



September 5, 2021

Mr. Colin Cross, Land Use & Planning Analyst
California Department & Housing & Community Development
Division of Housing Policy Development
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RE: Initial Comments to Draft Housing Element dated July 2021

Mr. Cross:

Thank you for the opportunity to review and comment on the city of Mission Viejo's 2021-2029 initial draft Housing Element. We have reviewed the draft and are submitting this letter to provide public comments.

The Kennedy Commission (the Commission) is a broad-based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$27,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with Orange County jurisdictions to create effective housing and land-use policies that have led to the new construction of homes affordable to lower-income working families.

Public Engagement

Public engagement is a necessary component of the Housing Element process. As California Housing Element law states: "The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element..."¹ Broad participation and true engagement of the public increase the likelihood that the community members involved in the discussion and planning processes will support new housing strategies and housing developments. Public engagement should include participation from residents of diverse communities, housing consumers, service providers, and advocates.

The city conducted one community workshop. The city did not use any other engagement tools, such a community survey or stakeholder groups to solicit input in the evaluation of the 5th Cycle Housing Element or in the development of the 6th Cycle draft. In addition, there were no alternative options available for the engagement or participation of lower income residents in the Housing Element process. The community workshop summary does not indicate the number of participants that attended, making it unclear how many were residents and specifically how many, if any, were low-income residents.

Furthermore, the city states in the Housing Element that copies of the public hearing draft of the Housing Element were available upon purchase². The city did not take into consideration the residents who are not able to purchase these copies, or have transportation access to pick them up or access to computers. The city should not charge the residents for physical copies of the public

¹ Gov. Code, § 65583, subd. (c)(9)

² City of Mission Viejo 2021-2029 Draft Housing Element, p 4, June 2021

hearing draft, and should make these copies available online and have copies available for residents that need physical copies.

In addition, the draft was not made available to the public for an opportunity for public comment prior to submission to HCD. The city did not provide sufficient opportunity for the public to review the Housing Element draft. The draft was released to the public in May, 2021. The city then submitted the draft to HCD without including public comments made on the second public meeting June 22nd, 2021. The same day the draft was submitted. The city should 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. As amendments and changes are made to the draft, Mission Viejo needs to engage community stakeholders and residents in the evaluation and creation of policies, goals, programs and sites for affordable housing development, especially low income and special needs residents who are the most vulnerable to the housing crisis and document these efforts.

Community Needs

According to SCAG's pre-certified housing data, there are a total of 7,671 renter households in Mission Viejo, with 4,340 or 56.6% of those households spending thirty percent or more of gross income on housing costs.² Additionally, 1,945 or 25.4% renter households are extremely rent burdened and are paying fifty percent or more of gross income on housing costs.² The SCAG pre-certified housing data shows that the medium average income is \$107,988, in which a majority of the job sectors make half as much at an average of \$52,000³. The City of Mission Viejo should take into account its local economy and offer healthy and affordable housing options that the current market-rate housing development is not offering.

Employment:

At least three of the four primary employment sectors in the city provide a median salary that is below the city's median income and that HCD defines as very low income: Educational and Social Services, Professional Services, Manufacturing, and Retail and Trade. According to Table H-10 and H-11, these sectors account for approximately 58.3% of jobs in the city⁴. The city should improve its analysis by describing employment trends by industry and how changes either recent or anticipated can affect the housing market and discuss opportunities for improving work-housing balance, such as mixed-use and affordable housing policies to facilitate housing near jobs consistent with the salaries of the workforce.

5th Cycle RHNA Performance

During the current 5th cycle planning period the city had a total Regional Housing Needs Assessment (RHNA) of 177: 42 at very low-income, 29 at low-income, 33 at moderate and 73 at above moderate.

² SCAG Pre-Certified Housing Data for the City of Mission Viejo, p.14 March, 2021

³ SCAG Pre-Certified Housing Data for the City of Mission Viejo, p.28 March, 2018

⁵ City of Mission Viejo 2021-2029 Draft Housing Element, p.10 and p.11, June 2021.

To date, the city has approved 16 units at moderate and 832 at above moderate.⁵ At very-low income the city has approved 13 units and 31 at low-income. Although the city exceeded 5th Cycle targets for optional (low) moderate and above moderate, there is an unbalanced production of moderate and above moderate units. The number of moderate and above moderate units approved in the last seven years was 21 times more than those at low and very low income. This imbalance in housing production indicates that the city's affordable housing policies have not been effective in incentivizing and producing affordable housing for lower income households.

As part of the 5th cycle adequate sites inventory, the city identified three opportunity sites for lower-income households. These sites were in the zoning of Residential Planned Development By Right (Affordable) or RPD 30A and the sites were identified as parcels A, B, and C.

