

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

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December 17, 2020

Christa Johnson, City Manager  
City of Del Mar  
1050 Camino Del Mar  
Del Mar, CA 92014

Dear Christa Johnson:

**RE: Review of Del Mar's 6<sup>th</sup> Cycle (2021-2029) Draft Housing Element (Update)**

Thank you for submitting the City of Del Mar's (City) draft housing element received for review on October 20, 2020. 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 several communications in December. In addition, HCD considered comments from Allen Matkins, 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.

Also, please continue to consider HCD's December 4, 2020 and prior correspondence related to implementation of the 5<sup>th</sup> cycle housing element. For example, the most recent correspondence notes any deviation from HCD's understanding of the City's October 20, 2020 correspondence will trigger an immediate review and potential action by HCD. The correspondence also notes the City must report progress in implementation monthly and document actions have been taken to implement Program 2-G prior to April 15, 2021. Lack of effective implementation of Programs 2-E, 2-F and 2-G will also have significant impacts on the City's efforts to comply with housing element law.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of April 15, 2021 for San Diego Association of Governments (SANDAG) localities. If adopted after this date,

Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: [http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375\\_final100413.pdf](http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

HCD appreciates the professionalism and dedication of Amanda Lee, Principal Planner, and Joseph Smith, Planning and Community Development Director during the course of our 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 Jose Ayala, of our staff, at [Jose.Ayala@hcd.ca.gov](mailto:Jose.Ayala@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West  
Land Use & Planning Unit Chief

Enclosure

## APPENDIX CITY OF DEL MAR

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 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 fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2. The program shall include an assessment of fair housing in the jurisdiction that shall include all of the following components:*

*(i) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.*

*(ii) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.*

*(iii) An assessment of the contributing factors for the fair housing issues identified under clause (ii).*

*(iv) An identification of the jurisdiction's fair housing priorities and goals, giving highest priority to those factors identified in clause (iii) that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved.*

*(v) Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement. (Gov. Code, § 65583, subd. (c)(10)(A))*

The element includes information contained within the Regional Analysis of Impediments and some general description of patterns within the City related to racially and ethnically concentrated areas of poverty, disparities in access to opportunities and disproportionate housing needs, including displacement risks. However, the element contains minimal analysis to adequately identify contributing factors to fair housing issues and formulate meaningful and significant goals and actions. An adequate analysis generally will identify all the fair housing areas described above, evaluate patterns and trends, analyze other relevant factors and summarize findings to better inform and prioritize contributing factors to fair housing issues and goals and actions. Specifically, the element must include:

- Identification and analysis of integration and segregation on protected characteristics, including race, disability, familial status and income. Identification and analysis must also fully address disproportionate housing needs, including overpayment, overcrowding and substandard housing and access to opportunities for persons with disabilities.
- For all analysis categories (e.g., fair housing enforcement, segregation and integration, racially and ethnically concentrated areas of poverty, disparities in access to opportunities and disproportionate housing needs), discuss patterns and trends relative to the region. For example, Del Mar largely does not appear to reflect socio-economic patterns of the San Diego region.
- For all analysis categories, analyze other relevant factors, most specifically for Del Mar, demographic trends relative to the region, past practices and policies that led to how Del Mar strongly differs from the rest of the region and any other local data and knowledge that compliments the analysis. This analysis must address Del Mar's zoning and land use as a barrier to a broader range of socio-economic characteristics and the fact that a housing development affordable to lower-income households has never been built in Del Mar.
- A listing and prioritization of contributing factors to fair housing issues. 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. HCD will send additional examples under separate cover. The element should prioritize contributing factors to better form responsive goals and actions.
- Goals and actions that significantly contribute to overcoming contributing factors to fair housing issues. These goals and actions must have a strong connection to a complete analysis and contributing factors and must not be limited to the regional housing need allocation.

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).)*

Sites Inventory: While the element lists sites by various factors such as zoning, acreage and capacity, it must also list sites by general plan (i.e., community plan) designation. The inventory should also sufficiently describe existing uses to facilitate an analysis of the potential for redevelopment and explain access to infrastructure (i.e., water, sewer, and dry utilities). Finally, based on communications, the inventory has several inaccuracies such as errantly identifying sites or not accounting for overlay zones in capacity calculations and must be corrected.

Realistic Capacity: The element must include an analysis to support the number of units estimated on each site in the inventory and the likelihood of residential development in zones allowing non-residential uses (e.g., North Commercial and Professional Commercial zones). Currently, the element assumes full build-out of sites listed for very low and low-income households but must also adequately support or correct this assumption based on factors such as land-use controls, overlay zone requirements, and other standards. The element also assumes residential development on sites zoned for non-residential uses. To support this assumption, the element lists several policies that appear to have little connection to promoting residential development. Instead, the element must either adequately revisit and revise the list of policies and include analysis based on factors such as development trends, performance standards or other relevant factors. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#zoning>.

