

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



September 28, 2023

Justin Kirk, Deputy Director  
Development Services Department  
County of Orange  
601 N. Ross St.  
Santa Ana, CA 92701

Dear Justin Kirk:

**RE: County of Orange's 6th Cycle (2021-2029) Revised Draft Housing Element**

Thank you for submitting the County of Orange's (County) revised draft housing element received for review on July 31, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Elizabeth Hansburg of People for Housing OC pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements described in HCD's February 7, 2023 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

Public participation in the development, adoption, and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the County 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.

Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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

Justin Kirk, Deputy Director  
Page 2

Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the County 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 County 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: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the hard work and the County's planning staff provided during the update and review. We are committed to assisting the County in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Reid Miller, of our staff, at [Reid.Miller@hcd.ca.gov](mailto:Reid.Miller@hcd.ca.gov).

Sincerely,

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

Melinda Coy  
Senior Program Manager

Enclosure

## APPENDIX COUNTY OF ORANGE

The following changes are necessary to bring the County'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 <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> 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 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))*

Integration and Segregation: While the element was revised to include adequate analysis of integration and segregation based on race and ethnicity, it must still be revised to provide the same analysis for patterns of integration and segregation based on disability, familial status, and income. As noted in HCD's February 7, 2022 review this analysis must include complete local and regional data on integration and segregation for the unincorporated County and analyze it for both local and regional trends and patterns over time.

Disproportionate Housing Needs: While the element was revised to provide further data on overcrowding, cost burden, housing conditions, and homelessness and provides some general analysis, it must still analyze the data for trends and geographical patterns over time both locally and regionally and provide additional analysis as to the potential causes of these patterns and trends.

Local Data and Knowledge: While the element was revised to include some additional local data for disproportionate housing needs, it largely was not revised to meet this requirement. As stated in HCD's December 27, 2021 review, the element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. Also, 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 and investment practices or other information and demographic trends.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element was revised to provide an analysis of sites in relation race and ethnicity and income, it must provide the same analysis for disability, familial status. In addition, the element

also requires an analysis of the placement of sites in relation to disproportionate housing needs and access to opportunity. The element should discuss whether the distribution of sites improves or exacerbates existing conditions, and if sites do exacerbate conditions, the element should identify further program actions that will be taken to promote equitable quality of life throughout the community (e.g., anti-displacement and place-based community revitalization strategies).

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).)*

Sites Inventory: While the element was revised to provide an estimate of potential development by income on a per parcel basis, there continues to be inconsistencies with a number of tables (e.g., Figures B-13, B-14, and B-20) where the proposed total is inconsistent with the actual sum of the individual unit or acreage subtotals. The County should reevaluate all sites inventory tables to ensure consistency and be sure to include an estimate of size and capacity for each parcel.

Realistic Capacity: While the element was revised to provide examples of recent development using the Housing Opportunity Overlay (HOO) in Table B-2, it appears all the example sites develop at densities consistently lower than the 70 dwelling units per acre the County is assuming (the maximum density the HOO allows). In order to assume this density and apply it to sites in the inventory; the element must provide evidence of specific trends; patterns or other evidence that led to and justify these assumptions. Additionally, the capacity methodology must account for development standards or other factors that could limit the capacity.

Suitability of Nonvacant Sites: The element was not revised to meet this requirement. As stated in HCD's February 7, 2022 and December 27, 2021 reviews, trends and analysis need to support the redevelopment potential of identified sites, and the analysis must demonstrate that the existing uses do not pose an impediment to new housing development within the planning period. The element should use development and market trends in the County and surrounding region, and specifically connect the characteristics of those trends of development to sites in the inventory.

Large Sites: The element did not address this finding, as it does not provide information indicating sites of equivalent size and affordability to those large sites included in the inventory were successfully developed during the prior planning period. Please see HCD's February 7, 2023 review, with particular attention to the suggested framework of analysis for large sites in specific plan areas.

Small Sites: The element was not revised to meet this requirement. Please see HCD's February 7, 2023 review for an outline of the required analysis.

Accessory Dwelling Units (ADUs): While Program 6 (Accessory Dwelling Units) was revised to commit to establishing an ADU monitoring program sooner in the planning period with more frequent monitoring, the element's ADU projections were not revised as requested in HCD's February 7, 2023 review, nor has adequate additional analysis

or support for these projections been included. the element should be revised to reduce the number of ADUs to accommodate the County's Regional Housing Needs Allocation (RHNA).

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the County must submit an electronic sites inventory with its adopted housing element. The County must utilize standards, forms, and definitions adopted by HCD.

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

Local Processing and Permit Procedures: While the element has been revised to provide a general analysis of the approval process and procedures, it must still include typical findings for each type of permit, as well as any discretionary approval procedures and findings for single-family and multifamily development. Programs to address potential constraints may need to be revised based on this completed analysis.

Constraints on Housing for Persons with Disabilities: While the element has been revised to address how non-licensed group home facilities that serve seven or more residences is permitted, its conclusion that requiring a use permit for group homes with seven or more residents is not a constraint because no group home facilities of seven or more have been denied thorough the use permit process is erroneous. As stated in HCD's February 7, 2023 review, Zoning and standards should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations. Zoning code regulations that isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors pose a constraint on housing choice for persons with disabilities, and program actions should be added to the element to remove this use permit requirement.

4. *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).)*

While the element has been revised to provide an analysis of a number of factors that play a role in the length of time between receiving approval for a housing development and submittal of an application for building permits, it must provide a specific time frame for both single and multifamily developments.

## **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).)*

While the element revised a number of programs and added additional actions based on newly provided data and analysis, it largely was not revised to meet the requirements of this finding. Please see HCD's February 7, 2023 review.

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 A2, 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 County 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:

Program 1 (Provide Adequate Sites and Monitor for No Net Loss): While HCD understands the County adopted new zoning to meet some requirements in Program 1 to increase

allowed density in the HOO, it must provide information that those rezonings meet the requirements in Government Code section 65583.2, sub. (h) and (i). Specifically, information is necessary to determine compliance with the following provisions:

- permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a conditional use permit, planned unit development permit, or other discretionary review or approval.
- accommodate a minimum of 16 units per site;
- require a minimum density of 20 units per acre; and
- at least 50 percent of the lower-income need must be accommodated on sites designated for residential use only or on sites zoned for mixed uses that accommodate all the very low and low-income housing need, if those sites:
  - allow 100 percent residential use, and
  - require residential use occupy 50 percent of the total floor area of a mixed-use project.

In addition, please be aware, the recent California appellate decision in *Martinez v. City of Clovis*<sup>1</sup> found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The County should analyze how this decision may impact its current rezone strategy using the HOO and may need to adjust accordingly.

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 A3 and A4, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the County may need to revise or add programs and address and remove or mitigate any identified constraints.

4. Promote and AFFH 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).)

As noted in Finding A1, the element requires a complete AFFH analysis. The element must be revised to add goals and actions based on the outcomes of a complete analysis.

---

<sup>1</sup> *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64