

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 16, 2021

Tracy Steinkruger, Director
Community Development Department
City of Brea
1 Civic Center Circle
Brea, CA 92821

Dear Tracy Steinkruger:

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

Thank you for submitting the Brea's (City) draft housing element received for review on June 17, 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. In addition, HCD considered comments from The Kennedy Commission and Josh Albrektson pursuant to Government Code section 65585, subdivision (c). HCD also received comments from the Public Law Center; however, these comments were received with insufficient time remaining in the review period and HCD will consider these comments in future submittals of the housing element.

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.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2021 for Southern California Association of Governments (SCAG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting

requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

HCD is committed to assisting Brea in addressing all statutory requirements of Housing Element Law and appreciates the efforts of Project Manager Linda Tang, City Planner Jason Killebrew, Administrative Intern Sergio Heredia-Melchor, and the City's consultants Lori Parrington and Karen Warner in the preparation of your draft element. If you have any questions or need additional technical assistance, please contact Chelsea Lee at Chelsea.Lee@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX CITY OF BREA

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

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

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

As part of the evaluation of programs in the past cycle, the element must provide an explanation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female headed households, farmworkers, and persons experiencing homelessness).

B. Housing Needs, Resources, and Constraints

1. *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).)*

While the element identifies the number of lower-income renter households overpaying, it must also quantify the number of lower-income owner households overpaying. In addition, the element quantifies the existing needs of extremely low-income (ELI) households; however, it must also analyze their housing needs. The analysis of ELI housing needs could consider tenure and rates of overcrowding and overpayment. Finally, the element should add policies and programs, as appropriate based on the outcomes of this analysis.

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

While the assessment of fair housing in the City meets many of the statutory requirements, it must include additional analysis, as follows:

Segregation and Integration and Concentrated Areas of Affluence: The element provides data and analysis regarding the patterns and trends of various household characteristics. However, the element must also discuss the patterns and trends for household income and familial status relative to the rest of the region. In addition, the element should examine concentrated areas of affluence and could utilize household income patterns and trends to perform this analysis.

Local Data and Knowledge and Other Relevant Factors: The element should incorporate local data and knowledge of the jurisdiction into the AFFH section. To assist in meeting this requirement, the element should provide local data not captured in regional, state, or federal data analysis. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element can analyze historical land use and investment practices or other information and demographic trends.

Sites Inventory: The element includes some general discussion of identified sites and AFFH such as the number of sites in areas of moderate displacement vulnerability. However, the element should include discussion related to the magnitude of the sites (i.e., number of units and percentage of the regional housing need allocation) and the existing patterns of socio-economic characteristics. The element should also address the anticipated impact of inclusionary requirements, particularly given the policy allows moderate income. Further, sites must be identified and evaluated relative to the full scope of the assessment of fair housing (e.g., segregation and integration, concentrated areas of poverty and affluence, access to opportunity, etc.).

Goals, Priorities, Metrics, and Milestones: The element must be revised to add or modify goals and actions based on the outcomes of analysis described above. Goals and actions must specifically respond to the analysis and 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 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.

For further guidance, please visit HCD's Affirmatively Furthering Fair Housing in California webpage at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

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).)*

To demonstrate the adequacy of sites and strategies to accommodate the City's regional housing needs allocation (RHNA), the element must address:

RHNA Progress: The element provides information on Pages 3-105 and 3-106 that describe several projects in process that will count towards the City's RHNA. However, Table H-41 presents contradicting or otherwise unclear information that should be reconciled with the description provided for the Central Park Village project. In addition, the element must also demonstrate anticipated affordability for Mercury Village, Brea Mall Mixed Use, Brea 265, and Brea Plaza projects. The demonstration should be based on actual or anticipated rents or sale prices or other mechanisms ensuring affordability such as inclusionary requirements or deed-restrictions.

Suitability of Nonvacant Sites: While the element describes several factors to demonstrate the potential for additional development, it must also analyze past experience and market demand for converting existing uses relative to the identified factors. For example, the element could include some discussion of market demand and interest in converting office spaces to residential uses and whether allowable densities are sufficient to encourage redevelopment given viable existing uses. In addition, the element should include additional analysis to demonstrate uses will likely discontinue for Sites 3, 4, 7, 8, 9 and 11 and consider public comments as part of this analysis.

