



NEWPORT BEACH

City Council Staff Report

July 23, 2024
Agenda Item No. 23

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Benjamin M. Zdeba, AICP, Principal Planner - 949-644-3253, bzdeba@newportbeachca.gov

Jaime Murillo, AICP, Deputy Community Development Director - 949-644-3209, jmurillo@newportbeachca.gov

Leilani I. Brown, City Clerk - 949-644-3005, lbrown@newportbeachca.gov

TITLE: Ordinance Nos. 2024-16 and 2024-17, and Resolution Nos. 2024-50 to 2024-57 for the Necessary Amendments to Implement the 6th Cycle Housing Element and to Place the Major General Plan Amendment on the November 5, 2024 General Election Ballot Pursuant to City Charter Section 423; or Resolution No. 2024-58 to Initiate an Amendment to the 6th Cycle Housing Element

ABSTRACT:

For the City Council's consideration are the legislative amendments necessary to accommodate State of California mandated housing development, as planned for in the adopted and certified statutorily compliant 6th Cycle Housing Element. These include targeted amendments to the General Plan Land Use Element, the Coastal Land Use Plan, and Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code. To remain compliant, the amendments must take effect by the statutory deadline of February 2025. To analyze the resulting potential environmental impacts under the California Environmental Quality Act (CEQA), the City of Newport Beach has prepared a program environmental impact report (SCH No. 2023060699). The City Council will also consider adopting a resolution overriding the May 16, 2024, Orange County Airport Land Use Commission (ALUC) determination that the amendments are inconsistent with the 2008 John Wayne Airport Environs Land Use Plan (AELUP) pursuant to Public Utilities Code Section 21676(b). Approval of the amendments and the adoption of the resolution to override the ALUC requires a two-thirds majority vote of the City Council.

Lastly, the General Plan Land Use Element could be considered a "major amendment" pursuant to the City's Charter Section 423, as it results in an increase of more than 100 new dwelling units and over 100 peak hour trips (AM/PM) across several statistical areas. Accordingly, the City Council will also consider a resolution to authorize a ballot measure and the calling of a consolidated municipal election with the County of Orange for the November 5, 2024, election ballot.

As an alternative, the City Council can determine a Charter Section 423 vote is precluded by State law and initiate an amendment to the 6th Cycle Housing Element removing Charter Section 423 voter approval requirements for the adoption of the General Plan Amendment and related legislative amendments for implementation.

RECOMMENDATIONS:

a) Conduct a public hearing and proceed with one of the following two options:

Option No. 1:

- 1a) Adopt Resolution No. 2024-50, *A Resolution of the City Council of the City of Newport Beach, California, Certifying Environmental Impact Report (State Clearinghouse [SCH] Number 2023060699), Including a Mitigation Monitoring and Reporting Program and Adopting Findings, and a Statement of Overriding Considerations Related to the Implementation of the 6th Cycle Housing Element Involving Amendments to the General Plan, Coastal Land Use Plan, and Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (PA2022-0245);*
- 1b) Adopt Resolution No. 2024-51, *A Resolution of the City Council of the City of Newport Beach, California, Amending the General Plan Land Use Element to Implement the General Plan 6th Cycle Housing Element (PA2022-0245);*
- 1c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-16, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to Implement the General Plan 6th Cycle Housing Element (PA2022-0245), and pass to second reading on August 27, 2024;*
- 1d) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-17, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to Create Multi-Unit Objective Design Standards (PA2022-0245), and pass to second reading on August 27, 2024;*
- 1e) Adopt Resolution No. 2024-52, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission to Amend the City of Newport Beach Coastal Land Use Plan and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Related to the Housing Element Implementation Program (PA2022-0245);*

- 1f) *Adopt Resolution No. 2024-53, A Resolution of the City Council of the City of Newport Beach, California, Finding the Housing Element Implementation Program Amendments Consistent with the Purposes of the State Aeronautics Act and Overriding the Orange County Airport Land Use Commission's Determination of Inconsistency with the 2008 John Wayne Airport Environs Land Use Plan (PA2022-0245);*
- 1g) *Adopt Resolution No. 2024-54, A Resolution of the City Council of the City of Newport Beach, California, Calling for the Holding of a General Municipal Election to be Held on Tuesday, November 5, 2024, for the Submission of a Proposed Major Amendment to the Newport Beach General Plan Land Use Element Related to Implementation of the 6th Cycle Housing Element in Compliance with State Housing Law (PA2022-0245);*
- 1h) *Adopt Resolution No. 2024-55, A Resolution of the City Council of the City of Newport Beach, California, Requesting the Board of Supervisors of the County of Orange to Consolidate a General Municipal Election to be Held on Tuesday, November 5, 2024, with the Statewide Primary Election to be Held on the Same Date Pursuant to California Elections Code Section 10403 for the Purpose of Submitting a Proposed Charter Amendment;*
- 1i) *Adopt Resolution No. 2024-56, A Resolution of the City Council of the City of Newport Beach, California, Setting Priorities for Filing Written Arguments Regarding a City Measure, and Directing the City Attorney to Prepare an Impartial Analysis;*
- 1j) *Adopt Resolution No. 2024-57, A Resolution of the City Council of the City of Newport Beach, California, Providing for the Filing of Rebuttal Arguments for the City Measure Submitted to the Voters at the General Municipal Election to be Held on Tuesday, November 5, 2024, Pursuant to California Elections Code Section 9285; and*
- 1k) If desired, designate Councilmembers to draft a Direct Argument for the ballot measure and any Rebuttal Argument, if needed; or

