



Town of Moraga	Agenda Item
Ordinances, Resolutions, Requests for Action	10. B.

2 **Meeting Date: October 27, 2021**

TOWN OF MORAGA

STAFF REPORT

To: Honorable Mayor and Councilmembers
From: Afshan Hamid, Planning Director
Subject: Receive a Report on the California Housing Legislative Updates to Reform Housing Throughout the State and Impacts to the 2023 – 2031 Housing Element

Request

17 Receive a report on California Housing Legislative Updates and impacts to Moraga's
18 Advanced Planning Initiative: 6th Cycle Housing Element, Rezone (including Bollinger
19 Canyon Special Study Area), and General Plan Update. The purpose of this meeting is
20 to inform, and educate the Town Council, and the public on legislative updates that impact
21 Moraga's Advanced Planning Initiative.

Background

25 On February 10, 2021, as part of the 2021 Moraga Town Council and Community Goals
26 and Priorities, the Town Council approved the following goal: "Identify funding, create an
27 action plan and initiate work on the 6th Cycle Housing Element to satisfy the Regional
28 Housing Needs Allocation (RHNA), meet State mandates, and maintain the Town's Semi-
29 Rural character consistent with the General Plan."

31 On March 10, 2021, the Town Council received a detailed staff report (Attachment A) and
32 presentation on the Comprehensive Advanced Planning Initiative, a strategic approach
33 to complete the necessary planning documents and ensure the Town's Housing Element,
34 General Plan, and zoning are internally consistent. On July 14, 2021, Town Council
35 approved the consultant to execute the comprehensive Advanced Planning Initiative
36 which includes the State mandated Housing Element, Environmental Impact Report
37 (EIR), Rezoning of key sites, including the Bollinger Canyon Special Study Area (Study
38 Area) and General Plan update. On October 6, 2021, staff and the consultant held a joint
39 meeting with Town Council and Planning Commission to kick-off Phase One, which is
40 primarily the Housing Element, rezone of the Bollinger Canyon Special Study Area and
41 additional sites, the EIR, and an update of Safety Element and other parts of the General
42 Plan. As discussed at the meeting, staff is now providing a detailed legislative update led
43 by Burke, Williams & Sorensen LLP.

1
2 During this initial project phase, staff is informing Town Council on the key drivers from
3 the State of California, Department of Housing and Community Development (HCD) and
4 Association of Bay Area Governments (ABAG) that are shaping the upcoming 6th Cycle
5 Housing Element. In general, the strategies for the next housing element are vastly
6 different from prior cycles due to pro-housing measures, planning and transportation
7 grants supporting local jurisdictions to comply with State housing laws; and strong
8 accountability actions for non-compliance as needed. The drivers include the Regional
9 Housing Needs Allocation (RHNA) (Attachment B) and methodology, the Final Plan Bay
10 Area 2050 (Attachment C) and key legislation from the state. At the March 10 Town
11 Council meeting staff discussed in detail the RHNA allocation and methodology where
12 High Resource Areas such as Moraga were assigned higher numbers given the excellent
13 schools and quality of life (air quality, open space, etc.), and therefore were allocated a
14 significant number of units. Access to High Opportunity Areas was weighted 40% in the
15 allocation of moderate and above moderate income units and 70% in the allocation of
16 very low and low income units. For the upcoming 6th cycle, several properties in the Town
17 of Moraga will need to be rezoned to meet the new allocation of 1,118 units. The
18 allocation breakdown for the Town of Moraga includes the following income levels:
19

Extremely Low-income and Very Low-income units	318
Low-income units	183
Moderate-income units	172
Above Moderate-income units	445

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25 The second major driver is the Plan Bay Area 2050 ("Plan Bay Area"), the long-range
26 plan for housing, economic development, transportation and environmental resilience.
27 The Plan Bay Area was adopted on October 21, 2021 after four years of planning and
28 public input. The Plan Bay Area sets a policy course for the nine-county region for a more
29 affordable, connected, diverse, healthy and vibrant region through 2050 and beyond. The
30 Plan Bay Area includes 35 strategies for public policies or investments that can be
31 implemented across the nine-county region. Equity is interwoven into each strategy, from
32 housing strategies that would produce more than one million new permanently affordable
33 homes by 2050 to transit-fare reforms that would reduce cost burdens for riders with low
34 incomes. Strategies are also crafted to be resilient to future uncertainties, including
35 protections against climate hazards like sea level rise and wildfires, and with paths to
36 economic mobility through job training and a universal basic income.
37

38 The third major driver are the Housing Legislation packages. In recent years, the
39 California State legislature enacted the landmark "2017 Housing Package" for local
40 governments (Attachment D) and in 2018 Assembly Bill 686 or Affirmatively Furthering
41 Fair Housing (AFFH), a series of laws intended to spur housing development and fair
42 housing. See the summary of AB 686 requirements prepared by HCD (Attachment E).
43 The state legislature's affordability focus continued in 2019 with another package of
44 housing legislation. See the 2019 California Housing Legislation Round Up
45 (Attachment F). In fall of 2021, Senate Bill 9 and Senate Bill 10 were passed to increase
46 housing in residential areas and near transit.
47

48 The 2017 State Legislative Housing Package for local governments delivered on housing
49 commitments and provided HCD the authority to enforce the commitments. See letter to

1 Moraga from HCD dated January 2, 2019 (Attachment G). As noted in the letter from
2 HCD, the 2017 package of laws enacted “(1) increase the enforcement authority of HCD
3 against local governments that fail to adopt compliant housing elements and/or violate
4 the State Housing laws including the Housing Accountability Act (HAA), Density Bonus
5 Law or discriminate in the provision of housing; (2) provide critical funding for new
6 affordable home; (3) accelerate development to increase housing supply; (4) add certain
7 accountability requirements to localities in order to address housing needs in their
8 communities; and (5) create opportunities for new affordable homes while preserving
9 existing affordable homes.”

