

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

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January 10, 2022

Elaine Lister, Director  
Community Development Department  
City of Mission Viejo  
200 Civic Center  
Mission Viejo, CA 92691

Dear Elaine Lister:

**RE: City of Mission Viejo's 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element**

Thank you for submitting the City of Mission Viejo's (City) housing element adopted October 12, 2021 and received for review on October 13, 2021. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Mission Viejo Planning Partnership, Welcoming Neighbors Home Initiative and Kennedy Commission pursuant to Government Code, section 65585, subdivision (c).

The adopted housing element addresses some statutory requirements described in HCD's September 7, 2021 review; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code), as described in the enclosed Appendix.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation, including for lower-income households, shall 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 criterion. 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](http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf) and [http://opr.ca.gov/docs/Final\\_6.26.15.pdf](http://opr.ca.gov/docs/Final_6.26.15.pdf).

HCD is committed to assist 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](mailto:colin.cross@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF MISSION VIEJO

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. Review and Revision**

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)*

The revised element did not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

### **B. Housing Needs, Resources, and Constraints**

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).)*

Outreach: Outreach specifically related to affirmatively furthering fair housing (AFFH) is foundational to a complete analysis and formulating appropriate goals and actions to overcome patterns of segregation and foster more inclusive communities. Despite the many public comments received by HCD, the City appears to have received minimal public input on the housing element or incorporate that input. Further, input does not appear related to AFFH requirements. Moving forward, the City should use a variety of outreach methods (beyond workshops and hearings) to gather input on AFFH requirements. HCD fully encourages the City to make a diligent effort to commenters on this review for example and consider and incorporate comments as part of the AFFH requirement. In addition, the City could consider and tailor outreach from other processes such as a regional analysis of impediments to fair housing choice. Based on this outreach, the element should formulate appropriate programmatic response.

Assessment of Fair Housing: The revised element includes several short paragraphs labeled "Assessment of Fair Housing", but it generally does not adequately address this requirement. The element must analyze fair housing conditions in the jurisdiction with respect to segregation and integration, racially/ethnically concentrated areas of poverty and affluence, access to opportunity, and disproportionate housing needs, including

displacement, as detailed below. The analysis must go beyond mere reporting of data and for example, should consider patterns and trends. Patterns at a local level must address whether areas or neighborhoods differ from other areas or neighborhoods. Patterns at a regional level must compare the City as a whole to the surrounding region. This analysis is particularly important since Mission Viejo appears sharply different from the rest of the region. The analysis should also address any coincidence with other components of the assessment of fair housing and local data and knowledge and other relevant factors as described below. For more information, please visit HCD's Affirmatively Furthering Fair Housing in California website at <https://www.hcd.ca.gov/community-development/affh/index.shtml>. The following are examples of topics that should be addressed as part of this analysis:

- *Enforcement*: The revised element makes note of various outreach efforts the City has undertaken (p. 46), but it must also examine the City's capacity for fair housing enforcement and outreach. This may consist of, but is not limited to, the ability to investigate complaints, obtain remedies, or engage in fair housing testing.
- *Segregation and Integration*: The revised element includes a local map of the percentage of non-white population (p. 49), as well as a brief note stating that there are no patterns of segregation across the City (p. 46). However, this statement does not appear connected to the map which seems to show varying degrees of socio-economic concentrations. Further, this analysis should consider patterns across the region and should describe and analyze patterns of race and ethnicity in greater detail, including trends or relevant factors that may lead to existing patterns. This component of the analysis must also address segregation and integration on the bases of disability, familial status, and income at the local and regional levels.
- *Racially/Ethnically Concentrated Areas of Poverty and Affluence*: The revised element does not address this requirement. The housing element must include an analysis of racially/ethnically concentrated areas of poverty and affluence at the local and regional levels. A full analysis should evaluate patterns and changes over time and consider other relevant factors, such as public participation, past policies, practices, and investments and demographic trends.
- *Disparities in Access to Opportunity*: The revised element includes the TCAC/HCD Opportunity Map (p. 50) and a brief note describing it (p. 46). This is not adequate to satisfy the requirement. A full analysis should examine any patterns in the jurisdiction and should analyze access to opportunity with specific regard for education, economic opportunity, transportation, and environmental justice at the local and regional levels.
- *Disproportionate Housing Needs, Including Displacement*: The revised element does not address this requirement. The housing element must assess disproportionate housing needs on people with protected characteristics and lower-income households. A full analysis should analyze cost burden, overcrowding, substandard housing, homelessness, and displacement risk at the local and regional levels. For Displacement, the City could utilize data and mapping available through the urban Displacement Project at <https://www.urbandisplacement.org/maps/los-angeles-gentrification-and-displacement/>.

