

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

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January 31, 2022

Jon Berg, Director
Community Development Department
City of Indian Wells
44-950 El Dorado Drive
Indian Wells, CA 92210

Dear Jon Berg:

RE: City of Indian Wells' 6th Cycle (2021-2029) Draft Housing Element Update

Thank you for submitting the City of Indian Wells' draft housing element received for review on December 2, 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).

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 hard work and dedication of the City's housing element team during the review. We are committed to assist the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Marisa Prasse, of our staff, at Marisa.Prasse@hcd.ca.gov.

Sincerely,

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

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF INDIAN WELLS

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).)

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

B. Housing Needs, Resources, and Constraints

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

Outreach: Outreach specifically related to affirmatively furthering fair housing (AFFH) is foundational to a complete analysis and formulating appropriate goals and actions to overcome patterns of segregation and foster more inclusive communities. The City should summarize and relate its and other's outreach efforts to all components of the AFFH analysis and modify or add goals and actions as appropriate. For example, the element mentions outreach methods and some comments related to the overall housing element and generally describes the Regional Analysis of Impediments to Fair Housing Choice (AI) which has considerable outreach. However, a summary of that outreach should be tailored to the various components of the assessment of fair housing to better formulate appropriate programmatic response.

Enforcement: The element mentions local capacity for fair housing education and outreach, but it should also evaluate trends and characteristics related to fair housing complaints and address compliance with existing fair housing laws as well as any past or current fair housing lawsuits, findings, settlements, judgements, or complaints. Based on the outcomes of this evaluation, the element should summarize issues, identify contributing factors and formulate meaningful goals and actions.

Regional Patterns and Trends: While the element includes some discussion of local patterns and trends related to the various components of the assessment of fair housing (e.g., segregation and integration, disproportionate housing needs including displacement), it should also discuss differences between the City and the broader Coachella Valley. To complete an analysis, this discussion should address coincidences across the various components and should be complemented by local data and knowledge and other relevant factors.

Concentrated Areas of Affluence: The element mentions the City is not technically a racially concentrated area of affluence but also notes the City is an affluent community. This is further shown in housing costs. The element should specifically evaluate the City as an affluent community relative to the broader Coachella Valley region, including regional level patterns and demographic trends to formulate appropriate programmatic response.

Disparities in Access to Opportunity: In addition to evaluating education, economic and environmental disparities in access to opportunity, the element should address disparities in access to transportation opportunities.

Disproportionate Housing Needs, including Displacement: The element includes some analysis related to cost burdened households; however, it should also address disproportionate housing needs related to housing conditions and displacement risk. This analysis should address patterns and trends within the City (neighborhood to neighborhood) and a regional level (City compared to region). In addition, the element mentions minimal need for substantial rehabilitation of housing but also seventeen percent of the housing stock needs maintenance based on a housing conditions survey. The element should utilize data from the housing condition survey to examine in patterns throughout the City and formulate an appropriate programmatic response.

Sites Inventory: While the element includes some general discussion and conclusions of sites and AFFH, a full analysis should address location, the number of sites and units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity) and any isolation of the regional housing needs allocation (RHNA) by income group.

Local Data and Knowledge, and Other Relevant Factors: The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture

emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element should analyze historical land use, zoning (e.g., lack of higher density multifamily zoning), governmental and nongovernmental spending including transportation or other federal investments (e.g., CDBG, HOME, redevelopment funds), demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility at a local and regional level.

Contributing Factors to Fair Housing Issues: The element includes contributing factors to fair housing issues but should re-evaluate and prioritize these factors based on a complete analysis to better respond to the fair housing issues.

Goals, Actions, Metrics, and Milestones: The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, metrics and milestones as appropriate and must address, as appropriate based on the outcomes of the analysis, housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community revitalization and displacement protection. For further guidance, please visit HCD's AFFH in California webpage at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

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 toward the RHNA: The City's RHNA may be reduced by the number of new units built, permitted, approved or pending since July 1, 2021. The element indicates (p. BR-64) 54 units affordable to moderate income households in Indian Wells Crossing. However, the element must demonstrate the affordability of these units based on actual or anticipated sales price or rent level of the units or other mechanisms ensuring affordability (e.g., deed-restrictions).