Option No. 2

- 2a) Determine this action is exempt from environmental review under CEQA pursuant to Section 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and
- 2b) *Adopt Resolution No. 2024-58, A Resolution of the City Council of the City of Newport Beach, California, Initiating a Narrowly Focused Amendment to the Adopted and Certified 6th Cycle Housing Element to Remove the Reference to Charter Section 423 Voter Approval (PA2022-0245).*

DISCUSSION:

July 9, 2024, City Council Study Session

On July 9, 2024, the City Council conducted a study session to discuss whether a vote of the electorate is required under City Charter Section 423 to effectuate the General Plan Land Use Element Amendment necessary as part of the Housing Element Implementation Program Amendments. After public comments and City Council discussion, the City Council directed staff to return on July 23, 2024, with two options as presented in the “Recommendations” section of this report and as discussed further under “Charter Section 423 Vote.”

Background

The Housing Element is a required element of the General Plan. It presents how a city plans to accomplish the State-mandated Regional Housing Needs Allocation (RHNA) on sites within city limits. Local jurisdictions, like the City, are responsible for creating a regulatory environment in which the private market can build the unit types included in the RHNA. The City is required to prepare an update to its housing element every eight years.

After conducting wide-ranging public outreach involving extensive public participation opportunities, including numerous meetings of the City Council-appointed Housing Element Update Advisory Committee (HEUAC), the City Council adopted the City’s 6th Cycle Housing Element for the 2021-2029 planning period (Housing Element) on September 13, 2022. The Housing Element was later certified as statutorily compliant with State law by the California Department of Housing and Community Development (HCD) on October 5, 2022.

The Housing Element provides the City with a coordinated comprehensive strategy for promoting the production of a variety of housing types for all. The Housing Element was prepared to ensure the City establishes policies, procedures and incentives in its land use planning and development standards that result in maintenance and expansion of the housing supply. Section 4 (Housing Plan) of the Housing Element presents a framework and strategy for meeting the needs of existing and future resident populations within the City based on the RHNA allocation of 4,845 new housing units. To comply with State law, the City must now implement the various strategies and programs outlined in Section 4 of the Housing Element no later than February 2025. The City is not required to build housing units to meet its RHNA allocation, only to establish the appropriate zoning designations and development standards to allow the private market to develop these units.

Of critical importance is that the City is required to ensure the continued and effective implementation of the Housing Element programs including, but not limited to, the provision of sufficient adequately zoned land to accommodate its share of the regional growth and its required share of lower income dwelling units consistent with the General Plan and RHNA obligations. The areas where rezoning is required are focused in five areas of the city, as displayed in Figure 1. Although Banning Ranch (now the Randall Preserve) was included as a housing opportunity due to existing development capacity in the current General Plan Land Use Element, it is not being considered as an opportunity site that counts toward meeting the City's RHNA allocation.



Figure 1, Focus Areas for Residential Development

Overview of Implementing Amendments

The City Council's adoption of the 6th Cycle Housing Element in September 2022, and HCD's certification of statutory compliance in October 2022, created a roadmap for the City to comply with State law as it relates to housing. The proposed updates to the General Plan, Title 20 (Planning and Zoning), Local Coastal Program, and Title 21 (Local Coastal Program Implementation Plan) are crucial to the Housing Element's planned implementation. The amendments will collectively help to ensure the City's Housing Element remains compliant, thereby providing for retention of local development control. They will also provide greater clarity for prospective private developers while affording the opportunity for diverse housing options that meet the needs of the City, as identified by the RHNA allocation.

An in-depth and detailed project description has been prepared as Section 3.0 (Project Description) of the Draft Program Environmental Impact Report (Draft PEIR), which is digitally attached to this staff report as Exhibit “A” to Attachment A, due to size and made available online at www.newportbeachca.gov/CEQA within the “Housing Implementation Program EIR (PA2022-0245)” folder.

The three primary implementing actions are described below.

1) General Plan Land Use Element Amendment

The Land Use Element is a guide for the City’s future development. Its goals and policies help to guide the distribution and general location of land uses, such as residential, services, retail, open space, recreation, and public uses. The Land Use Element also addresses the permitted density and intensity of the various land use categories.

The first step in the Housing Element’s implementation is to revise the necessary goals and/or policies within the Land Use Element to support housing production in the focus areas identified by the Housing Element. City staff worked in collaboration with the City Council-appointed General Plan Update Steering Committee and the General Plan Advisory Committee to create draft revisions to the Land Use Element.

The proposed amendments to the Land Use Element include both revised policies and a series of new policies to implement the Housing Element in accordance with its policy actions. The new Land Use Element Policies 4.4 through 4.7 serve to allow for potential residential development in areas that do not necessarily allow it currently. Each of the new policies are summarized in Table 1 below.

