decision-making.¹⁰

HCD thus agrees that the City has properly concluded that state law precludes a Section 423 vote under these particular circumstances. In any event, state law plainly precludes any future vote on the issue, as the measures that the City has adopted to implement its housing element are required to be in place until the next planning period.

B. The Housing Accountability Act Precludes the City from Applying Its Outdated Land Use Policies to the Project at Issue in the TRO Application.

The HAA also likely prevents the City from applying its previous land use policies to the project. Under the HAA, the City’s planning staff had 60 days from the submittal of the project application to flag the project for any inconsistency with its local land use policies.¹¹ Failure to notify the applicant of any inconsistency with those land use policies means the project is deemed consistent with those policies.¹² For that reason, any error by the City in determining not to submit its Land Use Element amendment to the electorate cannot prevent this project from going forward, as the City did not timely identify for the applicant an inconsistency between the project and the outdated Land Use Element.

Conclusion

HCD appreciates the opportunity to provide technical assistance to the City in its ongoing efforts to comply with Housing Element Law. As the City is aware, the State of California remains in a housing crisis and the provision of much-needed housing,

⁶ Gov. Code, § 65585, subd. (i)(1)(C). In addition, Housing Element Law makes an adopted housing element’s program actions judicially enforceable. (Gov. Code, § 65587, subd. (c).)

⁷ See Gov. Code, § 65585, subd. (i)(1)(C).

⁸ See Gov. Code, § 65589.5, subds. (d)(6), (f)(6), (h)(11).

⁹ Gov. Code, § 65585, subds. (j), (l), (n).

¹⁰ See Gov. Code, §§ 65755, subd. (a); 65757.

¹¹ Gov. Code, § 65589.5, subd. (j)(2)(A)(ii).

¹² Gov. Code, § 65589.5, subd. (j)(2)(B).

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especially affordable housing, continues to be a priority of the highest order. Local governments must work with each other and the state to ensure that the state's housing needs, a statewide concern, are met.¹³ If you have questions, please contact me at melinda.coy@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
Proactive Housing Accountability Unit Chief

Cc: Aaron Harp, City Attorney
Seimone Jurjis, Assistant City Manager/Community Development Director

¹³ Gov. Code, § 65580, subs. (b)-(d).