

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

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Planning Dept.

March 22, 2022

Richard Mollica, Director
Planning Department
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265-4861

Dear Richard Mollica:

RE: City of Malibu's 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Malibu's (City) housing element adopted on January 10, 2022 and received for review on January 21, 2022. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted element addresses some statutory requirements described in HCD's October 10, 2022 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.

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.

The City's statutory deadline to adopt a housing element was October 15, 2021. 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 this statutory deadline, 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 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 and http://opr.ca.gov/docs/Final_6.26.15.pdf.

HCD appreciates the cooperation during the housing element update. We are committed to assisting Malibu in addressing all statutory requirements of Housing Element Law. If you have any questions or need additional technical assistance, please contact Fidel Herrera at fidel.herrera@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF MALIBU

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 noted in the prior HCD review, the element must include a program-by-program review including a comparison of prior objectives versus actual results, evaluation of effectiveness of past actions and how programs will be revised as appropriate to reflect the past program efforts. In response, the element now concludes whether programs are appropriate to continue but still must evaluate actual results (e.g., number of units) and the effectiveness in achieving program goals. Further, the element was not revised to the cumulative 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). Based on the outcomes of this analysis, the element should add or modify programs. Please see HCD's prior review for additional information.

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).)*

Fair Housing Enforcement and Outreach: The element provides a brief discussion of community outreach commitments in the future, but generally does not address affirmatively furthering fair housing (AFFH) requirements. The element must include the City's ability to provide enforcement and outreach capacity which can consist of actions such as the City's ability to investigate complaints, obtain remedies, or the City's ability to engage in fair housing testing. The element should also discuss compliance with existing fair housing laws.

Integration and Segregation: The analysis must address areas of ongoing and concentrated segregation and integration and compare concentrations of protected characteristics and incomes at both a regional and local level. The analysis should consist of comparisons using data tables or maps. To compare, the analysis should discuss the degrees of segregation and integration for protected characteristics and incomes. The analysis must discuss levels of segregation and integration for race and ethnicity, income, familial status, persons with disabilities, and identify the groups that experience the highest levels of segregation.

Disparities in Access to Opportunity: The housing element must identify and analyze significant disparities in access to opportunity. While the analysis can consider indices of various access to opportunity variables, it must also independently address access to opportunity variables. For example, the analysis should include disparities in access to opportunity based on income status (e.g., high, moderate, low), and must also individually address access to opportunity transportation. The element must also compare patterns and trends to the surrounding region. In addition, an analysis of disparities in access to opportunity must specifically address the housing and community development needs of persons with disabilities.

Disproportionate Housing Needs including Displacement Risk: The housing element must include an assessment of disproportionate housing needs, including displacement risk, on people with protected characteristics and households with low incomes. This analysis is important to understand how some groups of persons experience severe housing needs when compared to other populations within a local level and when compared to a region. The analysis must address cost burden and severe cost burden, overcrowding, substandard housing, and homelessness.

Local Data and Knowledge, and Other Relevant Factors: The element generally does not address these requirements. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. 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 includes some general information on lending and hate crimes, but it must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element should analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Sites Inventory: While the element notes the City is entirely an area consider high resource, it should still evaluate the number of units by income group, location, magnitude of impact on existing patterns, any isolation of the regional housing needs allocation (RHNA) by income group and conclude whether the inventory is improving or exacerbating patterns of segregation or integration. This analysis should address all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity, disproportionate housing need).

Contributing Factors to Fair Housing Issues: The element should re-assess and prioritize contributing factors upon completion of analysis and make revisions as appropriate. In addition, while the element now prioritizes contributing factors, it should consider a more focused list to guide appropriate policies and programs.

Goals, Actions, Metrics, and Milestones: The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must 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.

For more information, please contact HCD and visit <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

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: While the element considers tenure and rates of overcrowding and overpayment, the element did not expand the analysis of their housing needs. The analysis should assess the kind of housing available and suitable for ELI households (including supportive housing and single-room occupancy units). ELI households may require specific housing solutions such as deeper income targeting for subsidies, housing with supportive services, single-room occupancy and/or shared housing and rent subsidies (housing vouchers).

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).)*

Sites Inventory: As noted on the previous review sites identified for housing for above moderate-income in areas not served by public sewer systems are not required to be identified on a site-specific basis. The element states (p. B-1) that a listing of vacant parcels intended to accommodate above moderate-income households is available on file with the Planning Department and clarifies that single family sites are not served by a public sewer system; however, it should also include general information such as typical acreages and zoning. Otherwise, the element should inventory these sites on a site-specific basis according to statutory requirements.