Table 1, General Plan Land Use Element New Policies

Policy	Effect
LU 4.4 (Rezoning to Accommodate Housing Opportunities)	Supports the creation of the Housing Opportunity Overlay Zoning Districts and provides guidance on associated development limits for each focus area.
LU 4.5 (Residential Uses and Residential Densities)	Clarifies that residential use of identified properties is allowed regardless of and in addition to the underlying land use category or density. Identifies the maximum density in Policy 4.4 as an average across an entire property or project site. Furthermore, this Policy clarifies that development limits do not include units that are produced pursuant to State density bonus law or current pipeline units.
LU 4.6 (Continuation of Existing Development)	Reinforces that residential development opportunities are in addition to the existing uses allowed by the General Plan. The allowance for residential does not require development as residential nor does it create nonconforming conditions.
LU 4.7 (Redevelopment and Transfer of Development Rights)	Works in conjunction with current Policy 4.3 (Transfer of Development Rights) and allows the transfer of development rights within the same statistical area when a property is redeveloped. For example, removing an office building for a residential development would free up the net change in trips thereby allowing for additional nonresidential intensity on a neighboring site within the same statistical area. This condition will help to ensure the opportunity for adequate resident-serving commercial in newly development residential neighborhoods.

Attachment B provides additional justification for the proposed General Plan Land Use Element Amendment by way of a consistency analysis.

2) *Title 20 (Planning and Zoning) Amendment*

To implement the Land Use Element's policy changes, the City must rezone identified properties to allow housing development as an opportunity and to establish appropriate development standards.

The proposed amendment to Title 20 (Planning and Zoning) consists of two primary components. The first component is the proposed Housing Opportunity (HO) Overlay Zoning Districts, which would be applied to the housing opportunity sites identified in the Housing Element and in the Draft EIR. These sites generally include properties within the Airport Area, West Newport Mesa, Dover-Westcliff, Newport Center, and Coyote Canyon.

The second component is the proposed Multi-Unit Objective Design Standards. Each of the components are further described below.

Housing Opportunity Overlay Zoning Districts

An overlay zoning district is a regulatory tool that adds special provisions and regulations to a specific area. All proposed development within an overlay district must comply with the district's applicable development standards in addition to the base development standards unless specifically modified.

As a part of the proposed implementation program, Chapter 20.28 (Overlay Zoning Districts) of the NBMC would be amended to include new Section 20.28.050 (Housing Opportunity (HO) Overlay Zoning Districts). The HO Overlay Zoning Districts are intended to accommodate housing opportunities consistent with the Housing Element's focus areas and to ensure the City maintains adequately zoned sites consistent with its RHNA allocation. Although the City's 6th Cycle RHNA allocation is 4,845 housing units, a total new rezoning development capacity of 8,174 units is being provided to include a buffer necessary to address future "no net loss"¹ of available sites and to preclude the need to identify replacement sites during the 6th Cycle implementation. The provisions of Section 20.28.050 would be applicable in whole or in part to the following focus areas with associated maximum development limits:

¹ Pursuant to California Government Code Section 65863, the City must ensure its Housing Element opportunity sites inventory continues to always have capacity to accommodate the RHNA by income group throughout the planning period. This requires a careful accounting of development on the sites identified in the Housing Element and residential projects. Action by the City to modify development standards in a way that would result in a lower density, limit or stop development on sites identified in the inventory, exchange sites in the inventory, or downzone sites would trigger No Net Loss unless the City can make the required findings or identify alternative sites. The buffer helps to prevent the triggering of No Net Loss provisions. The lack of sites to accommodate the jurisdiction's RHNA represents a fundamental alteration to the City's ability to meet Housing Element Law.

HO-1: Airport Area (2,577 units)
HO-2: West Newport Mesa (1,107 units)
HO-3: Dover-Westcliff (521 units)

HO-4: Newport Center (2,439 units)
HO-5: Coyote Canyon (1,530 units)
HO-6: 5th Cycle Sites

Properties identified within HO-1, HO-2, HO-3, HO-4, and HO-5 Overlay Zoning Districts would be eligible for special development standards that are conducive to residential development at the prescribed average density range. These standards include, but are not limited to, minimum lot area, setbacks, height, open space, landscaping, and parking. The allowable uses are those that are permitted or conditionally permitted in the base zone, as well as multiple-unit residential and mixed-use developments that meet the density requirements and development standards of each HO Overlay Zoning District.

A critical component of the HO Overlay Zoning Districts is the development limits, which are included with the list above for reference and align with the housing strategy for each focus area. These limits are intended to be an additional opportunity on top of current intensity and density allowances allowed by the General Plan. As drafted, the development limits will only be drawn down with base residential units. Units that are produced through State density bonus law or other State provisions (e.g., Senate Bill 6 and accessory dwelling units) will not be counted against the development limits. Furthermore, current prospective developments identified as pipeline projects and those projects that have been applied for prior to the effective date of these HO Overlay Zoning Districts are also not counted against the development limits.

It is important to note that, as required by California Government Code Section 65584.2(h) and Section 65584.2(i), any residential or mixed-use development in an HO Overlay Zoning District that includes a minimum of 20% of the units reserved for low- and very-low income residents would not require discretionary review and would instead be allowed by-right, subject to the development standards and Objective Design Standards described in the next section. Developments meeting these criteria would also require an Affordable Housing Implementation Plan (AHIP) that stipulates a minimum 30-year affordability covenant and requires affordable units to be dispersed throughout a project and reflect the range of bedrooms and interior finishes that are features on market-rate units.

