

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

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November 10, 2021

Aldo Schindler, Director  
Community Development Department  
City of Downey  
11111 Brookshire Avenue  
Downey, CA 90241

Dear Aldo Schindler:

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

Thank you for submitting the City of Downey's (City) draft housing element received for review on September 15, 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 November 8, 2021 with Senior Planner Crystal Landavazo, Associate Planner Irving Anaya, and consultant, Diana Gonzalez, of MIG. In addition, HCD considered comments from Californians for Homeownership pursuant to Government Code section 65585, subdivision (c).

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.

The City's statutory deadline to adopt a housing element was October 15, 2021. 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 this statutory deadline, 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).

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criterion. 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).

We are committed to assist the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Colin Cross, of our staff, at [colin.cross@hcd.ca.gov](mailto:colin.cross@hcd.ca.gov).

Sincerely,

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

Paul McDougall  
Senior Program Manager

Enclosure

## **APPENDIX CITY OF DOWNEY**

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

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

### **A. Housing Needs, Resources, and Constraints**

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

Outreach: The element describes outreach efforts for the broader housing element, but it should also incorporate outreach relative to affirmatively furthering fair housing (AFFH). This outreach is particularly important to informing fair housing issues, contributing factors and appropriate goals and actions. Outreach should consider a variety of methods to gather input on the various components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity, disproportionate housing needs) and may utilize information from the 2020 Analysis of Impediments to Fair Housing Choice.

Patterns and Trends: The element reports data regarding the patterns of various socio-economic characteristics across all components of the required analysis (e.g., segregation and integration, access to opportunity, displacement). However, the element should also generally analyze the various socio-economic characteristics. An analysis should generally address patterns at a regional and local level and trends in patterns over time. Patterns at a regional level must compare conditions at the local level to the rest of the region. This analysis should compare the locality at a county level or other regional level such as a Council of Governments, where appropriate, for the purposes of promoting more inclusive communities. Patterns at a local level must address whether certain areas strongly differ from other areas. The analysis should also address any coincidence with other components of the assessment of fair housing and local data and knowledge and other relevant factors as described below.

Disparities in Access to Opportunity: The element reports data from the TCAC/HCD Opportunity maps at a composite level, but it should also separately report and analyze data, patterns and trends related to education, economy and transportation.

Disproportionate Housing Need, Including Displacement Risk: The element describes displacement relative to tenure; however, it could also consider information from the HCD AFFH Data Viewer and provide analysis as described above, including overlapping coincidence with other components of the assessment of fair housing.

Local Data and Knowledge: 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, including information obtained through community participation or consultation.

Other Relevant Factors: 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, zoning, governmental and nongovernmental spending including transportation investments, history of lending practices and demographic trends.

Sites Inventory: The element discusses identified sites relative to the TCAC/HCD Opportunity Map at a composite level but should also address the other components of the assessment of fair housing (e.g., segregation and integration, disproportionate housing need, including displacement risk), identified sites by income group and location, magnitude of the impact and any isolation of the RHNA by income group.

Contributing Factors to Fair Housing Issues: The element should re-visit and prioritize contributing factors to fair housing based on the outcomes of a complete analysis. Contributing factors create, contribute to, perpetuate, or increase the severity of fair housing issues and are fundamental to adequate goals and actions. Examples include community opposition to affordable housing, housing discrimination, land use and zoning laws, lack of regional cooperation, location and type or lack of affordable housing and lack of public or private investment in areas of opportunity or affordable housing choices. The analysis shall result in strategic approaches to inform and connect goals and actions to mitigate contributing factors to affordable housing.

Strategies and Actions: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Current program actions include the City's already existing strategies to provide adequate sites and do not demonstrate a connection to the fair housing issues and contributing factors identified. This is not adequate to satisfy the requirement for specific and meaningful actions. Program actions should be proactive, facilitate meaningful change, and respond directly to the contributing factors to fair housing issues that were identified. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results. The element must add and revise programs based on a complete analysis and connect to prioritized contributing factors to fair housing issues.

2. *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).)*

Progress in Meeting the RHNA: The City's RHNA may be reduced by the number of new units built since June 30, 2021, but the element must describe the City's methodology for assigning these units to the various income groups based on actual sales price or rent level of the units and demonstrate their availability in the planning period. Specifically, the element credits 28 townhomes (12850 Woodruff Avenue), of which 2 will be affordable to very low-income households. However, it must demonstrate affordability as described above. In addition, the element lists 600 approved units, of which 300 are expected to be affordable to very low-income households, from the Rancho Los Amigos South Campus Specific Plan. The element must address the status of these proposed units, including potential availability in the planning period and demonstrate anticipated affordability as described above.