For your information, the element relies on sites to accommodate 50 percent or more of the housing needs for lower-income households, which triggers requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period.

Realistic Capacity: While the element provides capacity calculations for the MU-I and MU-II zones on Table HE-44, it must also support calculation assumptions. On Page 3-110, the element states that the City reviewed development standards and regulations, as well as recently approved and built residential projects to develop these assumptions but should include additional and clear supporting information on typical densities of existing or approved residential developments at a similar affordability level. For example, the element could clearly list other recent projects, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus

In addition, the element appears to assume residential development on sites zoned for 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.

Small Sites: Many identified sites are smaller than half an acre. Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing. As a result, if utilizing these sites toward the housing need for lower-income households, the element must include analysis and programs as appropriate. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>.

Availability of Infrastructure: The element includes information on Page 3-103 that notes current infrastructure will not support future demand. The element should clarify whether there is sufficient existing and planned capacity for the RHNA and add programs if necessary.

Water and Sewer Priority: 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. HCD recommends including a cover memo describing the City housing element, including the City's housing needs and regional housing need. 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>.

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.

Accessory Dwelling Units (ADUs): The element projects 160 ADUs over the planning period or approximately 20 ADUs per year over the eight-year planning period. According to HCD records, 0 units were permitted in 2018, 10 were permitted in 2019, and 9 permitted in 2020. These trends do not support an assumption of 20 ADUs per year. To support assumptions for ADUs in the planning period, the element should reconcile trends with HCD records, adjust assumptions as appropriate and include additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate. For your information, HCD reviewed the City's ADU ordinance and noted the following areas, which may be inconsistent with statutory requirements:

- *Owner occupancy requirement:* the ordinance does not mention exceptions to occupancy requirements. For JADUs, owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization. (Gov. Code Section 65852.22(a)(2)).
- *Permitting procedure:* The City's ordinance requires a "certificate of compatibility" to be obtained prior to the submittal of an application for a building permit for ADUs. The element should discuss whether this process is non-discretionary and in compliance with ADU law.

The element should evaluate these potential constraints on the development of ADUs and include programs as appropriate to address identified constraints.

Sites with Zoning for a Variety of Housing Types: While the element includes an analysis for many types of housing, it must also add analysis and programs as necessary, as follows:

- *Employee Housing:* The Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. The element should demonstrate consistency with these requirements.
- *Emergency Shelters:* Brea's Zoning Code identifies objective standards to regulate emergency standards within the M-1 zone on Page 3-87 regarding minimum distance requirements of 500 feet from any other emergency shelters. While specified development standards for emergency shelters may be imposed, statute requires emergency shelters to not be more than 300 feet apart. The element should include programs to modify this standard.

For further guidance, please visit HCD's Housing Element Sites Inventory Guidebook at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

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).)*

Fees: The element indicates that fees for multifamily projects are significantly greater than those for single-family projects, an uncommon observation not found in other

comparable jurisdictions. Excessive fees for multifamily projects have significant impacts on housing affordability and production. The element should include an evaluation of these fees and add programs to address the constraint as appropriate.

SB 35 Streamlined Ministerial Approval Process: The element must clarify whether there are written procedures for the SB 35 (Chapter 366, Statutes of 2017) Streamlined Ministerial Approval Process and add a program to address these requirements.

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

Design Review: The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply and affordability. For example, the analysis could describe required findings and discuss whether objective standards and guidelines improve development certainty and mitigate cost impacts. The element must demonstrate this process is not a constraint or it must include a program to address this permitting requirement, as appropriate.

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

Approval Times: The element mentions requirements to analyze the length of time between application approval and building permits and then concludes projects are constructed in a reasonable time. However, to better inform the analysis and policies and programs, the element must identify the actual length of time between receiving approval for housing development and submittal of application for building permits and discuss any hindrances on construction.

6. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

The element indicates on Pages 3-27 and 3-34 that there are no farmworkers employed in fulltime farming occupations in Brea. However, farmworkers from the broader area and those employed seasonally may have housing needs, including within the City's boundaries. As a result, the element should at least acknowledge the

housing needs of permanent and seasonal farmworkers at a county-level (e.g., using USDA county-level farmworker data) and include programs as appropriate.

