

## City Council Special Meeting

**Wednesday, February 9, 2022**

**6:00 PM**

**Zoom Meeting**



### **ELECTED OFFICIALS**

**Mayor** Hildy Stern

**Mayor Pro Tem** Steve Napolitano

**Councilmember** Richard Montgomery

**Councilmember** Joe Franklin

**Councilmember** Suzanne Hadley

**City Treasurer** Tim Lilligren

### **EXECUTIVE TEAM**

**City Manager** Bruce Moe

**City Attorney** Quinn Barrow

**City Clerk** Liza Tamura

**Community Development Director** Carrie Tai

**Finance Director** Steve Charelian

**Fire Chief** Michael Lang

**Human Resources Director** Lisa Jenkins

**Information Technology Director** Terry Hackelman

**Parks and Recreation Director** Mark Leyman

**Interim Police Chief** Derrick Abell

**Public Works Director** Erick Lee

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### **MISSION STATEMENT:**

Our mission is to provide excellent municipal services,  
preserve our small beach town character, and enhance the quality of life for our  
residents, businesses and visitors.

**CALL AND NOTICE OF A SPECIAL CITY COUNCIL MEETING****TO MANHATTAN BEACH CITY COUNCILMEMBERS:**

**NOTICE IS HEREBY GIVEN** that the Mayor has called a Special Meeting of the City Council of the City of Manhattan Beach, California, to be held virtually via Zoom, at 6:00 PM on Wednesday, February 9, 2022. The agenda for the meeting is set forth below. Pursuant to the California Brown Act, no other business shall be considered or discussed.

Please note, that the City Council will provide an opportunity for members of the public to directly address the City Council concerning the item described in this notice before the City Council considers that item.

**/s/ Hildy Stern**  
**Hildy Stern, Mayor**

**/s/ Liza Tamura**  
**Liza Tamura, City Clerk**

*Please note that members of the public will be provided the opportunity to directly address the City Council concerning the item(s) described below before the City Council considers such item(s). No other business shall be considered.*

*The City continues to offer an opportunity to participate in Council meetings via Zoom. In the interest of maintaining appropriate social distancing, the City Council encourages the public to participate by submitting comments in advance of the meeting, no later than **5:30 PM, February 9, 2022** (the day of the meeting), via:*

- 1) eComment at <http://www.manhattanbeach.gov/ecomment>
- 2) email to [cityclerk@manhattanbeach.gov](mailto:cityclerk@manhattanbeach.gov) or
- 3) telephone message recorded at **(310) 802-5030**.

*All of your comments provided by the deadlines above will be available to the City Council and the public prior to the meeting.*

*In addition, you may participate by joining Zoom during the meeting. Instructions are provided on item D (Public Comments).*

*Meetings are broadcast live through Manhattan Beach Local Community Cable, Channel 8 (Spectrum), Channel 35 (Frontier), and live streaming via the City's website.*

*In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Office of the City Clerk at (310) 802-5056 (voice) or (310) 546-3501 (TDD). Notification 36 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting. The City also provides closed captioning of all its Regular City Council Meetings for the hearing impaired.*

**CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING**

*I, Liza Tamura, City Clerk of the City of Manhattan Beach, California, state under penalty of perjury that this notice/agenda was posted on Monday, February 7, 2022, on the City's Website and on the bulletin boards of City Hall, Joslyn Community Center and Manhattan Heights.*

**BELOW ARE THE AGENDA ITEMS TO BE CONSIDERED.**

**A. CALL MEETING TO ORDER**

**B. PLEDGE TO THE FLAG**

**C. ROLL CALL**

**D. PUBLIC COMMENTS (3 MINUTES PER PERSON)**

*Please note that members of the public will be provided the opportunity to directly address the City Council concerning the item(s) described below before the City Council considers such item(s). No other business shall be considered.*

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**ZOOM PUBLIC PARTICIPATION**

*If you wish to speak on any item on the agenda, please register in advance by clicking the following link: <https://citymb.seamlessdocs.com/f/publiccomment>, even when submitting this request you will need to use the "raise hand" feature via Zoom during the presentation of that Agenda Item in order to confirm with the City Clerk's Office that you wish to provide comments.*

- 1) Join Zoom Meeting via the internet:

*Direct URL: <https://citymb-info.zoom.us/j/93376200363>, Meeting ID: 933 7620 0363*

*During the meeting you will need to use the "raise hand" button through Zoom at the time the Agenda Item is being presented for City Council consideration.*

- 2) Join Zoom Meeting via Phone Conference (Voice Only):

**Phone Number: (669) 900-6833, Meeting ID: 933 7620 0363**

*During the meeting you will need to enter \*9 on the phone's dial pad to "raise your hand" at the time the Agenda Item is being presented for City Council consideration.*

*Please note, the City is not responsible for the public's use of Zoom as it relates to the software, configuration, and setting on a personal device. The public is encouraged to visit the Zoom website for information on use of this software. The City's use of Zoom is consistent with the platform features and functions as described on the Zoom website.*

**E. GENERAL BUSINESS**

1. (Continued Item) Consideration of the 6th Cycle Housing Element Update (HEU) and Associated Initial Study/Negative Declaration (Community Development Director Tai).