The HO-6 Overlay Zoning District is only listed to provide for a by-right review process for residential development on the prior 5th Cycle Housing Element sites. These are sites that are already zoned for residential development and were included in the 5th Cycle Housing Element, but which have not yet been redeveloped. They will simply be carried forward at the existing densities provided by current zoning. Sites within this HO-6 Overlay Zoning District are not provided additional density or modified development standards beyond the base zoning standards currently in place.

Attachment C provides additional justification for the proposed amendments to Title 20. Exhibit “B” of this attachment shows the proposed development standards for the five housing opportunity areas (HO-1 through HO-5) and the by-right approval process for HO-6, which will be incorporated into Chapter 20.28 (Overlay Zoning Districts).

Objective Design Standards

Under new State housing laws (i.e., Senate Bill 35 – Housing Accountability Act, Senate Bill 330 – Housing Crisis Act, Senate Bill 6, and Assembly Bill 2011), the City is prevented from enforcing subjective development standards and is required to permit certain housing development projects meeting minimum affordability criteria by-right. Therefore, it is important to create a set of objective design standards that provide certainty of compliance for housing developers while fostering good design and maintaining the character of Newport Beach. For example, the City is not allowed to include subjective standards in this document, such as requirements for “quality architecture” or “compatible colors and window treatments.”

State housing law specifies having objective design standards (hereafter “ODS”) available to apply to housing projects where the City’s discretion over design review is otherwise preempted per State law. ODS are defined under State law as “standards that involve no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal” (California Government Code §65913.4). Housing Element Policy Action 3A requires the preparation and adoption of the City’s own ODS.

The proposed ODS are to be incorporated into Title 20 as Section 20.48.185 (Multi-Unit Objective Design Standards), which will be part of Chapter 20.48 (Standards for Specific Land Uses). The ODS will supplement the development standards of the HO Overlay Zoning Districts, as well as any base zoning requirements. ODS address items such as amount of window coverage on the ground floor of mixed-use buildings, size of entry porches, building articulations and modulation, building orientation, open space, storefront design, and similar standards.

While there are existing development standards and proposed development standards under the HO Overlay Zoning District, the City’s proposed ODS go further and ensure high quality development without too much prescriptiveness to help address atypical situations. Should a developer wish to deviate from the ODS, a waiver of design standards may be requested through a discretionary site development review by the Planning Commission when it can be demonstrated that compensating design and development features are provided that offset impacts associated with the waiver of standards. Alternatively, projects that include affordable or special needs housing that are eligible for a density bonus may also request development standard waivers.

Attachment D provides additional justification for the proposed ODS. Exhibit “B” of this attachment contains the proposed draft ODS.

3) Local Coastal Program Amendment

The LCP consists of the Coastal Land Use Plan (CLUP) and the Implementation Plan, which is Title 21 (Local Coastal Program Implementation Plan) of the NBMC. The CLUP sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone within the city and its sphere of influence, except for Newport Coast and Banning Ranch. Title 21 provides the zoning and development standards for those properties within the Coastal Zone.

The proposed amendments serve to implement the Housing Element strategy for properties that are within the Coastal Zone. They are complementary to the General Plan Land Use Element and include updated and new policies to implement the Housing Element programs and strategies. They are also complementary to the amendments proposed for Title 20.

The new CLUP policies are listed in Table 2 below.

Table 2, Coastal Land Use Plan New Policies

Policy	Effect
Policy 2.1.11-1	Supports the creation of the Housing Opportunity Overlay Coastal Zoning Districts and provides guidance on associated development limits for each focus area.
Policy 2.1.11-2	Clarifies that residential use of identified properties is allowed regardless of and in addition to the underlying land use category or density. Furthermore, this policy clarifies that development limits do not include units that are produced pursuant to State density bonus law or current pipeline units.
Policy 2.1.11-3	Reinforces that residential development opportunities are in addition to the existing uses allowed by the General Plan. The allowance for residential does not require development as residential nor does it create nonconforming conditions.
Policy 2.1.11-4	Requires consistency with other Implementation Plan requirements, including a coastal development permit, and compliance with established procedures to grant relief from standards, such as a coastal modification or coastal variance.

The amendment to Title 21 includes the addition of the new Housing Opportunity (HO) Overlay Coastal Zoning Districts along with its corresponding development standards for the various overlay districts. While the new HO Overlay Coastal Zoning Districts will allow for a new residential development opportunity where it may not be allowed today, it is important to identify that a coastal development permit will still be required for any development project in the Coastal Zone.

Attachment E provides additional justification for the proposed LCP Amendments. Exhibits “B” and “C” of this attachment include the proposed amendments to the Coastal Land Use Plan’s policies, as well as to Title 21 of the NBMC. The standards address typical development standards including, but not limited to, height, setbacks, open space, landscaping, and parking.

Charter Section 423 Vote

A successful vote of the electorate is required for any major amendment to the City’s General Plan pursuant to City Charter Section 423 and its implementing guidelines. A “major amendment” is one that significantly increases the maximum amount of traffic that allowed uses could generate, or significantly increases allowed density or intensity. “Significantly increases” means over 100 peak hour trips (traffic), or over 100 dwelling units (density), or over 40,000 square feet of floor area (intensity).

