

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

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January 3, 2022

Edward C. Starr, City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

Dear Edward C. Starr:

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

Thank you for submitting the City of Montclair's (City) draft housing element received for review on November 5, 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.

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 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 will meet housing element requirements for these and other funding sources.

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

HCD appreciates the City's dedication and cooperation in the housing element update. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions, please contact Gerlinde Bernd, of our staff, at Gerlinde.Bernd@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF MONTCLAIR

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 review of programs in the past cycle (Chapter 7), the element must provide an evaluation of the cumulative effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female headed households, farmworkers and persons experiencing homelessness). This could be done as separate paragraph at the beginning or the end of review and revise section.

B. Housing Needs, Resources, and Constraints

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

The element includes a variety of information and analysis relative to affirmatively furthering fair housing (AFFH); however, additional information is necessary to address this requirement, as follows:

Concentrated Areas of Poverty and Affluence: The element includes general information relative to concentrated areas of poverty and affluence but should include additional analysis. For example, the analysis should evaluate the patterns, changes over time and coincidence with other fair housing components and consider other relevant factors, such as public participation, past policies, practices, and investments and demographic trends. This information should be specifically utilized to inform policies and actions.

Sites Inventory and Affirmatively Furthering Fair Housing (AFFH): The element broadly discusses the identification of sites and AFFH such as acreages by areas and different components of the assessment of fair housing (e.g., segregation and integration and

disparities in access to opportunity). However, to support conclusions related to fostering inclusive communities, the element should analyze the location of all sites by the number of units and income group and magnitude of the impact on existing patterns of socio-economic characteristics. As part of this analysis, the element could utilize census tracts or distinct areas and emphasize the City's mixed-income approach to identifying sites.

Other Relevant Factors: 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 should re-assess and, particularly, prioritize contributing factors upon completion of the analysis and make revisions as appropriate.

Goals, Priorities, Metrics, and Milestones: Goals and actions must create meaningful impact to overcome contributing factors to fair housing issues. Currently, programs are not sufficient to facilitate meaningful change and address AFFH requirements. Based on the outcomes of a complete analysis, the element must be revised to add or modify goals and actions accordingly. 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 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>.

2. *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).)*

Housing Conditions: The element indicates that based on the 2018 American Community Survey (ACS) there are 68 units lacking complete kitchen facilities and 20 units lacking plumbing facilities. While this information is useful, ACS data generally under-estimates substandard housing conditions and the element should consider other data sources to estimate the number of units in need of rehabilitation and replacement. For example, the City's code enforcement division could estimate the number of units in need of rehabilitation and replacement based on enforcement activities and could qualitatively describe geographic patterns to better inform the AFFH analysis.

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).)

The City has a regional housing need allocation (RHNA) of 2,593 housing units, of which 1,081 are for lower-income households. To address this need, the element relies on vacant and nonvacant sites, including sites in the Mixed-Use Neighborhood, Mixed-Use Commerce, and the Mixed-Use Urban Core. To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include a complete analysis, as follows:

Sites Identified in Prior Planning Periods: Sites identified in prior planning periods shall not be deemed adequate to accommodate the housing needs for lower-income households unless a program rezones sites to permit housing development by right pursuant to statutory requirements. The element must clarify if sites used to accommodate the housing need for lower-income households were previously identified in prior planning periods and include programs as appropriate.

Small Sites: The element identifies sites smaller than half an acre for lower income. Sites smaller than half acre in size are deemed inadequate to accommodate housing for lower-income housing 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 sites or unless the housing element describes other evidence to HCD that the sites are adequate to accommodate lower income housing. The element should include the factors that will lead to lot consolidation, such as historical trends or common ownership. As a result, if utilizing these sites toward the housing need for lower-income households, the element must include analysis and programs as appropriate.

Nonvacant Sites: While the element identifies nonvacant sites to accommodate the regional housing need for lower-income households, it must include a methodology that demonstrates the potential for additional development in the planning period. The methodology must consider factors including the extent to which existing uses may constitute an impediment to additional residential development, past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).)

The element generally should address all these requirements. For example, the element identifies various factors but should support these factors based on development trends, market conditions and the City's past experience converting existing uses to higher density residential development and then relate those trends to the identified sites. Also, the element should address the extent existing uses will prevent redevelopment, or conversely, factors indicating a property will redevelop, such as property owner interest or expiring leases. The element (p. 65) notes some of these indicators (e.g., declining uses, property owner interest) but it does not describe how these indicators are present

on identified sites (Appendix B). For example, Appendix B should denote which sites or areas have expressed interest in redevelopment or declining uses.

In addition, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, it 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.

Finally, if the element utilizes sites with existing residential uses, absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c) (3).

Infrastructure: While the element generally describes water and sewer infrastructure, it must clarify sufficient existing or planned capacity to accommodate the RHNA or include programs if necessary.

