



April 13, 2023

Board of Supervisors, Merced County
Meg Prince, Merced Association of Governments
Councilmembers, City of Merced

Submitted via email

Re: Merced CAG Multi-Jurisdictional Housing Element Update 2023-2032

Dear Meg Prince, Brenna Weatherby, and Nina Belluci,

Leadership Counsel for Justice and Accountability is a community-based organization that works alongside low-income communities of color in the City of Merced and in unincorporated areas in Merced County such as unincorporated South Merced, Planada, Beachwood/Franklin and Delhi, to elevate and advance residents' priorities for safe, affordable housing options and fair housing choice. We thank you for taking the time to read the following memo and welcome the opportunity to discuss our letter in further detail. As the Housing Element process begins it is important and necessary to start the process correctly and with strong community engagement. The Housing Element is an incredibly important piece of planning for our communities and the future of housing access in Merced County. Further, the State of California in recent years has strengthened the laws which govern the Housing Element. For Merced County Association of Governments (MCAG), elected city leaders and jurisdictions participating in this multi-jurisdictional housing element must apply these laws in a conscientious and diligent manner. With laws such as AB 686 and AB 1397 we expect this Housing Element to be robust, meaningful, and responsive to the housing crisis. As always, we are willing to partner and work alongside you to ensure that these requirements are fulfilled and exceeded in order to create the change we want to see in the Central Valley.

We look forward to working alongside the MCAG, city leaders, and staff in the multi-jurisdiction Housing Element Update and solving our housing crisis together.

I. Jurisdictions Must Meaningfully Engage the Public in their Housing Element Update Practices, Including Lower-Income Residents and Protected Classes

As Merced County begins the 6th Cycle Multi-Jurisdictional Housing Element Update, each participating jurisdiction (collectively referred to herein as "Merced jurisdictions" or "jurisdictions") must meaningfully engage the public, especially lower-income residents, members of protected classes under civil rights statutes, residents of disadvantaged communities



and racially and ethnically concentrated areas of poverty (“RECAPs”), as well as community-based organizations that work closely with directly impacted groups over the course of the housing element update. Gov. Code Sec. 65583(c)(9); HCD Affirmatively Furthering Fair Housing Guidance (“AFFH Guidance”), p.21.

The jurisdictions must engage the public throughout the housing element update process with “meaningful, frequent, and ongoing community participation, consultation, and coordination”¹ (HCD, Building Blocks, Public Participation). Pursuant to HCD’s AFFH Guidance, public participation efforts should be proactively and broadly conducted through a variety of methods to ensure access and participation. Key stakeholders must include community-based organizations and advocacy groups that work directly with extremely low income, very low income and low income households; protected classes; persons and households with special housing needs, including but not limited to farmworkers, seniors, single-parent households, and persons with disabilities; tenants, including residents of publicly-subsidized housing; members of protected classes, residents of disadvantaged communities and RECAPs; and fair housing agencies.² Outreach plans should include “in-person meetings in various locations to ensure residents from across the [city] have the opportunity to participate.”³ As the process begins, we ask that staff plan in-person workshops throughout the city, particularly for residents without internet access.

To satisfy Government Code § 65583(c)(9) and its duties to Affirmatively Further Fair Housing, some specific public outreach efforts that we recommend that the City undertake to achieve the above-referenced objectives include but are not limited to the following:

- conducting targeted outreach to and stakeholder interviews with members of special needs populations and protected classes, including but not limited to farmworkers, the elderly, members of large-families and single-headed households, people of color and non-English speakers;
- conducting several, in-person, evening workshops in communities throughout the County with interpretation to relevant languages provided to meaningfully solicit fair housing needs, community housing priorities, and feedback on drafts;
- soliciting completion of the community survey conducted by the jurisdiction by low income and special needs residents, including the City’s housing division and other city staff during interactions with residents in the course of the performance of their duties.
- advertising opportunities to participate in and provide feedback on the housing element update in non-English language print media, radio and television, including media in

¹ HCD AFFH Guidance, p. 10; Gov. Code §8899.50(a),(b),(c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 4253-42360 (July 16, 2015)

² HCD AFFH Guidance, p. 21

³ HCD AFFH Guidance, p. 10



Spanish, Hmong, and other languages spoken by Merced residents. Examples of non-English media outlets include Univision, Radio Bilingue, Hmong TV, and the Vida en el Valle publication among others. Many of these media outlets offer free advertising space for public service announcements. The housing element should document these additional efforts to achieve public participation by all economic segments of the community and explain how input received through those efforts is incorporated therein.