- *Local Data and Knowledge*: The element must incorporate local data and knowledge of the jurisdiction into the AFFH section. To assist in meeting this requirement, the element should provide local data not captured in regional, state, or federal data analysis, including information obtained through community participation or consultation.
- *Other Relevant Factors*: The element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element can analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, history of lending practices and demographic trends.
- *Site Inventory*: The element states (p. 81) that sites are geographically distributed in a manner that affirmatively furthers fair housing. This is not adequate to satisfy this requirement. A complete analysis should discuss where sites and the number of units by income group are located, the magnitude of the impact on existing patterns, any isolation of the regional housing needs allocation (RHNA) by income group and whether sites improve or exacerbate fair housing conditions within the jurisdiction. The analysis should address identified sites and AFFH with respect to all components of the assessment of fair housing (e.g., Segregation and Integration, Disparities in Access to Opportunity).
- *Contributing Factors*: The element should re-visit, cull, and prioritize the list of contributing factors to fair housing issues based on the outcomes of a complete analysis. Contributing factors create, contribute to, perpetuate, or increase the severity of fair housing issues and are fundamental to adequate goals and actions. With revisions, the element includes a list of 45 contributing factors to fair housing issues (pp. 47-48). However, these come from a county-wide analysis of impediments and while some may be appropriate, the listing should be tailored and prioritized based on the unique circumstances and conditions in the City. A responsive listing of contributing factors will better connect the assessment of fair housing to appropriate and meaningful goals and actions.
- *Goals, Actions, Metrics and Milestones*: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Current program actions include Program 16, which commits the City to its already existing actions related to fair housing enforcement and outreach; the adopted element did not revise the language of the original program or add new programs. This is not adequate to satisfy the requirement for specific and meaningful actions. Program actions should be proactive, facilitate meaningful change, and respond directly to the contributing factors to fair housing issues that were identified. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results. The element must add, and revise programs based on a complete analysis and connect to prioritized contributing factors to fair housing issues.

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).)*

Extremely Low-Income (ELI) Households: The revised element did not address this finding. Please refer to HCD's September 7, 2021 review for additional information.

3. *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).)*

Realistic Capacity: The revised element assumes 100 percent of maximum allowable densities on residential-only sites and 50 percent of maximum allowable density for overlay sites, occasionally combining these assumptions. However, the element does not adequately support these assumptions based on trends in residential development, land use controls, or other factors. Nor does it explain how the City arrived at these assumptions. Further, an assumption of 100 percent of maximum allowable densities appears to be inconsistent with the samples. For example, Site 2 points to the Shea homes, which are under construction at about 15 units per acre in a zone that allows 30 units per acre. Another project is entitled at approximately 22 units per acre. No connection is drawn between the yield on these sites and the assumptions made in the inventory. The element should include clear supporting information and relate its assumptions to trends and other factors and should adjust its capacity assumptions as appropriate. Please see HCD's prior review for additional information.

Suitability of Nonvacant Sites: The element must analyze the extent to which existing uses may impede additional residential development and include an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development. The element notes that nonvacant sites are "significantly underdeveloped, or failing commercial properties" (p. 88), but the actual analysis of existing uses as an impediment to redevelopment is limited. For example, several sites list a multitude of existing commercial uses, but the element does not examine whether those uses constitute an impediment. Other sites include existing residential uses, but the element does not explain how the City envisions redevelopment taking place. The element should be revised to include a complete analysis as described in HCD's prior review.

Substantial Evidence: The adopted element did not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Replacement Housing: The adopted element did not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Small and Large Sites: Sites 3, 4, 8 and 11 all trigger this requirement; the element acknowledges this but does not address the requirement for further analysis. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Sites Identified in Prior Planning Periods: The revised element includes an expanded Site C and claims that the site was not used in a previous inventory. However, this site triggers the requirements for sites used in previous inventories. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Infrastructure: The element clarifies sufficient access to existing or planned infrastructure for most sites. However, Sites 3 and 11 do not appear to have sufficient access to infrastructure, and the element does not demonstrate planned infrastructure for the sites either. Sites that do not have access to existing or planned infrastructure will not be counted towards the City's RHNA. The element must demonstrate a plan for infrastructure at these sites or adjust the inventory as appropriate. In addition, the element must clarify sufficient total water and sewer capacity (existing and planned) to accommodate the RHNA or include programs if necessary.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element includes some discussion of parking requirements, it generally does not address findings related to capacity and other development standards such as bed limits. Please see HCD's prior review for additional information.

