

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

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April 3, 2023

Jennifer Carman, Director  
Development Services Department  
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) Adopted Housing Element**

Thank you for submitting the City of Morgan Hill's (City) housing element that was adopted January 25, 2023 and received for review on February 2, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from David Kellogg, pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many statutory requirements described in HCD's November 17, 2022 review; however, additional revisions are necessary to fully 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.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while 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.

Please be aware Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

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

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 Sohab Mehmood, of our staff, at [sohab.mehmood@hcd.ca.gov](mailto:sohab.mehmood@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

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/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).)*

Racially Concentrated Areas of Affluence (RCAA): While the element included some general data and descriptions regarding RCAA census tracts, it must analyze these areas (e.g., Eastern Morgan Hill) for coincidences with other fair housing components including income, race, access to opportunities and disproportionate housing needs. The analysis should also be supplemented with other relevant factors and local data and knowledge to formulate appropriate programs to promote more inclusive communities.

Disproportionate Housing Needs Including Displacement: HCD's prior review found that the element must analyze persons experiencing homelessness. The element was revised to quantify the number of unhoused residents and identify racial characteristics. However, the element still needs to provide a complete analysis including identifying and evaluating local and regional trends, disproportionate impacts on protected characteristics (e.g., race, disability, etc.) and patterns of need, including access to transportation and services.

Affirmatively Furthering Fair Housing (AFFH) and Sites Inventory: The element was revised to include a brief discussion of the identified sites (pipeline projects) and the location. However, this does not address HCD's prior review. 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.

Additionally, the element now states that most projects are located in the Downtown and northern area of the City (low resourced census tract) due to allowable densities and feasibility. Specifically, the analysis noted that many projects developed in these areas

compared to the east side of the City due to allowable densities and preferential scoring on competitive funding applications. In contrast, the element acknowledges that the east side of the City has more favorable outcomes and fair housing conditions including higher incomes, lack of environmental issues, higher proficient schools, etc., While the element still must complete analysis of identified sites and AFFH, it should also include significant and meaningful programs and actions to promote housing mobility and increasing housing opportunities in higher resources/income/concentrated affluence areas with a specific focus on the east side of the City to address disparities in opportunity.

Local Data, Knowledge and Other Relevant Factors: The element was revised to discuss the City's growth control policies and bus system. However, the element should discuss additional relevant factors and incorporate local data and knowledge to complement the state and federal data and examine the patterns and trends in socio-economic characteristics and concentrations. For example, the element should include information on other factors to support the analysis such as disparities in investment and fair housing patterns between the east, west and downtown census tracts, land use decisions, local and state funding applications, or lack thereof, for affordable housing programs, investment practices, including utilizing knowledge from local and regional advocates, public comments, and service providers. The element should also utilize local data, knowledge, and other relevant factors to analyze the fair housing conditions for the City's low resourced census tracts. The analysis could consider past, current, and future investments (e.g., capital investment programs), neighborhood conditions and other contributing factors. Additionally, the data indicates that the City's TCAC opportunity scoring for low to moderate resourced census tracts is largely driven by environmental and economic disparities. The element could include local data, knowledge, and other relevant factors to expand and support the data. This analysis can help support and formulate stronger and tailored place-based strategies for these areas.

Contributing Factors: Based on the outcomes of a complete analysis, the element must list and prioritize contributing factors to fair housing issues.

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: Although the element includes additional demographic information regarding ELI households, as found in HCD's prior review, the element still must include an analysis examining availability and gaps in resources and success of past efforts to formulate appropriate programmatic response that commensurate the magnitude of need.

Special Needs Households: The element was revised to include some additional information about overcrowding and some local and regional programs e.g., the City's inclusionary program. However, this still does not address HCD's prior review. A complete analysis must examine the gaps in addressing the needs of these populations and identify proposed policies, programs and funding to help address those gaps.

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 (Parking): HCD’s prior review found that the element must analyze relevant land use controls, specifically height limits and parking requirements for potential impacts on cost and supply of housing, including the ability to achieve maximum densities. The element was revised to indicate that City requires 1.5 parking spaces for a studio and one-bedroom, and this is generally not a constraint. However, requiring 1.5-2 parking spaces (including guest parking) for smaller bedroom units is generally considered a constraint by increasing project costs and reducing available land to develop actual units and thus impact a projects ability to meet maximum densities. The element should add or modify a program committing to adopting reduced parking requirements for smaller bedroom units (e.g., studio and one bedroom).

Local Processing and Permit Procedures: While the element was revised to include additional information regarding the design permit approval findings, as found in HCD’s prior review, it should discuss any processes or guidelines that promote certainty in the design review and permit process. The analysis should also evaluate these requirements for impacts on cost, timing, size, feasibility and approval certainty.

Additionally, the element should address public comments on this revised draft submittal and discuss compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

On/Off-Site Improvements: The element was revised to indicate that projects are required to develop 60 feet for subdivision streets (including right-of-way). This is generally considered a constraint. The element should include or modify a program committing to reducing this requirement.