10
11 This staff report is intended to provide Town Council information on the bills that will most
12 likely impact Moraga’s 6th Cycle Housing Element and the policies that will shape this
13 element.

14
15 **Discussion**

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17 **Senate Bill 375 (SB 375):** SB 375 is foundational in launching the Plan Bay Area 2050
18 and the 2017 Housing Legislation Package. See an SB 375 Sustainable Communities
19 Strategies prepared by HCD (Attachment H). HCD states in its overview that the bill
20 includes the following provisions to hold local governments accountable:

- 21 1. A jurisdiction that does not adopt a Housing Element within four months of the
22 statutory deadline will shift into four-year cycles.
- 23 2. A jurisdiction is required to complete rezoning of the sites it identifies for residential
24 development in its Housing Element within three years of the element’s adoption.
- 25 3. Every year, jurisdictions must report progress toward rezoning and program
26 implementation to HCD and hold a local hearing to review and discuss the report.
- 27 4. SB 375 contains two remedies if a jurisdiction fails to rezone or implement
28 programs by the deadlines:

29
30 “a. “Builder’s Remedy:” A developer can build on any site that is identified
31 in an element for residential development, as long as the development is
32 within the densities and development standards specified in the element.
33 The local government must allow the development to proceed unless it
34 makes finding that the development will have a “specific, adverse impact
35 upon the public health or safety.” If the jurisdiction illegally denies a
36 development, a court can order it to comply with the law. The local
37 government will have the burden of proving its action was legal.

38
39 “b. “Citywide Remedy:” Any interested party can sue to compel the
40 jurisdiction to complete the rezonings or other programs. The local
41 government will have the burden of proving its action was legal, and the
42 court can impose sanctions for violations of the law. is an overarching
43 “policy” type law that acknowledges the Housing Crisis and more
44 importantly sets the tone for “implementation” type laws.

45 **The Housing Accountability Act (HAA):** As noted in a HAA Technical Assistance
46 Advisory from HCD (Attachment I), the Housing Accountability Act (HAA) (Government
47 Code Section 65589.5) “has been in effect since 1982 and recognizes California’s
48 housing supply has not kept up with population and job growth, and the affordability crisis

1 has grown significantly due to an undersupply of housing, which compounds inequality
2 and limits economic and social mobility. Housing is a fundamental component of a
3 healthy, equitable community. Lack of adequate housing hurts millions of Californians,
4 stifles economic opportunities for workers and businesses, worsens poverty and
5 homelessness, and undermines the state's environmental and climate goals and
6 compounds the racial equity gaps faced by many communities across the state.”
7

8 As further noted in HCD's advisory, the HAA addresses “local opposition to growth and
9 change. Communities resisted new housing, especially affordable housing, and,
10 consequently, multiple levels of discretionary review often prevented or delayed
11 development. As a result, developers had difficulty ascertaining the type, quantity, and
12 location where development would be approved. The HAA was intended to overcome
13 the lack of certainty developers experienced by limiting local governments' ability to deny,
14 make infeasible, or reduce the density of housing development projects.”
15

16 HCD further notes that some of the findings and declarations from the HAA pursuant to
17 Government Code sections 65589.5(a) include:
18

- 19 • “California housing has become the most expensive in the nation. The excessive
20 cost of the state's housing supply is partially caused by activities and policies of
21 many local governments that limit the approval of housing, increase the cost of
22 land for housing, and require that high fees and exactions be paid by producers of
23 housing.”
- 24 • “Among the consequences of those actions are discrimination against low-income
25 and minority households, lack of housing to support employment growth,
26 imbalance in jobs and housing, reduced mobility, urban sprawl, excessive
27 commuting, and air quality deterioration.”
- 28 • “Many local governments do not give adequate attention to the economic,
29 environmental, and social costs of decisions that result in disapproval of housing
30 development projects, reduction in density of housing projects, and excessive
31 standards for housing development projects.”
- 32 • “California has a housing supply and affordability crisis of historic proportions. The
33 consequences of failing to effectively and aggressively confront this crisis are
34 hurting millions of Californians, robbing future generations of the chance to call
35 California home, stifling economic opportunities for workers and businesses,
36 worsening poverty and homelessness, and undermining the state's environmental
37 and climate objectives.”
- 38 • “The majority of California renters, more than 3,000,000 households, pay more
39 than 30 percent of their income toward rent and nearly one-third, more than
40 1,500,000 households, pay more than 50 percent of their income toward rent.”
- 41 • “When Californians have access to safe and affordable housing, they have more
42 money for food and health care; they are less likely to become homeless and in
43 need of government subsidized services; their children do better in school; and
44 businesses have an easier time recruiting and retaining employees.”
- 45 • “An additional consequence of the state's cumulative housing shortage is a
46 significant increase in greenhouse gas emissions caused by the displacement and
47 redirection of populations to states with greater housing opportunities, particularly

1 working- and middle-class households. California's cumulative housing shortfall
2 therefore has not only national but international environmental consequences."

