

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

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December 21, 2021

Cheryl Kuta, Director
Development Services Department
City of Rancho Santa Margarita
22112 El Paseo
Rancho Santa Margarita, CA 92688

Dear Cheryl Kuta:

RE: City of Rancho Santa Margarita 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Rancho Santa Margarita (City) draft housing element received for review on October 22, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on December 15, 2021 with Wendy Starks, Principal Planner and consultant, Amanda Tropiano. In addition, HCD considered comments from the Welcoming Neighbors Home Initiative; People for Housing; YIMBY Law; and Carol Wheeler pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; 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.

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 (RHNA), 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).

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

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 meets 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 appreciates the diligent work of Amanda Tropiano during our review. We are committed to assist the City of Rancho Santa Margarita in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Tristan Lanza, of our staff, at tristan.lanza@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 Housing Accountability Manager

Enclosure

**APPENDIX
CITY OF RANCHO SANTA MARGARITA**

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).)

As part of the review of programs in the past cycle (Table H-2, page HEBR-9), the element must provide an evaluation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness).

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))*

Enforcement and Outreach: The element must describe capacity to provide enforcement and outreach which can consist of actions such as the ability to investigate complaints, obtain remedies, or engage in fair housing testing. The element currently describes services provided by the Orange County Analysis of Impediments to Fair Housing Choice (County AI) but should also describe the number and characteristics of housing discrimination complaints. The analysis could also evaluate data and the results from any fair housing testing. In addition, the analysis must address compliance with existing fair housing laws as well as any past or current fair housing lawsuits, findings, settlements, judgements, or complaints.

Integration and Segregation: The element includes a discussion of the dissimilarity index to analyze racial diversity, and some information related to income, disabilities, and familiar status. However, the element must discuss and analyze this data for

trends over time and patterns across census tracts. Additionally, it must evaluate patterns at a regional basis, comparing the City to the region.

Racial/Ethnic Areas of Concentration of Poverty (R/ECAP): The analysis should evaluate the patterns and changes over time and consider other relevant factors, such as public participation, past policies, practices, and investments and demographic trends. Per the analysis the City does not have areas of concentrated poverty but does have areas of affluence. The analysis should compare areas of affluence to the rest of the region.

Access to Opportunity: While the element contains some general information on access to opportunity from the Orange County Analysis of Impediments to Fair Housing Choice in 2020, it must provide local and regional analysis of trends and patterns for opportunities as it pertains to educational, employment, environmental, transportation. A complete analysis should include an analysis of local and regional disparities of educational, environmental, transportation, and economic opportunities through local, federal, and/or state data, and any factors that are unique to Rancho Santa Margarita. Please refer to page 35 of the Affirmatively Furthering Fair Housing (AFFH) guidebook (link: <https://www.hcd.ca.gov/community-development/affh/index.shtml#guidance>) for specific factors that should be considered when analyzing access to opportunities.

Disproportionate Housing Needs, Including Displacement: The analysis did not address overcrowding, substandard housing and homeless. The analysis must compare the City to the broader region and the sub-geographies within the City.

Sites Inventory and AFFH: While the element includes a discussion of the sites comparing the sites to the four components of the assessment of fair housing (segregation and integration, RECAP, access to opportunity, and displacement risk), it must include an analysis demonstrating whether sites identified to meet the regional housing needs allocation (RHNA) are distributed throughout the community in a manner that AFFH and whether the location of sites improve or exasperate conditions. If sites 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). For example, the element should address the concentration of lower-income housing need in Census Tract 320.53 (Business Park) which, according to Page HEBR-147 currently lack access to transportation, services, and other opportunities. The element could discuss programs actions to improve access to opportunities as part of this analysis.

- 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).)*

The City has a RHNA of 680 housing units, of which 329 are for lower-income households. To address this need, the element relies on vacant and nonvacant sites, including sites in Specific Plan Areas and within the Workforce Housing Overlay area.

