

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

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October 22, 2021

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) Draft Housing Element

Thank you for submitting the City of Malibu's (City) draft housing element received for review on August 25, 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 October 18, 2021 with Didier Murillo, Associate Planner and Adrian Fernandez, Assistant Planning Director.

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.

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.

Richard Mollica, Planning Director

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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. 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.

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 is 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).)

General: 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 many cases, the element includes information on progress in implementation, but it must still evaluate the effectiveness of program in achieving goals and modify programs as appropriate in response to that evaluation. For example, Program 2.2 B (Facilitate New Affordable Housing Development) reports on completing zoning amendments but the element must also include an evaluation of whether this program was effective in facilitating affordable housing development. Programs should be revised as appropriate depending on the outcomes of a complete evaluation of prior programs. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/getting-started/review-revise.shtml>.

Housing for Special Needs: As part of the review of programs in the past cycle (Appendix A: Evaluation of the Previous Housing Element), the element must provide an evaluation of 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).

B. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing (AFFH) 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).)*

The element has some basic information regarding outreach and assessment of fair housing on page 7-53. However, the element generally does not address this requirement. The element, among other things, must include a complete outreach, an assessment of fair housing, identification, and prioritization of 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.

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 (ELI). (Gov. Code, § 65583, subd. (a)(1).)*

ELI: While the element quantifies existing and projected ELI households, it must also expand the analysis of their housing needs. The analysis of ELI housing needs should consider tenure and rates of overcrowding and overpayment. To assist the analysis, see Southern California's Association of Government's (SCAG) Local Housing Data and sample analysis at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>.

3. *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).)*

Overpayment: While the element identifies the total number of overpaying households, it must quantify and analyze the number of overpaying households by tenure (i.e., renter and owner), including lower-income households. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

Housing Prices: The element should include a description and analysis of current housing stock characteristics. This information can be used to assist jurisdictions in identifying specific housing needs and tailoring housing programs to fit those needs. Specifically, the element must identify and analyze typical rental housing prices in the housing stock.

4. *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: The element lists parcels by various factors such as size and zoning. However, the listing must also include sites by general plan designation.

In addition, 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 a listing of vacant parcels intended to accommodate above moderate-income households is available on file with the Planning Department. However, the element must

clarify these sites are not on public sewer systems and 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: While the element includes an estimate of the number of units that can be accommodated on each site in the inventory, the estimate should rely on established minimum density standards or include analysis demonstrating how the number of units for each site was determined. For example, the element should clearly state whether the Affordable Housing Overlay (AHO) requires a minimum density of 20 units per acre. If not, the element should include an analysis demonstrating a realistic capacity on identified sites. For moderate income sites, the element must include this analysis. The estimate of the number of units for each site must be adjusted as necessary, based on the land-use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level.

In addition, the element must clarify whether base zoning under the AHO zoned sites allow 100 percent nonresidential uses. If 100 percent nonresidential uses are allowed, the methodology and residential capacity calculation should account for the likelihood that residential uses may not occur. The analysis should be based on factors such as development trends, performance standards or other relevant factors. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly.

Environmental Constraints: While the element generally describes environmental conditions, it must relate those conditions to identified sites and describe any other known environmental or other constraints or conditions that could impede housing development on identified sites in the planning period.

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

AFFH: The element must demonstrate the sites inventory AFFH. For more information, see HCD's guidance at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

Zoning for Lower-Income Households: The element must demonstrate densities appropriate to accommodate housing for lower income households. For communities with densities that meet specific standards (at least 20 units per acre for Malibu), no analysis is required. (Gov. Code, § 65583.2, subd. (c)(3).) Otherwise, an analysis must demonstrate appropriate densities based on factors such as market demand, financial feasibility and development experience within identified zones. The element notes the Multifamily Beach Front zone allows densities at 23 units per acre and the current inventory does not use these sites toward housing needs for lower-income households. For your information, given potential constraints and requirements in this zone, these

sites should not be used toward the RHNA for lower-income or for the purposes of No Net Loss Law pursuant to Government Code section 65863.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element describes emergency shelters are allowed in the Commercial General (CG) and Institutional (I) zoning districts; however, it should clarify whether shelters are permitted without discretionary action. In addition, the element must evaluate the available acreage for characteristics like parcel size or potential redevelopment or reuse opportunities, proximity to services and describe development standards. The analysis must also address the appropriateness of other uses in the CG and I zoning districts for human habitation and whether parking requirements are limited to staff working in the emergency shelters and do not require more parking than other residential or commercial uses in the zone. The element must include programs as appropriate based on the outcomes of this analysis.
- *Employee Housing:* The element must demonstrate the zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/farmworkers.shtml>.

5. *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 must identify and analyze all relevant land-use controls impacts as potential constraints on a variety of housing types (e.g., multifamily rental housing, mobile homes, transitional housing). The analysis must also evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve maximum densities and cost and supply of housing. In particular, the element should analyze heights, minimum lot sizes, multifamily parking requirements and the affordable housing overlay and multifamily beach front zones. In addition, several identified sites do not appear to meet minimum lot size requirements for the multifamily and multifamily beach front zones. The element should either clarify how development will occur on these sites, remove the sites or include programs as appropriate to allow development on the sites. Based on the outcomes of a complete analysis, the element should include programs to address or remove identified constraints.

