

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

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November 17, 2022

Jennifer Carman, Development Services Director  
City of Morgan Hill  
17575 Peak Ave  
Morgan Hill, CA 95037-4128

Dear Jennifer Carman:

**RE: City of Morgan Hill's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element**

Thank you for submitting the City of Morgan Hill's draft housing element received for review on August 19, 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. Our review was facilitated by a conversation on November 16, 2022, with Edith Ramirez, Assistant City Manager for Community Development, Adam Paszkowski, Principal Planner, and Rebecca Garcia, Housing Director. In addition, HCD considered comments from SV@Home and South Bay YIMBY 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). For example, the element must include a complete analysis of governmental constraints, and Affirmatively Furthering Fair Housing (AFFH) including programs with clear actions, metrics, and timeframes. The enclosed Appendix describes these and other revisions needed to comply with State Housing Element Law.

Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. The electronic sites inventory should also include pipeline projects. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions. The City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov).

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, 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>.

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 of Morgan Hill meets housing element requirements for these and other funding sources.

HCD is committed to assist the City of Morgan Hill in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Alex Contreras, of our staff, at (916) 776-7824.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long, sweeping horizontal line extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief

Enclosure

## APPENDIX CITY OF MORGAN HILL

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/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/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))*

Enforcement: While the element includes analysis of fair housing complaints, it must describe the City's compliance with existing fair housing laws and regulations. For additional information, please see pages 28-30 on HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance Memo at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

Integration and Segregation: While the element included an analysis of integration and segregation patterns for race and persons with disabilities, it must also include an analysis of local and regional patterns and trends for persons familial status and income.

Racial/Ethnic Areas of Concentration of Areas of Affluence (RCAA): The element includes information relative to Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) but should also address concentrated areas of affluence. The combination of the R/ECAP and areas of affluence analyses will help guide goals and actions to address fair housing issues. The analysis should evaluate the patterns and changes over time at a local (e.g., neighborhood to neighborhood) and regional level (e.g., City to region).

Disproportionate Housing Needs and Displacement Risk: The element does include data on overcrowded households, cost-burden, substandard housing conditions, but it must also analyze homeless.

Local Data, Knowledge, and Other Relevant Factors: While the element provides some general information on broad policies that can historically lead to issues in fair housing and lending patterns, the element must still supplement the analysis and complement state and federal data with local data and knowledge to capture emerging trends and issues, including utilizing knowledge from local and regional advocates, public comments, and service providers. Additionally, the element should analyze historical land use, zoning, governmental and nongovernmental spending

including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Sites Inventory: The element meets the Regional Housing Needs Allocation (RHNA) through proposed and approved projects. Therefore, the site inventory analysis should address how the project locations are distributed throughout the community in a manner that AFFH. A full analysis should address the income categories of identified projects with respect to location and number of units by income groups and how that effects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). The element should also discuss whether the distribution of projects improves or exacerbates conditions. If project locations exacerbate conditions, the element should identify further program actions that will be taken to mitigate this (e.g., anti-displacement strategies).

Contributing Factors: The element must prioritize contributing factors to fair housing issues, giving highest priority to those factors that most limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights compliance. 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. The analysis shall result in strategic approaches to inform and connect goals and actions to mitigate contributing factors to affordable housing.

Goals, Priorities, Metrics, and Milestones: 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, include geographic targeting 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. For more information, please see HCD's guidance at <https://www.hcd.ca.gov/affirmatively-furthering-fair-housing>.

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).)*

The element includes some basic information regarding extremely low-income (ELI) households such as the number of households (H-1-15) and projected housing needs (page H-2-6). However, given the unique and disproportionate needs of ELI households, the element must include analysis to better formulate policies and programs. For example, the element should analyze tenure, cost burden, overcrowding and other household characteristics then examine the availability of resources to determine gaps in housing needs.

3. *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).)*

Overpayment: While the element identifies the total number of households overpaying for housing (pg.1-41), it must quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner).

Housing Conditions: While the element includes some information on the age of the housing stock, it must also estimate the number of units in need of rehabilitation and replacement. For example, the analysis could use code enforcement activity to calculate a city-wide estimate.

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

The City has a RHNA of 1,037 housing units, of which 431 are for lower-income households. To address this need, the element relies entirely on projects in the pipeline. To demonstrate the adequacy of this strategies to accommodate the City's RHNA, the element must include complete analyses:

Progress in Meeting the RHNA: The element indicates that 1,738 units of which 530 units affordable to lower-income household are approved or pending approval but provides no information documenting how affordability of the units was determined. As you know, the City's RHNA may be reduced by the number of new units built since June 30, 2021; however, the element must describe the City's methodology for assigning these units to the various income groups based on actual or anticipated rents or sale prices or other mechanisms ensuring affordability such as deed-restrictions. In addition to count these units as progress towards RHNA, the element should describe the availability of the units within the planning period including the status of each project, describe any expiration dates on entitlements, anticipated timelines for final approvals, and any remaining steps for projects to receive final entitlements. Lastly, given the element's reliance on pipeline projects, the element must include programs with actions that commit to facilitating development and monitoring approvals of the projects (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals, rezoning or identification of additional sites should the applications not be approved).