The city's commitments described that, "Residential units within parcels A, B and C, and any other parcels within the RPD 30A zone requiring residential units to be "affordable", shall be affordable to lower or very low income households, as those terms are defined in Health and Safety Code §§ 50079.5 and 50105, respectively, or successor statutes thereto. "All such affordable units shall be restricted to their respective affordability level for not less than 45 years for owner-occupied units and 55 years for rental units. The percentage of residential units in parcels A, B and C required to be affordable are as follows: Parcel A— Fifteen percent (minimum and maximum). Parcel B— Minimum of 15 percent. Parcel C— Minimum of 20 percent."³

The city's draft 6th cycle Housing Element does not provide a detailed analysis on whether they have been successful in allocating these sites to affordable housing. Parcels A and B have been developed with mostly market rate housing and only a small percentage of lower income units. The affordability period for the developments on sites A and B do not meet the 55 year affordability requirement as the City approved a shorter affordability period for these developments.

Although the 5th Cycle Housing Element estimated that these sites would provide 405 lower income units, only 44 lower income units have been built in the past eight years. The city's only affordable housing production was as a result of the RPD30A zoning requirement including a 15-20% affordability requirement on the identified sites.

6th Cycle Housing Element Opportunity Sites Inventory

As part of the analysis of adequate sites, the city has reviewed potential housing sites citywide and has identified around 11 housing opportunity sites for lower-income households in the RPD 30A zone and within multiple underutilized sites that are currently developed with residential or commercial uses. The city identified these areas predominantly on density and a proposed housing overlay zone. As demonstrated above, affordable housing will not be produced on higher density sites unless there is a specific affordable housing policy to incentivize it.

Suitability of Nonvacant Sites:

The element must include an analysis demonstrating the potential for redevelopment of non vacant sites. To address this requirement, the element describes several non vacant sites. For example, the element should describe and support (through development trends) the potential for additional

³ City of Mission Viejo Municipal Ordinance No. 07-259, §§ 1, 5, 6, 9-4-07

development in the planning period and consider additional factors such as the age of structure, presence of expiring leases, condition of the structure, and expressed interest in development. If the element relies on this non vacant site for more than 48% of the lower-income RHNA, it must make findings of substantial evidence that the existing use does not constitute an impediment to development, and that the existing use is likely to discontinue.

Suitability of Vacant Sites (Site C):

Vacant Site C has been previously used in the sites inventory in the past 4th, 5th Housing Element cycles and is now being proposed in the current 6th Cycle⁴. This site is proposed to accommodate 477 very low- and low-income units⁶. Site C has previously been evaluated several times for potential development by multiple developers and has not moved forth with any affordable housing development due to the site's feasibility and development challenges. Evaluation of the site has demonstrated that significant pre-development grading and stabilization is required before any development can be contemplated. In addition to the pre-development and infrastructure constraints the site is also challenged by landslide risk, flood risk, environmental and wildlife conservation that make developing affordable housing infeasible. These factors reduce the likelihood that this site will actually be able to accommodate 477 very low- and low-income units. This site needs to be reduced from the site inventory for low- and very low-income. The overreliance of a site that has remained undeveloped in numerous planning periods is not acceptable. The city should provide an in-depth analysis of the realistic feasibility of alternative sites and not rely on meeting nearly half of its lower income RHNA on a site that is unfeasible for affordable housing development.

Traditional Funding for Affordable Housing:

In addition, identified affordable housing sites should also be evaluated for their viability to compete for traditional funding to create affordable housing. These funding sources prioritize development sites that promote access to community resources and services, such as schools, public transportation, medical services and access to parks.

No Net Loss:

The city will also have to consider No Net Loss when it identifies opportunity sites. It is crucial that affordable housing moves along with market-rate housing given the limited sites that are available. Considering the state's No Net Loss requirements, if the sites identified for affordable housing are developed for market-rate housing, the city will have to rezone new sites for the appropriate density.⁵

It is important that the city address the concerns we raised with the 6th Cycle Housing Element site inventory and further evaluate constraints to and the likelihood of the development of affordable housing on these sites. Moreover, the city needs to identify affordable housing policies and programs that will equitably facilitate and incorporate affordable housing at the extremely low-, very low-, and low-income categories on these sites.

⁴ The City of Mission Viejo Housing Element, pg.71 2014-2021

⁵ Government Code § 65863

Incentivizing Affordable Housing in the 6th Cycle Housing Element:

To ensure that affordable housing is incentivized on the sites identified in the 6th Cycle, the city needs to include policies and programs that will create affordable housing. The following policies and programs can be proposed in the 6th Cycle.

