

DATE: December 13, 2022

TO: Honorable Mayor and City Council

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VIA: Kimbra McCarthy, City Manager

TITLE: **Revised 2023-2031 Draft Housing Element**



STUDY SESSION MEMO

PURPOSE

The purpose of this Study Session is for the City Council to review the revised Draft Housing Element (see Attachment 1 to this Study Session memorandum) and provide direction to staff regarding modifications, including the addition of alternate programs.

BACKGROUND

City Council Study Session

On June 14, 2022, the City Council provided the following direction and staff revised the public review Draft Housing Element to incorporate changes to the narrative, sites inventory, and a few of the recommended programs. The following policy direction was included in the draft for the Department of Housing and Community Development (HCD) review:

- Include Program 1.2, Community Sites for Housing (now 1.4, Religious and Community Assembly Sites for Housing), in the Housing Plan.
- Include “Other Shopping Centers” in the back-pocket list for future rezonings in case the City’s site inventory capacity falls below Regional Housing Needs Allocation (RHNA) (“no net loss”).
- Remove the El Camino Health site (at Phyllis Avenue and El Camino Real) from the sites inventory.
- Include 57/67 East Evelyn Avenue and 1110 Terra Bella Avenue/1012 Linda Vista Avenue sites as rezonings concurrent with the Housing Element adoption.

- Enhance and update narrative to show explicit connection between public input and programs included in the Housing Element in response to public input.
- Review and add each of the programs based on resources and time:
 - Included in Program 2.1: Add Community Opportunity to Purchase Act (COPA) and Tenant Opportunity to Purchase Act (TOPA) programs in the programs section of the Housing Element and extend benefits to mobile homes.
 - Included in Program 4.2: Lobby the State to change laws to shift impact fees from residential to office development.
 - Included in Program 4.3: Develop local revenue ballot measures to fund affordable housing, support other housing programs, and increase the feasibility of residential development if the regional Bay Area Housing Finance Authority (BAHFA) measure is not implemented.
 - Included in Program 4.3: Increase housing impact fees for office development.

The following requested programs required additional time for interdepartmental input and, as staff had explained at the Study Session in June, were not included in the first draft submitted to HCD. They are included in the second draft of the Housing Element and discussed in more detail in the Newly Added Programs section later in this Study Session memorandum.

- Included in Program 1.3: Adopt ordinance updates that allow live-work uses in areas with ground-floor retail, where appropriate.
- Added Program 1.6: Adopt ordinance updates that allow condo mapping of Senate Bill (SB) 9 dual urban opportunity (DUO) developments to increase home ownership opportunities.
- Added Program 1.7: Create a design resource to encourage SB 9 DUO, accessory dwelling unit (ADU), and junior accessory dwelling unit (JADU) developments.
- Added Program 2.2: Create a funding program to encourage SB 9 DUO, ADU, and JADU developments.
- Included in Program 4.6: Adopt ordinance updates that allow the development of short-term employee housing on sites zoned for office use.
- Included in Program 4.6: Create a framework to collaborate with major employers (including large public entities) to provide workforce housing.

Staff would additionally like to note that since the Housing Plan was reformatted to provide more detail and add the new programs, program numbers may have changed since the July publication of the first Draft Housing Element.

HCD Comments on First Draft Housing Element

The Draft Housing Element was submitted to HCD on July 1, 2022 for a formal 90-day first draft review, and the City received comments on September 29, 2022 (see the letter in Attachment 2). The comments cover a range of topics, including the following requests:

1. Clarification and additional detail on the site inventory analysis;
2. Additional programs addressing Affirmatively Furthering Fair Housing (AFFH) issues;
3. Incorporation of solutions to government constraints into programs;
4. Adding specific actions and metrics within the Housing Plan; and
5. Additional analysis on the effectiveness of previous programs.

One of the most repeated lessons learned from other California regions is the importance of establishing communication with HCD reviewers to better anticipate comments during the review and receive assistance in responding to formal comments after the review. Staff met with HCD for an initial meeting on September 13 and received informal comments regarding missing data points, answered some questions, and provided clarifications to HCD. However, the feedback from HCD was generic and very close to their 90-day review date of September 29, 2022. As a result, staff did not have the ability to discuss any potential revisions.

Since receiving the formal comment letter, staff has met with our HCD staff reviewers three times: October 5, October 12, and October 28, 2022. The Housing Element team used these meetings to ask for clarification on the comments and present draft responses for HCD feedback. Details about the major changes made to the Housing Element are discussed later in this Study Session memorandum under the specific topic. Additionally, minor changes are in the attached redlined Housing Element and will not be summarized or discussed further in this Study Session memorandum (see Attachment 3).

Furthermore, HCD recommended that cities should submit subsequent drafts rather than adopted Housing Elements. This provides the opportunity to iterate with HCD on the draft rather than HCD simply taking the plan as it is. This is the most efficient use of time as they can provide more assistance and guidance on drafts, and the City may be able to address them within the 60-day review period. Staff is, therefore, recommending a revised schedule rather than

proceeding with adoption hearings by the end of the year. With the revised schedule, the EPC and Council have another opportunity to provide further direction on the Housing Element before adoption. Please refer to the Next Steps section of this Study Session memorandum for the project schedule.

