

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

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December 22, 2023

Kimberly Cole, Director
Community Development Department
City of Monterey
570 Pacific Street
Monterey, CA 93940

Dear Kimberly Cole:

RE: City of Monterey's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Monterey's (City) draft housing element received for review on September 26, 2023, along with revisions received on December 8, 2023. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on November 14, 2023, with the City's housing element team. In addition, HCD considered comments from Jane Parker and LandWatch, pursuant to Government Code section 65585, subdivision (c).

The draft element, including revisions, addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

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. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government does not adopt a compliant housing element within 120 days of the statutory deadline (December 15, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government

Code sections 65583, subdivision (c) and 65583.2, subdivision (c). 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). Please be aware, if the City does not adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

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 Affordable Housing and Sustainable Communities program, 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: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the hard work and dedication the City's housing element team provided during the review. 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 Mao Lee, of our staff, at Mao.Lee@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF MONTEREY

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 <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> 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).)*

Disparities in Access to Opportunity: While the element reports data on disparities in access to education, economic, and environmental opportunities, it should also address disparities in access to transportation opportunities, including accessibility and combined transportation and housing costs experienced by protected groups. Please refer to page 35 of the AFFH guidebook (link: https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf).

Disproportionate Housing Needs (Substandard Housing Conditions): While the element included some data regarding housing conditions, it must also identify any concentrations of substandard housing units or concentrations of older units in need of rehabilitation at the local level.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element provides information regarding site analysis and affirmatively furthering fair housing, the element must also evaluate sites relative to the full scope of assessment of fair housing, specifically factors regarding access to opportunity. For example, the element should discuss whether the location of sites is consistent with the obligation to AFFH, and whether the location of sites improves or exacerbates conditions.

Contributing Factors: Upon a complete analysis of AFFH, the element should re-assess and prioritize contributing factors to fair housing issues.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Sites Inventory: The element must reconcile the information provided in Appendix A (sites inventory). Multiple sites are listed with a maximum density of 30 units per acre, but the total capacity well-exceeds the calculation. For example, a 1.26-acre site with a maximum density of 30 du/ac is listed at a total capacity of 70 units, when it should be 38 units.

Realistic Capacity: The element mentions a survey of recent residential projects from comparable sites in neighboring jurisdictions to establish the capacity assumptions in the City's housing element. While this approach is generally acceptable, the element should list these examples by built densities, allowable densities and affordability and also describe similarities in the zoning and development standards between the City and neighboring jurisdictions cited, performance standards, processing, and permit procedures, including the requirement for Conditional Use Permits (CUP), and development trends supporting residential development.

In addition, given the City utilizes overlay and several sites with zoning that appear to allow 100 percent nonresidential uses, the calculations of residential capacity should account for the likelihood that sites will utilize the overlay and include a residential component. For example, to demonstrate the likelihood of utilizing the overlay, the element could discuss interest from property owners or developers. To demonstrate the likelihood of a residential component, the element could examine all development in the relevant zones and how often a residential component occurs.

Zoning for Lower-Income Households: The element must demonstrate adopted densities appropriate to accommodate housing for lower-income households. For communities with densities that meet specific standards (at least 20 units per acre for Monterey), no analysis is required (Default Density). (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. To address this requirement, the element should clearly identify which zones and allowable densities are being utilized to accommodate the lower-income RHNA. If utilizing existing zoning, the element should either meet the Default Density standard or demonstrate the appropriate densities based on the factors noted above. If utilizing planned zoning, (e.g., Publicly-Owned sites, Education Workforce Housing Overlay, Congregational Overlay), the element must include a program(s) rezoning sites to meet all by-right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i).

Suitability of Nonvacant Sites: The element currently divides the nonvacant analysis by planned areas. While this approach is generally acceptable, the element must also evaluate the extent existing uses on identified sites impede additional development. For example, the evaluation should address (a) any existing leases or other contracts or conditions that would perpetuate the existing use or prevent redevelopment of the site for additional residential development; (b) existing regulatory framework, including incentives and potential barriers such as heights, FARs and interior courtyard requirements; (c) existing versus allowable floor area; (d) indicators of turnover such as vacancy, for sale or frequent changes in use; (3) the viability of the existing use and

impacts of relocation or continuing the use and (4) any other relevant factors that may preclude or promote redevelopment.

