

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

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April 1, 2022

Aaron France, City Manager
City of Buena Park
6650 Beach Blvd
Buena Park, CA 90622

Dear Aaron France:

RE: City of Buena Park's 6th Cycle (2021-2029) Adopted Element

Thank you for submitting the City of Buena Park's (City) housing element adopted January 25, 2022 and received for review on February 1, 2022. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on April 1, 2022 with Brady Woods, Planning Manager. In addition, HCD considered comments from the Kennedy Commission to Government Code section 65585, subdivision (c).

The adopted element addresses many statutory requirements described in HCD's December 14, 2021 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes these and other revisions needed to comply with State Housing Element Law.

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. HCD received several comments from the public which included meaningful policy and

program suggestions that could be incorporated into the housing element. Yet, the adopted element does not reflect this input. Moving forward, the City must proactively make future revisions available to the public, including any commenters, with sufficient time to comment and prior to submitting any revisions to HCD and diligently consider and address comments, including revising the document where appropriate.

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 Mashal Ayobi, of our staff, at Mashal.Ayobi@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall". The signature is stylized and somewhat cursive, with the first name "Paul" and last name "McDougall" clearly distinguishable.

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF BUENA PARK

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))*

Sites Inventory: While the element states that approximately one-fourth of the city is considered Low Resource, sites are fairly dispersed, and that future investments in major corridors where the majority of sites are located can spur displacement, the element must still discuss how the distribution of sites improves or exacerbates conditions in relation to the sites inventory. Many of the lower-income sites are located in low and moderate-income areas (LMI), lower opportunity and have a high non-white population while only a few sites are located in the southern portion of the City where there is a majority white population. Additionally, the revised element states that the City expects investment to flourish in the low-resource northern part of the city, but does not include evidence to support this conclusion. Given that the majority of sites are clustered in the low resource part of the city, these assumptions about access to opportunity should be supported with analysis.

Integration and Segregation: While the element minimally mentions concentration of sites in LMI areas, it did not address this requirement. The analysis must include must still discuss and analyze data for trends over time and patterns across census tracts relative to segregation and integration of protected classes, not just by income, but by other protected classes as well, including population by race, disability, and familial status. The analysis should address fair housing issue trends and patterns both within the jurisdiction and in comparison, to the region for each protected characteristic, and highlight the primary practices and other factors that have led to current conditions.

Disparities in Access to Opportunity: While the element provided additional data and analysis on disparities in access to opportunity relative to one of the protected characteristics, race and ethnicity, it should analyze each variable in the analysis (education, economic, transportation, and environment) against other socio-

economic characteristics (e.g., race, income, familial status, disability income and poverty) and across neighborhoods or census tracts. After identifying and discussing any overarching patterns of access to opportunity for members of protected classes, the element should discuss patterns and trends over time. In addition, as stated in the prior review, the element does not address discrepancies within Buena Park, such as school proficiency and low poverty rates of Black and Hispanic/Latino populations when compared with White, Non-Hispanic/Latino populations. Please see HCD's December 14, 2021 review.

Goals, Actions, Metrics and Milestones: Currently, the element identifies program(s) to encourage and promote affordable housing; however, most of these programs do not appear to facilitate any meaningful change nor address affirmatively furthering fair housing (AFFH) requirements. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

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).)*

The City has a regional housing need allocation (RHNA) of 8,919 housing units, of which 3,462 are for lower-income households. To address this need, the element relies on vacant and underutilized sites, as well as new overlays. 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 element added clarification (p. 11-58) on two pending projects which received entitlement approval prior to the preparation of the 2021-2029 housing element and indicated that their affordability level was determined by the developer. However, the element does not provide adequate support to demonstrate the affordability of these projects. As noted in the previous review, the methodology to determine affordability must be based on actual sales price or rent level of the units or other mechanisms ensuring affordability (e.g., deed-restrictions).

Sites Inventory: The element did not address this finding. The inventory continues to describe in general the existing use of each nonvacant site such as "commercial". The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. Please see HCD's December 14, 2021 review.

Suitability of Nonvacant Sites: While the element indicated the factors on pg. 11-66 were used to identify redevelopment potential of non-vacant sites, the analysis must relate these factors to sites identified in the inventory. The element can do this by listing each factor value in the actual sites inventory or including a narrative on how these factors relate to the sites identified in the inventory. Additionally, the element

should support the selected factors with development trends, market conditions, or other information that demonstrate the potential for development of new housing within the planning period. For church sites under the congregational sites overlay, the element should clarify which parts of the parcels are being considered for redevelopment and if property owners have expressed interest.