Constraints on Housing for Persons with Disabilities:

- *Reasonable Accommodation* – The element was revised to include approval findings for a reasonable accommodate request including findings related to impacts on surrounding uses – essentially a conditional use permit (CUP) finding. However, reasonable accommodation should be a unique exception process from a conditional use permit, especially given its importance in addressing barriers to housing for persons with disabilities. The element should include a program to amend the reasonable accommodation ordinance and remove constraints, namely the “potential impact on surrounding uses” approval finding.

- *Group Homes* – The element indicates that group homes of seven or more are excluded from several residential zones and only allowed with a CUP. HCD’s prior review found that 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. The element was revised to include Program 6.E (Residential Care Facilities) to evaluate the requirements and eliminate constraints. This does not address HCD’s prior review. The program must include specific commitments to 1) allowing group homes of seven or more in all zones allowing residential uses and 2) permit these uses with objectivity and certainty similar to other residential uses of the same form.

4. *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 was revised to indicate that the City has 142 affordable units with expiring affordability restrictions within the next eight years. The element must include an assessment of conversion risk estimate, analyze the cost for replacing versus preserving the units and identify qualified entities and funding sources to assist with maintaining its affordability. For more information on the analysis, please visit <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/assisted-housing-developments-risk-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... (Gov. Code, § 65583, subd. (c).)*

HCD’s prior review found that programs generally need to be revised to include a commitment to specific deliverables, measurable metrics, and definitive deadlines or benchmarks for implementation. Additionally, HCD’s prior review found that deliverables should occur early in the planning period. While the element revised some programs, additional revisions will be necessary to address these requirements.

Programs must be revised to provide more specificity in implementation including required steps (e.g., evaluate, identify, adopt, implement, etc.) and timelines for completing each action. Additionally, several programs still state “evaluate” “study” “coordinate”, etc., and do not include specific commitments to tangible outcomes and deliverables. Programs that must be revised to address specific outcomes and implementation steps include Programs 1.G (ELI Development), 1.J (ADUs), 2.A (Support Measure A), 2.B (Development Incentives), 2.C (End Homelessness) 2.E (Commercial Linkage Fee), Program 3.A

(Housing in Eastern), 3.F (Shared Equity), 3.I (Create Jobs), 3.K (Expand Bus Service), 4.C (Rehabilitation) and 5.B (End Homelessness).

As found in HCD's prior review, programs and implementation must happen early in the planning period to ensure beneficial impacts. Programs that should be revised to include actions earlier in the planning period including Programs 1.J (ADUs), 2.B (Development Incentives), 2.G (Farmworker Housing), 2.E (Commercial Linkage Fee), 3.A (Housing in Eastern), 3.B (Affordable Housing Overlay), 3.C (Rent Mediation), 3.D (Tenant Relocation), 3.E (Eviction Counsel) and 3.G (Inclusionary).

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... (Gov. Code, § 65583, subd. (c)(1).)*

Progress in Meeting the Regional Housing Needs Allocation (RHNA): The element is crediting 1,819 units of which 830 units affordable to lower-income households that have been approved, entitled, or received building permits. HCD's prior review found that 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). The element was revised with Program HE-1.I committing to outreach with owners and developers and supporting funding applications. However, as noted in HCD's prior review, given the element's reliance on pipeline projects, the element must include significant programs with additional actions and timelines to facilitate development during the planning period.

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 A3, the element requires a complete analysis of potential 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).)*

While the element included some revisions and clarifications to programs (page 5-134), the element generally did not address HCD's prior review. First, as noted in Finding A1,

the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City will need to revise or add programs.

Second, as found in HCD's prior review, 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. The analysis identified several issues; however, the element did not include programs to address the issues or included programs that are not significant and meaningful. For example, to create inclusive communities, address disparities in opportunity and provide housing choices on the east side of the City, the element included Program 3.A (Housing in East Morgan Hill) which will not be implemented until the end of the planning period and Program 3.B (Affordable Housing Overlay) which may or may not result in any tangible outcomes besides a study.

Third, several AFFH programs do not commit to specific outcomes or actions beyond "study" "review", "consider" and/or include timelines that will not start implementation later in the planning period.

Fourth, as found in HCD's prior review, the element must include significant and meaningful programs and actions that promote housing mobility, increasing housing choices and affordability in higher resourced/income/concentrated affluence areas (e.g., low density zones) and place-based strategies for community revitalization in lower-resourced/income areas and anti-displacement strategies.

Lastly, as found in HCD's prior review, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results. For your information, metrics (where applicable), should be targeting beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed). For more information, please see HCD's AFFH guidance at <https://www.hcd.ca.gov/affirmatively-furthering-fair-housing>.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a)... (Gov. Code, § 65583, subd. (c)(6).)*

The element now indicates that the City has 142 units with expiring affordability restrictions and at-risk of converting to market rate within the planning period. While the element includes a program committing to monitoring and ongoing rehabilitation (Programs 4.A and 4.B), it must also include specific and proactive actions to preserve the at-risk units. For example, the program could include supporting applications by nonprofits for funding to purchase at-risk units, strengthening relationships with qualified entities and proactively reaching out, and consider pursuing funding on at least an annual basis. Additionally, this program must commit to complying with noticing requirements within three years, twelve months, and six months of the affordability expiration date.