The thresholds apply to the total of 1) Increases resulting from the amendment itself, plus 2) 80% of the increases resulting from other amendments affecting the same neighborhood and adopted within the preceding 10 years. Due to the broad and speculative nature of the implementation amendments across several statistical areas, City staff prepared Table 3 in a cumulative fashion by focus area, and without consideration of the previous increases.

Table 3, Potential Charter Section 423 Increases and Affected Statistical Areas

Focus Area	Affected Statistical Areas	Dwelling Units	Peak Hour Trips (AM)¹	Peak Hour Trips (PM)¹
Airport Area	J5, J6, and L4	2,577	1,031	1,314
West Newport Mesa	A1, A2, and A3	1,107	443	565
Dover-Westcliff	B5, H3, H4, and J2	521	208	266
Newport Center	F1, G1, K1, L1, L2 and M6	2,439	976	1,244
Coyote Canyon	Not Identified	1,530	612	780

(1) Conservatively uses the “ITE Trip Gen Land Use 220: Multifamily Housing (Low Rise) Not Close to Rail” trip generation rate, consistent with the provisions of City Council Policy A-18 (Guidelines for Implementing Charter Section 423. This land use category in the ITE Manual references residential developments up to three levels

At the City Council Study Session on July 9, 2024, the City Council discussed whether a vote under Charter Section 423 is appropriate given the 6th Cycle Housing Element and its implementation are mandated under State Housing Element Law.

If the City Council proceeds with Option No. 1 and determines the provisions of Charter Section 423 are not precluded by State law, then the proposed amendment is considered a major amendment due to increases in both density and trips across all affected statistical areas. Accordingly, the proposed General Plan Land Use Element amendment would not take effect unless it has been submitted to the voters and approved by a majority of those voting on it.

Given the February 2025 deadline for implementation of the zoning actions, City staff has been working to bring the matter to a ballot vote as part of the November 5, 2024 General Election.

Pursuant to Housing Element Section 4 (Housing Plan), a failed vote should result in the City's pursuit of a second ballot vote with a revised approach that lessens the amount of development proposed to meet the RHNA allocation. However, this approach anticipated an initial ballot vote in March 2024, and there is no longer time to conduct a second ballot vote and meet the February 2025 deadline for implementation. It is further important to note that any reduced development would also reopen the Housing Element for HCD review and require revisions to all implementing documents. As outlined in Section 4, should the second ballot vote fail, the City would request an opinion from the State Attorney General's Office to determine the City's options for compliance. Accordingly, a failed vote on November 5, 2024, will significantly jeopardize the City's ability to meet the stated February 2025 deadline for implementation, and is almost inevitable to result in loss of compliance with State Housing Element Law.

Should the City Council proceed with Option No. 2 and determine that a vote of the electorate pursuant to Charter Section 423 is precluded by State law, then the following section of this staff report ("November 5, 2024, General Municipal Election Process") is no longer applicable or relevant. Instead, the City Council will adopt the draft resolution included at the back of this staff report as Attachment O. This action would delay the adoption of the General Plan Land Use Amendment and related legislative amendments. City staff would immediately work with HCD on completing a narrowly focused review of the revisions to remove the Charter Section 423 vote as a constraint from Section 3 (Housing Constraints, Resources, and Affirmatively Furthering Fair Housing) and as an implementation action from Section 4. After HCD review and assurance that the proposed amendment would not affect the City's compliant status, City staff would return with both the amendment to the Housing Element and the General Plan Land Use Amendment and related legislative amendments to complete the implementation ahead of the February 2025 deadline.

November 5, 2024, General Municipal Election Process

Attachment G calls a General Municipal Election on November 5, 2024, for the purpose of placing the amendments to the General Plan Land Use Element on the ballot; and Attachment H requests a consolidated election with the County of Orange for the purpose of presenting the ballot measure to the electorate.

Attachment I directs the City Attorney to prepare an impartial analysis of the ballot measure showing the effect of the ballot measure on existing law. The analysis shall not exceed 500 words in length and the deadline to submit the impartial analysis to the elections official is 5:30 p.m. on Monday, July 29, 2024. The 10 calendar day examination period for the impartial analysis shall commence on Tuesday, July 30, 2024, and end on Thursday, August 8, 2024.

The Elections Code allows arguments to be submitted for ballot measures and Section 9287 establishes priorities as to which argument is chosen for printing by the election official if two or more arguments are submitted in favor of or against a measure. Although some types of measures give the Council automatic first priority to file arguments, if it is the Council's desire to ensure that it has first priority in submitting arguments, formal action is required (Attachment J). The direct arguments shall not exceed 300 words in length and requires that at least one, but not more than five, persons sign it. For Councilmembers, not more than three signatures are allowed. The deadline for submitting direct arguments is 5:30 p.m. on Tuesday, August 6, 2024, and the 10 calendar day examination period for the direct arguments shall commence on Wednesday, August 7, 2024, and end on Friday, August 16, 2024.