3
4 We will provide more information on some of the key provisions of the Housing
5 Accountability Act at the Town Council meeting.

6
7 **AB 686 Housing Discrimination, Affirmatively Furthering Fair Housing (AFFH):**
8 Beginning January 1, 2019, all housing elements must include a program that promotes
9 and affirmatively furthers fair housing opportunities throughout the community for all
10 persons regardless of race, religion, sex, marital status, ancestry, national origin, color,
11 familial status, or disability, and other characteristics protected by state and federal laws.
12 See a Summary of AFFH Requirements in Housing Element Law prepared by HCD
13 (Attachment E). AB 686 also requires that the housing element land inventory and
14 identification of sites must be consistent with AFFH. As noted in HCD's summary, a
15 program for AFFH must include:

16
17 "a. Meaningful Actions: Affirmatively furthering fair housing (AFFH) includes taking
18 meaningful actions that, taken together, address significant disparities in housing
19 needs and in access to opportunity for all groups protected by state and federal law
20 by:

- 21 i. Replacing segregated living patterns with integrated and balanced living
22 patterns.
- 23 ii. Transforming racially and ethnically concentrated areas of poverty into areas
24 of opportunity (without displacement).
- 25 iii. Fostering and maintaining compliance with civil rights and fair housing laws.
- 26 iv. Meaningful actions include actions that will promote fair housing opportunities
27 for low- and moderate-income tenants and tenants of affordable housing,
28 including subsidized housing.

29
30 b. Timeline of Concrete Actions: As with other programs of the housing element, the
31 program(s) to AFFH must include a schedule of concrete actions and a timeline for
32 implementation.

33
34 c. No Actions Inconsistent with AFFH: The jurisdiction must not take any action that is
35 materially inconsistent with its obligation to affirmatively further fair housing.

- 36 i. Existing State law requires that housing elements are internally consistent and
37 that the housing element and the other components of a jurisdiction's General
38 Plan are internally consistent. AB 686 specifically requires that jurisdictions
39 take no action that is materially inconsistent with its obligation to affirmatively
40 further fair housing. Not only does this apply to other policies, programs, and
41 actions in the housing element, and the other General Plan elements, it broadly
42 applies to all of the jurisdiction's activities relating to housing and community
43 development."

44
45 In order to meet the requirement of AFFH, High Resource Areas such as Moraga will
46 need to implement policies along with actions and programs. During the Housing
47 Element process, staff and consultants will look at strategies and actions to implement
48 priorities and goals identified in the housing needs assessment. The types of potential

1 strategies and action from HCD AB 686 Summary (Attachment E) may include but are
2 not limited to "a) enhancing mobility strategies and promoting inclusion for protected
3 classes b) encouraging development of new affordable housing in high-resource
4 areas c) place-based strategies to encourage community revitalization, including
5 preservation of existing affordable housing d) protecting existing residents from
6 displacement."

7
8 HCD's Affirmatively Furthering Fair Housing Guidance for all Public Entities and for
9 Housing Elements (Attachment J) also notes that AB 686 requires that a jurisdiction
10 identify sites throughout the community, in a manner that is consistent with its duty to
11 affirmatively further fair housing and the findings of its AFH, pursuant to Section
12 65583(c)(10)(A). In the context of AFFH, the site identification requirement involves
13 not only an analysis of site capacity to accommodate the RHNA, but also whether the
14 identified sites serve the purpose of replacing segregated living patterns with truly
15 integrated and balanced living patterns, transforming racially and ethnically
16 concentrated areas of poverty into areas of opportunity. At the most basic level, this
17 requirement suggests two courses of action relating to the identification of sites:

- 18 i. Ensure that sites zoned to accommodate housing for lower-income households
19 are not concentrated in lower resource areas and segregated concentrated
20 areas of poverty, but rather dispersed throughout the community, including in
21 areas with access to greater resources, amenities, and opportunity.
- 22 ii. Where sites zoned to accommodate housing for lower-income households are
23 located in lower resource areas and segregated concentrated areas of poverty,
24 incorporating policies and programs in the housing element that are designed
25 to remediate those conditions, including place-based strategies that create
26 opportunity in areas of disinvestment (such as investments in enhanced
27 infrastructure, services, schools, jobs, and other community needs)."

28
29 Some examples of potential AFFH strategies include strategies to promote a range of
30 community-based housing options for people with disabilities, adoption of inclusionary
31 housing policies and/or other policies to facilitate the development of deed-restricted
32 affordable housing that is integrated with market-rate housing or strategies to encourage
33 development of new affordable housing in high resource areas.

34
35 Under AB 686, the housing element must also include a summary of fair housing outreach
36 and capacity including meaningful, frequent, and ongoing community participation,
37 consultation, and coordination that is integrated with the broader stakeholder outreach
38 and community participation process for the overall housing element. The Housing
39 Element outreach should be aligned with SB 1000, Environmental Justice Element, with
40 outreach to the greatest extent possible." Some examples of key stakeholders include
41 independent living centers, churches and community services organizations that serve
42 ethnic/linguistic minorities, lower income community members and households that
43 include persons in protected classes. Meaningful engagement includes translation of
44 materials and making translation available at meetings and making accessible information
45 materials that avoid use of overly technical language."

1 Staff and the consultant team are tentatively scheduling a November 17 joint meeting with
2 Town Council and Planning Commission on the topic of Affordable Housing
3 implementation tools.

