

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

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January 9, 2023

Steve Leonardis, City Manager
City of Monte Sereno
18041 Saratoga-Los Gatos Road
Monte Sereno, CA 95030

Dear Steve Leonardis:

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

Thank you for submitting the City of Monte Sereno's (City) draft housing element received for review on October 12, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from East Bay for Everyone, South Bay YIMBY, Anne Paulson and YIMBY Law 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.

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 (January 31, 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 fails to 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.

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.

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 meets 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>.

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,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF MONTE SERENO

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. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

The review requirement is one of the most important features of the element update. The review of past programs should describe progress in implementation of previous actions, including results compared to objectives and evaluate the effectiveness of actions to make appropriate adjustments in the current planning period. In several cases, the element appears to either omit or not describe and evaluate actions from the prior planning period. Most notably, the review and revise does not evaluate actions related to accommodating the regional housing need allocation (RHNA) (accessory dwelling units (ADU)), providing realistic opportunities for multifamily development and outreach to affordable housing developers, including nonprofits. These programs were geared toward promoting housing variety and affordability, housing mobility and inclusion into Monte Sereno. Yet, the current element does not evaluate past commitments or consider appropriate actions. For example, Program H-2.5 committed to establish multifamily zoning and if not successful, provide alternative multifamily opportunities and amend the element to correct inconsistencies. The Program also committed to make specific outreach to developers of housing affordable to lower income and special needs households and apply for funding. The current element includes some discussion that the multifamily zoning was repealed and instead a project was developed on a multifamily zoned site. The project occurred on a site that was committed to be zoned multifamily in the prior planning period for the same reasons (See Program HE 3.10 from the 4th cycle) – to promote a variety of housing types. Instead, the site was zoned at precariously marginal densities and that development ended up being single-family – not multifamily. The element omits the depth and importance of this commitment and did not discuss or evaluate the effectiveness of multifamily zoning, lack of alternative measures taken and outreach efforts. Other examples of programs geared toward promoting housing variety, mobility and affordability from the prior review include:

- *Program HE-2.1 (Evaluate ADU)*: The element does not discuss changes to development standards, results of the survey or achieving the program objectives.
- *Program HE-2.2 (Shared Housing)*: The element does not address contacting agencies or publicizing the program.
- *Program HE-2.3 (ADU Monitoring)*: This program had a specific trigger to revise multifamily zoning and densities if ADUs for all income were not constructed in specified time intervals. The current element omits any discussion of these commitments.
- *Program HE-4.1 (Special Needs)*: The element does not discuss the attempts, success or effectiveness of outreach with non-profit developers.
- *Program HE-4.2 (Senior Housing)*: The Program's focus was to develop innovative housing. Instead, the element discusses the City's attempts at partnerships with the County Department of Aging.

To address this requirement, the element must fully describe past commitments, progress in implementation, evaluate effectiveness and then discuss appropriate adjustments in the current planning period. Given the apparent lack of effectiveness and success in developing multifamily choices and affordability for at least two planning periods, this analysis should particularly focus on zoning for a variety of housing types, including multifamily and discuss significant actions to promote housing choice, affordability and mobility to facilitate inclusion beyond the RHNA and beyond complying with related state laws (e.g., ADU law and SB 9).

In addition, the element must provide an evaluation of the cumulative effectiveness of past goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness) and revise programs as appropriate.

B. Housing Needs, Resources, and Constraints

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

Income and Racial Concentration of Affluence (RCAA): The element briefly mentions incomes in the City compared to the region and notes it is safe to speculate the City has neighborhoods that are RCAAs; however, the entire City is a RCAA and the element should incorporate this information. Please see HCD's Affirmatively Furthering Fair Housing (AFFH) Data Viewer at <https://affh-data-resources-cahcd.hub.arcgis.com/>. The element should include specific analysis of income and RCAA at a regional level (City compared to the broader region). The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within and beyond City boundaries.

Local Data and Knowledge and Other Relevant Factors: The element includes state and federal data but must utilize other sources of local data and knowledge to supplement the data and mapping including planning documents such as locally adopted ordinances, other elements of the general plan, infrastructure assessments, and mobility assessments to fully describe the impacts on fair housing patterns and trends. In addition, the element must discuss other relevant factors such as historical land use (zoning, initiatives, growth control) that impacted socio-economic patterns.

Contributing Factors to Fair Housing Issues: Upon a complete AFFH analysis, the element must assess and prioritize contributing factors to fair housing issues and add or modify programs as appropriate.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)

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).)

Extremely Low-Income (ELI) Households: While the element quantifies existing ELI households, it must also identify projected ELI housing needs and analyze their housing needs. The projected housing need for ELI households can be calculated by using available census data to determine the number of very low-income households that qualify as ELI households or presume that 50 percent of the RHNA for very low-income households qualify as ELI households. The analysis of existing ELI housing needs should address tenure, disproportionate impacts (overcrowding, overpayment, housing situations), comparisons to other income groups, effectiveness of past strategies and magnitude of needs (including projected).