For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/land-use-controls.shtml>.

On-Off-Site Improvements: The element must identify and analyze actual standards and analyze their impact as potential constraints on housing supply and affordability. For additional information and a sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml>.

Building Codes and Code Enforcement: While the element states on page 7-40 that the City has adopted the current 2019 Los Angeles County Building Codes, with all amendments which are based on the California Code, it must also identify and analyze local amendments for impacts on housing cost and supply and discuss the type and degree of enforcement conducted by the City. For additional information and a sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml>.

Processing and Permit Procedures: While the element describes the permit procedure for single-family and multifamily processing, it must include the type of permit, level of review, approval findings and any discretionary approval procedures. The element must clarify if the concurrent review also includes coastal engineer, environmental health administrator, Geotech engineer and public works review. In addition, the element should analyze the Coastal Development Permit (CDP) 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. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/processing-permitting-procedures.shtml>.

Housing for Persons with Disabilities: The element should identify and analyze any definition of family in zoning and land use requirements. The element must demonstrate any definition is not a constraint or it must include a program to address and remove the definition. Secondly, the element must demonstrate the City has a reasonable accommodation procedure for providing exception in zoning and land use, including approval findings and include programs as appropriate. Lastly, 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.

Zoning, Development Standards and Fees: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards and fees for each parcel on the jurisdiction's website.

Locally Adopted Ordinance: The element must specifically analyze locally adopted ordinances such as inclusionary ordinances or short-term rental ordinances that directly impact the cost and supply of residential development. The analysis should demonstrate

local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters. (Gov. Code, § 65583, subd. (a)(5).)

SB 35 Streamlined Ministerial Approval Process: The element must describe the availability of written procedures for the SB 35 streamlined, ministerial approval process or include a program as appropriate.

6. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. (Gov. Code, § 65583, subd. (a)(6).)*

Land Cost, Construction Cost and Available Financing: The element did not include estimates for land costs and construction costs and available financing in the community. The element must include an estimate of the average cost or the range of costs per acre for single family and multifamily development, an estimate of typical construction costs including material and labor and available housing financing, including private financing and government assistance programs generally available in the community. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/community-development/building-blocks/constraints/nongovernment-constraints.shtml>.

Requests for Lesser Densities and Approval Times: The element did not address these requirements. The element must address requests to develop housing at densities below those anticipated in the sites inventory and the length of time between receiving approval for housing development and submittal of application for building permits. The analysis must address any hinderances on housing development and programs should be added as appropriate.

7. *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 the element quantifies the City's special needs populations, it must also analyze their special housing needs. The element does not include analysis of available resources nor draw any conclusions on housing need that would lead towards programs. 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, # 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.

Persons with Developmental Disabilities: The element must quantify the number of persons with developmental disabilities in the City and analyze the special housing needs of persons with developmental disabilities. The term developmental disability refers to a severe and chronic disability attributable to a mental or physical impairment, such as cerebral palsy, epilepsy, or autism that begins before individuals reach adulthood. (Welfare and Institutions Code, § 4512.) The analysis could include the following:

- a quantification of the total number of persons with developmental disabilities;
- a description of the types of developmental disabilities;
- a description of the housing need, including a description of the potential housing problems; and
- a discussion of resources, policies and programs including existing housing and services, for persons with developmental disabilities.

For additional information and a sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/people-with-disabilities.shtml>, and for additional information, see the area's local regional center for developmental services at <https://www.dds.ca.gov/rc/listings/>.

Farmworkers: While the element identifies a quantification from recent Census estimates published by SCAG; it must also include an estimate of the number of permanent and seasonal farmworkers within the community. The estimate could utilize county level data from the United States Department of Agriculture (USDA).

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 B4, 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.

2. *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 ELI and special needs households. The program(s) could revise Program 2D (Federal and State Funding) to 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 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.

3. *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 B5 and B6, 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.

4. *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 Program should commit to how and when the City will target assistance to lower and moderate-income and special needs households.
- *Program 1.3 (Housing Rehabilitation Assistance):* The Program aims to encourage rehabilitation of housing for lower and moderate-income households by offering fee waivers but only for units that are deed restricted for affordability. However, the City does not have deed restricted housing for lower and moderate-income households and the impact of fee waivers in encouraging rehabilitation does not appear

effective. As a result, this program should be revised with additional actions to conserve and improve the existing housing stock for lower and moderate-income households.

5. *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. 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 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).)*

Program 2.2 A (Expand the Supply of Accessory Dwelling Units) should include additional actions to promote accessory dwelling units (ADU) 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. 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 includes quantified objectives for construction and rehabilitation, it should also include objectives for conservation (e.g., mobile home parks).

E. 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), it must also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. Specifically, 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. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income households in future public outreach efforts. In addition, the element should also summarize the public comments and describe how they were considered and incorporated into the element. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>.