Consequences of Noncompliant Housing Element

Under State law, the City must adopt a substantially compliant Housing Element by January 31, 2023. To meet that timeline, the Housing Element project team has held to an aggressive schedule. **To date, Mountain View is farther along in this process than any other jurisdiction in the County, and all but a few cities in the Bay Area.** The current schedule does not have a set Housing Element adoption date since it depends on a broad range of factors, including the timing of HCD response to the previous draft, and whether there are any additional comments. In addition, in the following sections, the City Council is provided with options that may extend the Housing Element adoption schedule. If the Council directs staff to make changes that affect the schedule, it is important to recognize the consequences of late adoption. These include:

1. **Loss of eligibility for applying for grants.** There are several grants that are not available to the City if the Housing Element is out of compliance. These include Prohousing Designation (which would give the City preference for a range of funding opportunities), Infill Infrastructure Grants, Affordable Housing and Sustainable Communities Grants, transportation grants issued through regional agencies (VTA and MTC), and the Local Housing Trust Fund. The deadline for the latter is likely in May and may provide up to \$5 million for the City's affordable housing pipeline.
2. **Limited ability to deny residential projects that provide 20% low-income units or 100% moderate-income units based on nonconformance with General Plan or zoning requirements and standards, including density or height (called the "Builder's Remedy").** There is a provision of State law that potentially gives developers an opportunity to build housing projects of any density and subject to no development standards if the City does not have a compliant, adopted Housing Element. The scope, application, and interpretation of this provision (sometimes referred to as the "Builder's remedy") of the Housing Accountability Act is not entirely clear and may eventually be determined by the courts, but developers have used it to apply for projects far exceeding otherwise-allowed density and height in some Southern California cities during the period the cities did not have a certified, adopted Housing Element.
3. **A requirement to add programs or language in the Housing Element for recent State laws that take effect in 2023.** State legislation adopted in 2022 will not take effect until 2023. One such statute is Assembly Bill (AB) 2339, which relates to requirements for emergency shelters. Although these regulations are applicable regardless, they only require the Housing Element to be amended consistent with the regulations if a jurisdiction submits a

Draft Housing Element to HCD 90 days after they take effect (March 31, 2023). Therefore, if the City's Draft Housing Element is submitted to HCD after March 31, staff will have to spend additional time to review State legislation requirements and add them to the Draft.

Environmental Planning Commission Study Session, November 16, 2022

On November 16, 2022, the Environmental Planning Commission (EPC) reviewed the Revised Draft Housing Element and discussed the questions in this Study Session memorandum. Their recommendations are included later in this Study Session memorandum. In addition, the EPC discussion included the following:

- Programs—Various EPC members discussed revisions, including:
 - Prioritizing programs supporting affordable multi-family housing development earlier in the Sixth Cycle such as Program 1.3 (Review and Update Ordinance Precise Plans Residential Standards) and 1.4 (Religious and Community Assembly Sites for Housing) before 1.7 (Monitor and Promote ADUs, Junior ADUs, and SB 9 Developments) and 2.2 (Pilot ADU and SB 9 Incentives Program); and
 - Increasing density of the sites in Program 1.4 to above the recommended densities of approximately 30 to 40 dwelling units per acre. Others felt that with State Density Bonus law and the City's NOFA process, the densities achieved on these sites could be at least 80% above the base density and did not recommend a change.
- Alternate program—A couple of EPC members discussed adding the R3 and Displacement Response projects to the alternate programs. However, the majority of EPC members noted that this would reduce the City's flexibility because it would commit the City to a timeline.

Ultimately, the EPC did not recommend any revisions to the Draft Housing Element.

No one from the public spoke at the meeting. However, two written items of correspondence were received (Attachment 4—Public Comments for EPC Meeting). One recommended adding density to downtown. The other had various concerns, including concerns about the likelihood of inventory sites to redevelop and timing/metrics of programs, especially related to alignment with State law, SB 9 subdivisions, parking requirements, the Park Land Dedication Fee, development review process, and neighborhood engagement.

DISCUSSION

Recommended Changes in Response to HCD Comments

The City is required to address HCD comments before HCD will certify the Housing Element as substantially in compliance with State law, though the comments are structured to give the City flexibility in how they are addressed. Attachment 5 is the Response to HCD Comments Letter, which includes page references to where the changes were made in the red-lined Draft Housing Element and a list of anticipated corrections since the publication of the Second Housing Element.

Most changes were requests for more information or clearer analysis, such as evaluation of past programs, status and deed restriction of pipeline units, cumulative impact of government constraints, review processes, etc. These requests were responded to in the revised draft that is attached but will not be further summarized in this report. Rather, this report will focus on substantive issues, such as the sites inventory revisions, the AFFH analysis of the sites inventory, and (in the next section) program revisions.