[22-0109](#)

**ADOPT RESOLUTION NOS. 22-0014 AND 22-0015**

Attachments: [Housing Element Compliance & Noncompliance](#)

**F. ADJOURNMENT**





**Agenda Date:** 2/9/2022

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Bruce Moe, City Manager

**FROM:**

Carrie Tai, AICP, Community Development Director  
Talyn Mirzakhanian, Planning Manager

**SUBJECT:**

(Continued Item) Consideration of the 6th Cycle Housing Element Update (HEU) and Associated Initial Study/Negative Declaration (Community Development Director Tai).

**ADOPT RESOLUTION NOS. 22-0014 AND 22-0015**

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**RECOMMENDATION:**

In accordance with staff's recommendation, the Planning Commission recommends that the City Council adopt the attached Resolution No. 22-0014 adopting the Negative Declaration for the 6th Cycle Housing Element; and adopt the attached Resolution No. 22-0015 adopting the 6th Cycle Housing Element.

**PLEASE NOTE:**

- 1) **The Housing Element Update is unrelated to Senate Bill (SB) 9. More information on SB 9 can be found at [www.manhattanbeach.gov/SB9](http://www.manhattanbeach.gov/SB9)**  
<<http://www.manhattanbeach.gov/SB9>>.
- 2) **The Housing Element Update is unrelated to the proposed Highrose project at 401 Rosecrans Avenue that is being processed via State law and the City's existing Housing Element. More information on the proposed Highrose project can be found at [www.manhattanbeach.gov/highrose](http://www.manhattanbeach.gov/highrose)**  
<<http://www.manhattanbeach.gov/highrose>>.

**REASON FOR SUPPLEMENTAL:**

This report provides supplemental and reiterated information in response to public comments and City Council questions on the Housing Element following the February 1, 2022 and February 4, 2022 City Council meetings. The report contains the following information:

- 1) Consequences of not having a certified Housing Element;
- 2) Differences between the 6th Cycle Housing Element and prior cycles; and
- 3) How sites were chosen and the future implementation.

**BACKGROUND:**

On February 1, 2022, the City Council considered the proposed 6th Cycle Housing Element Update. During the agenda item, the City Council received a staff report, asked questions, and opened the public hearing. During the public hearing, the City Council received public testimony. The public hearing was then closed. The City Council continued its deliberations on the matter to an adjourned regular meeting on February 4, 2022. The City Council continued the item to February 9, 2022, to provide additional opportunity for the public to comment on the draft Housing Element.

**DISCUSSION:**

Through the past several decades, there have been increased consequences for not having a legally compliant Housing Element. The vast majority of jurisdictions have habitually complied with State law, adopting required housing element updates in accordance with statutory deadlines and required analyses. Despite this, the State continues to find that housing production is not adequate in the State of California and has increased the depth and breadth of analyses required in housing elements. As such, the 6th Cycle Housing Element Update is the most complex that cities have ever encountered and adds focus on ensuring that policies, programs, and sites are realistic and implementable.

**Consequences Of Not Having A Certified Housing Element**

The following describes some of the consequences of not having a certified Housing Element by February 12, 2022. In general, the consequences of not having housing element may result in additional loss of local control and significant fiscal ramifications.

**Mandatory Rezoning by October 2022**

Assembly Bill (AB) 1398, effective January 1, 2022, establishes new penalties for local governments that fail to adopt a housing element in substantial compliance with State law in a timely manner. AB 1398 shortens the timeline for rezoning from three years and 120 days to one year for cities that have not adopted Housing Elements for this cycle. Rezoning must include CEQA analysis and include minimum density and development standards. The statutory deadline for the adoption of the Housing Element is October 15, 2021, with a 120-day grace period of February 12, 2022.

- If the City adopts its Housing Element by February 12, 2022, it has until February 12, 2025, to rezone properties to implement its Housing Element capacities.
- If the City does not adopt its Housing Element by February 12, 2022, the City must complete rezoning by October 15, 2022, eight months away. Any jurisdiction not in compliance is subject to the California Department of Housing and Community Development (HCD) enforcement action and litigation.