Zoning for a Variety of Housing Types:

- *Emergency Shelters*: Policy Action 2.8 (Zoning Code Update for Special Needs Populations) states the City does not have specific parking requirements for emergency shelters. However, the element should still clarify whether parking requirements for the zone comply with AB 139 (Chapter 335, Statutes of 2019) which requires only sufficient parking to accommodate all staff working in the emergency shelter and amend Policy Action 2.8 if necessary.
- *Transitional and Supportive Housing*: The element on page 140 states that the Montclair Municipal Code does not explicitly define or address transitional or supportive housing. Transitional housing and supportive housing must be permitted as a residential use in all zones allowing residential uses and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (a)(5).) The element must describe and analyze the City's transitional and supportive housing standards and codes and demonstrate consistency with Section 65583(a)(5) or add or revise programs which comply with the statutory requirements.
- *Employee Housing*: While the element includes Policy Action 2.8 which commits to amend the A and R-1 zoning districts by right, the program should be revised to include all residential zones such as R-2 and R-3. The element must demonstrate the zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 require 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.

- *Accessory Dwelling Units (ADUs)*: The element assumes 10 ADUs per year for a potential buildout of 80 units within the planning period. According to HCD records, the City has permitted an average of 4 units per year since 2019 with no units reported in 2019, far less than the 10 units assumed in the element. The trends used in the element appear inconsistent with HCD records and, further, do not support an assumption of 10 ADUs per year. To support assumptions for ADUs in the planning period, the element should reconsider projections, reconcile trends with HCD records, include additional information, such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate.

Electronic Sites Inventory Form: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

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).)*

Parking: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should address the parking requirement for 2 spaces in an enclosed garage per unit for multifamily development for impacts on cost, supply, housing choice and affordability. The element includes Policy Action 2.4 (p. 18) to review parking requirements. However, the Policy Action should be more specific to review all parking requirements particularly requirements for fully enclosed garages and modify or include programs to address identified constraints.

Inclusionary Housing Ordinance: The element includes Policy Action 3.2 Inclusionary Housing Ordinance; however, no analysis was provided. The element must describe and analyze the inclusionary housing requirements and their impacts as potential constraints on the development of housing for all income levels, specifically on housing supply and affordability. The analysis must evaluate the inclusionary policy's implementation framework, including levels of mandated affordability and the types of options and incentives offered to encourage and facilitate compliance with the inclusionary requirements. The City could engage the development community to facilitate this analysis.

Processing and Permit Procedures: 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.

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

Housing for Persons with Disabilities: While the element identifies how community care facilities serving six or fewer persons are permitted, it must describe and analyze how community care facilities serving seven or more persons are approved including zones allowing the use and any approval findings. The element should analyze the process for potential constraints on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes for seven or more persons objectively with approval certainty.

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

6. *Analyze existing assisted housing developments that are eligible to change to nonlow-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element on page 56 states Brianwood Manor includes 85 units that are at risk of converting from affordable to market-rate uses during the next ten years; however, the element must include analysis. The element must estimate and analyze the costs of replacement versus preservation for units at risk in the current planning period, list qualified entities with the capacity to acquire multifamily developments at-risk and identify financing and subsidy resources. In addition, Policy Action 1.3 (Monitor and

Preserve “At-Risk” Units) states the City has no affordable housing units identified as at risk of converting from income-restricted to market rate. The element should clarify this discrepancy and modify the Policy Action and analysis as appropriate.

C. Housing Programs

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

As noted in Finding B3, the element does not include a complete site analysis. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Rezone Program for Adequate Sites: The element appears to rely on rezoning of sites to accommodate the RHNA, including for lower-income households; however, if so, the element must include a program to identify sites and make appropriate zoning available to accommodate the RHNA by income group within the planning period. Rezoning programs to accommodate the RHNA must identify the shortfall of sites, minimum acreage to be rezoned, candidate sites for rezoning and completion dates. Rezoning programs to accommodate the RHNA for lower-income households must meet all requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). Examples include nondiscretionary approval, requiring minimum densities, permitting at least 16 units per site and residential performance standards.

Lot Consolidation: Policy Action 3.5 was included for lot consolidation and states incentives may be considered at the discretion of the City Council; however, as the City relies on consolidation of small sites to accommodate the RHNA, the Policy Action should be revised to specifically commit rather than consider providing incentives and should include proactive measures with property owners and developers as well as a mid-planning period evaluation of the effectiveness of the Policy Action, including alternative actions and timing if the Policy Action is not effective in facilitating lot consolidation.

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

The element must include a program(s) with specific actions and timelines to assist in the development of housing for all special needs households including seniors, homeless, farmworkers, female-headed households and persons with disabilities including developmental. 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 extremely low, very low, low and moderate-income households; assisting, supporting, or pursuing funding applications; and outreach and coordination with affordable housing developers.

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

As noted in Findings B4 and B5, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *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 protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. 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.

D. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(8).)

While the City made efforts to include the public through its website, workshops, project tours, and surveys, it must also demonstrate diligent efforts were made to involve all

economic segments of the community in the development of the housing element. The element could describe the efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the element and ensure translation services are available throughout the review process. If necessary, the City should employ additional methods, moving forward, to engage all segments of the community.