As stated in the element, because the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households; the housing element must demonstrate that the existing use is not an impediment to additional residential development in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) The element must provide substantial evidence that the existing use is likely to be discontinued during the planning period and could include information on existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development; whether property owners or developers have expressed any interest in these sites, and regulatory or other incentives or standards to encourage additional residential development on these sites. For sites with residential uses, the inventory could also describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For nonresidential sites, the inventory could also describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment. This is particularly important as noted in the March 1, 2022 letter received by the Kennedy Commission, many of these sites have continuing operating uses such as churches, models, fraternal organization, single family homes, and operating retail centers such as the Downtown Buena Park Mall.

Small Sites: While the element includes additional data and analysis of small sites and lot consolidation starting on pg. 11-67, it still does not describe circumstances of the sites that potentially could lead to consolidation. Please see HCD's December 14, 2021 review.

Realistic Capacity: The element did not address this finding. Please see HCD's December 14, 2021 review.

Sites with Zoning for a Variety of Housing Types (Emergency Shelters): While housing element law does allow a jurisdiction to limit the number of beds or persons permitted to be served nightly by a facility, standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. The element must still analyze the 30-bed limit as a potential constraint for the development of emergency shelters.

- 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. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder*

the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (a)(5).)

Land-Use Controls: While the element now describes minimum building setbacks and minimum dwelling unit floor area, these standards are not analyzed. Development standards must be evaluated for constraints and include a program to mitigate or remove constraints. The City could commit to modifying development standards such as minimum setbacks and maximum building coverage as these standards may constrain achieving the maximum allowable densities in the zone. In addition, pursuant to Program 11, the element is increasing density from 30 units per acre to 50 units per acre for the Housing Opportunity Overlay zone. The program must commit to adopting development standards that facilitate the development of projects at the new allowable density.

Site Plan Review: While the element described the Site Plan Review process on pgs. 11-53, it must still analyze the required approval findings and discuss whether design guidelines improve development certainty and mitigate cost impacts. The element must demonstrate this process is not a constraint or it must include a program to address this permitting requirement. Additionally, it must analyze the discretionary review and public hearing process for multifamily projects with more than five units for transparency and certainty in the process.

Constraints on Housing for Persons with Disabilities: While the element included some additional information related to reasonable accommodation procedures, it did not address how non-licensed group home facilities that serve seven or more residences is permitted. Zoning and standards should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations. Zoning code regulations that isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors may pose a constraint on housing choice for persons with disabilities. The element should include specific analysis of these and any other constraints, including their enforcement, for impacts on housing for persons with disabilities and add or modify programs as 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. The analysis shall also demonstrate local efforts*

to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)

The element did not provide any additional information to address this finding. While the element provides introductory statements relating to requests for lower density and average timeframes between entitlements and building permits, it does not support these statements with analysis. Please see HCD's December 14, 2021 review.

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).)*

Program 9 (Development of Housing for Extremely Low-Income (ELI) Households) and Program 16 (Streamline Entitlement and Permit Processing) must provide discrete timeframes. In addition, to ensure programs adequately facilitate housing for lower-income households, including extremely low-income households, the City could consider stakeholder comments from Kennedy Commission and others received as part of the City's public participation efforts.

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, the element should be revised as follows:

Program 11 (Adequate Sites to Accommodate the RHNA and Monitoring of No Net Loss): While the element has added more information to this program, it still does not demonstrate the rezones strategy will meet the requirements of Government Code, § 65583.2, subdivision (h) and (i). For example, the element seems to indicate that in-lieu fees will be allowed to meet the requirement that 20 percent of the units are affordable to lower-income households in the mixed-use overlay zone. However, it is unclear if this is to meet a general inclusionary requirement or is to demonstrate compliance with Government Code section 65583.2(h). Please note, in order to satisfy rezoning requirements, the program must demonstrate that the permits owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a conditional use permit (CUP), planned unit development permit, or other discretionary review or approval. Units must be provided as part of the development project rather than offer a payment of in-lieu fees.

In addition, the Mixed-Use Overlay action does not include language to comply with subdivision (h) of Government Code, § 65583.2 in regard to the mixed-use requirement. The City can only propose to accommodate more than 50 percent of the shortfall for lower income on sites zoned for mixed-use if those sites allow 100 percent residential use, and require residential use occupy 50 percent of the total floor area of a mixed-use project.

While Program 11 (Adequate Sites to Accommodate the RHNA and Monitoring of No Net Loss) has been modified to commit to establishing a Religious Congregational and Fraternal Sites Overlay, it must identify sites with appropriate zoning to accommodate the regional housing need within the planning period in accordance to Government Code section 65583.2 (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 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).)

While the element expanded its AFFH analyses, programmatic actions must be revised to add specific commitments, metrics, and milestones to address prioritized contributing factors and fair housing issues as identified on pg. D-53. The element could revise the element to incorporate AFFH throughout the programs section tying program actions to addressing trends and patterns identified in the analysis

5. *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 5 (Preservation of At-Risk Housing): While the element has modified the program to address required monitoring efforts, it must still commit to assist with available federal, state, and local financing and subsidy programs that the City could utilize to preserve units at-risk of conversion.