Realistic Capacity: The methodology for calculating residential capacity on identified sites must account for land use controls, site improvements and typical densities of existing or approved residential developments at a similar affordability level. While the element utilizes various potential unit yields, it must still support these assumptions. For example, for higher-density sites that do not require rezoning, the element assumes 80 percent of potential yield. The element supports this assumption by referring to two high-density developments, one of which dates back to 2014. Further support is needed to justify this assumption. The element does not clarify what zones these two high-density projects were developed in, or whether density bonus projects such as these are typical of residential development in those zones. The element should demonstrate what specific trends, factors, and other evidence led to the assumptions, including a more holistic view of development trends.

In addition, for sites where zoning allows 100 percent nonresidential uses, this analysis must adjust for the likelihood of 100 percent nonresidential development. For example, the element could describe the underlying zoning, whether 100 percent nonresidential development is allowed in these zones, analyze all development activity in these non-residential zones, how often residential development occurs and adjust residential capacity calculation, policies and program accordingly. The element could also incorporate any relevant programs or policies the City is undertaking to facilitate residential development in zones allowing 100 percent nonresidential uses.

Suitability of Nonvacant Sites: The element must include an analysis demonstrating the potential for redevelopment of nonvacant sites. To address this requirement, the element states that sites were selected based on "potential capacity increase available to property owners" and on location and existing uses (p. 4-8); the element also generally describes

some existing uses, but it must include analysis to demonstrate the potential for additional development. The analysis should consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the City's 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. For example, the element could clarify what is meant by "potential for intensification" (p. 4-6) and consider additional indicators such as age and condition of the existing structure, presence of expiring leases, expressed developer interest in *residential* development, low improvement to land value ratio, and other factors.

In addition, because 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.

Small Sites: The element identifies many sites at less than a half-acre. These sites are not eligible absent a demonstration 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 other evidence is provided. If the inventory indicates some sites can be consolidated it should also provide analysis demonstrating the potential for consolidation. For example, the analysis could describe the City's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for lot consolidation, or information from the owners of each aggregated site.

Accessory Dwelling Units (ADUs): The element assumes an average of 125 ADUs per year will be constructed during the planning period, for a total of 1,038 ADUs. The element's analysis and programs do not support this assumption. Based on HCD records and numbers reported in the element, the City is averaging about 24 ADU permits per year since 2018. To include a realistic estimate of the potential for ADUs, the element must reduce the number of ADUs assumed per year and include analysis, policies and programs as appropriate. The element must commit to monitor ADU production and affordability throughout the course of the planning period and implement additional actions if not meeting target numbers anticipated in the housing element by a certain date. Additional actions, if necessary, should be taken in a timely manner (e.g., within 6 months). Finally, if necessary, the degree of additional actions should be in stride with the degree of the gap in production and affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then rezoning or something similar

would be an appropriate action. If actual production and affordability is near anticipated trends, then measures like outreach and marketing might be more appropriate.

Environmental Constraints: While the element generally describes a few environmental conditions within the City, it must describe any known environmental constraints or other conditions that could impact housing development on identified sites in the planning period.

Infrastructure: The element generally describes infrastructure. However, it must also demonstrate sufficient total water and sewer capacity (existing and planned) to accommodate the regional housing need by community plan area.

In addition, 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.) The element should discuss compliance with this requirement and if necessary, add or modify programs to establish a written procedure by a date early in the planning period.

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

#### Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element describes that emergency shelters are permitted in the H-M zone without discretionary action. The element should also describe development standards, including parking requirements, for compliance with statutory requirements. In addition, the element states that no properties are available in the areas zoned to permit emergency shelters. As a result, the element should identify another zone and area to accommodate the need for emergency shelters, including a description of capacity and add or modify Program 2.7 (Address Homelessness) to amend zoning as appropriate.
- *Employee Housing:* The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) or add or modify programs. Specifically, 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.

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

Land Use Controls: The element must identify and analyze all relevant land-use controls as potential constraints on a variety of housing types, both independently and cumulatively with other land-use controls. Further analysis is needed of the City's requirements related to heights in multifamily zones, particularly the Downtown Core, and parking requirements. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Site Plan Review: The element must analyze the City's Site Plan Review, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply, cost and approval certainty. Specifically, certain approval findings, such as that a proposed development should "integrate harmoniously", prevent "extremes of dissimilarity or monotony", and focus on the compatibility of the design, appear subjective and should be analyzed as a potential constraint. A full analysis should discuss whether approval findings, standards and guidelines provide for development certainty and impact the cost and timing of approvals. The element must add or modify programs as appropriate to address identified constraints.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning and development standards on the City's website and include programs if appropriate.