4

5 **Senate Bill 35 (SB 35) Streamlined Ministerial Approval Process:** The intent of SB
6 35, as noted in a HCD Streamlined Ministerial Approval Guidelines (Attachment K) “is to
7 facilitate and expedite the construction of housing. Applicable to applications submitted
8 on or after January 1, 2019, SB 35 requires the availability of a Streamlined Ministerial
9 Approval Process for developments in localities that have not yet made sufficient progress
10 towards their allocation of the regional housing need. Eligible developments must include
11 a specified level of affordability, be on an infill site, comply with existing residential and
12 mixed-use general plan or zoning provisions, and comply with other requirements such
13 as locational and demolition restrictions.” In other words, if the Town of Moraga does not
14 make progress to meet RHNA in all the income requirements, a developer may submit
15 an application for a development as long as the application contains 50% affordable units
16 and the application would be subject to streamlined review, including compliance with
17 objective standards. Applications are subject to consistency review within “60 calendar
18 days if the development contains 150 or fewer housing units or within 90 calendar days if
19 the development contains more than 150 housing units”.

20

21 **Senate Bill 330 (SB 330):** As noted in the HCD HAA Technical Assistance on SB 330
22 (Attachment L), the bill increases “transparency and certainty early in the development
23 application process” by making a number of changes to state law. For example, SB 330
24 allows a housing developer the option of submitting a “preliminary application” for any
25 housing development project.” Submittal of a preliminary application allows a developer
26 to provide specific information on the proposed housing development before providing a
27 full application and information required by the local government. Upon submittal of a
28 preliminary application and a payment of the permit processing fee, a housing developer
29 is allowed to “freeze” the applicable standards to their project early while they assemble
30 the rest of the material necessary for a full application submittal. In addition, SB 330
31 added Government Code section 65905.5, providing that if a proposed housing
32 development project complies with applicable, objective general plan and zoning
33 standards, the local government can conduct a maximum of five hearings, including
34 hearing continuances, in connection with the approval of the project.

35

36 **Senate Bill 379 (SB 379) Safety Element:** SB 379 and clarified in HCD Integration
37 Concepts for General Plan Updates or Other Local Planning Activities (Attachment M)
38 requires a safety element to be reviewed and updated as part of the 6th cycle housing
39 element “to comprehensively address climate adaptation and resilience along with
40 evacuation routes.” For Moraga this would include High Fire Severity Zones and Very
41 High Fire Severity Zones along with an assessment of existing and proposed evacuation
42 routes. As noted by HCD, “potential changes in residential, mixed-use, or other land-use
43 designations and associated policies or diagrams in the general plan land-use element
44 can be analyzed along with potential changes in housing element policies and suitable
45 sites and zoning pursuant to local regional housing needs allocation (RHNA) targets , and
46 then compared to known hazards and potential increases in risk associated with climate
47 change in the safety element. By coordinating updates to all three elements (land-use,
48 housing, and safety), local agencies can direct future development into areas that avoid

1 or reduce unreasonable risks while also providing needed housing and maintaining other
2 community planning goals.”

3

4 **Senate Bill 9 (SB 9) Streamlining for Duplexes and Lot Splits:** This bill is new and will
5 go into effect on January 1, 2022, and is the most talked about housing bill from this
6 Legislative session. SB 9 requires ministerial approval of an application to develop up to
7 two units on nearly all lots zoned for single-family housing (including via partial or full
8 teardown of an existing unit). SB 9 also requires ministerial approval of an application to
9 split a lot in order to create not more than 2 new parcels, which must be of approximately
10 equal size. Under SB 9, an existing single-family residential lot can be split and then two
11 units built on each lot, for a total of 4 dwelling units with no discretionary review even if
12 this would exceed the permissible density for the property under the Town’s general plan
13 and zoning.

14

15 Once a lot has been split under SB 9, it cannot be split again under SB 9. Additionally, a
16 lot can’t be split under SB 9 if the owner or someone acting in concert with the owner
17 previously split an adjacent parcel under SB 9. If a lot has been subject to both a
18 ministerial lot split and a ministerial two-unit development approval under SB 9, the Town
19 is not required to permit an ADU on the property.

20

21 SB 9 allows cities to impose objective zoning standards, objective subdivision standards,
22 and objective design review standards that do not conflict with SB 9. As a reference the
23 Association of Bay Area Governments (ABAG) through the law firm Goldfarb & Lipman
24 LLP (Attachment N) and PowerPoint (Attachment O).

25

26 Requires a ministerial approval of certain proposed two-unit projects in all existing single-
27 family residential zones as well as an urban lot split. The vast majority of Moraga’s
28 privately-held land is zoned for single family (1-DUA, 2-DUA, 3-DUA, 6 DUA). Note,
29 consensus regarding the full implications of the bill are continuing to evolve, however,
30 the current understanding of SB 9 is as follows:

31

- 32 • Requires lot splits to be roughly half the size of the existing lots, with up to a 20%
33 difference (i.e., 40% of existing for one lot and 60% for the other), with an absolute
34 minimum lot size of 1,250 sf. Most residential lots in Moraga are over 10,000 sf.
- 35 • Although the bill contains a provision regarding Very High Fire Severity Zones
36 (VHFSZ), it is unclear whether SB 9 projects that comply with more stringent
37 building codes (required by law) would be prohibited in these areas. Currently only
38 Indian Valley is in the VHFSZ.
- 39 • Generally, the Town’s existing objective standards for single family homes,
40 including maximum height and minimum setbacks, would apply to duplexes
41 (including new single-family homes on lots that already contain a single-family
42 home). However, the minimum parking requirement changes from two spaces in
43 a garage per home to one space per unit, or none within a half mile of BART or a
44 qualifying County Connection bus stop, or within a block of a carshare vehicle.
- 45 • Similar to ADUs, the Town will not be able to require a Design Review Permit for
46 duplex projects.
- 47 • SB 9 does not apply to addition projects unless the addition includes a new unit.