C. 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 Programs 2 (Multifamily Acquisition and Rehabilitation), 7 (Affordable Housing Development Assistance), and 20 (Housing for Persons with Developmental Disabilities). Programs must also be modified to include program language with clear commitments as follows:

- *Program 2 (Multifamily Acquisition and Rehabilitation):* In addition to identifying apartments in need, the program should include additional actions and timing such as pursuing funding and coordination with non-profit developers.
 - *Program 4 (Section 8 Rental Assistance):* The program should commit to how and when the City will interact with landlords.
 - *Program 8 (Land Use Element and Sites Inventory):* The program should commit to proactively reach out to property owners and developers related to incentives for consolidation and opportunity sites for development.
 - *Program 9 (Brea Core Plan):* The program should go beyond evaluating modified standards for office to residential conversions and commit to modifying development standards in addition to monitoring the success of this innovative approach with appropriate alternative actions if the program is not successful.
 - *Program 11 (Publicly-Owned Land for Affordable Housing):* The program should commit to when or how often the City will issue requests for proposals and go beyond “evaluate” for modification to zoning and development standards.
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 B3, 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. In addition:

- **Shortfall of Sites:** The element describes a shortfall of sites and indicates rezoning will occur to accommodate the RHNA. While the element includes Program 9 (Brea Core Plan), it must specifically commit to acreage, allowable densities and anticipated units. In addition, if necessary, to accommodate the housing needs of lower-income households, the program should specifically commit to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i).
- **Sites Identified in Multiple Planning Periods:** The element must include a program for vacant sites identified in two of more consecutive planning periods' housing elements or non-vacant sites identified in a prior housing element, that are currently identified to accommodate housing for lower-income households. The program must be implemented within the first three years of the planning period and commit to zoning that will meet the density requirements for housing for lower-income households and allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower-income households (Gov. Code, § 65583.2, subd. (c)).
- **Small Sites:** As noted in Finding B5, the element must add or modify programs based on the outcomes of a complete analysis to address the suitability of these sites towards the RHNA for lower-income households.
- **Annexation:** The element indicates several sites and projects that are undergoing an annexation process. If the City must rely on annexation to accommodate its regional housing need, the element must modify Program 12 (Annexation of Sphere of Influence) to commit to completing the annexation and to rezone other sites if annexation is not completed by a date specified in the program.
- **Replacement Provisions:** If necessary, the element should include a policy replacing units on sites with existing residential uses pursuant to Government Code section 65583.2, subdivision (g).
- **Accessory Dwelling Units (ADUs):** In addition to annually monitoring production, Program 10 (Accessory Dwelling Units) should commit to monitor affordability and implement additional actions if not meeting target numbers anticipated in the housing element. Additional actions, if necessary, should be taken in a timely manner (e.g., within 6 months).

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).)*

The element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-income households. The program(s) could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to lower and moderate-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/assist-in-development-housing.shtml>.

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 Findings B4 and B5, 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 to address and remove or mitigate any identified constraints.

In addition, Program 14 (Updated Parking Standards) indicates the City will develop objective parking standards but must be revised to include a commitment to reduce parking requirements.

5. *Promote AFFH opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B3, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. For example, the element could add an environmental justice program to address disparities in access to opportunity and the likelihood of displacement for the City's disadvantaged communities. For additional guidance on program requirements to AFFH, please see HCD's guidance at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

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).)*

The element includes Program 3 (Preservation of Assisted Housing) and specifies actions to monitor at-risk units, including contacting property owners within at least one year of the affordability expiration dates on projects. However, the program should be modified to include noticing requirements within 3 years and 6 months of the affordability expiration dates, in addition to coordinating with qualified entities such as non-profit organizations and establish specific time parameters around such actions.

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

The element provides a summary of quantified objectives on Page 3-169 for the 6th cycle planning period. For your information, conservation objectives could be expanded to include housing choice vouchers (Program 4).

E. Public Participation

Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)

While the element includes a general summary of the public participation process (beginning on Page 3-6 and in Appendix E), it should also summarize public comments and describe how they were considered and incorporated into the element. Further, the element should describe additional methods for public outreach efforts in the future, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income households in future public outreach efforts. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>.

In addition, HCD understands the City made the element available to the public concurrent with its submittal to HCD. By not providing an opportunity for the public to

review and comment on a draft of the element in advance of submission, the City has not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD's ability to consider public comments in its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD's review. The City must proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.