Zoning for Lower-Income Households: In the City's 5<sup>th</sup> Cycle housing element, the City committed to re-zoning sites to allow up to 20 dwelling units per acre but failed to implement these programs in a timely manner. To address part of this requirement, the City is amending the North Commercial and Professional Commercial zones to allow up to 20 units per acre on some sites. Based on correspondence and communications, the City is taking all zoning and land use actions necessary, including amendments to the local coastal and community plan designation, to allow up to 20 units per acre prior to April 15, 2021. However, Programs 1A, 1B and 1C note timing within 12 months of adoption or even longer. For your information, if these programs and zoning actions are not fully and appropriately completed prior to April 15, 2021, the City must zone sites to permit multifamily without discretionary action at a minimum density of 20 units per acre and comply with all other requirements pursuant to Government Code section 65583, subdivision (c)(1), and section 65583.2, subdivisions, (h) and (i).

Suitability of Non-Vacant Sites: The element must include an analysis to demonstrate the potential for redevelopment. The analysis shall consider factors, including but not limited to the extent existing uses constitute an impediment, past experience, development trends and market conditions. In addition, if relying on non-vacant sites to accommodate 50 or more of the housing needs for lower-income households triggers requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period. The element explains these requirements including headers organizing the statute, but, otherwise, analysis is absent. For example, the element lists recent projects but does not explain how those projects relate to zoning, existing uses and the listed sites in the inventory. The element explains demographic trends for seniors and Generation Y but does not explain how that relates to market demand for redeveloping identified sites. The element states existing leases are an impediment but then concludes that information is not available. There is no attempt to evaluate whether existing uses are operating, have been operating or

are or are not anticipated to continue operating – all of which is retrievable and available information. For regulatory incentives, the element mentions density bonus but then later notes the ordinance needs to be updated to comply with law. To address these requirements, the element must include analysis and must relate that analysis to identified sites to demonstrate the existing uses in the inventory are not an impediment and have potential for redevelopment.

Further, the City's site strategy is dependent on efforts with the State 22<sup>nd</sup> District Agricultural Association and includes candidate sites for potential rezoning. Given the uncertainty of which sites will be rezoned, the element must address statutory requirements for greater than 50 percent reliance on non-vacant sites to accommodate the housing need for lower-income households as described above.

Affirmatively Furthering Fair Housing: The element must identify sites throughout the community to foster inclusive communities. While the element identifies and show sites and zoning throughout the community, it also notes the plan to accommodate half of the regional housing need for lower-income households at the Del Mar Fairgrounds. 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 to foster a more inclusive community.

Accessory Dwelling Units: While the element includes analysis of the number of accessory dwelling units (ADUs) anticipated in the planning period, it must also demonstrate the affordability of those units, particularly for moderate income households. In estimating affordability, the analysis could consider a community survey of existing new accessory dwelling units for their rents and include other factors such as square footage, number of bedrooms, amenities, age of the structure and general location. For additional information, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/second-units.shtml> and the *Accessory Dwelling Unit Handbook* at <https://hcd.ca.gov/policy-research/docs/adu-ta-handbook-final.pdf>.

City Owned Sites: The element appears to rely on city-owned sites, including rezoning (Program 1H). The element should also discuss the availability, whether current zoning allows up to 20 units per acre and revise programs as appropriate such as complying with requirements pursuant to Government Code section 65583, subdivision (c)(1), and section 65583.2, subdivisions (h) and (i). The discussion of availability should address whether the City intends to surplus the sites and how and when or utilize ground leases.

Suitability and Availability of Infrastructure: The element describes the availability of water, sewer and utility lines but must also demonstrate sufficient existing or planned total water and sewer capacity to accommodate the regional housing need.

Environmental Constraints: In addition to describing various overlays (e.g., coastal bluff, floodplain overlay), the element should discuss whether these overlays

preclude or constrain development, account for impacts in capacity calculations and include policies and programs to address and remove or mitigate constraints.

Emergency Shelters: The element notes emergency shelters are permitted in the North Commercial Zone and the availability of 13.5 acres. The element should also clarify whether shelters are permitted without discretionary action and list and evaluate whether sites and development standards facilitate emergency shelters.

Transitional and Supportive Housing: The element (page 3-18) appears to conflate transitional and supportive housing definitions and should clarify these housing types as distinctly different.