- If a property already has one or more Accessory Dwelling Units on its property (two are currently allowed by State law), the owner can still add a new house to the lot as long as they do not do a lot split. However, ADUs count towards the maximum number of two homes per lot for split lots.
- Property owners doing a lot split under SB 9 must sign an affidavit stating that they plan to live on the property for the next three years.
- Certain restrictions apply to lots where a tenant has resided within the prior three years.
- Short-term rentals are prohibited for new units created under SB 9.

Finally, because SB 9 establishes a ministerial review process for certain projects, the approval of those projects would be exempt from California Environmental Quality Act (CEQA). Staff has formed a collaborative with Planning Directors from Contra Costa County along with several legal teams to understand what is required for the implementation of SB 9.

Assembly Bill 215 (AB 215): AB 215 (Attachment P) is also new and will go into effect on January 1, 2022. AB 215 changes the procedures applicable to the adoption and amendment of a Housing Element. It requires cities and counties to make the first draft revision of a housing element available for public comment for at least 30 days and, if any comments are received, take at least 10 additional business days to consider and incorporate public comments into the draft revision before submitting it to HCD. The bill would require agencies to post any subsequent draft revision on its website and to email a link to individuals and organizations that have requested notices relating to the local government's housing element. HCD is prohibited from reviewing a draft housing element revision until this public review process has been completed.

In general, ongoing additional legislation is anticipated to lead to more pro-housing regulations. The new laws, in general, significantly increase the ability of housing developers and property owners to secure housing project approvals by curbing the capability of local governments to deny, reduce the density of, or render infeasible housing developments. The goals are to streamline housing production and promote more types of housing at various income levels. At the October 27 Housing Legislative update, the Town Council will have an opportunity to ask on how to best align housing policies with the new laws in the 6th Cycle Housing Element.

Consequences of Non-Compliance with Housing Laws

In April 2021 HCD issued guidance (Attachment Q) to cities and counties about the consequences of falling short in adopting or otherwise not complying with previously adopted housing elements. Staff previously shared the consequences in the October 6, 2021 staff report (Attachment R). Under the recent legislation enacted, HCD is authorized to review any action or failure to act by a local government inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. The penalties for non-compliance have increased in scope and severity over the past few legislative cycles, and they currently include legal lawsuits, court imposed fines and limited access to state funding. Additionally, cities would need to check in with the State halfway through their eight-year housing approval process.

1
2 **Requested Input from Town Council, Planning Commission and Public**

3 Staff is in the initial stages of the project and is providing this staff report for informational
4 purposes and to take questions regarding legislation. It is anticipated that a Power Point
5 of the October 27 meeting will be available and be distributed prior to the Town Council
6 meeting.

7
8 **Fiscal Impact**

9
10 This project is part of the Comprehensive Advanced Planning initiative funded by the
11 following Capital Improvement Projects: Bollinger Valley Special Study Area (CIP 18-603)
12 and Implementing the 6th Cycle Housing Element and General Plan (CIP 20-501).

13
14 **CEQA**

15
16 This preliminary discussion item is not considered a “project” under the California
17 Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et
18 seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.) as the item will
19 not cause a direct, or reasonably foreseeable indirect, physical change in the
20 environment. However, the Town will conduct environmental review as required under
21 CEQA as part of the Housing Element, Rezone (including Bollinger Canyon Special Study
22 Area) and General Plan Update.

23
24 **Recommendation**

25
26 Staff recommends the Town Council receive the Housing Legislative updates for
27 Moraga’s Comprehensive Advanced Planning Initiative: 6th Cycle Housing Element,
28 Rezone (Including Bollinger Canyon Study Area) and General Plan Update and provide
29 any questions or follow up.

30
31 **Report reviewed by:** **Cynthia Battenberg, Town Manager**
32 **Karen Murphy, Assistant Town Attorney**

33
34 **Attachments:**

35
36 A. [March 10, 2021 Staff Report link](#)
37 B. [ABAG Draft RHNA Methodology and Final RHNA Subregional Shares Report](#)
38 [2023-2031 link](#)
39 C. [Final Plan Bay Area 2050 link](#)
40 D. HCD California’s [2017 Housing Package link](#)
41 E. [AB 686 Summary of Requirements in Housing Element Law by HCD link](#)
42 F. Terner Center for Housing Innovation [2019 California Housing Legislation Round](#)
43 [Up link](#)
44 G. Letter to Moraga from HCD dated January 2, 2019
45 H. [SB 375 Sustainable Communities Strategies by HCD link](#)
46 I. [Housing Accountability Act Technical Assistance Advisory by HCD link](#)
47 J. [HCD AFFH Guidance for all Public Entities and for Housing Elements link](#)
48 K. [HCD Streamlined Ministerial Approval Guidelines on Senate Bill 35 link](#)