Leadership Counsel is willing to support the jurisdictions in planning these additional public outreach efforts.

In addition, and importantly, the Draft Amendments must meaningfully incorporate public input provided on the housing element update, giving priority to input provided by lower-income residents, residents with special housing needs and protected classes. The housing needs analysis, sites inventory sites, assessment of fair housing choice, including the discussion of fair housing issues in RECAPs, displacement risks, disparities in access to opportunity impacting protected classes, meaningful actions, and programs must all incorporate, reflect, and respond to resident input and priorities. The overall Multi-Jurisdictional Housing Element must incorporate input from residents from all participating jurisdictions to tailor the analysis, sites inventories, actions, and programs applicable to specific jurisdictions accordingly.⁴

Currently, planned public outreach is insufficient, and due to time constraints, does not allow for significant revisions using public input in updated drafts. MCAG is planning to receive public input through a stakeholder focus group, online surveys, and community workshops. Public outreach is currently scheduled to run from February to July, with an additional community workshop in November once the public draft is released for review. MCAG will then submit its first draft to HCD in January. The current timeline is designed to miss HCD's deadline of January 2024. The current timeline assumes that MCAG's first draft of their HE will be approved by HCD, further, if MCAG's first draft is approved it will be out of compliance during the time in which HCD takes to analyze its HE (a process that can be up to 90 days for an initial draft). More likely, HCD will deny MCAG's initial housing element forcing it to revise and resubmit the draft to HCD, which then may take up to 60 additional days in every subsequent draft review. Therefore MCAG is knowingly setting its HE up for noncompliance, at minimum, for several months. Because its housing element was meant to be completed by January 2024, additional time for public outreach is unlikely to be prioritized in revising and resubmitting MCAG's subsequent drafts. Therefore, it is important MCAG adequately conduct greater public outreach efforts and incorporate input received in its initial draft to HCD. Public outreach must include several, in-person workshops with interpretation to relevant languages conducted in the

⁴ HCD AFFH Guidance, p. 21



evenings in communities throughout Merced County in order to ensure that residents have opportunities to shape the Housing Element update.

Jurisdictions' limited outreach to date has resulted in a lack of both quantitative and qualitative data resulting in a deficient Fair Housing Needs Assessment. For example, residents we work with have shared the following experiences:

- Rental increases in downtown Merced have forced low-income residents from their homes.
- Black residents we work with have reported experiencing discrimination when applying for low-income housing units in Merced. They've further shared that they did not make formal Fair Housing complaints, so it is crucial that MCAG conduct direct outreach to glean information that is not already available in the existing database.
- Undocumented residents cannot access legal aid from LSC legal providers or most rental assistance programs, as many of those programs require immigration status.

Several of the examples listed above would likely not have been captured under current procedures focusing on community surveys. Without greater in-person public engagement, jurisdictions will lack the ability to form a complete and accurate Fair Housing Needs Assessment, further entrenching housing inequities and failing its duty to AFFH.

Jurisdictions may gain public trust if proactive steps are taken to engage the public on an ongoing basis and provide materials in multiple languages, thoroughly incorporate the public input provided, and have that reflected in the final housing element update. Jurisdictions must ensure that strong public engagement efforts are maintained following their adoption of the housing element, including, for example, establishing and facilitating a housing element oversight advisory committee to assist the jurisdiction in obtaining community feedback on housing element implementation from lower-income residents and protected classes.

II. The Multi-Jurisdictional Housing Element Update Must Comply with Cities' and the County's duties under AB 686

To prevent the continuation of past and current discriminatory practices and to overcome their legacy, the State of California enacted AB 686 (2018). AB 686 requires the state, cities, counties, and other public agencies to affirmatively further fair housing ("AFFH") in all programs and activities relating to housing and community development. **AFFH means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. It means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated**



living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. AB 686 also amended the Housing Element Law to require that housing elements include an assessment of fair housing (“AFH”) and identify sites *throughout* the jurisdiction to satisfy its regional housing needs allocation. We recommend that jurisdictions and MCAG carefully review HCD’s AFFH Guidance which contains a detailed discussion of AB 686’s requirements, including the requirements for a complete AFH. Some of these requirements include:

