



**HOUSING ELEMENT IMPLEMENTATION – REZONING PROGRAM
OCTOBER 18, 2022 CITY COUNCIL QUESTIONS
(GENERAL PLAN AMENDMENT NO. 2021-02 AND ZONE CHANGE NO. 2021-01)**

At the October 18, 2022 City Council meeting, a public hearing was held on the General Plan Amendment (GPA) No. 2021-02 and Zone Change (ZC) No. 2021-01, which implements the City's 6th Cycle Housing Element. During and subsequent to this meeting, the City Council raised various questions regarding the proposal. For the public's benefit, the Planning Division has prepared the list of questions raised and corresponding answers. For additional information, please contact the Planning Division at 714-990-7674 or at planner@cityofbrea.net. In addition, the public can access the October 18, 2022 City Council materials here: <https://www.ci.brea.ca.us/511/City-Council>.

On Monday, October 31, 2022, The Department of Housing and Community Development (HCD) staff and City of Brea staff participated in a zoom call. The responses below reflect the discussions had during this meeting.

Question #1: Do the state rezoning law that applies to the Housing Element sites also apply to the three Additional Potential Sites?

Answer: *No. HCD staff confirmed that there is no state law or statute that requires the City to rezone the three additional potential housing sites, and that the required rezone applies to the Housing Element housing sites that were identified to satisfy the City's Regional Housing Needs Assessment obligation.*

However, HCD staff did confirm that although there is no state law that requires rezoning of the three additional potential sites, Program 17 of the City's certified Housing Element does require rezoning within the 2022 calendar year. Failure to implement Housing Element programs could result in HCD's enforcement through their Accountability Unit. HCD staff also reminded staff that the City is required to take meaningful actions to affirmatively further fair housing (AFFH).

Question #2: Can HCD hold a community forum or an informational session during the Brea City Council meeting to educate the community on the Housing Element law and the requirements that the City must comply with?

Answer: *HCD staff indicated that they can consider hosting such meeting if the City submits a formal request to HCD; however, due to current work load, it would not be the agency's priority. HCD could not commit to a future date for the information session.*

Question #3: Are the Housing Element housing sites required to be developed?

Answer: No, the Housing Element law requires the City to plan for the anticipated housing needs. The City is not required to build any units. However, the City, through implementation of Housing Element programs and policies, is required to promote and encourage development of housing projects through its regulations, programs and policy, in an equitable manner to all (e.g. rezoning properties to accommodate higher density, provide incentives for affordable housing developments, fair housing policies, fair distribution of affordable units throughout the City, AFFH, etc.)

Question #4: What was the method used to select the Housing Element housing sites?

Answer: The following methods were utilized when selecting the different types of Housing Element housing sites:

- *Projects in process:* 4 pending projects (whether they are under review or under construction) that has projected occupancy to occur in the 6th housing cycle (between July 2021 and December 2029) were included.
- *Vacant single-family site:* A site located along Lambert Road was selected as a viable housing site based on its existing zoning that allows residential use (R-1), the site condition (vacant), and the adjacency to a newly approved the Brea 265 Specific Plan area.
- *Focused Development Sites:* Among properties that are zoned or could be zoned as one of the mixed-use zones, the City selected a total of 17 Focused Development Sites by applying the following two-tiered methodology:
 - *First refinement:* Selection of sites that were either vacant or developed with an existing building greater than 30 years in age.
 - *Second refinement:* Selection of sites that met one or more of the following criteria:
 - *City-owned or vacant parcels*
 - *Sites with a high ratio of surface parking lots*
 - *Known development interest on the site*
 - *Sites that are >1 acre or larger in size*
 - *Sites developed with existing uses that are particularly underutilized and marginal (as measured by an improvement-to-land value ratio of less than 1.0)*
- *Additional Potential Sites:* These sites were individually evaluated based on the size of the sites, proximity to other residential neighborhoods and supporting land uses, and past development interest/inquiries.

Question #5: What are the penalties for failure to comply with the state law required rezoning of Housing Element housing sites?

Answer: Penalties for failure to comply with the required rezoning can be found in Government Code Section 65583 (g) - https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65583.

In summary, if the City fails to rezone the sites that are required to be rezoned, the City generally cannot disapprove a housing development proposed on such sites, nor require

any discretionary permit, if the development includes 49% or more affordable units (moderate or lower) and complies with the standards applicable to the zone that the site is required to be rezoned to per the Housing Element.

In addition, failure to comply with the required rezoning may result in non-compliance with the Housing Element law.

Question #6: What are the penalties for Housing Element non-compliance?