Housing Conditions: While the element includes information on the age of structures and lack of kitchen and plumbing facilities, it must still estimate the number of units in need of rehabilitation and replacement. In addition, the element could consider discussion of any patterns from code enforcement as areas of more frequent enforcement to compliment the assessment of fair housing (See AFFH above, including local knowledge).

Housing Costs: The element currently utilizes American Community Survey (ACS) data to evaluate rental costs but should consider additional data sources to better reflect market conditions (e.g., Zillow, Apartments.com). If minimal rental data is available, the element could consider market conditions in comparable nearby communities.

Special Needs: While the element reports data on special needs groups, it must still include analysis including trends, characteristics, magnitude of need, resources, and potential strategies to mitigate identified housing issues.

3. *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).)*

Adequate Sites and Accessory Dwelling Units (ADU): The element identifies a RHNA of 193 units, including a lower-income RHNA of 83 units and moderate-income RHNA of 31 units and proposes to accommodate essentially the entire RHNA for all income groups with ADUs. While the element may demonstrate adequate sites entirely with ADUs, given the reliance on one strategy, it must include robust and commensurate analysis, as follows:

- *Calculation of Past Trends:* The element excludes 2020 permit numbers and then average permits to approximately 16 ADUs per year. However, even this calculation is incorrect and appears to exclude 2018 and 2020 numbers. Given the reliance on ADUs, the element should utilize averages based on all years since 2018.
- *Affordability:* The element uses the Association of Bay Area analysis of ADU rents. However, these assumptions should consider public comments on this review and market rents from comparable and nearby communities.
- *Other Relevant Factors:* The analysis, policies, and programs and ADU assumptions for the planning period should account for the availability of ADUs for rent. This is particularly important given the reliance on ADUs and lack of housing choices, affordability and mobility into the City.
- *Owner Intentions and Past Surveys:* The element concludes the City's robust outreach and incentives have resulted in 225 residential owners expressing their intentions in developing ADUs in the planning period. However, the element must include substantial evidence to support this conclusion, especially considering even the most favorable recent trends would result in a significantly lesser number of ADUs in the planning period. For example, the element should discuss the survey tool, how the survey was administered, list the actual responses, and evaluate the likelihood of owners converting intentions into permitted ADUs in the planning period, including availability for rent. This analysis could incorporate past surveys and analyses as a result of programs in the prior planning period.

If the above analyses necessitate identifying sites to accommodate the RHNA, including by income group, the identification of sites and analysis must meet all requirements pursuant to Government Code section 65583.2, including but not limited to parcel listing, map of identified sites, identified sites and AFFH, environmental and other constraints, infrastructure, size of sites, nonvacant sites, calculation of realistic residential capacity and appropriate zoning to accommodate housing for lower-income households. For more information, please see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

Environmental Constraints: While the element includes some general discussion of environmental constraints, it should also relate that discussion to the development of ADUs, including any other known constraints that preclude development in the planning period.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/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:

- *Multifamily:* While the element mentions that the City has established a multifamily zoning district, it must still discuss how multifamily zoning encourages and facilitates a variety of housing types including density, development standards and permit procedures. In addition, the element must identify significant and realistic opportunities for multifamily development in the planning period, including but not limited to identification of sites, any known constraints or impediments, parcel size, appropriateness of densities and methodology for calculating residential capacity. Based on the outcomes of this analysis, the element must include programs to identify sites and appropriate zoning (e.g., 20 units per acre) and development standards to encourage and facilitate multifamily development.
- *Emergency Shelters:* While the element states that emergency shelters are allowed by-right, it should clarify that by-right is without discretionary action. In addition, the element should add a discussion of acreage, parcel sizes, reuse and redevelopment opportunities and proximity to transportation and services as well as list and analyze development standards, including parking. If constraints are identified, the element must add or revise programs.
- *By-Right Permanent Supportive Housing:* By-right permanent 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.
- *Single Room Occupancy (SRO) Units:* While the element includes some information on SROs, it must still discuss zoning, development standards and permitting procedures. This is particularly important given the lack of implementation in the prior planning period and programs should be added or modified to establish appropriate zoning and capacity early in the planning period.
- *Accessory Dwelling Units:* The element must demonstrate that the City's ADU ordinance is in compliance with state law and add or modify programs to comply with State ADU Law.

- *Manufactured Housing:* Manufactured homes that are built on a permanent foundation must be allowed in the same manner and in the same zones as conventional or stick-built structures. Specifically, manufactured homes on a permanent structure should only be subject to the same development standards as a conventional single-family residential dwelling. The element must demonstrate consistency with this requirement or add or modify programs as appropriate.
4. *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: While the element generally describes land-use controls, it must evaluate all development standards and other land use controls for impacts on housing supply (number of units), cost, feasibility, timing and ability to achieve maximum densities. For example, the analysis should address how density is defined and any and all standards that regulate intensity, especially for multifamily housing and parking.

In addition, much of the City consists of large lots and there are no multifamily units in the City. While the element lists four residential zoning districts, none of the districts allow more than eight units per acre and, while the City does have a single-family zone allowing five units per acre, most single family zoning is no more than two units per acre. Essentially, there is a lack of a variety of minimum lot sizes and allowable densities. The lack of a variety of lot sizes and densities can impact housing supply, choices and affordability. As a result, the element should include analysis of the impacts of an apparent predominant large lot land use pattern and include programs as appropriate.