Recommended Changes to Sites Inventory

Several changes were made to the sites inventory to respond to HCD comments, better support the analysis of nonvacant sites, and increase the City's buffer of sites above the minimum to meet its RHNA requirement:

- Pipeline Projects—Units that had not received a final certificate of occupancy as of June 30, 2022 were added to the inventory (including 1720 Villa Street, 2580 California Street, and 950 West El Camino Real). Initially, these projects were not reflected in the Sixth Cycle RHNA; however, HCD directed staff to include pipeline projects that have not received their final Certificate of Occupancy by the start of the projection period (June 30, 2022). The RHNA is not additive between cycles and the RHNA projections are based on the number of units that have received a Certificate of Occupancy at the start of the projection period. Therefore, even if a project received their building permit and was counted as a unit built during the Fifth Cycle, it should also be counted to the Sixth Cycle allocation.

As noted later in this discussion, Table 1 provides the updated sites inventory, including these units, as required to be counted per direction from HCD. Additionally, Table 2 shows the sites inventory total without these units for informational purposes as a comparison.

- Additional narrative was provided justifying the site selection based on the City's record of developing housing on nonvacant sites.
- Based on the high occupancy rates and large numbers of tenants, more narrative was provided regarding the large shopping centers in the inventory and the possibility of their

redevelopment. In addition, these centers were “discounted” by 80% to further acknowledge the viable existing uses.

- Two sites were added to the inventory:
 - 1250 Grant Road, the Nob Hill site in Grant Park Plaza. The age of this structure was previously inaccurately identified as 2005, but it was actually built in 1971 (which met the City’s criteria for inclusion).
 - 1500 North Shoreline Boulevard, the Century Theatre in North Bayshore. This site was not previously included because it was not clear what the property owners intended to do with the site. However, staff has met with the owners several times over the last few months, and the owners have expressed interest in constructing housing. Per HCD Housing Element guidelines, because this is such a large site, most units cannot be counted to low or moderate income, but the City can count 300 units to those categories (which accounts for 15% of the roughly 2,000 units that may be built there).
- New submitted applications were added, most significantly the project at 685 East Middlefield Road, which includes 828 units, including 138 lower-income units.
- Removal of 2690 West El Camino Real. The property owner submitted a letter right before the November 16 EPC meeting indicating they are maintaining the existing use and have applied for planning entitlements to improve the property. This will reduce 77 units from the low-income units. The revised Draft presented to EPC and submitted to HCD does not currently reflect this. Unless the Council directs otherwise, this site will be removed from the inventory consistent with Council direction on other properties that have requested removal.

Staff has reviewed draft language regarding the updated nonvacant site methodology with HCD staff, who expressed support. While this is not final approval of the inventory by HCD, it is a promising outcome and provides some confidence that additional rezonings will not be required.

The updated sites inventory is shown below in Table 1. The new buffers are 30%¹ on low-income units and 16% on moderate-income units. Though these are lower than the previous draft and

¹ The tables below do not reflect the removal of 2690 West El Camino Real. If it is removed, the new low-income buffer is 28%.

the moderate-income buffer is lower than staff was targeting, it is still a very healthy buffer for several reasons:

- The City has a very large pipeline of units under review, approved, and under construction, and there is relatively low risk that the pipeline sites will redevelop at significantly fewer low- or moderate-income units than proposed. After removing the pipeline and ADUs, the buffers on the remaining RHNA are 72% (lower income) and 23% (moderate income).
- If new development reduces the moderate-income capacity below the RHNA, lower-income sites can be converted to moderate-income sites through the annual reporting process. Therefore, a more accurate calculation of the buffer would combine the two incomes, resulting in a buffer of 26%. This may not apply in the reverse (from moderate- to lower-income) because there are additional requirements for lower-income sites.

Table 1: Site Inventory

	Low- Income Units	Moderate- Income Units	Above Moderate- Income Units	Total Unit Capacity
Sixth-Cycle RHNA	4,370	1,885	4,880	11,135
Pipeline Projects				
<i>Approved/Under Construction</i>	509	247	3,186	3,942
<i>Proposed Projects</i>	1,992	252	5,232	7,476
<i>No Rezoning Required</i>	1,884	252	5,232	7,368
<i>Rezoning Required</i>	108	0	0	108
Subtotal	2,501	499	8,418	11,418
RHNA Remaining	1,869	1,386	-3,538	-283
Opportunity Sites				
<i>Developable Sites</i>	3,127	1,654	1,484	6,265
<i>ADUs</i>	48	38	10	96
Subtotal	3,175	1,692	1,494	6,361
RHNA Remaining	-1,306	-306	-5,032	-6,644
Total Unit Capacity	5,676	2,191	9,912	17,779
Buffer	30%	16%	103%	60%

As discussed earlier, Table 2 below shows the sites inventory without the roughly 1,500 pipeline units that were counted towards the Fifth Cycle under “permits issued” and in the Sixth Cycle for units that did not receive “Certificates of Final Occupancy” before June 30, 2022.