Sites with Zoning for a Variety of Housing Types:

Emergency Shelters: While housing element law does allow a jurisdiction to limit the number of beds or persons permitted to be served nightly by a facility, standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. The element must analyze the 30-bed limit as a potential constraint for the development of emergency shelters and must amend its emergency shelter parking requirements to be in line with AB 139/Government Code section 65583, subdivision (a)(4)(A)).

*Single Room Occupancy (SRO) Units:* The element must identify and analyze zoning for SROs. Based on this analysis, the element should include programs as appropriate.

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

Land-Use Controls: The element must independently and cumulatively analyze all relevant land use controls for potential impacts the cost and supply of housing, including the ability to achieve maximum densities. As part of the analysis the element could describe past or current efforts to remove identified governmental constraints. Specifically, the element identifies the height limit may constrain the development of housing. The element should evaluate the height limit and include a program to amend accordingly. In addition, the element must describe and analyze the parking requirements for single-family and multifamily residential dwellings for its impact as a potential constraint on housing.

Fees and Exaction: The element must describe all required fees for single family and multifamily housing development, including impact fees, and analyze their impact as potential constraints on housing supply and affordability. For example, the analysis could identify the total amount of fees and their proportion to the development costs for both single family and multifamily housing.

Local Processing and Permit Procedures: While the element includes information about processing times and the design permit, it should also describe the procedures for a typical single family and multifamily development. The analysis should address the approval body, the number of public hearing if any, approval findings and any other relevant information and address impacts on housing cost, supply, timing and approval certainty. For example, the element should describe the standards and findings for the design permit, and identify the presence of processes or guidelines to promote certainty.

On/Off-Site Improvements: The element must identify subdivision level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width) and infrastructure requirements and analyze their impact as potential constraints on housing supply and affordability.

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).

Housing for Persons with Disabilities: The element briefly describes its reasonable accommodation procedures. However, the element should also describe the process and decision-making criteria such as approval findings and analyze any potential constraints on housing for persons with disabilities.

In addition, element states group homes of seven or more are permitted only in higher-density zones with a conditional use permit (CUP). For your information, excluding these uses from residential zones or subjecting the uses to CUPs is generally considered a constraint and programs should be modified as appropriate with specific commitment to allow the use in all residential zones with objectivity and certainty.

6. *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).)*

While the element includes data and a general discussion of housing challenges faced by special needs households, it still must provide an analysis of the existing needs and resources for each special needs group including seniors, farmworkers, persons with disabilities including developmental disabilities, and female-headed households. For example, the element should discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

7. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element uses the California Housing Partnership's Preservation Database to identify potential projects at risk of converting to market rate. However, it does not identify if any locally assisted projects are at risk of conversion.

## **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 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).)*

To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials.

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. The City could also consider prioritizing actions to ensure implementation of those programs most critical to achieving its housing objectives.

Many of the program actions lists implementation timelines as "ongoing." While this may be appropriate for some programs, programs with specific implementation actions must include completion or initiation dates resulting in beneficial impacts within the planning period. All program actions must be evaluated to include specific dates or benchmarks for implementation throughout the planning period, as appropriate. Timing of key programs to remove governmental constraints and address AFFH contributing factors should occur early enough in the planning period to realize a beneficial impact.

Additionally, all program actions should be revised to ensure meaningful and specific actions and objectives as follows:

- Program actions containing unclear language (e.g., "Evaluate"; "Consider"; "Encourage"; etc.) should be amended to include more specific and measurable actions.
- Program actions that require the City to coordinate with other County entities and stakeholders should clarify what the City's role is in the implementation of these programs and what outcomes are expected to be achieved.
- Program actions that seek to "promote" or "educate" should specify how and when those actions to occur.
- Program actions that commit to "study" should clarify the objectives and ensure measurable outcomes and actions from the results of those actions.

To assist with meeting this requirement, upon request, HCD can provide additional technical assistance under a separate cover.

2. *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(s) with specific actions and timelines to assist in the development of housing for extremely low-income households. The program(s) could commit the City to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to extremely low-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers.

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 Finding A5 the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs.

5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

Programs must be expanded to include incentives to promote the creation and affordability of ADUs. Examples include exploring and pursuing funding, modifying development standards and reducing fees beyond state law, increasing awareness, pre-approved plans and homeowner/applicant assistance tools.