

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

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January 10, 2022

Anita D. Gutierrez, Director
Development Services Department
City of Pomona
505 South Garey Avenue
Pomona, CA 91766

Dear Anita D. Gutierrez:

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

Thank you for submitting the City of Pomona's (City) draft housing element received for review on November 11, 2021, along with revisions received on December 27, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on December 20, 2021 with you, Ata Khan, Planning Manager, and consultants Molly Mendoza and Clara Eddy.

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.

As a reminder, the City's 6th cycle housing element was due on October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

For your information, some General Plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and http://opr.ca.gov/docs/Final_6.26.15.pdf.

HCD appreciates the hard work, dedication, and responsiveness you, Ata Khan, Planning Manager, and consultants Molly Mendoza and Clara Eddy provided during the review. We are committed to assist the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jose Ayala, of our staff, at Jose.Ayala@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall".

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF POMONA

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Outreach: Outreach specifically related to affirmatively furthering fair housing (AFFH) is foundational to a complete analysis and formulating appropriate goals and actions to overcome patterns of segregation and foster more inclusive communities. The City has made a tremendous outreach effort but must summarize and relate this input to all components of the AFFH analysis and modify or add goals and actions as appropriate. Further, the element mentions the analysis of impediments to fair housing choice (AI), including outreach but should also tailor and summarize that outreach relative to fair housing issues and formulate appropriate programmatic response.

Assessment of Fair Housing: The element reports and maps data on some components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity) but it must also analyze the information such as evaluating patterns, trends, conditions and circumstances, coincidence with other components of the assessment of fair housing and the effectiveness of past and current strategies to promote inclusive communities and equitable. This analysis should be complemented by local data and knowledge, including input from commenters, and other relevant factors as described below.

Enforcement: The element mentions local capacity for fair housing education and outreach, but it should also discuss the ability to investigate complaints, obtain remedies, or engage in fair housing testing and address any trends and characteristics of fair housing complaints and enforcement. In addition, the element should address compliance with existing fair housing laws as well as any past or current fair housing lawsuits, findings, settlements, judgements, or complaints. Based on the outcomes of this evaluation, the element should summarize issues, identify contributing factors and formulate meaningful goals and actions as described below.

Integration and Segregation: The element provided some information on integration and segregation across racial groups, persons with disability, familial status and income, but must relate further analyze the effects on fair housing issues in the jurisdiction and in the region. The element must discuss and analyze this data for trends over time and patterns across census tracts.

Racial/Ethnic Areas of Concentration of Poverty (R/ECAP): The element identifies a R/ECAP and addresses concentrated areas of affluence but should also analyze the R/ECAP, such as evaluating trends, conditions, comparisons to other neighborhoods and effectiveness or absence of past strategies related to equitable quality of life. The element must add or modify programs based on the outcomes of this analysis.

Access to Opportunity: While the element provides analysis for the transportation and environmental analysis factors, the element must include a similar analysis for education and access to economic opportunity.

Disproportionate Housing Need: While the element provides information regarding displacement risks, the element must provide analysis as described above and also address substandard housing and homelessness. For substandard housing, the element could discuss housing conditions and location or utilize information from code enforcement. For homelessness, the element should evaluate impacts on protected characteristics and disparities in access to opportunities.

Sites Inventory: While the element provides information regarding the placement of sites relative to race and income and R/ECAP, additional analysis is required. For example, the element, for all components of the assessment of fair housing, should address the number of units by income group, location, magnitude of impact on local patterns, any isolation of the regional housing needs allocation (RHNA) by income group and address the concentrations of sites in key areas and corridors.

Local Data and Knowledge, and Other Relevant Factors: The element does not address this requirement. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element should analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Contributing Factors: The element identifies many contributing factors to fair housing issues. In addition, the element should re-assess and prioritize these factors based on the outcomes of a complete analysis to better formulate policies and programs and carry out meaningful actions to further fair housing.

Goals, Actions, Metrics, and Milestones: 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.

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

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).)

Extremely Low-Income (ELI) Households: While the element quantifies the existing housing needs of extremely low-income (ELI) households, it must still quantify projected ELI housing needs. The projected housing need for ELI households can be calculated by using available census data to determine the number of very low-income households that qualify as ELI households or presume that 50 percent of very low-income households qualify as ELI households. In addition, the element should analyze the unique and disproportionate housing needs of ELI households, including evaluating tenure, overpayment and other household characteristics, resources and strategies available to address housing needs and the magnitude of the gap in addressing housing needs to better formulate appropriate policies and programs. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>.

Housing Costs: The element includes information from the American Community Survey (ACS) on housing costs; however, it should include current information on sales prices and rents to reflect market conditions and better evaluate housing needs and formulate appropriate policies and programs.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Realistic Capacity: The element notes the calculation of residential capacity was based on various factors, including a review of pending projects. However, the element should also include information (Table C-10) on built densities versus maximum allowable densities for listed projects to support this methodology.

In addition, the element appears to assume residential development on sites with zoning that allows 100 percent nonresidential uses, but to support this assumption, the element

must analyze the likelihood of residential development in zoning where 100 percent nonresidential uses are allowed. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses or other relevant factors such as enhanced policies and programs.

Suitability of Nonvacant Sites: While the element includes analysis regarding common type of site and provides a general analysis, additional information is necessary to detail the suitability of nonvacant sites for residential development. For example, the description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. In addition, the element should analyze the extent that existing uses may impede additional residential development. While the element summarizes past experiences converting existing uses to higher density residential development, it should also discuss development trends to support listed factors (e.g., maximum buildout through floor area ratio (FAR) and density and percentage of maximum buildout opportunity in use).