- 1 L. [HCD HAA Technical Assistance on Senate Bill 330 link](#)
- 2 M. [HCD Integration Concepts for General Plan Updates or Other Local Planning](#)
- 3 [Activities SB 379 Safety Element link](#)
- 4 N. [Goldfarb & Lipman LLP SB 9 presentation](#)
- 5 O. [Goldfarb & Lipman LLP PowerPoint presentation](#)
- 6 P. [Assembly Bill 215 link](#)
- 7 Q. April 2021 HCD Guidance Memo
- 8 R. [October 6, 2021 Staff Report link](#)

ATTACHMENT A

[March 10, 2021 Staff Report link](#)

ATTACHMENT B

[ABAG Draft RHNA Methodology and Final RHNA Subregional Shares Report 2023-2031 link](#)

ATTACHMENT C

[Final Plan Bay Area 2050 link](#)

ATTACHMENT D

[HCD California's 2017 Housing Package link](#)

ATTACHMENT E

[AB 686 Summary of Requirements in Housing Element Law](#)
[prepared by HCD link](#)

ATTACHMENT F

[2019 California Housing Legislation Round Up link](#)

ATTACHMENT G

Letter to Moraga from HCD dated January 2, 2019

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

LEGAL AFFAIRS DIVISION

2020 W. El Camino Avenue, Suite 525, 95833
P. O. Box 952052, Sacramento, CA 94252-2052
(916) 263-2769 / FAX: (916) 274-0408
www.hcd.ca.gov



January 2, 2019

City Attorney of Record
City of Moraga
329 Rheem Blvd.
Moraga, CA 94556

Dear City Attorney of Record:

RE: Housing Accountability and Enforcement

The 2017 Legislative Housing Package enacted obligations for local governments to deliver on housing commitments, and it provided the Department of Housing and Community Development (Department) with the authority to enforce those commitments (attached). On January 1, 2019, additional laws will enhance the ability and authority of the Department and local governments to provide housing opportunities to all Californians. These laws provide a renewed focus on housing and local government accountability, and they provide the tools necessary for local governments and the Department to work toward availability of housing for all Californians.

The following provides a brief summary and reference to housing legislation from the most recent legislative session, effective January 1, 2019, to assist your jurisdiction in compliance with the newly enacted laws:

Housing Discrimination: Affirmative Furtherance of Fair Housing AB 686 (Santiago) - Requires local governments to administer programs relating to housing and community development in a manner that furthers fair housing, and to not take any action materially inconsistent with this obligation. Requires revisions to the housing element occurring on and after January 1, 2021, to include an assessment of fair housing implementation within its jurisdiction. (Gov. Code § 65583 and Chapter 15 (commencing with §8899.50).

Planning and Zoning: Charter Cities SB 1333 (Wieckowski) – Expressly clarifies that provisions of Planning and Zoning Law regarding general plans, specific plans and the adoption and review of housing elements, apply to charter cities. (Gov. Code, §§65356, 65852.150, 65852.25, 65860, 65863, 65863.4, 65863.6, 65863.8, 65866, 65867.5 and 65869.5, 65300.5, 65301.5, 65359, 65450, 65454, 65455, 65460.8, 65590, 65590.1 and Article 10.6).

Planning and Zoning: Regional Housing Needs Assessment AB 1771 (Bloom) – Revises the objectives required in a regional housing needs allocation plan (Gov. Code §§ 65584, 65584.01, 65584.04, 65584.05 and 65584.06), and requires the regional housing needs allocation plan to include an objective to increase access to areas of opportunity for lower income residents while avoiding displacement and furthering the goals of fair housing.

Land Use Housing Element: SB 828 (Wiener) – Prohibits the continued underproduction of housing by relying on static population numbers from a previous housing element cycle as justification for a determination or reduction in the jurisdiction's share of the regional housing need. (Gov. Code §§ 65584, 65584.01 and 65584.04).

Planning and Zoning: Housing Element and Development AB 2162 (Chiu) – Authorizes supportive housing as a use by right in zones where multifamily and mixed uses are permitted and the development meets enumerated criteria. Expands the exemption for the ministerial approval of projects under the California Environmental Quality Act. (Gov. Code §§ 65583 and 65650).

The laws enacted during the last two Legislative Sessions offer new regulatory and financial resources that (1) increase the enforcement authority of the Department against local governments that fail to adopt compliant housing elements and/or violate the Housing Accountability Act, Density Bonus Law or discriminate in the provision of housing; (2) provide critical funding for new affordable homes; (3) accelerate development to increase housing supply; (4) add certain accountability to localities in order to address housing needs in their communities; and (5) create opportunities for new affordable homes while preserving existing affordable homes.

This letter is for informational purposes only and is designed to facilitate dialogue and training of your jurisdiction's staff and management. For additional guidance or technical assistance, please contact Ryan Seeley or Anastasia Baskerville at 916-263-2769.

Sincerely,



Ryan Seeley
General Counsel



Anastasia Baskerville
Attorney IV

Attachment

2017 Housing Package

Housing Accountability Act: AB 678 (Bocanegra)/SB 167 (Skinner) and AB 1515 (Daly) – Strengthens the Housing Accountability Act (Gov. Code, § 65589.5). For example, the statute now (1) requires findings made by a locality to deny or reduce the density of a housing development to be based on a preponderance of the evidence, (2) requires courts to impose a fine of \$10,000 or more per unit on localities that fail to comply with court orders to comply with the act, and (3) states that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.

Housing organizations, market rate developers and tenants eligible to live in proposed developments prevailing in litigation regarding the Act are entitled to reasonable attorney fees in addition to the developer proposing the projects. The statute now states the Legislature's intent that the section shall be interpreted and implemented to give the fullest possible weight to the interest of the local approval and provision of housing.