**Inability to Deny Certain Residential Projects**

Without a certified housing element, the City may not deny certain affordable housing



developments containing 20 percent of the units for lower income, or 100 percent of the units for middle or moderate-income households for being inconsistent with the City's General Plan and Zoning Code. This means the City would be required to approve qualifying housing developments even if they do not comply with the City's basic requirements for these housing projects. (Currently, the City is not considering any applications for projects meeting this criteria).

#### General Plan Deemed Inadequate and Invalid/Suspension of Local Control

The State provides cities with a certain level of sovereignty. In granting this, the State requires that each city's laws conform to State law. State law requires each city to have a General Plan. The Housing Element is part of a city's General Plan. When a jurisdiction's housing element is found to be out of compliance, its entire General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan may have their permitting authority enjoined by a court, and would no longer be able to make permitting decisions of any kind, including new or remodeled commercial and residential permits. In other words, a court could prohibit the City from issuing any residential or commercial building permits, even remodeling permits, until Manhattan Beach has a Housing Element for this cycle.

#### Limited Access to State Funding

Various State grant and loan programs require an HCD-certified housing element, and several State and federal funding programs consider compliance with housing element law as an eligibility or ranking criterion. Some examples of grants used by the City currently or in recent past are Community Development Block Grants (CDBG), Active Transportation Grants, Sustainable Communities Grants, SB 1 Planning grants (which fund transportation improvements). The City relies on a myriad of State funding resources for capital projects, roadway, parks, playgrounds, accessible crosswalk ramps, etc.

#### Legal Suits and Attorney Fees

If a jurisdiction does not have a certified housing element, HCD may notify the Attorney General that the city is in violation of State law. Then, if a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees. Potential consequences of lawsuits include mandatory compliance within 120 days, suspension of local control on development matters, (including issuance of any building permits), and court approval of housing developments.

#### Financial Penalties

Court-issued judgement directing the jurisdictions to bring its housing element in substantial compliance with state housing element law. The court can order the city to pay fines (or have funds withheld) directed to the California State housing trust fund, attorney's fees to the plaintiff, or both. California Government Code § 65585(I)(1) defines an escalating structure of fines with a minimum of \$10,000 per month and a maximum of \$100,000. If a jurisdiction's housing element continues to be out of compliance, courts can multiply financial penalties by a factor of six.

#### Court Receivership

Government Code §65585(I)(3)(B) allows a court to appoint an agent with all powers necessary to bring a city's Housing Element into compliance with state law.

### **Preparation of Sites Analysis**

The most challenging of exercises conducted for the preparation of the 6th Cycle Housing Element was in relation to Appendix E, the Sites Analysis and Inventory, which describes the methodology by which the City can accommodate its Regional Housing Needs Allocation (RHNA) targets and provides an inventory of the sites identified to meet the housing need.

The requirement to include an inventory of land suitable and available for residential development to meet the locality's regional housing need by income level is not a new requirement in State Housing Element law. In fact, the City has had to prepare site inventories in all prior Housing Element cycles, including the 5th Cycle in 2013 to accommodate the City's then-RHNA of 38 housing units.

Since the adoption of the 5th Cycle Housing Element, however, there have been many changes to respond to the State's overall lagging housing production. The State's RHNA for each county and city increased dramatically (the City's RHNA increased from 38 to 774 units), and the State legislature adopted a number of laws starting in 2017 that drastically changed existing criteria, and added new criteria, related to the sites inventory. This means that in addition to the sites identified in the 5th Cycle Housing Element, the City has had to identify more housing capacity while being strictly limited by new criteria stemming from the legislation outlined below. This has resulted in the site-selection process for the 6th Cycle Housing Element being exceedingly more complex as compared to previous cycles.

Below is a summary of those laws (SB= Senate Bill and AB= Assembly Bill):

- Design and development of the site inventory (SB 6, 2019)
- Requirements in the site inventory table (AB 1397, 2017 AB 1486, 2019)
- Capacity calculation (AB 1397, 2017)
- Infrastructure requirements (AB 1397, 2017)
- Suitability of non-vacant sites (AB 1397, 2017)
- Size of site requirements (AB 1397, 2017)
- Locational requirements of identified sites (AB 686, 2018)
- Sites identified in previous housing elements (AB 1397, 2017)
- Non-vacant site replacement unit requirements (AB 1397, 2017)
- Rezone program requirements (AB 1397, 2017)

Pursuant to AB 1397, the minimum size criteria for identified sites for lower-income capacity is one-half acre. According to the legislation, a parcel smaller than one-half acre is considered inadequate to accommodate housing affordable to lower income households, unless the housing element demonstrates development of housing affordable to lower income households on these sites is realistic or feasible.