**Table 2: Not Including Pipeline Projects
 (included in the Fifth and Sixth Cycles—informational)**

	Low- Income Units	Moderate- Income Units	Above Moderate- Income Units	Total Unit Capacity
Sixth-Cycle RHNA	4,370	1,885	4,880	11,135
Pipeline Projects				
<i>Approved/Under Construction</i>	422	229	1,910	2,561
<i>Proposed Projects</i>	1,992	252	5,232	7,476
<i>No Rezoning Required</i>	1,884	252	5,232	7,368
<i>Rezoning Required</i>	108	0	0	108
Subtotal	2,404	481	7,142	10,037
RHNA Remaining	1,956	1,404	-2,262	1,098
Opportunity Sites				
<i>Developable Sites</i>	3,127	1,654	1,484	6,265
<i>ADUs</i>	48	38	10	96
Subtotal	3,175	1,692	1,494	6,361
RHNA Remaining	-1,219	-288	-3,756	-5,263
Total Unit Capacity	5,589	2,173	8,636	16,398
Buffer	28%	15%	77%	47%

Recommended Changes to AFFH Analysis of Sites Inventory

HCD requested analysis and data supporting the Draft Housing Element’s conclusions that lower-income units in the site inventory were not concentrated in areas of the City. Specifically, HCD requested analysis of the distribution of the sites inventory relative to existing patterns of opportunity, racial segregation, or other AFFH concerns. HCD informally reviewed these data and methodology and expressed general support.

North Bayshore was excluded from this analysis, even though it is the City’s only low-resource census tract, according to the State’s Opportunity Index maps. There are several reasons for this, which ultimately relate to how special a case it is:

- North Bayshore contains the City’s highest concentration of high-paying jobs, which constitutes significant economic opportunity for the residents of this neighborhood.
- The number of existing units in North Bayshore is less than 10% of the expected number of units, which will be predominantly market rate for above-moderate incomes. This means the demographics of the area today do not represent the expected demographics in the near future.

- The North Bayshore Precise Plan and North Bayshore Master Plan both contain robust implementation plans to improve access to schools, open space, daily goods and services, and public transit, increasing opportunities for the existing and future residents.

After removing North Bayshore, the remaining lower-income units in the sites inventory (including pipeline projects) were compared to the existing distribution of units in the City along a range of AFFH metrics, including nonwhite population, incomes, opportunity areas, and education. These data are shown below in Table 3.

Table 3: AFFH Analysis of Site Inventory

AFFH Metric	Existing Units	Lower-Income Units in Site Inventory
Racial and Ethnic Composition		
Less than 55% Nonwhite	23%	4%
55%-65% Nonwhite	48%	74%
65% or more Nonwhite	29%	21%
Income Composition		
Less than 35% Low-/Moderate-Income	49%	54%
35% or higher Low-/Moderate-Income	51%	46%
Opportunity Index		
Highest Resource	41%	52%
High Resource	45%	43%
Moderate Resource (rapidly changing)	14%	5%
Low Resource	0%	0%
Education Domain Score		
Less than 80%	49%	34%
80% or higher	51%	66%

The data in Table 3 show the following, which reflect that the City’s Housing Element is not concentrating new lower-income housing in low-resource or segregated neighborhoods:

- Lower-income site inventory units are more weighted to areas with more higher-income households and fewer moderate- or lower-income households.
- Lower-income site inventory units are more weighted to the highest resource opportunity areas than high- or moderate-resource areas.
- Lower-income units are more weighted to areas with higher education domain scores than lower education domain scores.

The race and ethnicity data is more nuanced, however. The lower-income units are weighted toward areas that are 55% to 65% nonwhite and away from areas that are less than 55% nonwhite. This reflects the few opportunities for new housing south of El Camino Real and near downtown. However, they are also weighted away from areas that are more than 65% nonwhite, meaning that the sites are not concentrated in areas of the highest racial segregation. In addition, the Draft Housing Element includes new programs and enhances previous programs that further encourage development in areas that are less than 55% nonwhite, such as by promoting SB 9 and ADU development through design resources, a pilot financial support program, and subdivisions that can help make these projects more economically feasible.

EPC Recommendation: The EPC did not recommend any revisions to the sites inventory.

Recommended Changes to Programs

HCD provided comments requiring Housing Plan modifications mainly to:

- Provide more detail on quantifiable outcomes and desired achievements (such as including desired heights and densities regarding housing on religious and community assembly sites);
- Prioritize certain programs earlier in the Sixth Cycle (such as the process streamlining program);
- Link how programs address fair housing issues and specify how they are meaningful to overcome identified patterns and trends of inequity (such as the Multi-Family Inspections and Code Enforcement programs); and
- Address comments received by HCD from members of the public.

To address the comments, the latest Housing Plan is presented in a new format to accommodate the detail added for each program. In addition, several new programs were added based on Council direction. The following two tables highlight substantive changes since the last Council meeting and the first Draft Housing Element was submitted to HCD in July. These include:

- **Newly Added Programs**—Several new programs were added based on Council direction at the Study Session in June 2022. At that time, staff had noted that programs that needed additional review would not be included in the first draft to be submitted to HCD. The review has been completed, and the programs are in the second draft. Other programs are added based on comments received from HCD.
- **Modified Programs**—Here, programs are modified to address HCD comments.

Other changes in the redlined Housing Element are not substantive and will not be summarized or discussed in this Study Session memorandum.

Where programs address public comments, they are noted below. A comprehensive list of comments and staff responses are included in Attachment 6.