Answer: Penalties for Housing Element non-compliance can be found in Government Code Section 65585 (i) through (p)

[https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65585.](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65585)

In summary, HCD and the Attorney General, either jointly or separately, can bring a suit against the City for non-compliance. If the Court finds that the City is out of compliance and the City fails to remedy the non-compliance or comply with the court order or judgment, the Court will impose fines as follows:

- *Initial fine: Up to \$100,000 per month (minimum \$10,000)*
- *After 3 months from the initial fine: Court may multiply the initial fine amount up to 3 times*
- *After 6 months from the initial fine: Court may multiply the initial fine amount up to 6 times*

**Failure to pay the imposed fines may result in the court requiring the state controller to intercept any available state and local funds.*

**After 6 months from the initial fine, the court may “take all governmental actions necessary” to bring the City’s Housing Element into compliance (e.g. suspending the City’s authority to issue building permits or planning entitlement approvals, court receivership, etc.)*

In addition, there are additional consequences that may result from not having a certified Housing Element, which may include, but not limited to, the following:

- *Inability to receive various State and regional grant and loan programs as they require a certified Housing Element as one of qualifying criteria (e.g. CDBG, Permanent Local Housing Allocation, CalHOME, Local Housing Trust Fund Program, etc.).*
- *The City’s General Plan can be found as inadequate and invalid. Local governments with an invalid General Plan can no longer make permitting decisions.*
- *Vulnerability to litigation from other parties (e.g. housing rights’ organizations, developers, etc.).*

Question #7: When is the deadline for the City to complete the required rezoning of the Housing Element housing sites?

Answer: According to HCD staff, the City’s Housing Program (#s 8 and 17.c) commits the City to a timeline of end of 2022 for the rezoning of all six subject housing sites. However,

HCD staff recognized that the requirements of the statute allow the City to complete the required rezoning by February 15, 2025 since the City's 6th Cycle Housing Element was certified prior to October 15, 2022. As such, HCD staff indicated that there may be some flexibility related to when the required rezoning needs to be completed, although HCD staff did not and could not provide any certainty or specifics.

Question #8: What is the historical significance of the "Rock House" on 104/108 E. Date Street?

Answer: According to Linda Shay from Brea Museum/Historical Society, the home is not on the City's Historical Resources Registry but has the potential to be based on the first owner, Louis Papillo.

Question #9: Can the existing R-1 zoning for the two Additional Potential Sites with churches (200 S. Associated Rd. and 480 N. State College Blvd.) accommodate the anticipated density specified in the Housing Element?

Answer: No. The maximum density associated with R-1, which is 6 dwelling units/acre (du/ac), cannot support the anticipated density specified in the Housing Element for these two sites. 480 N. State College Blvd. site has anticipated density of 18 du/ac and 200 S. Associated Rd. has anticipated density of 15 du/ac.

Question #10: Is it possible to add more alternative sites that are not existing church sites?

Answer: The City cannot add more alternative sites in the Housing Element without formally amending the Housing Element, which would require HCD review and approval.

Question #11: What were the responses of the property owners of the subject housing sites after they received the notice of the proposed GPA/ZC?

Answer: Following the public notice period, the City received phone calls from the property owner at 480 N. State College. City staff confirmed that the property owner has all the control on if and when they would seek to redevelop the site, and that the current operations could remain. The Senior Pastor at 200 S. Associated Road, who is not the property owner on title per the City record, spoke at the Planning Commission meeting and expressed that the church and the school had no plans of relocating or closing, and City staff confirmed that the proposed GPA/ZC does not limit their existing operations.

Question#12: What is the density of the apartment community located north of the Additional Potential Site - 200 S. Associated Road?

Answer: According to the City records, Birchwood Village Apartments (1717-1919 E. Birch Street) consists of 484 units on a 24.17-acre site. This equates to 20 du/ac.

Question#13: Where can the public find the result/summary of the Housing Element Survey and Community Workshop conducted during the Housing Element update process?

Answer: The result of the on-line Housing Element Survey and the summary of the Housing Element Community Workshop are included in the Appendix E of the certified Housing Element. The certified Housing Element can be found online here: <https://shapebrea.net/8505/widgets/53243/documents/34442>. Within the document, results of the Housing Element Survey can be found on PDF pages 333 to 346, and the summary of Community Workshop can be found on PDF pages 329 to 332.

Question #14: Provide information on the following items related to the Avalon Brea Place apartments: 1) Rental Rates; 2) Income Requirements; 3) Occupancy Rate; 4) Profile for Average Lessee; 5) Traffic Data Comparison between pre-development and current conditions

Answer: *Note - Responses to sub-questions #s 1 through 4 below are as of October 25, 2022 and the responses were provided by the property management company.*

- 1) *Rental Rates:*

<i>Studios</i>	<i>\$2,246 - \$2,560</i>
<i>1-Bedrooms</i>	<i>\$2,605 - \$3,097</i>
<i>2-Bedrooms</i>	<i>\$3,355 - \$4,195</i>

- 2) *Income Requirements:* *There is no income requirement. The property management only conducts credit check and biometric identify scanning to prevent fraudulent applicants.*

- 3) *Occupancy Rate:* *93% of the units (607 out of 653 units) are currently leased.*

- 4) *Profile for Average Lessee:* *The property management declined to provide requested information based on company policy and fair housing parameters.*

- 5) *Traffic Data comparison:* *The following summarizes the findings of the most recent quarterly report.*
 - *Birch Street:* *The overall performance of Birch Street generally improved from the pre-construction conditions. The slight increase of average travel time in September (1 second or 2%) is insignificant and has no impact to the average speed.*

 - *State College Boulevard:* *Average corridor travel times compared to the pre-construction conditions have been maintained at the same or better along State College Boulevard with the exception of the northbound that reported increased travel time during the peak periods.*

Note: The intersection of State College Boulevard and Lambert Road currently runs under a special coordination cycles with the SR-57 ramps instead of responding to the traffic demands and fluctuation on State College. The current setting puts priority on the east-west direction along Lambert to accommodate heavy bi-directional traffic. The construction of signal modifications or timing revisions at the SR-57 ramps have impacted the signal operation at State College and Lambert.