In selecting the argument, the election official shall give preference and priority, in the order named, to the arguments of the following:

- A. the legislative body, or member or members of the legislative body authorized by that body;
- B. The individual voter, or bona fide association of citizens, or combination of voters; and associations, who are the bona fide sponsors or proponents of the measure
- C. Bona fide associations of citizens; or
- D. Individual voters who are eligible to vote on the measure.

Rebuttal arguments must be filed not more than 10 days after the deadline for filing direct arguments, or 4:30 p.m. on Friday, August 16, 2024, and are limited to no more than 250 words. Any rebuttal argument received the election official will be made available in the City Clerk's Office for public examination during the 10 calendar day period commencing on Saturday, August 17, 2024, and ending on Monday, August 26, 2024.

The resolution relative to rebuttal arguments is included as Attachment J.

Public Outreach and Review

In early 2023, City staff began to work closely with the General Plan Update Steering Committee (GPUSC), the General Plan Advisory Committee (GPAC), and GPAC's Land Use Element Subcommittee to formulate initial policy revisions for the General Plan Land Use Element. The draft revisions were reviewed at three GPUSC meetings, three GPAC meetings, and four GPAC Land Use Subcommittee meetings.

In June and July 2023, the City began work on the Draft Program Environmental Impact Report (DPEIR) for the project. This is discussed in more detail beneath the "environmental review" header.

In August 2023, the City released initial draft versions of the General Plan Land Use Element revisions, Housing Opportunity (HO) Overlay Zoning Districts, and Multi-Unit Objective Design Standards for public review and comment. On September 21, 2023, the Planning Commission conducted a study session to review these implementing components. Some of the commissioners expressed concern regarding overly restrictive Objective Design Standards and suggested broadening them to provide for more latitude for atypical sites.

Based on input received from the Planning Commission and various community stakeholders, the drafts were revised and reposted on January 16, 2024.

On February 12, 2024, the City released the Draft EIR for a 46-day public review and comment period. On February 13, 2024, the City Council held a study session to receive an update on the Housing Element's implementation.

Based on input received from various community stakeholders, the drafts of implementing amendments were once again revised and reposted on March 29, 2024. At this time, the City also prepared a draft of the Local Coastal Program Amendments for review and published initial drafts of the HO Overlay Zone maps.

Potential Consequences of Missing the February 2025 Deadline

Implementation of the Housing Element's rezonings by the February 2025 mandated deadline is of critical importance to maintain a compliant Housing Element.

Should the matter proceed to a Charter Section 423 vote, and the vote fails, the Housing Element may be considered non-compliant with State housing law. This would enable developers of affordable housing projects to have their residential projects approved as a "builder's remedy" in accordance with the Housing Accountability Act allowing higher density housing on any site, including those not identified as housing opportunity sites in the Housing Element, and effectively circumventing well established height limits, density limits, and other regulations designed to ensure development is consistent with the City's Vision Statement of the General Plan. Beyond builder's remedy projects, further ramifications could include, but are not limited to, increased exposure to public and private litigation, loss of permitting authority, financial penalties including substantial monthly fines, loss of eligibility for state and regional funding sources, court receivership, and increased exposure to monitoring by the newly formed Housing Accountability Unit of HCD.

Planning Commission Review and Recommendation

On April 18, 2024, the Planning Commission considered and recommended the City Council approve the Amendments. The April 18, 2024, Planning Commission staff report, Planning Commission minutes excerpt, and Planning Commission Resolution No. PC2024-006 are all included as Attachment K.

Orange County Airport Land Use Commission (ALUC) Override

Section 4.3 of the AELUP and Section 21676(b) of the California Public Utilities Code (CPUC) require the City to submit legislative amendments to the ALUC for a determination of consistency with the AELUP. ALUC conducted a hearing on the Amendments at its May 16, 2024, meeting and found them inconsistent with the AELUP. ALUC's staff report and determination letter are included as Attachment L.

On May 28, 2024, consistent with CPUC Sections 21670 and 21676, the City Council held a duly noticed public hearing and adopted Resolution No. 2024-32, containing findings necessary to override the ALUC determination.

On May 29, 2024, a notice of intent to override, along with Resolution No. 2024-32, were sent via certified mail and emailed to ALUC and to the California Department of Transportation, Aeronautics Program.

The City received timely comments from the Aeronautics Program on June 21, 2024, and from ALUC on June 28, 2024, which are summarized under the individual sub headings below. Both letters are attached and incorporated by reference in the draft resolution for overriding (Attachment F). The facts in support of the findings provided in Exhibit "D" to that resolution adequately address the comments received. As previously noted, overriding the ALUC determination and adopting the proposed Amendments requires a two-thirds majority vote of the Council to be effective.

Aeronautics Program

The Aeronautics Program primarily echoed ALUC's concerns with locating housing near John Wayne Airport, and in higher noise areas or less desirable safety zones.

ALUC Comments

ALUC reiterated its determination of inconsistency due to concerns of airport noise, safety, and overflight impacts. ALUC further suggested that the ALUC is comprised of pilots and individuals who are best qualified to further the objectives of the John Wayne Airport while upholding the spirit and intent of the AELUP.

