

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

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December 3, 2021

Kelvin Parker, Director
Community Development Department
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362

Dear Kelvin Parker:

RE: City of Thousand Oaks' 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Thousand Oaks' (City) draft housing element received for review on October 27, 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 2, 2021, with you, planning staff Lain Holt, Kari Finley, Krystin Rice, Lynn Oshita, and consultants Veronica Tam, Alexis Bueno, and Matthew Raimi. In addition, HCD considered comments from Cohen Land Use Law on behalf of their client, Kennedy Wilson 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 these, and other 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 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 Molivann Phlong, of our staff, at molivann.phlong@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF THOUSAND OAKS

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. 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).)*

Disproportionate Housing Needs: The element (p. D-1) includes some data on disproportionate housing needs. However, the housing element must analyze and address disproportionate housing needs for persons experiencing homelessness with local and regional data, evaluate spatial patterns and trends and summarize fair housing issues.

Sites and Affirmatively Furthering Fair Housing (AFFH): The element states most sites are located in tracts that are also identified as having patterns of segregation (a concentration of minorities, especially Hispanics, persons with disabilities, low and moderate-income households, housing choice voucher use), lower access to opportunities, and disproportionate housing needs. The element includes some general discussion of these sites in relationship to sites identified for lower-income households in comparison to above-moderate income and generally concludes units were distributed in efforts to promote mixed-income development as well as access to housing opportunities for lower-income households in areas with high resources. However, the element must include further analysis to support these conclusions. This analysis could include the number of units per site by income group for each of the AFFH categories relative to the existing patterns (number of households), impacts on patterns of disproportionate housing needs (e.g., overpayment, overcrowding, displacement) and expanding on the reasoning for this concentration of sites. Further, if the inventory continues to concentrate the regional housing needs allocation (RHNA) in lower-resourced area, the element must have commensurate programs with place-based strategies for community revitalization and new opportunities in higher opportunity areas (beyond RHNA) to result in an equitable quality of life and AFFH throughout the City.

Goals, Priorities, Metrics, and Milestones: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Currently, the element

identifies (p. 82) Program 15: Housing Mobility to encourage and promote affordable housing; however, the element must analyze the goals and actions regarding housing mobility and mobility enhancement. This should include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

The element could focus on programs that enhance housing mobility and encourage development of more housing choices and affordable housing throughout the community. Programs must be significant and meaningful and based on prioritized contributing factors. The element must add, and revise programs based on a complete analysis and listing and prioritization of contributing factors to fair housing issues. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results. For more information, please see HCD's guidance at <https://www.hcd.ca.gov/community-development/affh/index.shtml#guidance>.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

The element identifies the age of the housing stock (p. 15). However, it must include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations.

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).)*

"Pipeline" Projects: The element identifies a number of units in the pipeline on page C-2 of the element. The element should indicate what remaining approvals are necessary for these projects, expected timing for those approvals and demonstrate their availability in the planning period.

Sites Inventory: While the element lists sites by various factors (p. C-9), it must also list sites by zoning and general plan designation.

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. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

Realistic Capacity: The element appears to assume residential development on sites with zoning that allows 100 percent nonresidential uses, but to support this assumption, the element must analyze the likelihood of residential development and account for the potential occurrence of 100 percent nonresidential uses. To demonstrate the likelihood for residential development in nonresidential zones, the element could describe any performance standards mandating a specified portion of residential and any factors increasing the potential for residential development such as incentives for residential use, and residential development trends in the same nonresidential zoning districts.

Small Sites: The element (p. C-34) contains small sites. 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 and affordability were successfully developed during the prior planning period or present other evidence to demonstrate these sites are adequate to accommodate housing for lower-income households. (Gov. Code, § 65583.2, subd. (c)(2)(A).) For additional information, see the *Building Blocks* at <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>.

Nonvacant Sites: The element (p. C-4) includes housing sites on nonvacant land. The element must include an analysis demonstrating the potential for redevelopment of nonvacant sites. The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. In addition, the element must analyze the extent that existing uses may impede additional residential development. For example, the element should provide additional information on the potential residential development on the mall site. The element can summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. The element could also consider indicators such as expressed developer interest, and other factors.

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).) This can be demonstrated by providing substantial evidence that the existing use is likely to be discontinued during the planning period (Gov. Code, § 65583.2, subd. (g)(2).

Zoning for a Variety of Housing Types:

- Emergency Shelters: The element (p. 49) states that emergency shelters are permitted by right in the Rancho Conejo Industrial Park Specific Plan. However, the element must demonstrate the area still has sufficient capacity

to accommodate the identified housing need for emergency shelters. For example, identifying the number of parcels, typical parcels sizes, whether the sites are nonvacant, and the potential capacity for adaptive reuse.