- **Summary of Fair Housing Issues.**⁵ The Housing Element must analyze and address patterns of integration and segregation; racially or ethnically concentrated areas of poverty; racially concentrated areas of affluence, disparities in access to opportunity for lower-income residents and protected classes; and disproportionate housing needs impacting lower-income residents and protected classes, including displacement risk. The analysis of disparities in access to opportunity must include disparities in access to educational, employment, transportation, and environmental opportunity and cover the specific topics identified in HCD’s AFFH guidance for each of those opportunity categories. HCD’s AFFH Guidance, pp. 35-36. The disproportionate housing needs analysis must consider disparities in housing cost burden, overcrowding, substandard housing, homelessness and other issues and must evaluate displacement risks holistically, considering impacts of rising rents, infrastructure and service deficiencies, climate change, and other displacement risks that may disproportionately impact lower-income households and protected classes. The analysis must incorporate local data and knowledge, including the input of lower-income households and protected classes, and discuss the fair housing issues specific to distinct jurisdictions, RECAPs, and lower-income communities.
- **Identification and Prioritization of Contributing Factors.** The AFH must analyze and prioritize factors that contribute to identified fair housing issues and give highest priority to factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights.
- **Sites Inventory AFFH Analysis.**⁶ The housing element must not only demonstrate site capacity to accommodate each jurisdiction’s RHNA, but also that the identified sites are consistent with the duty to AFFH, serving the purpose of replacing segregated living patterns with truly integrated and balanced living

⁵ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, pg.11

⁶ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, pg.12

patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity.⁷ This evaluation must include the specific components described in the AFFH Guidance, including how sites better integrate the community considering historic patterns and trends; the extent to which sites may exacerbate existing patterns of segregation; whether the RHNA by income group is concentrated in areas of the community; and local data, knowledge, and community input. Based on the outcome of the analysis, the site inventory must be modified and/or actions must be included to overcome patterns of segregation and barriers to opportunity in relation to the sites contained in the inventory.

- **Meaningful Goals and Actions** . Existing Housing Element Law requires programs with a schedule of actions with timelines and specific commitment to have a “beneficial impact” within the planning period to achieve the goals and objectives of the housing element. As stated in the AFH guidelines “actions implement goals and consist of concrete steps, timelines and measurable outcomes.”

As the draft Housing Element is produced, we will be looking for these components and compliance with the City’s duties under AB 686 and to ensure that drafts reflect residents’ input and priorities. Further, if barriers are identified that impede the application and implementation of programs, policies, and production of housing, the City should analyze these barriers as well and attempt to make a good faith effort to find alternative solutions.

III. The Housing Element Must Analyze and Incorporate Programs and Policies That Adequately Respond to our Housing Crisis

As discussed above, the housing element must include programs and actions prioritized by lower-income residents, protected classes, and residents of lower-income communities and RECAPs during the housing element update to solve our housing crisis. Below are community identified programs and policies which residents from South Merced neighborhoods have repeatedly identified as priorities to solve our housing crisis and to AFFH, of which we ask jurisdictions to consider:

A. City of Merced

Housing policies to increase the production of affordable housing for lower-income households and tenant protections:

- **Adopt a Sustainable Revenue Source for Affordable Housing** - In June 2022 the City allocated \$500,000 in its 2022-2023 annual budget to establish an Affordable Housing Trust Fund, and we understand that the City plans to apply for state matching funds in the

⁷ 24 Gov. Code, § 8890.50. subd. (b).



next Local Housing Trust Funding cycle of spring 2023. In order to qualify for the state's Affordable Housing Trust Fund program, the City must identify an ongoing, sustainable funding stream for the Fund. The Housing Element update community engagement process should focus on soliciting community input on this long-term funding plan for the Trust Fund, and the updated Housing Element should include a plan for this sustainable funding stream based on the feedback received.

- **Adopt a Commercial Linkage Fee** - In previous years, residents have requested that the City adopt a commercial linkage fee and apply impact fees for all new commercial developments that would contribute dedicated funds to a local housing trust fund. The number and variety of commercial businesses that come to Merced impact local housing, of which businesses may require at or near minimum wage job positions, must also contribute to the development of affordable housing and provide housing for workers. It is necessary for the City to consider multiple strategies to increase its competitiveness for these matching funds from LHTF.
- **Adopt a local rent stabilization ordinance** to protect tenants from continuous rising rents, including a rent stabilization board to hear and approve rental increases submitted by landlords to ensure a fair return for property owners.
- **Adopt tenant protections to reduce displacement risks**, including just cause eviction that address gaps in protections afforded under the 2019 Tenant Protection Act and a right to counsel guaranteeing access to affordable legal counsel for low-income tenants in housing matters.
- **Implement Deed-Restricted Affordability Requirements with any “Affordable by Design” Densification Changes to the General Plan.** Given the City's ongoing efforts to promote housing density in the City's urban core to allow for additional residential density and commercial development, the City must implement affordability requirements. This will ensure that increasing density and beautifying downtown do not contribute to rental increases that would displace low-income families from their homes in and around downtown Merced.