Question #15: How was the potential density of the subject housing sites calculated?

Answer: *The following methods were used when determining the potential density for the Housing Element housing sites:*

- *Focused Development Sites:*
 - *For sites with the existing or proposed GP and Zoning of MU-I and MU-II (includes Site #s 7 and 10):*

- Review of recent projects built under mixed-use zoning standards
- Net acreage resulting from on-site improvements (i.e. sidewalks, easements)
- Typical densities of projects with affordable housing

After taking above items into consideration, an adjustment was made to limit the development potential at 80% of the maximum density allowed for corresponding zone.

- For sites with the existing or proposed GP and Zoning of MU-III (includes Site #13): A maximum density of 18 du/ac was selected based on average density of three projects recently developed under MU-III standards.
- Additional Potential Sites: Existing conditions and site characteristics for each site and surrounding neighborhood and developments were evaluated. The anticipated densities for these three sites range from 11 to 18 du/ac.

Question #16: What are the development restrictions that apply to the subject housing sites?

Answer: Each site is required to comply with corresponding zoning district's development standards, which includes, but not limited to, setbacks, height, density (du/ac or FAR). Corresponding development standards can be found in following link for each of the six sites:

	Site Address	Proposed General Plan Land Use and Zoning Designations	Development Standards Code Section	Link to the Applicable Code Section
1	Focused Development Site #7 (SW corner of Cypress St and Brea Blvd)	Mixed Use I; Mixed-Use I (MU-I)	Section 20.258.020 and 030 (for MU-I)	https://codelibrary.amlegal.com/codes/brea/latest/brea_ca/0-0-0-73211
2	Focused Development Site #10 (NW corner of Fir St and Brea Blvd)	Mixed Use I; Mixed-Use I (MU-I)	Section 20.258.020 and 030 (for MU-I)	
3	Focused Development Site #13 (NE block of Elm St and Brea Blvd)	Mixed Use III; Mixed-Use III (MU-III)	Section 20.258.020 and 030 (for MU-III)	https://codelibrary.amlegal.com/codes/brea/latest/brea_ca/0-0-0-73249
4	Additional Potential Site (Southern portion of 275 Valencia Ave)	Mixed-Use II; Mixed-Use II (MU-II)	Section 20.258.020 and 030 (for MU-III)	
5	Additional Potential Site (200 S. Associated Rd)	High Density Residential; Multiple Family Residential (R-3)	Section 20.220.040	https://codelibrary.amlegal.com/codes/brea/latest/brea_ca/0-0-0-72052#JD_20.220.040
6	Additional Potential Site (480 N. State College Blvd)	Mixed Use II; Mixed-Use II (MU-II)	Section 20.258.020 and 030 (for MU-II)	https://codelibrary.amlegal.com/codes/brea/latest/brea_ca/0-0-0-73211 https://codelibrary.amlegal.com/codes/brea/latest/brea_ca/0-0-0-73249

Question #17: If the proposed GPA/ZC for the subject housing sites are approved, can the City change the General Plan Land Use and Zoning designations of these properties in the future?

Answer: *Yes, however, there is a restriction for the three Focused Development Sites. Because these three sites are part of the City's Housing Opportunity Sites identified to satisfy the City's RHNA obligation, the No Net Loss Law (Govt. Code Section 65863) prohibits "downzoning" of these three sites to a zone that has less density than existing at the time unless:*

- *The City can demonstrate that even with the new zoning, there are sufficient adequate sites in its identified housing sites inventory to accommodate the City's unmet RHNA by income category; or*
- *The City amends its Housing Element sites inventory to either include additional sites to accommodate the shortfall or sites that have been rezoned to correct for the shortfall.*

It should be noted that the same requirements apply if the City approves a development that has less density than what was included in the Housing Element.

Question #18: Is there an example of HCD's interpretations and applications of the regulations?

Answer: *The City Attorney's office could not find any HCD letters that directly addresses the issue; however, there are some HCD issued letters to other jurisdictions that provides HCD's application of the Housing Element law, which includes, but not limited to the following:*

- *Highlighting local jurisdictions' obligation to AFFH;*
- *Listing consequences of noncompliance, which includes impacts on ability to obtain State funding, legal ramification involving Attorney General, potential monetary fines and limitation in disapproving a housing project; and*
- *One of the letters revokes a jurisdiction's conditional certification of its Housing Element due to noncompliance with one of its Housing Programs*