Housing Policies to Increase Affordable Housing

The city must “review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element.”⁶ While the element includes a program-by-program review of implementation in the prior planning period, the review of past programs should also analyze the cumulative effectiveness of programs on addressing special housing needs over the previous planning period. As the 5th Cycle progress indicates, the city’s housing policies have developed housing in an unbalanced way and prioritized market-rate housing over housing for low-income families. For the upcoming 6th Cycle, we recommend that the city include policies with stronger affordability requirements, instead of continuing to hope that the market will deliver affordable housing by identifying higher density sites for lower-income RHNA needs. This strategy has proven to be ineffective and has only produced luxury, market-rate housing that is unaffordable to most Mission Viejo residents.

- **Inclusionary Housing Ordinance** - The Commission strongly recommends the city adopt an Inclusionary Housing Ordinance within the next year to ensure that identified sites are truly feasible and effectively provide affordable housing in a balanced manner. We recommend that the ordinance include a 15% requirement of affordable housing production at extremely low, very low- and low-income categories and that it apply to all residential projects. The Inclusionary Housing Ordinance should be implemented no later than one years from the adoption of the Housing Element.
- **Affordable Housing Overlay** -The Commission strongly recommends that the city adopt an Affordable Housing Overlay that requires a minimum of 15% of units be set aside for housing at the very low- and low-income level on sites identified for rezoning at densities of 30+ units to the acre. This will ensure that identified sites are truly feasible and effectively provide affordable housing in a balanced manner. The Affordable Housing Overlay should be implemented no later than one year after the adoption of the 6th Cycle Housing Element.

ADUs

Looking at the city’s calculation for lower income ADUs, we believe that affordable housing opportunities assumed in the city’s ADU calculations seem to be high and not supported by local housing costs for rentals and annual production. The city calculates an anticipated issuance of permits for 40 ADUs in the upcoming 6th Cycle, or 5 ADUS per year. The estimate of 5 ADUs per year is drastically higher than the 6 total ADUs issued permits from the 5th Cycle between 2014-2020⁶. To analyze potential ADU production in the 6th Cycle, the city needs to provide the public with complete past ADU production data. The Commission believes the city should either reduce the number of ADUs or include additional analysis and programs to support the city’s assumption of ADU production in the next eight years.

⁶ Gov. Code § 65588 (a) and (b)

The city states that implementation of Program 8: Accessory Dwelling Units (ADUs) will help increase the number of ADUs permitted per year thus far. However, this program does not provide strong enough incentives or data to support the city's projection of 40 ADUs. Furthermore, Program 8 does not include any mechanisms that will ensure ADUs are affordable at the lower income levels. In addition to providing a more realistic calculation for anticipated ADUs in the upcoming Housing Element Planning period, the city needs to propose a better plan to ensure the affordability of ADUs.

Pursuant to guidelines set in the Housing Element Sites Inventory Guidebook, "the element should also include a monitoring program that a) tracks ADU and JADU creation and affordability levels, and b) commits to a review at the planning cycle mid-point to evaluate if production estimates are being achieved."

Affirmatively Furthering Fair Housing

The city of Mission Viejo has not provided an adequate analysis or recommendations on how the city will address contributing factors to Fair housing issues in the city. The following is required:

- The preparation, adoption, and implementation of a housing element requires a diligent effort to include all economic segments of the community.
- Assessment of Fair Housing in Mission Viejo: Summary of Issues and Analysis of Patterns, Trends, and Disproportionate Housing Needs.
- A summary of fair housing issues in Mission Viejo and an assessment of the jurisdiction's fair housing enforcement and outreach capacity.
- An analysis and summary of fair housing issues utilizing available federal, state, and local data and knowledge. The analysis must include a variety of factors, such as trends and patterns within the locality and in comparison, to the broader region.
- The analysis must address: Integration and segregation; Racially or ethnically concentrated areas of poverty; Disparities in access to opportunity, including for persons with disabilities.
- Disproportionate housing needs (this may include things like overpayment, overcrowding, housing conditions disproportionately affecting protected classes), including displacement risk.
- Identified sites serve the purpose of replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity.
- Identification and Prioritization of Fair Housing Contributing Factors
- Programs with a schedule of actions with timelines and specific commitment to have a "beneficial impact" within the planning period to achieve the goals and objectives of addressing contributing factors to Fair housing issues.⁷

While the element includes a brief AFFH analysis in Program 16, it has not provided an adequate plan to address Affirmatively Furthering Fair Housing requirements. The element, among other things, must include outreach, an assessment of fair housing, identification, and prioritization of

⁷Gov. Code, § 65583, subd. (c)(10)(A)

contributing factors to fair housing issues and goals and actions sufficient to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity.