In addition, as noted in the housing element, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

City-Owned Sites: The element should include additional discussion of the City-Owned sites identified to accommodate the RHNA. Specifically, the analysis should address whether existing uses impeded additional development, any known conditions that preclude development in the planning period, the potential schedule for development and necessary actions to facilitate development (e.g., consolidation) as intended in the sites inventory. In addition, the housing element must include a description of whether there are any plans to dispose of the properties during the planning period, how the jurisdiction will comply with the Surplus Land Act Article 8 (commencing with Government Code section 54220) and add or modify programs as appropriate.

Environmental Constraints: While the element generally discusses environmental constraints, it should evaluate how these factors related to identified sites and also discuss any other known conditions that may preclude development on identified sites and if necessary, reconsider identified sites or include programs as appropriate.

Infrastructure: The element must clarify whether there is sufficient existing or planned dry utility and water capacity to accommodate the City's RHNA or include programs, if necessary.

For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service

providers. The element should demonstrate compliance with these requirements and include programs if necessary. For additional information and sample cover memo, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/priority-for-water-sewer.shtml>.

Accessory Dwelling Units (ADUs): ADUs may be counted toward the RHNA based on past permitted units and other factors. In the element, the City projects 2,184 ADUs to be constructed over the planning period, averaging 273 units per year. This projection was based on figures provided based on increase of 17 percent year-over-year of ADU annual permit figures of 80, 107, and 108 for 2018, 2019 and 2020, respectively. However, these figures are inconsistent with HCD records and should be based on permitted units, instead of approved units. Further, the analysis does not support a year-to-year increase. In short, the City must reduce its ADU projections and establish a realistic target for the planning period.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types (Emergency Shelters): The element generally describes the City's overlay zone, but it must include an analysis of capacity and the zone. The element should also clarify shelters are permitted without discretionary action and discuss available acreage in the overlay zone, including typical parcel sizes and the presence of reuse opportunities. In addition, the analysis should address proximity to transportation and services and any conditions inappropriate for human habitability. Finally, the element should identify and analyze development standards as potential constraints, including parking requirements in compliance with Government Code section 65583, subdivision (a)(4)(A).

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land-Use Controls: The element must analyze all relevant land use controls impacts as potential constraints on a variety of housing types (e.g., multifamily rental housing, mobilehomes, 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.

Processing and Permit Procedures: While the element several steps in the review process, particularly leading up to a complete application, it should also analyze the rest of the typical process for single family and multifamily development. The analysis should address the approval body, the number of public hearing if any, approval findings and any other relevant information such as the time from initial application to issuing building permits. The analysis should address impacts on housing cost, supply, timing and approval certainty.

Housing for Persons with Disabilities: The element indicates group homes for seven or more persons are excluded from some residential zones, unlike single family uses, and subject to a conditional use permit (CUP). The element must analyze the lack of zones and CUP procedure as constraints on housing for persons with disabilities and add or modify programs to promote objectivity and approval certainty for these housing types.

Streamlining Provisions: The element should clarify whether the City has procedures consistent with streamlining procedures pursuant to Government Code section 65913.4 (Sb 35) and include programs as appropriate.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines, including for Program 5.1A (Fair Housing in Land Use Regulations). For example, many programs have timing for initiating actions but not completing actions. Examples of programs that should be modified with specific commitment and implementation timelines include:

- Program 1.4A (Inclusionary Housing)
- Program 1.3B (Housing Permit Streamlining)
- Program 2.1A (Strategic Plan to Combat Homelessness)
- Program 2.1B (Interim and Transitional Rental Assistance)
- Program 2.1C (Housing for Persons with Developmental Disabilities)
- Program 2.3B (Housing Improvement Program)
- Program 2.3C (Homeowner Rehabilitation Loan Program)
- Program 2.4A (Community Land Trust)
- Program 2.4B (Public Assembly Sites)
- Program 2.4C (Housing Development on City-Owned Parcels)

- Program 2.5A (Community Housing Development Organization Assistance)
- Program 2.5B (Affordable Housing Trust Funds and Targeted Investments)
- Program 5.1A (Fair Housing in Land Use Regulations)
- Program 5.1B (Fair Housing in Government and Nongovernment Financing)

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A3, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

3. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

While the element includes Program 1.4B (Affordable Housing Incentives), to assist in the development of affordable housing, the program should be revised to incorporate explicit actions for the development of extremely low-income households and special needs households.

In addition, as noted on page B-7, Program 1.4B (Affordable Housing Incentives) should include specific commitment and a discrete timeframe for amending an ordinance pursuant to Government Code section 65915 (State Density Bonus Law).

4. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding A4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

5. *Promote and affirmatively further fair housing opportunities and promote housing*

throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics ... (Gov. Code, § 65583, subd. (c)(5).)

As noted in Finding A1, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis.

6. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance. (Gov. Code, § 65583, subd. (c)(6).)*

While the element includes Program 2.6A (Preserve and Monitor At-risk Units), it should incorporate preservation notice law (Government Codes 65863.10, 65863.11, 65863.13) as well as include proactive outreach to owners beginning three years before expiration of rental agreements. The Program should also commit to coordinate with entities qualified to preserve at-risk units, assist with funding or support funding applications and education and assist to tenants.

7. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

Program 3.1A (Express Permitting for Additional Units): While the Program now monitors ADU production and affordability annually, it must include alternative action more than once in the planning period (e.g., every two years) if trends are not consistent with assumptions. In addition, alternative actions should not be limited to incentives. For example, if trends are far from assumptions, alternative actions such as rezoning may be necessary.