Finally, the element should include a discussion of how the City complies with Government Code sections 65852.21 and 66411.7 (SB 9) and add or modify programs (Program E) as appropriate to comply with state law.

Fees and Exaction: The element lists total development fees for single-family and multifamily development (Table C-4) but should also list the various fees that comprise the total fees per unit. For example, the element should list and evaluate the various impact fees per unit for impacts on housing cost.

Processing and Permit Procedures: While the element generally describes processing and permitting procedures, it must still list and evaluate site development permit and design review, including typical approval findings, typical number of hearings, and timing and then evaluate impacts on housing supply, cost, feasibility and approval certainty.

Streamlining Provisions: The element should clarify whether the City has procedures consistent with streamlining procedures pursuant to Government Code section 65913.4 (SB 35) and include programs as appropriate.

Constraints on Housing for Persons with Disabilities: The element must include an analysis of potential constraints on housing for persons with disabilities, as follows:

- *Reasonable Accommodation:* The element indicates the City has a reasonable accommodation procedure but must still describe these procedures including approval findings and evaluate potential constraints on housing for persons with disabilities.
- *Family Definition:* The element concludes the City has a definition of family that does not limit the number of persons. However, the element should describe the actual definition of family and evaluate its potential impacts, including impacts on unrelated persons.
- *Group Homes:* The element broadly mentions residential care homes are allowed but it should specifically identify which zones allow the uses, how the uses are allowed (e.g., permit type), any other relevant factors and evaluate potential constraints. The analysis should be conducted for both group homes for six or fewer persons and seven or more persons.

Local Ordinances: The element must specifically analyze locally adopted ordinances such as inclusionary ordinances or short-term rental ordinances that directly impact the cost and supply of residential development.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning and development standards for each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and achieve the goals and objectives of the housing element, programs must have discrete timing early in the planning period (e.g., at least annually or by 2025) and specific commitment to housing outcomes (e.g., refrain from language such as “explore”, “develop”, “consider”). Examples of programs to be revised include:

- *Program E (Facilitate Subdivision):* This program must be revised to add specific commitments to a housing outcome, beyond reviewing regulations.

- *Program G (Develop Incentives)*: Especially given the lack of progress in the previous planning periods, this program must specifically, proactively, and annually reach out to affordable developers and apply for funding in addition to “at the request of the developer”.
 - *Program H (Employee Housing)*: Given the lack of implementation in the prior planning period, the program should commit to amend zoning earlier in the planning period (e.g., by 2024).
 - *Program I (Accessory Dwelling Units)*: The program should go beyond “consider removing” restrictive requirements and specifically commit (remove consider) to revise the ADU ordinance in compliance with ADU law. In addition, this program should include annual monitoring of production and affordability and alternative actions (e.g., additional incentives, rezoning) if assumptions not met by a specified date (e.g., within six months).
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 B3, 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:

- *Multifamily Zoning*: As noted in Finding B3, the element must include a program to identify sites and appropriate zoning (e.g., 20 units per acre) and development standards to encourage and facilitate multifamily development.
 - *Program P (Low Barrier Navigation Centers)*: The Program should specifically commit to permit low barrier navigation centers without discretionary action and in compliance with Government Code section 65661.
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 a program to assist in the development of adequate housing to meet the needs of lower and moderate-income households, including ELI and Special Needs households. These actions should be significant and specific, given the lack of implementation and results in the prior planning periods. Examples of actions include proactive an annual outreach to developers of affordable housing, assisting with

funding, supporting funding applications, land acquisition, priority processing, fee waivers, concessions and incentives beyond State Density Bonus Law, assistance with infrastructure and site improvements and monitoring and adjustment at least annually.

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 Findings B4 and B5, 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.

In addition, as noted in Finding B4, the City lacks a variety of minimum lot sizes and densities and the element should add programs to create a variety of lot sizes, increased densities, and modified development standards to facilitate maximum densities.

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

As noted in Finding B1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add or modify goals and actions. 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, milestones, geographic targeting and metrics or numerical targets and, as appropriate, address housing mobility enhancement, new housing choices and affordability in higher opportunity or higher income areas, place-based strategies for community revitalization and displacement protection. For example, the element must add significant and meaningful housing mobility actions to overcome the existing patterns in the City related to the broader region.

D. Quantified Objectives

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

While the element includes quantified objectives for new construction by income level, it currently targets no objectives for rehabilitation and conservation and should be revised accordingly. For example, quantified objectives could incorporate numerical targets for

ADU amnesty or anticipated outcomes from Programs Q (Housing Maintenance), R (Infrastructure Capital Improvements), S (Energy Conservation), T (Water Conservation) and U (Fair Housing).

E. Public Participation

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

The element should employ additional methods of public outreach and participation moving forward to include all segments of the community in the public participation process, including engaging organizations which represent lower-income and special needs groups. In addition, the element should describe comments and how they were incorporated into the housing element.