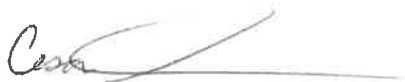
Additionally, the city does not provide anti-displacement policies that adequately protect current residents. We ask that the city prioritize the housing needs of large families of low, very low and extremely low-income, who encounter difficulties in finding decent, affordable housing during the development of its new Housing Element.

As the city moves forward with the Housing Element update, the Commission urges the city to support the development of affordable homes. The city needs to ensure opportunity sites are not simply up zoned or rezoned without including affordable housing policies that will capture the financial and land use incentives being given to property owners and market rate developers. This approach did not create affordable housing in the 5th Cycle and nor will it have a different outcome in the 6th Cycle. The Commission would like to provide the city with following recommendations:

1. Adopt an Inclusionary Housing Ordinance with a 15% requirement of affordable housing production at extremely low, very low- and low-income categories.
2. Prioritize affordable housing funding and programs to increase affordable housing options for families of lower incomes, especially at very low and extremely low-income.
3. Identify city-owned sites and prioritize these sites for the development of housing exclusively at the extremely low, very low- and low-income level.
4. Prioritize affordable housing funding and programs to increase affordable housing options for families of lower incomes, especially at very low and extremely low-income.
5. Ensure that development sites being identified and discussed in the Housing Element draft are realistic and available during the planning period. The land inventory Site C is not an adequate location that can be developed to hold 48% of the very low and low income RHNA allocations.
6. The city of Mission Viejo should provide an adequate analysis and recommendations on how the city will Affirmatively Further Fair Housing. For example, the city should include anti-displacement policies that protect low-income residents from rising rents and commit to reinvesting in low resource areas to improve the quality of living of residents in those areas.
7. The city needs to prioritize and expand affordable housing in new opportunity sites identified in the Housing Element inventory, where density and incentives will only promote market rate housing.

The Commission looks forward to partnering with the city of Mission Viejo to create opportunities to increase affordable homes for lower income households in the city. If you have any questions, please feel free to contact me at (949) 250-0909 or cesarc@kennedycommission.org.

Sincerely,



Cesar Covarrubias
Executive Director



May 25, 2021

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Irvine, CA 92614
949 250 0909

Chairman Ruesch and Commissioners
Mission Viejo Planning and Transportation Commission
200 Civic Center
Mission Viejo, CA 92691

RE: Item 2. Preliminary consideration of a draft update to the City of Mission Viejo General Plan Housing Element

Dear Chairman Ruesch and Commissioners:

The Kennedy Commission (the Commission) is a broad based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$27,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with Orange County jurisdictions to create effective housing and land-use policies that has led to the new construction of homes affordable to lower income working families.

The staff report indicates that the Housing Element Update has consisted of a **single** joint public workshop on March 31st, 2021 to kick-off the public participation process. Since that initial workshop, the City has already developed a draft Housing Element. Today's meeting is meant for the Planning and Transportation Commission to provide feedback and comments on the draft. Next steps would be sending a revised draft to City Council on June 8th, 2021. According to the staff report "Following City Council review, the draft Housing Element must be submitted to the California Department of Housing and Community Development (HCD) for review". After HCD review the City plans to hold public hearings to adopt the final Housing Element.

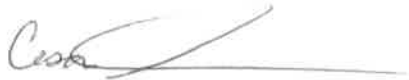
As stated in our letter submitted on August 3rd, 2020, public engagement is a necessary component of the Housing Element process. As California Housing Element law states: "The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element..." Broad participation and true engagement of the public increases the likelihood that the community members involved in the discussion and planning processes will support new housing strategies and housing developments. Public engagement should include participation from residents of diverse communities, housing consumers, service providers, and advocates.

Based on the lack of community engagement the Commission requests that the City provide more opportunities for further community input and an additional 30 days to review the draft before it is submitted to the State. This will allow time for the public to

review the draft, submit input and recommendations to further strengthen the Housing Element.

The Commission looks forward to partnering with the City to increase housing opportunities for lower-income residents in Mission Viejo. Please keep us informed of any updates and meetings regarding strategies to increase affordable homes for lower-income households in the City. If you have any questions, please feel free to contact me at (949) 250-0909 or cesarc@kennedycommission.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cesar', followed by a long horizontal line extending to the right.

Cesar Covarrubias
Executive Director

CC:

Megan Kirkeby Megan.Kirkeby@hcd.ca.gov

Paul McDougall Paul.Mcdougall@hcd.ca.gov