Zoning for Lower-Income Households: The element generally does not address this requirement. The element must demonstrate densities appropriate to accommodate housing for lower income households. For communities with densities that meet specific standards (at least 20 units per acre for Indian Wells), no analysis is required. (Gov. Code, § 65583.2, subd. (c)(3).) Otherwise, an analysis must demonstrate appropriate densities based on factors such as market demand, financial feasibility and development experience within identified zones. Specifically, the element should address this requirement for the City-Owned property intended to accommodate development of units affordable to lower-income households.

Alternative Adequate Sites: The City may utilize existing units toward the RHNA but must meet all requirements pursuant to Government Code section 65583.1. For example, the element must demonstrate, through findings in a public hearing, the units are reasonably expected to convert to other uses during the next eight years (Gov. Code § 65583.1, subd. (c)(2)(C)(iii)). Also, the element must demonstrate the City has met a share of its RHNA for low- and very-income households in the prior or current planning period (Gov. Cod § 65583.1, subd. (c)(3)). Programs should be revised based on the outcomes of a complete analysis.

City-Owned Sites: The element describes using a City-Owned site generally toward the RHNA for lower-income and moderate-income households. As a result, the element should include a discussion of suitability and availability of these sites for development. For example, the analysis should address any known conditions that preclude development in the planning period, the potential schedule for development and necessary actions to facilitate development (e.g., zoning) as intended in the sites inventory. In addition, the housing element must include a description of whether there are any plans to dispose of the properties during the planning period and how the jurisdiction will comply with the Surplus Land Act (commencing with Government Code section 54220) and add or modify programs as appropriate. Based on the outcomes of this discussion, the element should include programs as appropriate.

Accessory Dwelling Units: The element notes four and five ADUs permitted in 2020 and 2021, respectively. However, HCD records indicate the City has not reported any ADUs as part of the annual progress report, pursuant to Government Code section 65400. The City should reconcile these records and revise the element as appropriate.

Environmental Constraints: The element describes some environmental conditions within the City, but it should also 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.

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

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element indicates emergency shelters are ministerially permitted in the Community Commercial zone. However, the element should include analysis of capacity and development standards. The element should discuss total acreage, typical parcel sizes and any reuse or other opportunities that

could accommodate at least one emergency shelter. In addition, the element should identify and analyze development standards for any potential constraints on emergency shelters.

- **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, while the element includes Program 12 (Development Code Amendments) to address agricultural worker housing, 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. The element should demonstrate compliance with this requirement or add or modify programs if necessary.
- **Accessory Dwelling Units (ADUs):** The element indicates the City modifies its zoning code to include regulations regarding the development of ADUs, yet HCD's records do not show that the City has submitted its ADU ordinance for review by HCD. The City should submit its ordinance for review, and HCD will provide a complete listing of ADU non-compliance issues under a separate cover if any exist. If any noncompliance issues are found, the City should promptly implement its program to update the City's ADU and zoning ordinances to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state ADU requirements.

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 impacts as potential constraints on a variety of housing types. The analysis should address impacts on housing supply (e.g., number of units), costs, timing and ability to achieve maximum densities. The analysis should address unit size, heights and parking, including the number of spaces and garage requirements, for zones allowing multifamily uses. Based on the outcomes of a complete analysis, the element should include programs to address or remove the identified constraints.

Processing and Permit Procedures: The element mentions most development is subject to a conditional use permit (CUP) and lists approval findings, but it should evaluate this requirement for impacts on housing supply (number of units), cost, timing and approval certainty and add or modify programs to address the constraint.

Fees and Exactions: The element lists some entitlement fees, but it should describe and evaluate all required fees for single family and multifamily housing development, including impact fees, and analyze their impact as potential constraints on housing supply and

affordability. For example, the analysis should identify the total amount of fees, including impact fees and their proportion to the development costs for both a typical single family and multifamily housing development.

On / Off Site Improvements: The element must identify subdivision level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width), and analyze their impact as potential constraints 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>.

Building Codes and Their Enforcement: The element describes that local amendments to the Building Code do not directly impact housing standards or processes but it should also list and analyze local amendments for impacts on housing costs.