- 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: The element identifies various land use controls, including zoning, overlays, development standards. However, the element must also include an analysis of the impacts of these land use controls on the cost, supply, timing and approval certainty of development. This analysis must specifically evaluate land use controls individually and cumulatively for impacts, including the ability to achieve maximum densities without exceptions (e.g., variance, conditional use, density bonus law). For example, the analysis should address heights, setbacks, lot coverage and parking garage requirements. Finally, the element must include programs to address and remove or mitigate identified constraints.

Design Review: While the element mentions the design review process is intended to protect Del Mar's special character and atmosphere, it must also list and analyze the requirements for impacts on cost and approval certainty. Specifically, the analysis should list standards and approval findings, evaluate impacts and include programs as appropriate to address constraints.

Housing for Persons with Disabilities: The element explains the reasonable accommodate procedure and lists approval findings, including impacts on the use of adjacent properties and right of way. Findings such as impacts on surrounding uses or adjacent properties can act as a barrier to housing for persons with

disabilities. The element should analyze these findings for impacts on housing for persons with disabilities and include programs as appropriate.

Also, community care facilities for seven or more persons are explicitly excluded from several residential zones and subject to a 1,000-foot spacing requirement – a significant barrier to housing for persons with disabilities. The element must include a program to address this constraint and should consider zoning approaches consistent with the City’s occupancy standards as opposed to excluding potentially unrelated persons from several residential zones.

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).)*

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

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).)*

Though the element provides information on these special housing needs groups, additional information should be included, specifically on the housing needs of farmworkers, persons with developmental disabilities and homeless population within the City’s boundaries. HCD will send information to assist in this analysis under separate cover.

## **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).)*

The element includes several programs where either the timeline for implementation should be earlier in the planning period or the program should have a discrete timeline instead of “ongoing”. Examples where the timeline should be earlier include: Programs 1C (Central Commercial Zoning), 1E (Rezoning North Bluff and South Stratford), 1F (Manufactured Housing), 1G (Density Bonus Ordinance), 1H (Public Facilities Zoning) and 1L (Streamlining and Incentives). Examples of programs that should have discrete timelines include: Programs 6A (SB 35 Permit Streamlining), 7A (Housing Assistance Reserve), 7D (Housing Choice Voucher) and 7G (Non-profit Housing and Assistance Programs).

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 must be revised as follows:

- *Program 4B (Supportive Housing and Low Barrier Navigation Centers):* The program commits to adopt procedure “if” a project is proposed. The absence of an explicit procedure to permit and encourage these uses is a constraint and barrier to housing and shelter for persons with disabilities and experiencing homelessness. The program must commit to amend zoning by a date certain.
- *Programs 1A to 1E (Rezoning):* As noted in Finding A2, if any zoning amendment or rezoning is necessary in the planning period to accommodate a shortfall of adequate sites or unaccommodated need, the zoning must permit multifamily uses without discretionary action and address several other requirements pursuant to Government Code sections 65583, subdivision (c)(1), and section 65583.2, subdivision (h) and (i). These programs should either reflect timing before the beginning of the

planning period or revise the program as appropriate. In addition, Program 1E should consider timing earlier in the planning period and reflect statutory requirements to amend zoning within 3 years.

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

The element must include proactive and specific efforts to assist in the development of housing for lower-income households and households with special needs, including extremely low-income, persons experiencing homelessness, farmworkers, persons with disabilities, including developmental and elderly. These efforts are particularly important since Del Mar does not have a 100 percent affordable development in the entire city. Efforts must proactively and regularly reach out to developers of affordable housing and utilize incentives and financial and other resources. HCD will send examples under separate cover.

4. *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 Finding(s) A3 and A4, 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 add programs and address and remove or mitigate any identified constraints.

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 A1, the element must include a complete analysis of affirmatively furthering fair housing. Based on the outcomes of that analysis, the element must add or modify programs.

### **C. 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).)*

The element must include quantified objectives to establish an estimate of housing units by income category that can be constructed, rehabilitated, and conserved over the planning period. While the element includes an empty table to address this requirement (page 4-25), the table should be completed with actual quantified objectives.

**D. Coastal Zone Localities**

*Coastal localities shall document the number of low- and moderate-income units converted or demolished, and the number of replacement units provided. (Gov. Code, § 65588, subd. (d).)*

The element does not meet the statutory requirements. To determine whether the City affordable housing stock in the coastal zone is being protected and provided as required by Government Code section 65588, the element must be revised to include the following:

1. The number of new housing units approved for construction within the coastal zone since January 1982.
2. The number of housing units for persons and families of low- and moderate-income required to be provided in new housing developments either within the coastal zone or within three miles.
3. The number of existing residential dwelling units occupied by low- and moderate-income households required either within the coastal zone or three miles of the coastal zone that have been authorized to be demolished or converted since January 1982.
4. The number of residential dwelling units for low- and moderate-income households that have been required for replacement.