Housing programs for youth and families: These programs are critical to build a housing safety net for the City's lowest-income renters who are already cost-burdened or extremely cost-burdened.

- **Tenant-Landlord Mediation** - Tenants often experience housing issues that may not require legal representation, but some sort of low level mediation with their landlord or property owner. They are often denied by fair housing representatives because their case does not involve discrimination of a protected class. However, due to the lack of tenants' rights education and resources, tenants find themselves at a disadvantage with their landlords who often have access to an attorney and other landlord resources.



- **Right to Counsel** - When the situation does require legal representation, local groups are either limited to the tenant's documentation status or they are over capacity. Local housing organizations that provide legal assistance often refer people to each other and it creates a never-ending cycle, largely because the amount of resources is completely lacking and they need adequate funding to be more effective.
- **Farmworker Housing** - The City's Housing Element Policy H-1.7: Support Housing to Meet Special Needs indicates that these programs (H1.7.c - Assist in obtaining funding for farmworker housing, H1.7.d - Assess the need for farmworker housing and H1.7.e - Provide incentives for the development of farmworker housing) will address the housing needs for farmworkers. To date, we have not seen any assistance, assessment or development for farmworker housing. With a Housing Element Update in 2023, the City must take action to address this high need in our community. Additionally, at minimum, the City must allocate 25% of funding from its first-time Homebuyer Program for farmworkers.
- **Rent Escrow Account Program (REAP)** - Habitability issues with the rental housing stock in Merced has become one of the top housing-related concerns. The City Council voted against adopting a Rental Registry to ensure that housing in Merced is habitable and up to code, and to prevent slumlords from operating the rental housing stock in Merced, and now habitability issues continue to arise. The City of Los Angeles has a program that requires tenants to continue paying their rent, but the City withholds the rent from the landlord until they correct certain issues to ensure that homes are habitable and up to code, specifically for the lowest income households and older rental housing.
- **Rental Registry** - A rental registry program is another alternative to promote landlord accountability to addressing the widespread habitability issues in Merced's housing stock. A rental registry program would not necessarily be mutually exclusive from a Rental Escrow Account Program; the City could potentially choose to pursue both.
- **Youth Guaranteed Housing Program** - Young people ages 18-24 who are LGBTQ+ without housing are some of the most vulnerable members within our community. Local homeless shelters are often an unsafe place for LGBTQ+ people to be and there are few, if any, resources available to them. Merced must look to create housing programs that are safe and accessible to young people, specifically low-income BIPOC (Black and Indigenous People of Color) and LGBTQ+ people.
- **Establish a permanent emergency rental assistance program** to assist residents at risk of homelessness due to rent increases and changed circumstances and ability to pay. Identification of a permanent local source of funding will ensure continuous funding and that the program can be used to prevent displacement. *The City of Merced can leverage the Local Housing Trust Fund dollars and the State is continuing to grant monies for rental assistance programs.*



- **Extreme heat and weatherization programs** for low-income households and rental properties, in order to promote community-wide adaptation to climate change. This includes funding for weatherization upgrades to homes and rental units, specifically in census tracts that rank the highest on CalEnviroScreen for pollution and poor health outcomes and are most vulnerable to climate change.
- **Establish an acquisition and rehabilitation fund** to purchase older, blighted, and / or abandoned homes/buildings. The City can establish a revolving fund to ensure that rehabilitated homes are sold back to the community at a low cost.
- **Establish local hire provisions** requiring that a certain percentage of workers reside within 10 miles or less of a Project Site. This can reduce the length of trips, reduce greenhouse gas emissions and provide localized economic benefits
- **Developing Public Health Impact Reports** for new development in order to understand existing public health disparities and the potential of those conditions worsening as a result of development. Public health agencies should be resourced to support this analysis. The findings of these reports should be available publicly and be included in permit approval processes and other key decision-making milestones.
- **City-Wide Affordable Unit Requirement.** Market rate developers must designate at least 20% of all newly constructed units as deed-restricted, affordable units. This ensures that affordable housing is constructed in high-resourced areas and actively combats the legacy of segregation.

