

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

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April 14, 2023

Tom Kisela, City Manager
City of Orange
300 E. Chapman Ave.
Orange, CA 92866

Dear Tom Kisela:

RE: City of Orange 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Orange's (City) housing element, which was adopted February 14, 2023, and received for review on February 15, 2023. HCD also received supplemental correspondence from the City on March 22, 2023 and April 12, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD's review was facilitated by telephone conversations with you; Susan Galvan, Assistant City Manager; Russell Bunim, Community Development Director; Anna Pehoushek, Asst. Community Development Director; Chad Ortlieb, Principal Planner; Mary Binning, City Attorney; Diana Varat, Consulting Attorney; and Nick Chen and Ines Galmiche, Consultants. In addition, HCD considered comments from Loeb & Loeb LLP, Californians for Homeownership, People for Housing, and a member of the community pursuant to Government Code section 65585, subdivision (c).

As you know, HCD's January 27, 2023 review found the City of Orange's subsequent draft housing element would meet statutory requirements to be found in compliance with State Housing Element Law (Article 10.6 of the Gov. Code, § 65580 et seq.). HCD's finding was based on, among other reasons, the City's analysis on the identification of adequate sites to accommodate the City's Regional Housing Needs Allocation (RHNA) including nonvacant sites that have the potential to redevelop within the planning period. HCD has since received multiple public comments challenging the adequacy of the nonvacant sites in the inventory to accommodate residential development within the planning period. HCD provided the City of Orange an opportunity to respond to the public comments, and after careful review, HCD finds that additional information and analyses are necessary to substantially comply with State Housing Element Law as follows:

1. *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 or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city's or county's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, 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, 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)(1).)¹

...when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. (Gov. Code, § 65583.2, subd. (g)(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).)

¹ The recent *Martinez v. City of Clovis* decision does not impact this finding by HCD. *Martinez* indicates that a city or county need not include the analysis required under section 65583.2, subsection (g), *within its housing element*. It does not prevent HCD from requesting additional information and analysis (including under subsection (g)), especially in the circumstances presented here. (See *Martinez v. City of Clovis* (2023) 2023 WL 2820092, *20-*23.)

Nonvacant Sites: Public comments received as part of this review provided evidence that some sites identified in the inventory were subject to recorded covenants, reciprocal easement agreements, leases, or other declarations that could impede the development of residential development in the planning period. For example, some declarations require that parcels may not be used for housing or have expiration timeframes well after the end of the planning period (2029). While the housing element generally mentions that leases on infill and nonvacant properties present a potential impediment, and that the City informed property owners that sites were listed in the inventory (page 3-59), specific information was not included on the extent to which these recorded declarations could impede new residential development. The City must consider the potential impediment to residential development within the planning period from the information relating to recorded documents provided by public comments on the City Town Center, Orange Town and Country, and Stadium Promenade shopping centers. The City could include the information provided in the March 22, 2023 and April 12, 2023 letters and relate that information to identified sites, provide information related to conversations with owners demonstrating interest in redevelopment, and/or provide information from developers demonstrating the feasibility of modifying these agreements. Depending on that analysis, the City may need to amend the housing element to revise the potential capacity within the planning period, provide an additional buffer of sites to account for the constraint, and/or include strong programmatic commitments to facilitate housing development on these sites within the planning period. This could include outreach to the owners, expediting approval of housing plans, or other mechanisms to facilitate and actualize housing development, especially housing to meet the lower-income housing need on these sites.

In addition, the element notes that as part of the methodology for site selection, the City notified property owners of inclusion on the list as noted in the March 28, 2023 correspondence, no objections were expressed by property owners at that time. However, subsequent information provided to HCD from owners and additional information that is part of the public record show that the Orange County Classical Academy, the Ayres Hotel, and the Orange County Sheriff Training Facility may have uses that are likely to continue during the planning period. The City should either provide additional analysis demonstrating that these uses are likely to discontinue in the planning period or remove these sites from the inventory.

Programs: As noted above, additional information and analyses are required before HCD can find that the element includes a complete site analysis. Therefore, the adequacy of sites and zoning have not been 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.

HCD believes that the element will likely meet the statutory requirements of State Housing Element Law once the City has complied with the above requirements.

Public participation in the development, adoption, and implementation of the housing element is essential to effective housing planning. As the City address the findings described herein, it must 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 City's website and a link to the revisions must be emailed to all individuals and organizations that have previously requested notices relating to the City'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 1 Sustainable Communities grant, the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities program, 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.

HCD appreciates the effort and dedication the City's staff provided throughout the course of this housing element review. HCD recognizes the City's cooperation and intent to attain a compliant housing element. HCD is committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact me at Melinda.Coy@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
Proactive Housing Accountability Chief