Housing for Persons with Disabilities:

- *Family Definition*: The element should identify any definition of family utilized in zoning and land use and analyze that definition for impacts on housing for persons with disabilities.
 - *Community Care Facilities*: The element must describe and analyze how community care facilities serving six or fewer or seven or more persons are approved including any approval findings or lack of zones allowing these housing types. The element should analyze the process and lack of residential zones for potential constraints on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes are permitted objectively with approval certainty.
4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..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).)*

Timing of Approval: The element must analyze the length of time between receiving approval for housing development and submittal of application for building permits. The analysis should address any hinderances on the construction of the RHNA.

5. *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 lists projects at-risk of converting to market rate uses in the planning period, but it must also identify public and private nonprofit corporations known to the City to have the legal and managerial capacity to acquire and manage at-risk units.

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 specific commitment and discrete timelines, instead of “ongoing” or “annual monitoring and reporting” for example. Programs to be revised with discrete timelines include Programs 3 (Production of New Housing Units), 6 (Evaluate Alternative Funding and Financing Mechanisms), 9 (Monitoring Potential Constraints), 16 (Support for Persons Experiencing Homelessness) and 17 (Support for Persons with Developmental Disabilities). In addition, Program 6 (Evaluate Alternative Funding and Financing Mechanisms) should include actions beyond establishing, updating and reviewing a strategy and should implement that strategy.

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 B2, 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, the element should be revised as follows:

Shortfall of Sites to Accommodate the RHNA: As noted in Finding B2, the element does not identify zoning appropriate to accommodate housing for lower-income households. Based on the outcomes of this analysis, the element may need to add a program to address a shortfall of sites to accommodate the RHNA, including complying with requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i).

City-Owned Sites: As noted in Finding B2, based on the outcomes of a complete analysis, the element should include a program that commits to a schedule of actions to facilitate development on City-Owned sites. For example, steps could include zoning, initial site studies, environmental review, incentives, coordination with developers and requests for proposals. In addition, if zoning at appropriate densities is necessary, the program should commit to rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i).

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 B3 and B4, 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. *The Housing Element shall include programs to conserve and improve the condition of the existing affordable housing stock. (Gov. Code, § 65583, subd. (c)(4).)*

Program 1 (Rehabilitation): The Program states there is no need for major rehabilitation. However, the element also indicates approximately 17 percent of the housing stock needs maintenance; potentially minor repairs. As a result, the Program should be revised as appropriate to address the need to conserve and improve the existing housing stock. For example, the Program could consider a handy person program to address minor repairs and strengthen multi-generational relationships.

5. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics 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. Based on the outcomes of that analysis, the element must add or modify programs.

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

Program 2 (Preservation of At-risk Units): As noted in Finding B2, the element must include a complete analysis to demonstrate the potential for utilizing at-risk units toward the RHNA and this Program should be modified based on the outcomes of that analysis. In addition, this Program should commit to coordinating with qualified entities to preserve and maintain the affordability of at-risk units and providing education and support to tenants.

7. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households... (Gov. Code, § 65583, subd. (c)(7).)*

Program 8 (Accessory Dwelling Units): The Program should conduct a review of ADU production every two years (instead of a mid-cycle review) and commit to additional actions such as adjusting assumptions, rezoning or establishing additional incentives within a specified timeframe (e.g., six months).

D. Quantified Objectives

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

While the element includes quantified objectives for new construction and conservation, it could consider quantified objectives for rehabilitation under Program 1. In addition, conservation objectives could be increased beyond at-risk preservation. For example, conservation objectives could consider Programs 15 (Section 8 Housing Choice Vouchers) and 18 (Green Building Program).

E. 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)(9).)

While the element includes a general summary of the public participation, 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 should discuss outreach efforts to

lower-income and special needs groups during the public participation efforts. For example, 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. If necessary, the City should employ additional methods, moving forward, to engage all segments of the community. In addition, the element should describe comments and how those comments were considered and incorporated into the element.

In addition, HCD understands the City made the element available to the public on December 3, 2021, after 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 the course of 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.

F. Consistency with General Plan

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

The element must describe how the housing element is internally consistent with the rest of the general, including any information to demonstrate what was conducted to achieve internal consistency as part of this update. The element must also include more specific discussion on how internal consistency will be maintained throughout the planning period. For additional information and a sample program, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/analysis-consistency-general-plan.shtml>.