To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include a complete analysis as follows:

Sites Identified in Prior Planning Periods: Sites identified in prior planning periods shall not be deemed adequate to accommodate the housing needs for lower-income households unless a program, meeting statutory requirements, rezones sites to permit housing development by right pursuant to statutory requirements. The element must clarify if sites used to accommodate the housing need for lower income households were previously identified in prior planning periods and include programs as appropriate.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Nonvacant Sites: While the element identifies nonvacant sites to accommodate the regional housing need for lower-income households, it provides no description the potential for redevelopment. HCD received third party comments that many of the nonvacant sites listed may not be available during the planning period because the current use (industrial) is expected to remain. The element must describe the methodology used to determine the additional development potential within the planning period. The methodology must consider factors including the extent to which existing uses may impede additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).) The inventory could also describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment.

In addition, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the housing element must demonstrate that the existing use is not an impediment to additional residential development in the planning period (Gov. Code, § 65583.2, subd. (g)(2).). Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Infrastructure: While the element describes water and sewer infrastructure capacity (pg. HEBR 84), it must also demonstrate sufficient existing or planned dry utilities supply capacity, including the availability and access to distribution facilities to accommodate the City's regional housing need for the planning period. (Gov. Code, § 65583.2, subd. (b).).

Small Site: The element (Appendix A, pg. A-10) identifies one small site (site 6) with a US Bank as existing use to accommodate housing for low-income households. However, sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size were developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing. For parcels anticipated to develop individually, the element must describe existing and proposed policies or incentives the City will offer to facilitate development of small sites. As a result, if utilizing this site toward the housing need for lower-income households, the element must include analysis and programs as appropriate. (Gov. Code, § 65583.2, subd. (c)(2)(A).).

Large Sites: The element (Appendix. A) contains multiple sites (site 2 and 3) larger than ten acres in size. While the element includes a letter from the property owner expressing a desire to develop workforce housing at this location, sites greater than ten acres are not eligible absent a demonstration that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless other evidence is provided. For example, the element can include programs or policies with incentives to include expedited or automatic approval of lot splits or creation of new parcels, waivers of fees associated with subdivision, or expedited processing or financial assistance with the development of infrastructure required to develop the site and information that can demonstrate the feasibility of the site for development. (Gov. Code, § 65583.2, subd. (c)(2)(A).). If utilizing these sites toward the housing need for lower-income households, the element must include analysis and programs as appropriate.

Sites with Zoning for a Variety of Housing Types:

- *Emergency Shelters:* Emergency Shelters parking requirements should be updated pursuant to AB 139 (Chapter 335, Statutes of 2019) which requires only sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
- *Accessory Dwelling Units (ADU):* After a cursory review of the City's ordinance, HCD discovered several areas which were not consistent with State ADU Law. For example, the ordinance's limits height and setback requirements inconsistent with state law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should add a program to update the City's ADU ordinance to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state requirements surrounding ADU development.

In addition, the element on Table H-43, page HEBR-56 state junior accessory dwelling units (JADU's) are not permitted in the RH zone, but ADU's are allowed. Then page HEBR-58 states ADU's and JADU's are permitted on any lot in the City zoned to allow single-family or multifamily uses and that includes a proposed or existing legally developed single-family dwelling. The element must be revised as

appropriate to clarify that ADU's and JADU's are allowed in single-family and multifamily residential zones.

- 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.*

Land-Use Controls: The element must identify and analyze all impacts of relevant land-use controls for potential constraints on the cost, supply, timing, and certainty of housing. Specifically, the element must analyze the height requirement in the RM and RH zones of 35 feet and 2 stories for multifamily (Table H-45, page HEBR-64) as potential constraints on housing supply, affordability, and ability to achieve maximum allowable densities. Based on the outcomes of this analysis, the element should include a program to address and remove or mitigate identified constraints on housing.

Parking Requirements: The element must analyze parking requirements for potential constraints on development. Specifically, the element should analyze the Conditional Use Permit (CUP) parking requirement for senior apartments (Table H-47, page HEBR-66) and its requirements for one bedroom and three-bedroom units for its impact as a potential constraint on housing.