Newly Added Programs

Description of New Program	Source
1.2: Reduced Parking for Affordable Housing Often, projects are approved with reduced parking through studies. Establishing reduced parking standards will streamline review of 100% affordable housing development.	
Codifies reduced parking for affordable housing projects based on precedent reductions, Transportation Demand Management (TDM), and other analyses and streamlines affordable housing review, which often require discretionary parking reductions.	HCD and raised in public comments.
1.6: SB 9 DUO Subdivisions Through State law, single-family properties can subdivide once through SB 9. To increase home ownership opportunities, SB 9 DUO projects can propose condo mapping as part of the development, providing subdivisions of up to four units.	
Amend Zoning and Subdivision ordinances to allow SB 9 DUO subdivisions.	Council and raised in public comments.
2.2: Pilot ADU and SB 9 Financial Incentives Program To increase opportunities for additional density on single-family sites, the City will develop a pilot funding program.	
Develop opportunities for low-income households to access funding and resources to develop ADUs/SB 9 projects.	HCD, Council, and raised in public comments.
4.6: Partnerships with Employers Find opportunities to communicate and collaborate with employers to address jobs-housing balance improvements.	
Meet with and survey employers on opportunities and constraints for work force housing.	Council.
Create a legal land use framework for short-term employee housing.	Council.

Modified Programs

Description of Modification	Source/Response
1.1: Zoning Ordinance Update for Consistency with State Laws Required Zoning updates as new State laws become applicable. This program previously included a broader range of zoning amendments which were moved to 1.2 and 1.3.	
Added various State requirements to amend the Zoning Ordinance to address residential care homes, reasonable accommodation, and rezoning for remaining site(s) on the inventory without consistent zoning.	HCD.
1.3: Review and Update Ordinance and Precise Plan Residential Standards Updates that are not required by State law but would improve staff implementation and streamline processes to address governmental constraints. Previously in 1.1.	
Study live-work as an allowed residential use in viable locations.	Council.
Update standards and definitions in Zoning Ordinance and Precise Plans that constrain allowed density.	HCD and raised in public comments.
1.4: Religious and Community Assembly Sites for Housing Create opportunity for affordable housing on religious and community assembly sites that are located throughout the City and typically in existing high-opportunity residential areas. Previously 1.2.	
Added detail regarding heights (three stories) and densities (30 to 40 dwelling units per acre, approximately current R3 densities).	HCD.
1.7: Monitor and Promote Accessory Dwelling Units, Junior Accessory Dwelling Units, and SB 9 Developments Create added opportunities for additional density in single-family sites beyond State law by providing resources based on need through surveys, educational resources, etc. This program was previously 1.4.	
Develop and distribute promotional materials.	HCD, Council, and raised in public comments.
Create preapproved design resource to encourage SB 9 DUO/ADU/JADU development.	
2.1: Subsidize and Support Affordable Housing Programs Make funding available and develop/market support programs, particularly for underserved populations.	
Included milestone of bringing research and analysis of appropriate innovative programs to Council by end of 2024 and specify COPA/TOPA as an option.	HCD, Council, and raised in public comments.
3.2: Displacement Prevention and Mitigation Conserve and improve existing housing stock and develop strategy to prevent or mitigate displacement through various programs.	

Description of Modification	Source/Response
More quantitative outcomes provided and additional detail on antidisplacement strategies, such as right of refusal requirements, displaced resident preferences, partnerships with developers on alternative units for displaced residents, and plans for unit preservation.	HCD and raised in public comments.
4.1: Development Streamlining and Processing Revisions Review existing operational details and codified approval processes and find solutions to improve and streamline processes.	
Added development process review and related Zoning Code amendments.	HCD.
Included language about internal City coordination and improved process by allocating dedicated staff to facilitate affordable housing development.	Raised in public comments.
4.2: Federal, State, and Regional Policy Initiatives Advocate and shape legislation at regional, State, and Federal levels to improve opportunities to develop affordable housing and services.	
Lobbying State to change laws to shift impact fees from residential to office development.	Council.
Develop local revenue ballot measure to fund affordable housing, support other housing programs, and increase the feasibility of residential development if regional BAHFA measure is not implemented.	Council.
4.3: Financial Support for Subsidized Housing Examine existing and find new revenue sources to support extremely low- to moderate-income housing.	
Included increasing housing impact fees for office development and other updates to fees.	Council.

City Council Question No. 1: Does the City Council have any recommendations on the new or modified programs since the last Draft Housing Element?

EPC Recommendation: The EPC discussed various programs as noted earlier in this Study Session memorandum, such as accomplishing programs to further affordable multi-family housing (such as 1.3 and 1.4) on a faster timeline ahead of Programs 1.7 and 2.2. However, it did not ultimately recommend any changes to the programs in order to provide flexibility in the work plan.

Alternate Programs for Consideration

The City Council discussed a range of proposals for policy direction beyond what has been included in the first and second drafts of the Housing Element. There are a range of reasons why these proposals have not been in the draft, including because they have been rejected by Council at Study Sessions, they were deemed too uncertain for the Housing Element, they were partially addressed in the Housing Element, or the comments were received after the previous draft was

presented to Council. **Since this may be the final opportunity the City Council to weigh in on these questions, the following section summarizes the key proposals for Council recommendation on whether to include them in the Housing Element update.**

Additional Rezonings—General

The City has received many public comments regarding additional rezonings that the Housing Element should commit to. In addition, many comments have expressed concern about the likelihood of redevelopment of some of the sites inventory sites.

