



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

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**

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

**Background**

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

On March 10, 2021, the Town Council received a detailed staff report (Attachment A) and presentation on the Comprehensive Advanced Planning Initiative, a strategic approach to complete the necessary planning documents and ensure the Town's Housing Element, General Plan, and zoning are internally consistent. On July 14, 2021, Town Council approved the consultant to execute the comprehensive Advanced Planning Initiative which includes the State mandated Housing Element, Environmental Impact Report (EIR), Rezoning of key sites, including the Bollinger Canyon Special Study Area (Study Area) and General Plan update. On October 6, 2021, staff and the consultant held a joint meeting with Town Council and Planning Commission to kick-off Phase One, which is primarily the Housing Element, rezone of the Bollinger Canyon Special Study Area and additional sites, the EIR, and an update of Safety Element and other parts of the General Plan. As discussed at the meeting, staff is now providing a detailed legislative update led 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 6<sup>th</sup> 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 6<sup>th</sup> 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		
20	Extremely Low-income and Very Low-income units	318
21	Low-income units	183
22	Moderate-income units	172
23	Above Moderate-income units	445
24		

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 6<sup>th</sup> Cycle Housing Element and the policies that will shape this  
13 element.

## 14 **Discussion**

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16  
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 “a. “Builder’s Remedy:” A developer can build on any site that is identified  
30 in an element for residential development, as long as the development is  
31 within the densities and development standards specified in the element.  
32 The local government must allow the development to proceed unless it  
33 makes finding that the development will have a “specific, adverse impact  
34 upon the public health or safety.” If the jurisdiction illegally denies a  
35 development, a court can order it to comply with the law. The local  
36 government will have the burden of proving its action was legal.

37  
38 “b. “Citywide Remedy:” Any interested party can sue to compel the  
39 jurisdiction to complete the rezonings or other programs. The local  
40 government will have the burden of proving its action was legal, and the  
41 court can impose sanctions for violations of the law. is an overarching  
42 “policy” type law that acknowledges the Housing Crisis and more  
43 importantly sets the tone for “implementation” type laws.

44  
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.”  
46

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 6<sup>th</sup> 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 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.



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

10  
11 Finally, because SB 9 establishes a ministerial review process for certain projects, the  
12 approval of those projects would be exempt from California Environmental Quality Act  
13 (CEQA). Staff has formed a collaborative with Planning Directors from Contra Costa  
14 County along with several legal teams to understand what is required for the  
15 implementation of SB 9.

16  
17 **Assembly Bill 215 (AB 215):** AB 215 (Attachment P) is also new and will go into effect  
18 on January 1, 2022. AB 215 changes the procedures applicable to the adoption and  
19 amendment of a Housing Element. It requires cities and counties to make the first draft  
20 revision of a housing element available for public comment for at least 30 days and, if any  
21 comments are received, take at least 10 additional business days to consider and  
22 incorporate public comments into the draft revision before submitting it to HCD. The bill  
23 would require agencies to post any subsequent draft revision on its website and to email  
24 a link to individuals and organizations that have requested notices relating to the local  
25 government's housing element. HCD is prohibited from reviewing a draft housing element  
26 revision until this public review process has been completed.

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

### 36 37 Consequences of Non-Compliance with Housing Laws

38 In April 2021 HCD issued guidance (Attachment Q) to cities and counties about the  
39 consequences of falling short in adopting or otherwise not complying with previously  
40 adopted housing elements. Staff previously shared the consequences in the October 6,  
41 2021 staff report (Attachment R). Under the recent legislation enacted, HCD is authorized  
42 to review any action or failure to act by a local government inconsistent with an adopted  
43 housing element or housing element law. This includes failure to implement program  
44 actions included in the housing element. The penalties for non-compliance have  
45 increased in scope and severity over the past few legislative cycles, and they currently  
46 include legal lawsuits, court imposed fines and limited access to state funding.  
47 Additionally, cities would need to check in with the State halfway through their eight-year  
48 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 6<sup>th</sup> 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: 6<sup>th</sup> 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. Turner 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](#)
- 9

# **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  
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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](#)

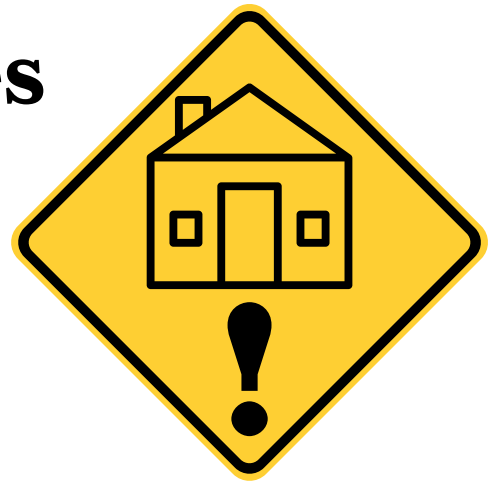
# **ATTACHMENT Q**

April 2021 HCD Guidance Memo



June 2021

# 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-encinitas-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/>

## 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**

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)

# **ATTACHMENT R**

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