Minor Language Changes Since Planning Commission and ALUC Review

Four immaterial changes were made to proposed Land Use Element Policies 3.3, 4.4, and 4.5 to provide additional guidance and clarity, and one immaterial change was made to Footnote 1 for Table 2-16 of Section 20.28.050 (Housing Opportunity [HO] Overlay Zoning Districts) to define more clearly "Pipeline Units." These changes are provided in redline-strikeout format in Attachment M to this staff report.

FISCAL IMPACT:

Recommended Options

Should the City Council proceed with Option No. 1, funding has been budgeted to conduct the November 5, 2024, General Municipal Election. Should the City Council proceed with Option No. 2, there are no further funding requirements.

Housing Element Implementation Program Amendments

Pursuant to General Plan Implementation Program 12.1, a fiscal impact analysis was prepared for the Housing Element Implementation Program Amendments by Keyser Marston Associates (KMA) dated July 9, 2024 (Fiscal Impact Analysis). As there are no specific projects proposed and the dwelling unit capacity added through implementation does not contemplate any replacement of existing uses, KMA's evaluation is highly conservative and theoretical. The Fiscal Impact Analysis has been provided as Attachment N to this staff report. In summary, KMA found the following:

- Rents, sales prices and assessed values in the city are all very high, benefiting General Fund revenues.
- Total buildout of all the potential residential would have a net negative impact on the City's General Fund; however, this may be mitigated if projects continue to be developed at higher price points.
- The replacement of land uses that generate minimal public revenues can offset the negative impact of the residential. For example, the recently approved 1400 Bristol Street project demonstrates that office development can have a net negative impact on the General Fund and higher rents/values can significantly reduce the residential impact to the General Fund.
- Cities will often adopt a development fee program, negotiate development agreements, and pursue other methods to mitigate the fiscal impact of residential development. KMA understands the City is currently preparing a development fee program, which could potentially offset some of the projected impacts.

ENVIRONMENTAL REVIEW:

Program Environmental Impact Report (PEIR)

Prior to considering approval, the City Council must first review, consider and certify the Program Environmental Impact Report (PEIR) identified by State Clearinghouse Number (SCH No.) 2023060699.

The City contracted with Kimley-Horn & Associates, Inc. (Kimley-Horn), a well-qualified planning and environmental consulting firm, to prepare the Draft Program Environmental Impact Report (Draft PEIR) for implementation in accordance with CEQA and the CEQA Guidelines. A copy of the Draft PEIR was made available on the City’s website, at each Newport Beach Public Library location, and at the Community Development Department.

Given the wide-sweeping and programmatic nature of the Draft PEIR, all topics to potentially be evaluated under CEQA were analyzed. It is further important to highlight that the analyses conducted for the Draft PEIR were highly conservative and assumed full build-out of the entire housing development capacity without any consideration for removal and replacement of existing development. While a robust discussion is provided in the Draft PEIR, the following Table 4 provides a quick summary of the outcome for the analyses conducted under each topical area.

Table 4, Summary of Significant Impacts and Mitigation Program

Topic	Level of Significance	Notes
Aesthetics	Significant and Unavoidable	No feasible mitigation measures to reduce to less than significant for Banning Ranch only. No mitigation required for other focus areas.
Air Quality	Significant and Unavoidable	No feasible mitigation measures to reduce to less than significant.
Biological Resources	Less Than Significant	Implementation of standard conditions and mitigation measures.
Cultural Resources	Significant and Unavoidable	No feasible mitigation measures to reduce to less than significant given the unknown and speculative locations of development, and the potential loss of buildings that are 50 years old and older.
Energy	Less Than Significant	Implementation of current regulations.
Geology and Soils	Less Than Significant	Implementation of current regulations.
Greenhouse Gas Emissions	Significant and Unavoidable	No feasible mitigation measures to reduce to less than significant.
Hazards and Hazardous Materials	Less Than Significant	Implementation of current regulations.
Hydrology and Water Quality	Less Than Significant	Implementation of current regulations.
Land Use and Planning	Less Than Significant	Implementation of current regulations.
Noise	Significant and Unavoidable	For roadway noise, no feasible mitigation measures to reduce to less than significant for one segment only (Campus Drive from MacArthur Boulevard to Von Karman Avenue).
Population and Housing	Less Than Significant	Implementation of current regulations.
Public Services	Less Than Significant	Implementation of current regulations.
Recreation	Less Than Significant	Implementation of current regulations.

Topic	Level of Significance	Notes
Transportation²	Less Than Significant	Implementation of current regulations and a mitigation measure.
Tribal Cultural Resources	Less Than Significant	Implementation of standard conditions and mitigation measures.
Utilities	Significant and Unavoidable	Related to availability of water, no feasible mitigation measures to reduce to less than significant.
Wildfire	Less Than Significant	Implementation of current regulations and a mitigation measure.

All standard conditions, current regulations, and required mitigation measures are identified in the Mitigation Monitoring and Reporting Program, which is included in Exhibit “C” of Attachment A.

The Draft PEIR document was released for a 46-day public comment period from February 12, 2024, through March 28, 2024.

Staff received seven comment letters on the Draft PEIR from agencies and members of the public. Kimley-Horn has worked with City staff to prepare detailed written responses to each of the comments received on the adequacy of the Draft PEIR. Corrections and additions to the Draft EIR are also provided to incorporate additional or revised information required for the preparation of responses to certain comments. The revisions do not alter any conclusions for level of significance disclosed in the Draft PEIR, and therefore, do not warrant recirculation of the Draft PEIR for public review. The revisions to the Draft PEIR will be incorporated into the Final PEIR, if certified.