If the City Council wishes to remove sites from the sites inventory, reducing the inventory below the RHNA, the City would also need to identify new inventory sites in rezoned areas. The City would be required to rezone these areas by January 31, 2024 (or by 2026 if the Housing Element is adopted by January 31, 2023, which is likely impossible if additional areas are proposed for rezoning). Alternatively, if the Council does not wish to remove sites from the inventory, the City can identify these rezonings as programs and would have more flexibility in their implementation.

In general, the City Council should consider the following when recommending additional rezonings:

- They would increase the housing capacity of the City and allow housing on more underutilized sites.
- They would increase the site inventory buffer and/or provide opportunities to be more selective about sites inventory sites. However, based on preliminary discussions with HCD, our current sites inventory appears adequate to meet HCD requirements (though it is not certain until final approval).
- HCD generally expects upzoning programs to identify density targets, even for voluntary upzonings that are not necessary to meet RHNA (for example, they requested this information from our Religious Sites program). The City has not completed the analysis or outreach to identify specific upzoning densities.
- They would almost certainly require recirculation of the Draft Environmental Impact Report (EIR), delaying adoption by six months and adding up to \$200,000 to the budget.
- Nothing limits the City from pursuing these rezonings at any time in the next eight years, whether or not they are in the Housing Element.
- There is limited staff capacity over the next eight years. If the City Council wishes to recommend more than one rezoning, they should also prioritize them.

The following areas have been promoted in one or more comments from the public as potential rezonings for the City to consider or undertake, but there has not been any outreach or analysis to support a commitment to particular densities. In addition, these areas have not had any outreach or analysis outside the Housing Element process, unlike the R3 Zoning District, which is described below. In general, this list only includes rezonings that involve density increases or new allowances for residential. The Draft Housing Element already includes programs that reduce development standards to improve viability of existing density allowances.

- Downtown Precise Plan. The City Council has expressed interest in a comprehensive update to the Downtown Precise Plan, which could include residential density increases. No outreach or analysis has been conducted to identify unit capacity, target densities, redevelopment feasibility, or other factors that could affect residential development in the downtown area.
- Industrial Areas. Over the last 10 years, there have been several industrial-to-residential land conversions, most notably the North Bayshore and East Whisman Precise Plans, as well as some developments along Colony Street. In addition, the City prepared but ultimately did not approve the Terra Bella Vision Plan. Lastly, several industrial sites are already proposed for affordable housing in the Housing Element. While there may continue to be opportunities for conversion, the City Council may wish to consider the amount of land that should be preserved for industrial, the distance of these areas from school or neighborhood amenities, and that land costs may be kept low for affordable developers by maintaining the industrial zoning.
- Charleston Plaza (previous site of Best Buy and REI). In June, this site was presented to the City Council for discussion, and it was not directed for inclusion. In addition, there is currently an application under review to rehabilitate the buildings for R&D uses, which are allowed in the zoning district.
- Other Various Sites. Previously, Council directed staff to not include properties northeast of the Castro Street/El Camino Real intersection (“Castro Commons”) and 901-987 North Rengstorff Avenue (“Ambra”), since the proposed projects would result in trivial amounts of affordable housing inclusion in the Housing Element and would reduce opportunities for City discretion on key aspects of the projects’ designs. Alternatively, Councilmembers could identify other areas of interest to study.

If the City Council wishes to recommend committing to rezoning any of these areas, they could be added to the back-pocket list or a program with the following language:

“Adopt density increases in/at _____. Adopted densities shall be based in part on an analysis of feasible development. The process shall include outreach to

key stakeholders, analysis of constraints and existing uses that may impede development, review and development of policy goals for development (including distribution of densities or intensities, design and character, mix of uses, open space needs, and parking or TDM), and adoption of objective standards that do not constrain the increased densities.”

R3 Zoning District

This section focuses on proposed density increases in the R3 Zoning District, which received more public comment than the areas identified above. Note that the considerations at the beginning of the previous section apply to this section as well. Unlike the areas above, the City has been working on a potential R3 zoning update over the last few years. The purpose of this update is to consider form-based zoning, incentivizing stacked flats, and updated rowhouse standards. In addition, options for increasing density in R3 have also been the subject of community outreach and presented to the City Council. In November 2021, the City Council directed staff not to include the R3 Update in the Housing Element based on its uncertainty, timing, and displacement concerns.

There are many opportunities to increase density in R3, which could focus on different areas (e.g., access to transit and services or distance from lower-density neighborhoods), underutilized opportunity sites, different form/character approaches, replacement targets, or other policy goals. These different goals should be evaluated and presented to City Council before identifying or committing to target minimum densities. In addition, R3 density increases will occur on small sites through Program 1.3, which will update R3 and other zoning districts to allow at least the densities prescribed by the General Plan (small sites currently have lower maximum density in R3 zoning than in the General Plan).