4. *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).)*

The element must include analysis of requests to develop housing at densities below those anticipated in the site inventory. The element notes that the City does not discourage developers who choose to develop at lower densities, but it still must analyze any such requests and address any hinderances on the construction of the RHNA.



5. *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).)*

While the element quantifies various special needs groups, it must also analyze those housing needs. The analysis should include, but is not limited to, factors such as household income, tenure, housing types, overpayment, trends, zoning and related strategies, available resources and gaps in addressing housing needs. Local officials, special needs service providers, or City/County social and health service providers may be able to assist with information to complete the analysis. For additional information and a sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/large-families-female-head-household.shtml>.

In addition, to supplement analysis and better formulate policies and programs, the element should also identify and analyze persons with disabilities by type (e.g., ambulatory, vision difficulty, cognitive) and permanent and seasonal farmworkers at a county level (e.g., USDA Agricultural Census).

## **B. Housing Programs**

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

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines, objectives and specific and clear commitment to outcomes.

Programs to be revised with discrete timelines (e.g., annually, Spring 2022) include Programs 1.4 (Accessory Dwelling Units), 1.5 (Density Bonus), 2.1 (Special Needs Housing), 2.3 (Affordable Housing Development Incentives), 2.4 (Affordable Housing Technical Assistance), 2.6 (First-Time Home Buyer Assistance), 2.7 (Address Homelessness), 2.8 (County and Regional Partnerships) and 3.5 (Special Needs Housing Law).

Programs to be revised with objectives include Programs 1.5 (Density Bonus), 2.3 (Affordable Housing Development Incentives), 2.6 (First-Time Homebuyer Assistance) and 3.8 (Energy Conservation).

Programs to be revised with specific and clear commitment to outcomes include:

- *Program 1.3 (Land Use Policy Changes)* commits to revise residential standards, “if needed”; however, the program should specifically commit to making revisions consistent with the feedback of expert practitioners as noted on page 1-8.
- *Program 2.2 (Housing for Persons with Disabilities)* should go beyond reviewing procedures and revise procedures to ensure objective procedures that promote approval certainty and address barriers to housing for persons with disabilities.
- *Program 3.1 (Lot Consolidation)* should commit to additional actions given the lack of progress in the prior planning period (p. 5-8) and reliance on small sites.
- *Program 3.6 (Definition of Family)* commits to evaluate and amend the definition of family if appropriate. Based on the information in the element, the definition of family is a constraint on housing for persons with disabilities and the Program should clearly commit to amend the definition.
- *Program 3.9 (Water and Sewer Providers)* simply commits to confirm procedures are available for the eight-year planning period. However, confirmation should occur as part of the housing element update and clear commitment should be included to establish procedures, particularly if the City plays a role in granting water and sewer service.

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 A2, 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:

- *Program 1.1 (Adequate Sites)* commits to rezoning and satisfies many requirements, but it should also clarify by-right and minimum densities consistent with Government Code sections 65583.2, subdivisions (h) and (i) and commit to

establish incentives to encourage intended uses consistent with the overlay given allowable uses by the base zoning.

- *City-owned Sites:* The element should consider a schedule of actions to facilitate development of City-owned site(s). Additional actions include outreach with developers, incentives, fee waivers, priority processing and financial assistance.

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 A3 and A4, 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 A1, the element does not contain programs that satisfy the AFFH requirements for specific and meaningful actions to overcome fair housing issues. Based on a complete analysis, the element must add or revise programs.

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

Program 1.4 (Accessory Dwelling Units) generally includes outreach and some other actions but should consider additional commitment to incentives, particularly if the City continues to utilize ADUs toward a significant portion of the RHNA. Examples could include exploring and pursuing funding, modifying development standards and homeowner/applicant assistance tools. In addition, Program 1.4 (Accessory Dwelling Units) should monitor affordability in addition to productions and must commit to take alternative actions beyond incentives if necessary (e.g., rezoning) and by a specified date (e.g., within 6 months).

### **C. 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).)*

HCD understands the City made the element available to the public two weeks prior its submittal to HCD. By not providing ample 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. This 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.