HCD Enforcement Authority: AB 72 (Santiago) – Authorizes the Department of Housing and Community Development (Department) to review any local action it determines is inconsistent with an adopted housing element, including failure to implement program actions, and requires the Department to issue findings as to whether the local action is out of compliance with state housing element law. If the Department finds the local action out of compliance, the legislation authorizes the Department to revoke a previous finding that a housing element is in compliance and to refer violations to the Attorney General. Housing element compliance is utilized as eligibility and scoring criteria in several funding programs. Localities out of compliance with housing element law could be ineligible or less competitive for funding. The Department may also refer violations to the Attorney General related to the Housing Accountability Act (Gov. Code, § 65589.5), No Net Loss Law (Gov. Code, § 65863), State Density Bonus Law (Gov. Code, §§ 65915-65918) and Anti-discrimination in Housing and Land Use (Gov. Code, § 65008).

No Net Loss: SB 166 (Skinner) – Amends the existing No Net Loss statute to require that a locality make sites available at all times throughout the planning period to accommodate its unmet share of the regional housing need for all income levels. Requires that at no time shall a locality cause its housing element sites inventory to be insufficient to meet its share of the regional housing need for lower- and moderate-income households. Requires a locality to make written findings supported by substantial evidence as to whether remaining sites in the housing element are adequate to accommodate its share of the regional housing need for each income category if any action results in reduction of density to, or the development of, fewer units by income category on a parcel than was indicated in the housing element for that parcel. If the approval of a specific development results in fewer units by income category, then the local government must identify and make available additional adequate sites to accommodate the remaining share of the regional housing need by income category within 180 days.

RHNA Performance and Streamlined Approvals: SB 35 (Wiener) – Creates a streamlined approval process for developments in localities that have not yet met their allocation of the regional housing need, as determined by the Department, or have failed to submit its annual housing reports for two consecutive years, provided that the development includes a specified level of affordability, is on an infill site, complies with existing residential and mixed use general plan or zoning provisions, and complies with other requirements such as locational and demolition provisions.

Housing Element Sites Inventory: AB 1397 (Low) – Makes a number of changes related to the inventory of sites requirement under Housing Element Law to ensure that localities are including sites that are available and developable within the planning period. Strengthens analysis requirements to demonstrate the suitability of non-vacant sites. For example, if more than 50 percent of the housing need for lower-income households is accommodated on non-vacant sites, the statute requires findings based on substantial evidence that existing uses are likely to be discontinued in the planning period. It also requires that a non-vacant site identified in a prior planning period may not be re-identified in a subsequent planning period unless the site will be rezoned within three years to allow development by-right for projects in which 20% of the units will be affordable to lower-income households. For vacant sites, the same by-right requirement applies if the site has already been included in two planning periods without developing.

Rental Inclusionary Requirements: AB 1505 (Bloom) – Authorizes localities to require rental housing developments to include a certain percentage of lower- or moderate-income units. These ordinances must provide alternative means of compliance that may include in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. The legislation provides limited authority to the Department to review inclusionary ordinances adopted or amended on or after September 15, 2017, that require more than 15 percent lower-income rental units in a development when the locality has failed to either meet 75% of its above moderate-income RHNA share over five consecutive years or submit its annual performance report for the last two years. The Department's review is limited to whether the locality submits an economic feasibility study in support of the ordinance that was prepared by a qualified entity and followed best professional practices.

Housing Sustainability Districts: AB 73 (Chiu) – Authorizes localities to create housing sustainability districts as a way to streamline the development of housing meeting various requirements. Provides state financial incentives to cities and counties that create sustainability districts, if the Legislature appropriates funds for that purpose.

Annual Progress Reports and Fee Study: AB 879 (Grayson) - Make various updates to housing element and annual report requirements to provide data on local implementation, including number of project application and approvals, processing times, and approval processes, and requires charter cities to submit housing element annual reports to the Department. It also requires the Department to deliver a report to the Legislature on how local fees impact the cost of housing development.

Affordable Housing Preservation: AB 1521 (Bloom and Chiu) - Strengthens the state's Affordable Housing Preservation Notice Law (Gov. Code. §§ 65863.10 and 65863.11) and supports the preservation of deed-restricted affordable housing at risk of losing affordability. The revised law expands owner-noticing requirements and clarifies transactional provisions regarding owner acceptance of a bona fide offer to purchase from a qualified preservation purchaser. The law clarifies the types of injunctive relief available for affected tenants and public entities in the event of violations of the statute and provides the Department with additional tracking and enforcement responsibilities to ensure compliance.

ATTACHMENT H

[SB 375 Sustainable Communities Strategies by HCD link](#)

ATTACHMENT I

[Housing Accountability Act Technical Assistance Advisory by HCD link](#)

ATTACHMENT J

[HCD AFFH Guidance for all Public Entities and for Housing Elements link](#)

ATTACHMENT K

[HCD Streamlined Ministerial Approval Guidelines on Senate Bill 35 link](#)

ATTACHMENT L

[HCD HAA Technical Assistance on Senate Bill 330 link](#)

ATTACHMENT M

[HCD Integration Concepts for General Plan Updates or
Other Local Planning Activities SB 379 Safety Element link](#)

ATTACHMENT N

[Goldfarb & Lipman LLP SB 9 presentation](#)

ATTACHMENT O

[Goldfarb & Lipman LLP PowerPoint presentation](#)