- Accessory Dwelling Units (ADUs): After a cursory review of the City's ADU ordinance, HCD discovered several areas which were not consistent with State ADU Law. This includes, but is not limited to, setbacks and height limitations. In addition, ADUs need to be allowed in any zones that allow residential use. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should modify Program 3: Accessory Dwelling Units (ADUs) to update the City's ADU ordinance and related ordinances to comply with state law. HCD will provide additional information under separate cover.
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).)*

Development Standards: The housing element (p. 46) contains development standards by zoning districts. However, the housing element must identify and further analyze all relevant development standards impacts as potential constraints on a variety of housing types (e.g., multifamily rental housing). This includes, but is not limited to, maximum building heights, setbacks, required parking spaces, Residential Planned Development Permits for multifamily housing in a multifamily zone, and Hillside Development Permits for multifamily housing in the Hillside Planned Development Zones. The analysis must also evaluate the cumulative impacts of development standards on the cost and supply of housing, including the ability to achieve maximum densities, cost, and supply of housing, promoting certainty, and transparency. The analysis should also describe how new development standard will be modified to remove constraints. While HCD recognizes that zoning has not yet been created to implement new mixed-use zones, the element should generally describe and commit to expectations for development standards in these zones. For example, will 100 percent residential projects be allowed or will a commercial component be required for new multifamily development.

Local Processing and Permit Procedures: While the element generally describes the types of permitting procedures, it must analyze these procedures as potential constraints on housing supply, cost, timing, and approval certainty. Specifically, the element should describe and analyze typical findings and approval procedures for the Residential Development Permit and design review requirements. The analysis should address typical procedures for multifamily developments, including level of review, approval findings and any discretionary approval procedures. The element

could also reflect anticipated policies and programs under the general plan update and zoning code in the housing element programs.

Housing for Persons with Disabilities : The element currently details that residential care facilities serving six or fewer persons are permitted in all residential zones. However, residential care facilities serving seven or more persons are limited with the approval of a conditional use permit (CUP). The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty.

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).)*

While the element (p. 22) quantifies the City's special needs populations, it must also analyze their special housing needs. Analysis should address challenges faced by the population, the existing resources to meet those needs (availability senior housing units, # of large units, # of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

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).)*

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. The element must provide quantified objectives where appropriate and discrete timing for all programs (e.g., month and year) to account for how often the action will occur as well as to ensure a beneficial impact throughout 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 A3, 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:

Shortfall of Adequate Sites: Currently the element identifies a shortfall of adequate sites to accommodate the RHNA within the planning period. In order to provide sufficient sites to accommodate the RHNA, Program 1 (Adequate Sites for RHNA and Monitoring of No Net Loss) and Program 2 (By-Right Approval of Projects with 20 Percent Affordable Units) commit to, among other things, creating several new land use designations with the potential to accommodate lower and moderate-income housing. However, in order to accommodate the lower-income need, programs must specifically commit to acreage, allowable densities and anticipated units. In addition, if necessary, to accommodate the housing needs of lower-income households, the program should specifically commit to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i). For example, the program is missing the requirement that 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.

In addition, while the program states that development will be allowed “by-right” but does not define the term. Government Code section 65583.2 (i) defines by-right as local government review must not require a CUP, planned unit development permit, or other discretionary review or approval. Finally, programs must have specific timing and commitments to adopted both the general plan and zoning.

Replacement Housing Requirements: The housing element must include a program to provide replacement housing. Nonvacant sites identified in the sites inventory with existing, vacated, or demolished residential uses and occupied by, or subject to an affordability requirement for, lower-income households within the last five years, require a replacement housing program for units affordable to lower-income households. (Gov. Code, § 65583.2, subd. (g)(3).) Absent a replacement housing program, these sites are not adequate sites to accommodate lower-income households. The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c)(3).

Programs to Facilitate Redevelopment of Nonvacant Sites: The element must include a program with specific actions and timelines to assist in the development of housing identified in the sites inventory specifically the mall site and sites that are expected to be redeveloped. 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 working with housing developers coordinate and implement a strategy for developing housing affordable to lower- and moderate-income households.

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 lower-income households, including extremely low-income (ELI) and special needs 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 ELI and special needs households; proactive outreach and assistance to non-profit service providers and developers; prioritizing some funding for housing developments with ELI and special needs households; assisting, supporting or pursuing funding applications; and annual outreach with housing developers to coordinate and pursue housing opportunities.

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 A4, the element requires a complete analysis of potential 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).)*

As noted in Finding A1, the element must include a complete analysis of AFFH. The element must be revised to add 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 further guidance, please visit HCD's Affirmatively Furthering Fair Housing in California webpage at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

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 element is required to include a program that incentivizes or promotes ADU development for very low-, low-, and moderate-income households. This can take the form of flexible zoning requirements, development standards, or processing and fee incentives that facilitate the creation of ADUs, such as reduced parking requirements, fee waivers and more. Other strategies could include developing information packets to market ADU construction, targeted advertising of ADU development opportunities or establishing an ADU specialist within the planning department. To address this requirement, Program 3 (Accessory Dwelling Units (ADUs)) should include additional actions to promote ADUs.