Realistic Capacity: The element clarifies that the Affordable Housing Overlay (AHO) requires a minimum density of 20 units per acre. However, the inventory does not appear to utilize this assumption. In addition, the element was not revised to address residential capacity assumptions for moderate-income sites. Finally, the element notes two sites in the affordable housing overlay (AHO) zone do not allow nonresidential use; however the element on page B-1 states that one site at La Paz Lane has a base zoning designation of Community Commercial. The element should clarify if the site at La Paz Lane allows 100 percent nonresidential and if so, account for the likelihood of 100 percent nonresidential development. Please see HCD's prior review for additional information.

Environmental Constraints: The element now states all properties face development challenges due to environmental constraints and the calculation of residential capacity accounts for these constraints. In addition, the element should evaluate whether any of these environmental or other known conditions preclude housing development on identified sites.

Infrastructure: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Electronic Site Inventory: As noted in the prior review, pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory and submit an electronic version of the sites inventory. While the City has submitted an electronic version of the sites inventory, if changes occur, any future re-adopted versions of the element must also submit the electronic version of the sites inventory.

Zoning for a Variety of Housing Types (Emergency Shelters): The element now describes available acreage for emergency shelters and lists development standards but should evaluate these standards. The evaluation should specifically address proximity to transportation provisions for impacts on capacity to accommodate emergency shelters.

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 element was not revised to address this finding. Please see HCD's prior review for additional information.

On-Off-Site Improvements: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Processing and Permit Procedures: While the element clarifies that the concurrent review also includes coastal engineer, environmental health administrator, Geotech engineer and public works review, as mentioned on the previous review the element should list and analyze approval findings for impacts on timing, cost, supply and approval certainty. The element must demonstrate this process is not a constraint or it must include a program to address this permitting requirement, as appropriate.

Housing for Persons with Disabilities: While the element includes a definition of family, as noted on the previous review the element excludes group homes for seven or more persons from all residential zones; a significant barrier to housing for persons with disabilities. The element should include a program to allow these housing types objectively with approval certainty in all residential zones. In addition, the element states reasonable accommodation requests are reviewed for a material effect on surrounding properties and make refer applications to the Planning Commission. The element must analyze this decision-making criterion as a constraint and add or modify programs to address and remove or mitigate the constraint.

5. *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).)*

Special Housing Needs: While additional information was included for seniors the element should also analyze the special housing needs of other special needs populations such as for large households and female headed households. As noted on the previous review, for a complete analysis of each population group, the element should discuss characteristics and challenges faced by the population, the existing resources to meet those needs (availability senior housing units, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

Persons with Developmental Disabilities: The element was not revised to address this finding. The element was only revised to include a statement that says, "According to SCAG, the number of persons living in Malibu with developmental disabilities is not available." Please see HCD's prior review for additional information.

Farmworkers: The element was not revised to address this finding. Please see HCD's prior review for additional information.

C. Housing Programs

1. *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 contain a complete sites inventory and analysis. 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 now identifies sites from prior planning periods to accommodate the housing needs of lower-income household and, as a result, it must include a program to facilitate development. The program must be implemented within the first one or three years of the planning period and commit to zoning that will meet the density requirements for housing for lower-income households and allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower-income households (Gov. Code, § 65583.2, subd. (c).).

2. *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 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 to address and remove or mitigate any identified constraints.

3. *Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action. (Gov. Code, § 65583, subd. (c)(4).)*

As noted in Finding A, the element must include a complete analysis of prior programs. Based on the outcomes of that analysis, the element may need to add or modify programs to conserve and improve the condition of the existing housing stock. In addition:

Program 1.2 (Rebuilding Assistance): The element was not revised to address this finding. Please see HCD's prior review for additional information.

Program 1.3 (Housing Rehabilitation Assistance): The element was not revised to address this finding. Please see HCD's prior review for additional information.

4. *Promote 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 B1, the element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must 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. While Program 3.1 was revised to include additional information on fair housing outreach, education and counseling on housing discrimination complaints, the element should revise other program actions to address the City's obligation to AFFH including how programs address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection. As noted in the prior review actions must have specific commitment, metrics, and milestones as appropriate.

5. *Develop a plan that incentivizes and promotes the creation of ADUs 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).)*

As noted on the prior review. Program 2.2 A (Expand the Supply of Accessory Dwelling Units(ADU's)) should include additional actions to promote ADU's such as proactive marketing. In addition, the Program should go beyond "evaluate mechanisms" to provide financial assistance such as applying for funding. All actions must have discrete timelines (e.g., annually).

D. Public Participation

Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)

While the element includes a general summary of the public participation process (Appendix C) including a summary of the comments received, it generally does not appear to incorporate comments into the element. In addition, as noted on the previous review the City should employ additional methods for public outreach efforts in the future, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. Please see HCD's prior review for examples and additional information.