In addition, for your information, the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, which 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. Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Publicly-Owned Sites: While the element revised Program 1-E (Education Workforce Housing Overlay) and added Program 1-L (County Courthouse Site) with a commitment to comply with the Surplus Land Act and offer incentives, the Programs must also be revised to include additional actions such as a schedule to issue a request for proposals (RFP) for housing services and include additional actions to facilitate development on this site given its importance in accommodating the RHNA. For example, the Program could commit to facilitate entitlements and issue permits by a specific date consistent with the assumptions in the sites inventory. The Programs should also commit to alternative actions by a specified date if the sites do not progress toward completion in the planning period, as anticipated.

Small and Large Sites: Sites larger than ten acres in size or smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites are suitable to accommodate housing for lower-income households. For small sites, the element must provide specific examples with the densities, affordability and, if applicable, circumstances leading to consolidation. The element should relate these examples to the sites identified to accommodate the RHNA for lower-income households to demonstrate that these sites can adequately accommodate the City's lower-income housing need. For large sites, the element must provide evidence to demonstrate the suitability of sites larger than ten acres to accommodate housing for lower-income households. The evidence could include additional discussion on how development might occur on the sites, analysis of prior redevelopment of large sites for affordable housing, or other evidence to demonstrate the suitability of these sites. Based on a complete analysis, the City should consider adding or revising programs to include incentives for facilitating development on small and large sites.

Accessory Dwelling Units (ADU): The element projects 120 ADUs over the planning period or approximately 15 ADUs per year over the eight-year planning period. The element also notes permitting 7 ADUs in 2018 and 2019, 13 in 2020, 9 in 2021, and 19 in 2022. These trends are inconsistent with HCD records (4 in 2018, 1 in 2019, 12 in 2020, 2 in 2021, and 21 in 2022) and do not support an assumption of 15 ADUs per year. To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as

appropriate. Further, programs should commit to additional incentives and strategies beyond zoning incentives for deed-restricted ADUs.

Availability of Infrastructure: While the element's site inventory states that the Ryan Ranch/Fort Ord site has current infrastructure in place, public comment regarding the project appears to note the lack of available infrastructure to service the site. Therefore, the element should reconcile this information and provide the most current information regarding the suitability and availability of infrastructure, specifically water, to the Ryan Ranch/Fort Ord site.

Infrastructure: While the element includes programs to maintain and augment the existing water supply, the programs should be revised to include discrete timelines for implementation throughout the planning period.

Replacement Housing: The element identifies sites with existing "mixed-uses". The element should clarify if mixed-uses constitute residential uses. In the event it does, absent a replacement housing policy, these sites will not be considered adequate sites to accommodate lower-income households. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).

Environmental Constraints: While the element discusses environmental constraints, it should also address any other conditions that could preclude development in the planning period. Examples of other conditions include shape, access, contamination, relocation, title conditions, historic preservation, and easements.

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/planning-and-community-development/housing-elements> 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 (Permanent Supportive Housing): Supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs as appropriate.

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 (e.g., multifamily rental housing). The analysis must also evaluate the cumulative impacts of land use controls on the cost and supply of housing, feasibility, and ability to achieve maximum densities. The analysis should specifically address heights, lot coverage, parking, including the requirement for buildings with 25 or more units to provide two parking spaces per unit, and other standards. Based on the outcomes of a complete analysis, the element should include programs to address or remove the identified constraints.

Local Processing and Permit Procedures: The element describes some typical permitting tracks under the City's processes, including Architectural Review and use permits but should also analyze the impacts on housing cost, timing, and approval certainty. The analysis should specifically address approval findings for typical development that are consistent with zoning and story pole requirements. The element should include programs to address or mitigate identified constraints.

In addition, the element must describe how the City complies with the Permit Streamlining Act, including intersections with the California Environmental Quality Act and timing requirements, including streamlining determinations, and add or modify programs as appropriate.