If the City Council wishes to recommend committing to some increased density in R3, it could be added as a recommended program as noted below:

“Adopt higher densities on key sites or areas of the R3 Zoning District to achieve desired outcomes, such as affordable unit replacement, minimized displacement, access to transit/services/opportunity areas, or enhanced/preserved neighborhood character. Adopted densities shall be based in part on an analysis of feasible development. The process shall include outreach to key stakeholders, analysis of constraints and existing uses that may impede development, review and development of policy goals for development (including distribution of densities or intensities, design and character, mix of uses, open space needs, and parking or TDM), and adoption of objective standards that do not constrain the increased densities.”

Replacement of Rent-Stabilized Units

The Draft Housing Element includes a robust displacement mitigation program, including acquisition of existing units to support preservation and relocation, right of refusal requirements, COPA/TOPA and community land trusts, partnerships, and enforcement of current tenant-protection laws. However, the Draft Housing Element does not currently include a local replacement requirements provision, wherein developments that include demolition of existing rent-stabilized units must replace those units with new units at specified rent or area median income (AMI) levels.

As noted in the August 30, 2022 affordable housing Study Session, staff and the City's consultants are evaluating local replacement requirement options as a part of the larger displacement response framework listed above and in coordination with the R3 zoning project. Staff also plans to implement stakeholder outreach over the coming months to inform potential options that will be discussed with City Council in a Study Session on displacement response.

Based on an initial review of replacement requirements, staff has identified the following options. Many of these options involve requiring replacement units for rent-stabilized units which are currently protected under SB 330. SB 330 protections (to require replacement units) are currently scheduled to sunset in 2030. Therefore, staff recommendation on the timing will be to complete implementation of options prior to the sunset date of 2030 (regardless of whether they are included in the Housing Element). These will all require further study from an economic, legal, and land use perspective:

1. Establishing requirements to replace demolished rent-stabilized units with new rent-stabilized units. This would involve adopting an ordinance pursuant to the Ellis Act that would provide additional protections for rent-stabilized units after the expiration of SB 330, the State Housing Crisis Act of 2019.
2. Putting in place a program to designate more than 15% inclusionary deed-restricted units in new developments, potentially as an incentive and/or alternative mitigation to Option 1. Staff is still studying the legal and financial feasibility of this option.
3. Expansion of Housing Element sites inventory to include additional residential sites with existing rent-stabilized units that are likely to be redeveloped to require 100% replacement of those rent-stabilized units as deed-restricted affordable units. This may be an option per the Government Code relating to Housing Elements. Staff is still studying the legal and financial feasibility of this option. If Council pursues this option, it will require site-specific analysis and consultation with HCD. Furthermore, the sites would have to comply with what would be appropriate to include in the sites inventory. Because this requires significant further study, considering this option now would cause delay in Housing Element

adoption, but there is nothing barring the City from considering this and updating the sites inventory at a later date.

4. Displacement response programs and local replacement requirements of other cities. Staff is working with consultants to assess the feasibility of applying these options to Mountain View.

In addition to the above, staff may provide other recommendations to support displacement prevention efforts at the Study Session (such as advocating for an extension of SB 330 at the State level, developing partnerships with property owners with vacant units, and creating “displaced household” preferences for affordable housing) .

As indicated above, replacement requirements are not currently explicitly included in the Housing Element, although staff will proceed on this work per Council direction as part of the larger displacement mitigation strategy. If the City Council would like to recommend including a program in the Housing Element regarding replacement requirements, the following proposed language is recommended:

“Study, and, where appropriate and legally feasible, adopt local replacement requirements to prevent displacement upon the expiration of SB 330.”

Eliminating Parking Requirements

The Housing Element includes programs to reduce standards affecting residential development, including parking. For example:

- The TDM ordinance will provide opportunities to propose reduced parking along with provisions supporting alternative mobility; and
- Affordable housing projects will be allowed streamlined reduced parking based on previous analysis, TDM, and other factors.

Further, the City has already eliminated minimum parking requirements for multi-family residential development in North Bayshore and East Whisman. Lastly, State law now restricts the City from enforcing minimum parking regulations in the vicinity of major transit stops, such as downtown, San Antonio, and East Whisman.

Some public commenters have further requested eliminating residential parking standards altogether. This would reduce the complexity of review of residential development and would likely reduce residential development costs. It also “internalizes” the decision to provide parking to the developer’s calculation of marketability, similar to other project amenities (such as fitness rooms or swimming pools), and developers may be better than a broadly applicable standard at

responding to market changes or niche customers. In addition, reduced parking may encourage nondrivers to live in the City or encourage people in the City not to drive, which could reduce traffic and other car-related impacts. If developers choose not to build parking, it could also provide opportunities to improve project design by reducing parking-related constraints on development.

On the other hand, public comment was also received requesting that parking standards not be reduced because of the reduced quality of life for new and existing residents who would need to rely on congested street parking. In many places in the City, public parking is a free, common resource, and such resources tend to be inefficiently used, both by existing and future development. For example, near-term developers may have the incentive to build less parking until the street parking is over-capacity, creating additional construction costs for later developers as well as time and convenience costs to residents of existing and near-term development.