AB 1397 also requires stronger justification when non-vacant sites are used to meet housing needs, particularly for lower income housing and particularly when the underlying zoning allows for commercial uses, as well as substantial evidence that the current or planned availability and accessibility of water, sewer, and dry utilities are sufficient. Additionally, it requires by-right housing when the same site is included in more than one housing element, meaning that any

site(s) included in the Sites Inventory from prior cycles are subjected to a ministerial process for housing development.

As mentioned above, AB 1397 requires that cities (like Manhattan Beach) relying on non-vacant sites to accommodate 50 percent or more of its RHNA for lower income households must demonstrate with substantial evidence in the housing element that the use will likely be discontinued during the planning period (2021 - 2029). Otherwise, the existing use on non-vacant site is presumed to impede additional residential development. The housing element must include substantial evidence based on facts or reasonable assumptions predicated upon facts, and expert opinion supported by facts. Examples of substantial evidence include, but are not limited to:

- the lease for the existing use expires early within the planning period;
- the building is dilapidated and the structure is likely to be removed, or a demolition permit has been issued for the existing uses; or
- the property owner provides a letter stating its intention to develop the property with residences during the planning period.

Pursuant to AB 686, sites must be identified throughout the community in a manner that affirmatively furthers fair housing opportunities. For purposes of the housing element site inventory, this means that sites identified to accommodate the lower-income need are not concentrated in low-resourced areas (lack of access to high performing schools, proximity to jobs, location disproportionately exposed to pollution or other health impacts) or areas of segregation and concentrations of poverty. Instead, sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing.

In an attempt to meet all (old and new) sites inventory criteria in State law, and given that the City does not have vacant land, staff and the consultant developed a methodology to identify sites that had potential for redevelopment, as follows:

1. Sites were filtered by building age and included those with buildings more than 30 years old to meet building age criteria. Building age is a major factor influencing property valuation and land value. The age of housing is often an indicator of housing conditions.
2. Sites that are under-valued (with an assessed land-to-improvement (LTI) ratio less than one) were identified. Improvement values less than one indicates that the site has redevelopment potential, as the assessed value of the land is greater than the assessed improvement value.
3. Sites that are considered underbuilt were identified by analyzing commercially-zoned sites where the current floor area ratio compared to the maximum allowable floor area ratio is less than 100 percent. This indicator helps identify opportunity sites from a redevelopment perspective, as there is land is considered to be underbuilt.
4. Then, staff factored in resource access by evaluating sites within "Opportunity Areas", which are defined by HCD and the California Tax Credit Allocation Committee

(TCAC) as areas whose characteristics have been shown by research to support positive economic, educational, and health outcomes for lower-income households.

These initial factors were used to narrow the selection of sites within the City to allow for a more informed approach to selecting sites. Following the selection of sites through this data-driven approach, sites were then further narrowed down through on-the-ground research that looked at the potential to consolidate sites to meet HCD size criteria, and especially for lower-income sites, the feasibility of the redevelopment of the existing use. This includes accounting for net-new units on sites with existing residential units, knowledge of existing long-term leases and existing known vacancies, and also local knowledge of any known developer interest that has been revealed through developer discussions with City staff.

The Sites Inventory in Appendix E was the byproduct of the above-mentioned complex effort. The Sites Inventory identifies sites along major corridors and roadways and does not include any single-family neighborhoods. Because the majority of the City is developed with close-knit, multi-family areas and single-family neighborhoods, the concentration of all eligible sites along these corridors at prescribed densities means that the capacity can be accommodated in relatively few areas. As these areas are already located along corridors, they have the most direct access to regional roadway connections and services. These areas are described in Appendix E and presented at the February 1, 2022, meeting.

While the Sites Inventory in the Housing Element identifies potential capacity sites from a policy standpoint, Program 2 requires the City to enact rezoning to formally establish an overlay district over the identified sites in the General Commercial (CG) and Planned Development (PD) Districts to accommodate the remaining lower-income RHNA of 406 units and the 15% buffer and to put the Sites Inventory into motion.

Program 2 is just one of the 31 identified programs in the Housing Element, the Program Implementation section (as required by HCD) and specifies a timeframe, the responsible agency, and the funding source. It is worth noting that Program 2 is the most significant and intensive of these programs. As stated earlier in the report, if the City Council adopts the Housing Element by February 12, 2022, and HCD certifies the Housing Element, the City will have three years and 120 days to complete Program 2. If the City fails to adopt the Housing Element by February 12, 2022, the State will require that all rezoning outlined in Program 2 be finalized by October 2022.