B. County of Merced

- **Create an Ongoing, Rental Assistance Program for Low-Income Tenants** - Housing costs in Merced County are high and rising while wages remain relatively stagnant. Merced County also has a poverty rate of approximately 22% according to the 2020 US Census, which is roughly double the national average. As a result, financial support for low-income tenants is a crucial, ongoing need to help families stay housed.
- **Allow the use of ITIN numbers to access County Programs** - Undocumented residents are unable to use publicly available programs due SSN requirements. As a largely Latino community, many County residents would have greater access to County programs.
- **Establishment of a Housing Element Advisory Committee** - Establish a committee of at least 10 residents from unincorporated communities that advise the County on revising and implementing the Housing Element.
- **County-Wide Affordable Unit Requirement** - Market rate developers must designate at least 15% of all newly constructed units as affordable units. This ensures that affordable housing is constructed in high-resourced areas and actively combats the legacy of segregation.
- **Mobile Home Weatherization** - The County must invest funding and staff time to support a weatherization program to assist mobile home residents, including



undocumented mobile home residents. Doing so would protect vulnerable populations from extreme heat and higher utility costs.

- **First-Time Homebuyer Program** - The County must seek and invest funding in a first-time homebuyer program that would help low-income residents become homeowners.
- **Rent Stabilization** - Merced County has the ninth highest housing costs in the nation when average housing costs are adjusted for local wages. The Housing Element must include a rent stabilization ordinance that goes beyond AB 1482 protections and includes mobile homes to prevent tenants from being priced out of their homes.
- **Emergency Housing**. Additional emergency housing is needed for the unhoused population in Merced County. Additional emergency housing will also ensure that the County is prepared for extreme weather events and emergencies requiring residents to evacuate from their homes in the future.
- **Additional Resources and Affordable Housing for Residents Displaced by Flooding**. Many low-income tenants have been displaced from their homes due to flood damage which have started an ongoing increase in evictions and rental increases. Additionally, some tenants cannot yet return to their homes as repairs are ongoing. For all of these scenarios, rental assistance to low-income tenants impacted by the flooding will be critical in order to keep people housed.
- **Home Rehabilitation and Habitability Program**. The aging housing stock in Merced County is in need of rehabilitation funds to help low-income homeowners repair and update their homes. Additionally, for tenants living in substandard housing, a program that would assist low-income landlords with needed repairs, and enforce completion of needed repairs, would benefit those who cannot afford to move out of substandard housing. This program is also crucial in the wake of the January 2023 flooding, as many homes now require additional remediation and rehabilitation resources.
- **Accurately Assess Climate Vulnerabilities, Service Needs, and Infrastructural Needs of Disadvantaged Communities**. Neither the Merced County General Plan nor the Local Hazards Mitigation Plan have been updated to include Climate Adaptation Planning as required by SB 379. The Housing Element Update must therefore coincide with an effort to update the Safety Element or Local Hazards Mitigation Plan with policies, programs, and strategies to help communities in Merced County adapt to climate change. During the Housing Element update the County must ensure that all housing-related issues identified through the County's SB 244 analysis are properly addressed. These include flood risks, service deficiencies, and infrastructure improvement needs of disadvantaged communities. For example, where water and wastewater services are lacking in South Merced, the County must include a commitment to apply for state grant funding for infrastructure projects on behalf of County residents in the Housing Element.



IV. The Sites Inventory Must Comply with New Housing Element Law Requirements, Including Requirements for Access to Infrastructure and Services Under AB 1397

As mentioned above, the State of California has added further requirements and specificity to the obligation of the Housing Element to identify adequate sites for further development of affordable housing. Under AB 1397, for all sites in the inventory, the jurisdiction must determine the number of units “that can be realistically accommodated.”⁸ These requirements do not include “current or planned availability and accessibility of sufficient water, sewer and dry utilities.”⁹ In other words, sites that are served by water, sewer, and other dry utilities that are available and accessible within three years of the beginning of the planning period will be considered suitable for residential development. In addition, jurisdictions may not reuse on-vacant sites identified in a prior housing element or vacant sites identified in the last two housing element updates to meet lower-income RHNA requirements.

Finally, we recommend that jurisdictions ensure that sites chosen conform to HCD’s sites inventory guidance. Following HCD’s guidance would increase planning efficiency for local agencies while ensuring compliance with housing element requirements. We look forward to seeing local compliance.

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Thank you for taking our comments into consideration. We look forward to continuing to work with the City and County of Merced on developing a compliant Housing Element that responds to the needs of participating community residents and ensures access to safe and affordable housing for all.

Sincerely,

Madeline Harris
Regional Policy Manager

Zaray Ramirez
Policy Advocate

Isaac Serratos
Staff Attorney

⁸ Cal Gov Code 65583.2(c)

⁹ Cal Gov Code 65583.2(c)(2)



Cc: Rodrigo Espinoza, Supervisor District 1
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