Fees and Exactions: While the element describes required fees for single family and multifamily housing development, it should also identify the total amount of fees and their proportion to the development costs for both single-family and multifamily housing.

Zoning, Development Standards and Fees: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City's website and add a program to address these requirements, if necessary.

Local Processing and Permit Procedures: The element must describe and analyze the City's permit processing and approval procedures for single-family and multifamily developments. The analysis must evaluate the processing and permit procedures' impacts as potential constraints on housing supply and affordability. For example, the analysis should consider processing and approval procedures and time for typical single- and multi-family developments, including type of permit, level of review, approval findings and any discretionary approval procedures.

In addition, the element states on page HEBR-57 that multifamily is permitted by-right in the RM and RH zones, however it also states that multifamily projects are subject to review through the Site Development permit or CUP process. The element should clarify this discrepancy. If a CUP is required for multifamily the element must analyze the CUP process as a potential constraint on housing supply and affordability. The analysis should identify findings of approval for the CUP and their potential impact on development approval certainty, timing, and cost. The element must demonstrate this

process is not a constraint or it must include a program to address and remove or mitigate the CUP requirement.

Housing for Persons with Disabilities: While the element (HEBR-60) identifies that the reasonable accommodation ordinance states residential care facilities serving seven or more persons are subject to a CUP, it must describe and analyze how they are approved including any approved findings. The element should analyze the process for potential constraints on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes for seven or more persons objectively with approval certainty. In addition, the element should identify and analyze any definition of family. The element must include programs as appropriate based on the outcomes of a complete analysis.

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).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines (Month, Year), and quantified objectives where appropriate. Programs needing revision include Program 6 (Homeless Services), Program 7 (Code Enforcement) and Program 9 (First Time Homebuyer Assistance).

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 B2, 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:

Rezone Program for Adequate Sites: The element appears to rely on rezoning of sites (Table A-1) to accommodate the regional housing need for lower-income households, however the element must include a program to identify sites with appropriate zoning to accommodate the regional housing need within the planning period. The program must commit to rezone to the following standards:

- 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 of 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.
- 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 CUP, planned unit development permit, or other discretionary review or approval.

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 element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-, very low-, low-, and moderate-income households. The program(s) could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to lower and moderate-income households; assisting, supporting, or pursuing funding applications; and outreach and coordination with affordable housing developers.

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 Finding(s) B3 and B4, the element requires a complete analysis of potential governmental and nongovernmental 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).)

As noted in Finding B1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. In addition, Goals and actions must go beyond status quo actions and specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics, and milestones as appropriate and must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection.

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).)*

Program 3 (Accessory Dwelling Units) should be revised to include a timeline resulting in beneficial impacts within the planning period.

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element provided an estimate of the number of anticipated new construction units objectives by income level, it must also include rehabilitation objectives over the planning period.

E. 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).)

While the element (Appendix B) includes a general summary of the public participation process including survey results and public comments, the element must demonstrate diligent efforts were made to involve all economic segments of the community in the

development of the housing element. The element should be revised to discuss strategies to outreach to lower-income and special needs groups during the public participation process.

In addition, HCD understands the City made the element available to the public concurrent with its submittal to HCD. By not providing an adequate opportunity for the public to review and comment on a draft of the element in advance of submission, the City has not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD's ability to consider public comments in its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD's review. The City must proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.

F. Consistency with General Plan

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

The housing element affects a locality's policies for growth and residential land uses. The goals, policies and objectives of an updated housing element may conflict with those of the land-use, circulation, open space elements as well as zoning and redevelopment plans. The general plan is required to be "internally consistent." As part of the housing element update, the City should review the general plan to ensure internal consistency is maintained and add or revise programs which comply with the statutory requirements. In addition, the City should consider an internal consistency review as part of its annual general plan implementation report required under Government Code section 65400.