

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

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December 13, 2021

Scott Murphy, Executive Director  
Community Development Agency  
City of Ontario  
303 East B Street  
Ontario, CA 91764

Dear Scott Murphy:

**RE: City of Ontario's 6<sup>th</sup> Cycle (2021-2029) Draft Housing Element**

Thank you for submitting the City of Ontario's (City) draft housing element received for review on October 14, 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 10, 2021 with Thomas Grahn, Senior Planner; Kimberly Ruddins, Sustainability Program Manager; and your consultants Jennifer Gastelum, Halley Grundy, Nicole West, and Allison Holmstedt.

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.

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](mailto:sitesinventory@hcd.ca.gov) for technical assistance. 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](mailto:sitesinventory@hcd.ca.gov).

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](http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf) and [http://opr.ca.gov/docs/Final\\_6.26.15.pdf](http://opr.ca.gov/docs/Final_6.26.15.pdf).

HCD appreciates the hard work and dedication the City's housing element team provided during the review. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Reid Miller, of our staff, at [Reid.Miller@hcd.ca.gov](mailto:Reid.Miller@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 ONTARIO

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).)*

A thorough program-by-program review is necessary to evaluate City's performance in addressing housing goals. As part of this analysis, the element should describe the actual results of the prior element's programs, compare those results to the objectives projected or planned, and based on an evaluation of any differences between what was planned versus achieved, provide a description of how the objectives and programs of the updated element incorporate changes resulting from the evaluation. The element should be revised as follows:

Program 16 (Land Monitoring Program to Meet RHNA): The element should provide a date for when the rezones for the 5<sup>th</sup> cycle was completed, include information on how many acres were ultimately rezoned and at what densities. The analysis should also specify whether the rezones met all the lower-income RHNA shortfall requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i).

Program 17 (Incentives): Analysis on this program should include whether and what types of incentives were offered to housing projects in the 5<sup>th</sup> cycle.

Program 18 (Land Acquisition): The element should quantify how many units were developed from the sale of the lands as a part of this program, and at what affordability level.

### **B. 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).)*

Regional Patterns and Trends: The element generally describes local patterns and trends but must also analyze Ontario relative to the rest of the region regarding integration and segregation, racially and ethnically concentrated areas of poverty, disparities in access to opportunity and disproportionate housing needs, including displacement risks.

Disproportionate Housing Needs including Displacement Risks: The element includes some local data on cost burdened households (overpayment) and overcrowding (pp. H-84 to H-85). However, the element must evaluate patterns and trends for both within the City and in comparison to the region for overpayment, overcrowding, and substandard housing and must include data and evaluation on persons experiencing homelessness related to protected characteristics and access to opportunities. In addition, the element briefly and generically mentions displacement but must still provide data, analysis, and conclusions.

Contributing Factors: The element includes the contributing factors from the 2020 analysis of impediments to fair housing choice (AI). However, the element must prioritize contributing factors and relate factors to the analysis found in Affirmatively Furthering Fair Housing (AFFH) analysis.

Sites Inventory: The element discusses the proposed number of sites and units relative to income, but it must also address other components of the assessment of fair housing (e.g., R/ECAP, Disparities in Access to Opportunity, Disproportionate Housing Need, including Displacement). The accompanying analysis should address how the sites are identified to improve conditions (or if sites exacerbate conditions, how a program can address the impact) and whether the sites are isolated by income group. For example, the element includes sites within RECAP areas of the City. The element should talk about efforts to improve conditions in these areas. In addition, much of the lower-income need is concentrated the southwest undeveloped portions of the City. The element should discuss whether this strategy potentially isolates a significant number of the housing need for lower-income households and include actions as appropriate, such as additional zoning for a variety of housing choices.

Goals, Priorities, 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.

For further information about AFFH requirements, please refer to HCD's [https://www.hcd.ca.gov/community-development/affh/docs/affh\\_document\\_final\\_4-27-2021.pdf#page=7](https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf#page=7).

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).)*

Employment Trends: While the City does provide some analysis of employment trends on Page H-6, it could also provide an analysis of the largest employers in the City as well as the City's unemployment rate.

3. *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 identifies the age of the housing stock (p. H-47). However, it must include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. The analysis states a recent windshield survey was completed but could also discuss the results of that survey and identify how many units were found to be in need of rehabilitation and replacement.

4. *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 20,854 housing units, of which 8,926 are for lower-income households. To address this need, the element relies on both vacant and nonvacant sites, including sites in Specific Plan Areas. To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include complete analyses:

Progress in Meeting the RHNA: The City's RHNA may be reduced by the number of new units built since July 1, 2021. The element indicates (p. H-176) 1,650 units toward the RHNA, but to count these units toward the City's 6th cycle RHNA allocation, the element must also demonstrate their availability in the planning period.

Realistic Capacity: The element (pp. H-177 to H-205) provides assumptions to calculate residential capacity on identified sites and includes a few examples of recent developments and adjusts assumptions in specific plan areas based on infrastructure availability. However, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The estimate of the number of units for each site must be adjusted as necessary, based on the land-use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

In addition, the element appears to assume residential development on sites with zoning that allows 100 percent non-residential 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: The element identifies nonvacant sites to accommodate the regional housing need and provides minimal information on how the existing uses would not impede residential development. However, to demonstrate the potential for additional development on these sites, the element should include a discussion of trends and market conditions to support these assumptions. The element can summarize past experiences converting existing uses to higher density residential development and include current information on development trends and market conditions for redevelopment and relate those trends to the sites identified. In addition, the element should include information to support development at Ontario Hills Mall including identification of any impediments in developing the parking area due to any lease or parking agreements.