Constraints on Housing for Persons with Disabilities (Reasonable Accommodation): While the element and the City's zoning code describe the required findings to approve a reasonable accommodation request, the element should add or modify a program to remove the review authority from discretionary bodies when a reasonable accommodation request is reviewed concurrently with another land use permit and maintain the City Manager as the sole reviewer for all reasonable accommodation requests.

4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

Approval Time and Requests Lesser Densities: The element must include analysis of requests to develop housing at densities below those identified, the length of time between receiving approval for a housing development and submittal of an application for building permits that potentially. The element must address any hindrance to the development of housing and include programs 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).)*

Special Needs Households: The element reports data and includes a generic discussion of housing challenges faced by special needs households. However, the element must analyze the housing needs of special needs households for each special need group including seniors, farmworkers, large households, persons with disabilities including developmental disabilities, and persons experiencing homelessness. An analysis should address household characteristics, trends, local knowledge such as service providers, existing resources and strategies, and the magnitude of the gap in addressing those housing needs.

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... (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines early in the planning period to ensure actual housing outcomes. Programs to be revised include Program 1-C (Specific Plan Updates), Program 1-H (Fort Ord/Ryan Ranch Specific Plan), Program 1-I (Highway 68 Area Plan Update), Program 2-B (Permit Thresholds for Multi-Family Projects), and Program 2-D (Revise Adopted Plans with Objective Standards).

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:

- *Shortfall of Sites to Accommodate the Lower-Income RHNA*: As noted in Finding A3, if rezoning is necessary, including appropriate densities, to accommodate the lower-income RHNA, programs should specifically commit to acreage, allowable

densities, and anticipated units. In addition, the program should specifically commit to rezoning that meets all by-right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). Examples of by-right requirements include permitting all multifamily developments without discretionary action in which at least 20 percent of the units are affordable to lower-income households, 16 units per site, minimum densities, and residential-only performance standards. Based on the information in the element, these by-right and other program requirements may need to at least apply to Publicly-Owned sites, Educational Workforce Overlay sites, and Congregational Overlay sites.

In addition, please be aware, that the recent California appellate decision in *Martinez v. City of Clovis* found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). If the City is relying on an overlay to address a shortfall of capacity to accommodate the lower-income RHNA, the City may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities of less than 20 dwelling units per acre. *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.

- *Publicly-Owned Sites:* In addition to meeting various requirements described above, Program 1-G (Surplus Municipal Parking Facilities), Program 1-H (Fort Ord/Ryan Ranch Specific Plan), Program 1-I (Highway 68 Area Plan Update), Program 1-L (County Courthouse Site) should commit to numerical objectives consistent with assumptions in the sites inventory and a specific commitment to a schedule of actions to facilitate development in the planning period, including alternative actions completed by a specified date (e.g. by 2028) if the sites will likely not develop in the planning period. Actions should include discrete timing for outreach with developers, issuing requests for proposals, incentives, assisting with funding and entitlement, and issuing building permits.

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 non-governmental 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... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, 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 housing mobility enhancement, new housing choices and affordability in high-opportunity areas, place-based strategies for community preservation and revitalization, and displacement protection.

In addition, promoting housing mobility removes barriers to higher opportunity areas and strategically enhances access to housing choices and affordability to promote more inclusive neighborhoods, cities, and regions. Among other factors, the City is predominantly a highest- and high-resourced community in contrast to the rest of the region. As a result, the element should include significant and robust actions with numerical targets (not limited to the RHNA) to promote housing mobility and increase housing choices and affordability throughout the City. Examples include promoting more housing choices and affordability in lower-density areas, religious institutional sites, enhancing ADUs and junior accessory dwelling units (JADU), and home sharing strategies.

5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

As noted in Finding A2, the element assumed ADU projections beyond the per-year average dating back to 2018. While the element includes Program 3-G to incentivize deed-restricted ADUs, the element must add or modify programs to incorporate additional ADU incentives should it want to assume ADU projections beyond the per-year average to date.

C. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

While the element (Appendix G) summarizes the public input received on the housing element, the element must also demonstrate how this public input was incorporated into the element's policies and programs. In addition, while the element summarizes the public input it received during the public draft review, it must also summarize and describe additional public comments received and how it is incorporated into future submittals of the housing element.

D. Coastal Zone

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's 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 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.