**LEGAL REVIEW:**

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

**CONCLUSION:**

The City is mandated by the State to update the Housing Element of the General Plan for the upcoming, eight-year planning period (2021 - 2029). In accordance with all State regulations, the 6th Cycle Housing Element, as presented to City Council, analyzes community-housing needs in terms of affordability, availability, adequacy and accessibility, and describes the City's strategy and programs to address those needs. Subsequent to adoption, the City is required to implement the programs and policies as outlined in the Housing Element, over the course of the

upcoming eight years.

Accordingly, if adopted, staff will be returning to the City Council with the corresponding code amendments and rezoning efforts over the next three years, as required to set the programs and policies in motion and in compliance with the timeframes outlined in the Housing Element.

**ATTACHMENT:**

1. Housing Element Compliance & Noncompliance





# Housing Element Compliance Incentives

**Incentives for Housing Element Compliance:** Various state grant and loan programs require an HCD-certified housing element. Examples of active state funding sources that require housing element compliance for eligibility include the following:

**Permanent Local Housing Allocation (PLHA):** Helps cities and counties increase the supply of housing for households at or below 60% of area median income, increase assistance to affordable owner-occupied workforce housing, assist persons experiencing or at risk of homelessness, facilitate housing affordability, meet RHNA requirements, and ensure geographic equity in fund distribution.

**Affordable Housing and Sustainable Communities (AHSC):** The AHSC Program funds land-use, housing, transportation, and land preservation projects to support infill and compact development that reduce greenhouse gas ("GHG") emissions. Funding for the AHSC Program is provided from the Greenhouse Gas Reduction Fund (GGRF), an account established to receive Cap-and-Trade auction proceeds.

**SB 1 Planning Grants:** State-funded Sustainable Communities grants help cities pay for local transportation improvements.

**CalHOME Program:** The purpose of the CalHOME Program is to enable low- and very low-income households to become or remain homeowners through grants to local public agencies and nonprofit developers to assist individual first-time homebuyers through deferred-payment loans for down payment assistance, home rehabilitation, including manufactured homes not on permanent foundations, acquisition and rehabilitation, homebuyer counseling, self-help mortgage assistance, or technical assistance for self-help homeownership.

**Infill Infrastructure Grants (IIG):** IIG provides grant assistance, available as gap funding for infrastructure improvements necessary for specific residential or mixed-use infill development projects or areas.

**Prohousing Designation Program:** Prohousing designated jurisdictions will be awarded preference points on competitive funding applications (e.g. IIG, AHSC, Transformative Climate Communities (TCC), etc.). Local Early Action Planning (LEAP) and Regional Early Action Planning (REAP) grants can be utilized to establish prohousing policies for the purposes of eventually earning a Prohousing Designation.

**Local Housing Trust Fund Program (LHTF):** The LHTF Program provides matching funds to local and regional housing trust funds dedicated to the creation, rehabilitation, or preservation of affordable housing, transitional housing and emergency shelters.

**Regional Transportation Funding:** Transportation funding for some regions depend on local jurisdiction housing element compliance (e.g. **One Bay Area Grant funding (OBAG)**, **SANDAG's Active Transportation Grant Program**, etc.).

# Housing Element Noncompliance Consequences

## Penalties and Consequences of Housing Element Noncompliance

HCD is authorized to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. **HCD may revoke housing element compliance** if the local government's actions do not comply with state law. Examples of penalties and consequences of housing element noncompliance:

**General Plan Inadequacy**: The housing element is a mandatory element of the General Plan. When a jurisdiction's housing element is found to be out of compliance, its General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan can no longer make permitting decisions.

**Legal Suits and Attorney Fees**: Local governments with noncompliant housing elements are vulnerable to litigation from housing rights' organization, developers, and HCD. If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid by its own attorneys. Potential consequences of lawsuits include: mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.

**Loss of Permitting Authority**: Courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction's General Plan and housing element into substantial compliance with State law. The court may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring its housing element into compliance.

## Newer Consequences of Housing Element Noncompliance

**Financial Penalties**: Court-issued judgement directing the jurisdictions to bring its housing element in substantial compliance with state housing element law. If a jurisdiction's housing element continues to be found out of compliance, courts can multiply financial penalties by a factor of six.

**Court Receivership**: Courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction's housing element into substantial compliance with housing element law.