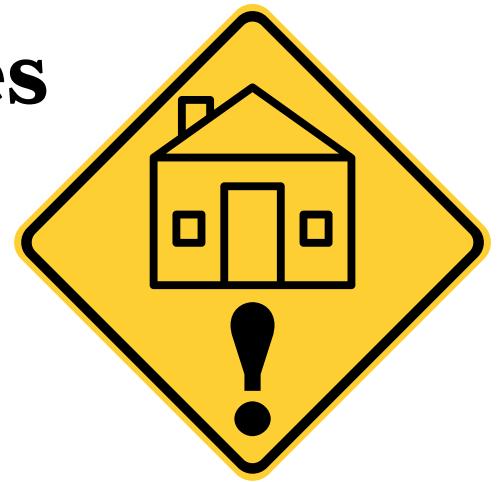
ATTACHMENT P

[Assembly Bill 215 link](#)

ATTACHMENT Q

April 2021 HCD Guidance Memo

Growing List of Penalties for Local Governments Failing to Meet State Housing Law



California's Housing and Community Development (HCD) department in April 2021 issued guidance to cities and counties about the consequences of falling short in adopting or otherwise complying with previously adopted housing elements.

HCD noted that, under legislation enacted in recent years, it is authorized “to review any action or failure to act by a local government (that it finds) inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government’s actions do not comply with state law.” And because housing elements are a mandatory part of a city or county’s General Plan, a noncompliant housing element could also impact its General Plan, potentially invalidating it as well. Localities in this situation are subject to a range of penalties or consequences, including:

Legal Suits and Attorney Fees: Local governments with noncompliant housing elements are vulnerable to litigation from housing rights’ organization, developers, and HCD. If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff’s attorneys in addition to the fees paid to its own attorneys. Potential consequences of lawsuits include: mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.

Loss of Permitting Authority: Courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction’s General Plan and housing element into substantial compliance with State law. The court may suspend the locality’s authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring their housing element into compliance.

Financial Penalties: Local governments are subject to court-issued judgements directing jurisdictions to bring a housing element into substantial compliance with state housing element law. If a jurisdiction’s housing element continues to be found out of compliance, courts can fine jurisdictions up to \$100,000 per month, and if they are not paid, multiply that by a factor of six.

Court Receivership: Courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction’s housing element into substantial compliance with housing element law.

Streamlined Ministerial Approval Process: Proposed developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need are now subject to less rigorous “ministerial” approvals in order to hasten the production of housing and bring a jurisdiction into compliance with its state-determined housing need allocation.

OVER ▼

Housing Laws Figure Prominently in the News

Following are links to a sampling of recent news coverage documenting the risks and challenges faced by cities and counties in the new housing arena:

State can sue:

- In the face of unprecedented housing crisis, California takes action to hold cities accountable for standing in the way of housing <https://www.gov.ca.gov/2019/01/25/housing-accountability/>
- Huntington Beach loses housing case with state of California <https://web.archive.org/web/20210203030515/https://www.latimes.com/socal/daily-pilot/news/story/2021-02-02/huntington-beach-loses-housing-case-with-state-of-california>
- State may revoke Encinitas's compliance status with California housing law <https://www.sandiegouniontribune.com/communities/north-county/encinitas/story/2020-02-14/state-revokes-encinitass-compliance-status-with-california-housing-law>
- Under pressure from state, Simi reverses opposition to proposed 278-unit apartment complex <https://www.vcstar.com/story/news/local/communities/simi-valley/2020/02/08/apartments-low-income-housing-simi-valley-california/4679587002/>

Developers can sue:

- Holland & Knight First in California to Win Lawsuit Under New State Housing Law <https://www.hklaw.com/en/news/pressreleases/2020/05/holland-knight-first-in-california-to-win-lawsuit-new-housing-law>
- Developer Sues Millbrae Over Proposed Housing at Historic El Rancho Inn <https://sanfrancisco.cbslocal.com/2021/06/03/developer-sues-millbrae-over-proposed-housing-at-historic-el-rancho-inn/>

Conversely, an HCD-certified housing element brings with it eligibility for numerous state and regional funding sources, including:

- Permanent Local Housing Allocation
- Affordable Housing and Sustainable Communities Grants
- SB 1 Planning Grants
- CalHOME Program Grants
- Infill Infrastructure Grants
- Pro-Housing Design funding
- Local Housing Trust Funds
- Regional Transportation Funds (such as MTC's OneBayArea Grants)

Third parties can sue:

- Controversial Vallco project can continue under SB 35, judge rules <https://sanjosespotlight.com/controversial-vallco-project-can-continue-under-sb-35-judge-rules/>
- City of Coronado sued over failing to comply with state law allowing expedited approval for accessory dwelling units <https://www.sandiegouniontribune.com/business/story/2021-01-21/coronado-sued-over-allegedly-denying-granny-flats>
- Los Altos drops appeal to court-approved housing development <https://www.mv-voice.com/news/2020/09/08/los-altos-drops-appeal-to-block-five-story-downtown-housing-project>
- City Takes Step That Could Expand Housing on the Westside <https://www.sfpublicpress.org/city-takes-step-that-could-expand-housing-on-the-westside/>

Individuals can sue:

- Clovis loses legal challenge, will be forced to zone and plan for low-income housing <https://www.fresnobee.com/news/local/article251227789.html>

 Association of Bay Area Governments



Technical Assistance
for Local Planning
HOUSING

ATTACHMENT R

[October 6, 2021 Staff Report link](#)