If the City Council wishes to recommend committing to eliminating or reducing parking requirements broadly and unrelated to TDM, the following recommended program language could be included:

“Reduce or eliminate parking minimum requirements for multi-family residential development. If reduced, set the minimum at a level that does not constrain development feasibility, for example, by setting it at or below typical amounts of parking provided in projects not subject to minimum parking standards.”

Timing of Including Alternate Programs

While City staff does not currently have absolute certainty about the approval of the Draft Housing Element by HCD, HCD staff have given positive feedback about the draft materials they have been able to review. Based on HCD feedback, the alternate programs would be optional; however, Council may wish to consider them either because they are consistent with Council policy goals, or as “insurance” that they would be implemented as part of the Housing Element.

As stated earlier (Consequences of Noncompliant Housing Element), the schedule of adoption can affect grant opportunities, developer’s rights to build large projects, and additional staff work. If Council requests new or revised programs or rezonings that require additional study in the Housing Element, such as revisions to and recirculation of the EIR, staff recommends a two-step process to:

1. Adopt a compliant Housing Element based on HCD input on the second Draft; and
2. In a second phase, review additional items that may involve recirculation of the EIR, discuss with HCD, and bring back amendments to the adopted Housing Element.

This approach has the following benefits:

1. It provides the most certainty of having a Housing Element that will meet HCD requirements.
2. It provides the best opportunity to have a compliant, adopted Housing Element as close to the January 31 deadline as possible, thereby increasing the likelihood that the City will be able to apply for and receive key grants and minimizing any possible period during which developers can prepare and submit a preliminary application to utilize the Builder's Remedy (as noted above).
3. It allows for Council and the public additional time and flexibility to weigh in on the Housing Element.

City Council Question No. 2:

- a. Does the City Council recommend adding any of the alternate programs?***
- b. If so, does the City Council wish to add them as part of the current Housing Element or as part of a future update to the Housing Element?***

EPC Recommendation: The EPC did not recommend any major revisions to the sites inventory, programs, or adding alternate programs.

Environmental Review

Due to the large scale of anticipated housing development from the RHNA, the City prepared an EIR in accordance with the California Environmental Quality Act (CEQA) requirements to evaluate the impacts on the environment that could potentially occur with the implementation of the Housing Element update.

The Draft EIR was posted from July 22, 2022 until September 6, 2022 for public review and comments. During the circulation period, the City received seven comments from individuals, organizations, and agencies and comments from the EPC during the public meeting held on August 3, 2022. The Final EIR consists of text changes made to the Draft EIR and the response to comments. It was made available to the public on November 4, 2022.

Separately, staff will bring the Housing Element-related rezonings and final Environmental Impact Report to the EPC on December 7, 2022, and for City Council adoption on January 24, 2023 since the rezonings are required to move projects forward and implement ordinance revisions to the Village Centers consistent with the General Plan.

However, if the Council wishes to include additional sites and/or programs in the Housing Element, staff would assess the appropriate level of additional environmental review and return to Council with an updated EIR along with the Housing Element at a later date. **Staff expects that major revisions to the Housing Element sites/programs could add up to six months to the schedule.**

RECOMMENDATION

That the City Council discuss and provide input on the Draft Housing Element by responding to the following questions:

1. Does the City Council have any recommendations on the new or modified programs since the last Draft Housing Element?
- 2a. Does the City Council recommend adding any of the Alternate Programs?
 - i. Programs to rezone any of the additional areas?
 - ii. A program related to the R3 Zoning Update?
 - iii. Programs referring to replacement requirements?
 - iv. A program to eliminate residential parking requirements or reduce them without TDM?
- 2b. If so, does the City Council wish to add them as part of the current Housing Element or as part of a future update to the Housing Element?

NEXT STEPS

Staff submitted the attached draft to HCD on November 18 for a formal 60-day review; however, HCD has stated that it is possible that they can provide preliminary comments before the conclusion of the 60-day review. There are a couple of scenarios for the Housing Element Update adoption hearings depending on HCD's determination of the second draft review and the level of additional work requested by Council. Staff expects the formal HCD review to conclude in mid-January 2023. If there are no major revisions to the Housing Element, EPC and City Council adoption hearings could be scheduled as early as January/February 2023. The schedule is subject to revision on Council feedback on the sites inventory, programs, and alternate programs as well as the preferred timing of including revisions as discussed earlier in this Study Session memorandum.

As noted earlier, staff will bring the Housing Element-related rezonings and final Environmental Impact Report to the EPC on December 7, 2022, and for City Council adoption on January 24, 2023.

PUBLIC NOTICING

The City Council agenda is advertised on Channel 26, and the agenda and this Study Session memorandum appear on the City's website. A meeting reminder was emailed to all persons subscribed to the Housing Element mailing list (approximately 480 people). A notice regarding the Revised Draft Housing Element and this meeting was published in the *Daily Post*.

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- Attachments:
1. Revised Draft Housing Element (submitted to HCD)
 2. HCD Comment Letter, September 29, 2022
 3. Redlined Draft Housing Element
 4. Public Comments for EPC Meeting
 5. Response to HCD Comments Letter
 6. Public Comments and Staff Responses