The Draft PEIR reflects the independent judgment of the City and recognizes project design features, standard construction and engineering practices, compliance with federal, state and local laws, and standard conditions of approval for projects within the city. On the basis of the analyses provided in the Draft PEIR, City staff has concluded that full build out of the project without consideration of removal or replacement of existing development would potentially have a significant impact on the environment. However, there are overriding considerations to consider given the programmatic nature of this document and the mandated planning exercise for the 6th Cycle RHNA allocation under State law. In that, the project’s benefits and the City’s retention of local development and land use control outweigh the potential impacts.

Tribal Consultation

Pursuant to Senate Bill 18 (SB 18), the City requested a Sacred Lands File (SLF) search on the project location from the Native American Heritage Commission (NAHC) on March 5, 2023.

² A major consideration for the topic of Transportation is the concept of Vehicle Miles Traveled or “VMT.” Based on a comprehensive VMT analysis prepared by Urban Crossroads and reviewed by the City Traffic Engineer, the project results in an overall decrease of 0.6 VMT/Service Population. While VMT increases, the population near job-rich areas in the City also increases, thereby resulting in a reduction of VMT per capita and no significant impact from a CEQA standpoint.

On March 22, 2023, the NAHC responded that the findings of the search were positive and identified 19 Native American tribal representatives to contact for further information on potential tribal resources. To comply with both the requirements of SB 18 and Assembly Bill 52 (AB 52), the City mailed and emailed notices regarding the proposed project to all listed tribes. The City received a response from only one representative of the Gabrieleño Band of Mission Indians – Kizh Nation expressing no concerns on the project given its programmatic nature, but also expressing a desire to be consulted on future individual projects.

Level of Service Analysis

Although a Level of Service (LOS) traffic study is no longer required for the purpose of CEQA, nor is it required for the Housing Element Implementation Program Amendments, the City has prepared the *Housing Element Transportation Analysis* (Analysis) consistent with the methodology prescribed by the City's Traffic Phasing Ordinance. The Analysis serves as a reference document to provide additional information regarding potential traffic conditions related to the implementation of the Housing Element.

The Analysis is available on the City's website using the following link: <https://www.newportbeachca.gov/home/showpublisheddocument/74436/638458397515200000>.

Much like the PEIR, the Analysis is a highly conservative, "worst-case" analysis in that it assumes full build-out of all units occurring without removal or redevelopment of any existing development. In reality, development of the new housing units will likely occur through redevelopment of existing nonresidential uses (e.g., office, retail, etc.) helping to offset vehicular trips. Furthermore, the Analysis notes that the introduction of residential into an area with predominantly existing employment uses will help to balance the land uses in the area, such that traffic volume increases may not be as substantial as expected.

Even with this highly conservative scenario, the Analysis concludes that only six of the study intersections are projected to potentially experience unacceptable conditions. These include the following:

- **Superior Avenue at Coast Highway (AM)**
- Riverside Avenue at Coast Highway (AM/PM)
- **Tustin Avenue at Coast Highway (AM)**
- **Irvine Avenue at University Drive (AM/PM)**
- SB Newport Boulevard Off-Ramp at Coast Highway (AM)
- Orange at Coast Highway (AM)

Of these six intersections, the three bolded are expected to operate at acceptable levels of service based on future improvements already identified in the General Plan. The Analysis provides recommendations that facilitate improved levels of service for the remaining three intersections.

NOTICING:

Given the citywide nature of this activity, notice of this hearing was published in the Daily Pilot in a one-eighth-page format at least 10 days before the scheduled meeting, consistent with Section 20.62.020(B)(2)(c) of the NBMC. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

- Attachment A – Resolution No. 2024-50 Certifying the PEIR
- Attachment B – Resolution No. 2024-51 Amending the General Plan Land Use Element
- Attachment C – Ordinance No. 2024-16 Amending Title 20 (Planning and Zoning) for Overlays
- Attachment D – Ordinance No. 2024-17 Amending Title 20 (Planning and Zoning) for Multi-Unit Objective Design Standards
- Attachment E – Resolution No. 2024-52 Authorizing Submittal of the Local Coastal Program Amendment
- Attachment F – Resolution No. 2024-53 Overruling ALUC
- Attachment G – Resolution No. 2024-54 Calling Election
- Attachment H – Resolution No. 2024-55 Requesting Consolidation
- Attachment I – Resolution No. 2024-56 Filing Written Arguments and Directing the City Attorney to Prepare an Impartial Analysis
- Attachment J – Resolution No. 2024-57 Providing for the Filing of Rebuttal Arguments
- Attachment K – April 18, 2024 Planning Commission Staff Report, Minutes Excerpts, and Resolution No. 2024-006
- Attachment L – May 16, 2024, ALUC Staff Report and Corresponding Action Letter
- Attachment M – Minor Language Changes Since Planning Commission and ALUC Review
- Attachment N – Fiscal Impact Analysis
- Attachment O – Resolution No. 2024-58 Initiating an Amendment to the 6th Cycle Housing Element