Small and Large Sites: Sites larger than ten acres in size or smaller than a half-acre in size is deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites are suitable to accommodate housing for lower-income households. While the element included a few examples about developments with lot consolidation (p. H-180) and states there is recent examples of large greenfield sites developing (p H-201), it must also provide specific examples with the densities, affordability and, if applicable, circumstances leading to development. The element should relate these examples to the sites identified to accommodate the RHNA for lower-income households to demonstrate that these sites can adequately accommodate the City's lower-income housing need. Based on a complete analysis, the City should add or revise programs to include incentives for encouraging development on these sites.

Environmental Constraints: While the element generally describes a few environmental conditions within the City (p. H-192), it must relate those conditions to identified sites and describe any other known environmental or other constraints that could impact housing development on identified sites in the planning period. For example, the element mentions that liquefaction poses a potential environmental barrier to residential development, but it does not specify which sites (if any) in the sites inventory are affected by this constraint.

Zoning For a Variety of Housing Types (Accessory Dwelling Units (ADU)): After a cursory review of the City's ordinance, HCD discovered provisions which were not consistent with State ADU Law. Specifically, the ordinance seems to limit the development of ADU to only sites with an "existing" primary dwelling unit. However, pursuant to Government Code section 65852.2, local agencies must allow ADUs to be created on lots zoned for single-family residences with a proposed or existing single-family residence on the lot. As a result, the element should add a program to update the City's ADU ordinance to comply with state law. HCD will provide additional

information on provisions to address under separate cover. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state requirements surrounding ADU development.

5. *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).)*

Processing and Permit Procedures: While the element includes information about processing times, it should also describe the procedures for typical single family and multifamily development. The analysis should address the approval body, the number of public hearings if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing, and approval certainty. For example, the element should identify and analyze approval findings for impacts on approval certainty, the presence of processes or guidelines to promote certainty and add or modify programs as appropriate. In particular, the element should analyze the role of the Development Advisory Board (DAB) which seems to duplicate efforts of planning staff and decision-making responsibilities of the planning commission. The element should describe how this process impacts timeframes for application approval and improves or reduces certainty in the process.

Codes and their Enforcement: The element must describe and analyze which building code (e.g., 2019) is enforced, any local amendments to the building code and their enforcement for impacts on housing supply and affordability. For additional information and a sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml>.

“Community Oriented Policing” Program: In Program 7, the City states that it will continue to implement “Community Oriented Policing” which includes a Crime-Free Multifamily Housing Program. This Program could be potentially problematic for a number of reasons, and the City should provide further analysis on whether this program could constitute a constraint on providing housing for all income levels throughout the community. Such analysis should address:

- how the program is enforced or implemented; what entity is charged with implementation and enforcement (e.g., police, code enforcement);
- whether the program applies to both renters and homeowners;
- whether the program is enforced against federally subsidized properties, or against housing that serves specific populations (e.g., people re-entering from contact with the criminal legal system or housing serving people with mental health or developmental disabilities);
- whether the program requires or encourages property owners to conduct a criminal background check; and



- what conduct is covered by the policy, and what locations of alleged criminal activity the ordinance covers (e.g., on the premises or off premises)
6. *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 Lesser Densities: The element must include analysis of requests to develop housing at densities below those identified, the length of time between receiving approval for a housing development and submittal of an application for building permits that potentially. The element must address any hinderance on the development of housing and include programs as appropriate.

7. *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 Page H-23 that there are 505 farmworkers employed in fulltime farming occupations in Ontario. However, farmworkers from the broader area and those employed seasonally may also have housing needs, including within the City's boundaries. As a result, the element should 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.

8. *Analyze existing assisted housing developments that are eligible to change to non-low-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 identifies properties at-risk of conversion to market-rate during the planning period (p. H-56). While the element includes most of the required analysis, it should also identify potential sources of funding to ensure the affordable units identified do not convert to market-rate.

### **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, but not limited to, Program 4 (CARES), Program 5 (Neighborhood Plans), and Program 11 (Ontario Ranch). In addition, Program 6 should include quantifiable metrics to measure the effectiveness of the Neighborhood Stabilization program

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 B4, 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, as mentioned in the element, buildout of the specific plans in the southwest area requires infrastructure improvements that will be provided throughout the planning period. The capacity assumptions for these areas are directly tied to assumptions of when these improvements will be provided. The element should include a program monitoring these provisions to ensure that infrastructure is being provided pursuant to these assumptions so that housing can be developed early in the planning period. The program should include provisions to amend the sites inventory or rezone additional sites should infrastructure not be provided pursuant to the timeframes stated.

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 B5 and B6, the element requires a complete analysis of potential governmental and non-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.

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 analysis of AFFH. The element must be revised to add 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.

5. *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).)*

Programs must be added or expanded to include incentives to promote the creation and affordability of ADUs. Examples include exploring and pursuing funding, modifying development standards and reducing fees beyond state law, increasing awareness, pre-approved plans and homeowner/applicant assistance tools. Additionally, as noted in Finding B5, the element should include a timeline for updating the City’s ADU ordinance to bring it into compliance with state law.

#### **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 element provides extensive information on the public participation strategy for the City’s 2020-2024 Consolidated Plan, including the Public Outreach and Community Needs Survey, it does not indicate what type of public participation strategy was employed specifically on the housing element update. While there are many components of the consolidated plan and stakeholder consultation process that are applicable to the housing element update, it does not address all of the public outreach requirements under

state housing element law, such as how public outreach and comment impacted the composition of the sites inventory, the formulation of necessary housing element programs, and the uncovering of potential governmental and nongovernment constraints to residential development. This outreach process should be outlined in greater specificity and detail in the adopted element.

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 revising 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.