4. *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 adopted element does not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Processing and Permit Procedures: The adopted element does not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Fees and Exactions: The adopted element does not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Housing for Persons with Disabilities: The adopted element does not address HCD's finding regarding group homes for seven or more residents. Please refer to HCD's September 7, 2021 review to meet this statutory requirement. In addition, the amended text regarding reasonable accommodation now indicates that a public hearing is required. A complete analysis should address this requirement as a potential constraint on housing for persons with disabilities, examining the process and its impact on supply, affordability, and other relevant factors. In addition, the element must still analyze findings of approval for a reasonable accommodation as described in HCD's prior review, particularly, since some findings appear to be constraints. Programs should be added or modified as appropriate. Please see HCD's prior review for additional information.

On/Off-site Improvements: The adopted element adds language clarifying the requirements for street width, but it does not provide the other requirements and does not include any analysis. The element should be revised to include analysis and add or modify programs as appropriate.

5. *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 regional housing need 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).)*

Density and Timing: The adopted element does not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

6. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

The adopted housing element does not address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

### **C. 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).)*

The adopted element now includes discrete timelines for many programs. However, Programs 1 (Housing Rehabilitation Program), 7 (Density Bonus Units), and 8 (Accessory Dwelling Units) still require a discrete timeline as described in HCD's September 7, 2021 review. Please note that Program 7 involves coming into compliance with state law, and as such should be completed within one year of the start of the planning period.

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 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. 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 B3, 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, the element should be revised as follows:

City-Owned Sites: Programs 6 (Inventory of Surplus Land) and 9 (Affordable Housing Outreach and Development) were not revised to address HCD's prior findings regarding City-Owned sites. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

Sites Identified in Prior Planning Periods: The adopted element is revised to include a new action under Program 9 (Affordable Housing Outreach and Development) that commits to rezoning requirements regarding sites identified in prior planning periods. Depending on the outcomes of a complete analysis as noted in Finding B3, this Program may necessitate modification in future versions of the housing element.

Emergency Shelters (Parking Requirements): As noted on page 36 of the element, Program 10 (Special Needs Housing) should include specific commitment and discrete implementation dates for amending parking requirements related to emergency shelters.

- 3. The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

The revised Program 9 (Affordable Housing Outreach and Development) is modified to include the words "special needs" for each action step; but it should also clarify and be more explicit about which households are to be targeted or what specific actions are to be taken. The element should also contain additional actions to assist the development of housing for households with special needs (e.g., elderly, persons with disabilities, including developmental, large households). Program actions could include prioritizing some funding for housing developments affordable to special needs households and offering financial incentives or regulatory concessions to encourage the development of housing types, such as multifamily and single-room occupancy.

- 4. 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 B4 and B5, the element requires a complete analysis of potential governmental and non-governmental 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.

5. *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).)*

The adopted element was not revised to address this finding. Please refer to HCD's September 7, 2021 review to meet this statutory requirement.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

The adopted element modifies language for Program 8 (Accessory Dwelling Units) by adding that the City "will consider additional actions such as exploring or pursuing funding options" and monitoring ADUs (p. 62). However, program actions must contain a specific commitment to be implemented by a date certain. For example, the Program should "consider" and establish incentives and should list other incentives to be considered. In addition, the program commits to annually track production and affordability, but it should also commit to implement alternatives within a specified timeframe (e.g., within six months) if assumptions are not realized, including rezoning if necessary.

#### **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).)*

The element does not describe a diligent effort to include all economic segments of the community in the development of the housing element. Moreover, it does not appear that the City conducted any additional outreach for the adopted element. HCD received several comments on this review that do not appear to be considered in the adopted element. HCD also observes that past comments and comments on this review included meaningful policy and program suggestions that could be incorporated into the element. Yet, the adopted element does not reflect this input. For example, there is mention of a potential site that may be suitable for residential development, but there is no consideration of the site in the adopted element. Moving forward, the City should employ additional methods for public outreach efforts, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. For example, the City could conduct

targeted stakeholder interviews or establish a committee representative of lower-income households in future public outreach efforts. The City must proactively make future revisions available to the public, including any commenters, with sufficient time to comment and prior to submitting any revisions to HCD and diligently consider and address comments, including revising the document where appropriate. The City's consideration of public comments must not be limited by HCD's findings in this review letter. The element should summarize future public comments and describe how comments were considered and incorporated into the element.