



CITY OF  
**PALO  
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## City Council Staff Report

**From: City Manager**

**Report Type: CONSENT CALENDAR**

**Lead Department: Planning and Development Services**

**Meeting Date: January 22, 2024**

Report #:2311-2302

### **TITLE**

Adoption of an Urgency Ordinance and an Ordinance Amending Palo Alto Municipal Code Title 18 (Zoning) Chapters 18.14 (Housing Incentives), 18.76 (Permits and Approvals), and 18.77 (Processing of Permits and Approvals) to Implement Housing Element Program 1.3 Creating By-Right Zoning Approval for Specific Housing Element Inventory Sites. CEQA Status: An Addendum to the City's Comprehensive Plan Environmental Impact Report was Prepared for the 2023-2031 Housing Element.

### **RECOMMENDATION**

Staff recommends that the City Council:

1. Adopt an urgency ordinance (Attachment A), that would be effective immediately, Amending Palo Alto Municipal Code Title 18 (Zoning) Chapters 18.14 (Housing Incentives), 18.76 (Permits and Approvals), and 18.77 (Processing of Permits and Approvals) to implement Housing Element Program 1.3 creating by-right zoning approval for specific housing element inventory sites; and
2. Adopt an ordinance (Attachment B) that would replace the urgency ordinance prior to its expiration.

### **EXECUTIVE SUMMARY**

The adopted 2023-2031 Housing Element (Housing Element) includes 122 implementation programs. Implementation of Program 1.3, Sites Used in Previous Housing Cycle, would establish a non-discretionary by-right zoning review process for eligible Housing Element opportunity sites reused from previous Housing Element cycles. The Program is required to be implemented by January 31, 2024, per the adopted Housing Element and state law. The urgency ordinance (Attachment A) and permanent ordinance (Attachment B) are required to be adopted in order to meet the required timeline. The ordinances, which contain the same text,

establish a new by-right review process for eligible sites in the Palo Alto Municipal Code (PAMC).

The Planning and Transportation Commission (PTC) reviewed the permanent ordinance on December 13, 2023 and unanimously recommended approval.

These changes were inadvertently left off the recent Housing Element implementation ordinance approved by the City Council late last year. This ordinance only applies to 16 properties included in the adopted Housing Element and does not modify development potential; only the process by which development is reviewed.

## **BACKGROUND**

The Housing Element is one of seven mandatory elements that must be included in Palo Alto's Comprehensive Plan. This element evaluates housing needs and issues in the City, and contains goals, policies, programs, and implementing objectives that the City uses to guide actions related to housing. The City Council adopted the Housing Element on May 8, 2023. The State Department of Housing and Community Development (HCD) provided a letter on August 3, 2023, requesting additional revisions to the Housing Element. Staff anticipates the Housing Element will be brought to the City Council for re-adoption to address HCD's requested revisions in early 2024. More information about the Housing Element can be found at the project website: [www.paloaltohousingelement.com](http://www.paloaltohousingelement.com).

The adopted Housing Element includes 122 implementation programs with several key programs needing to be completed by January 2024; the implementation of Program 1.3, Sites Used in Previous Housing Cycle, is one of those programs that must be completed. Council took action on November 13, 2023 adopting an ordinance implementing Housing Element programs 1.1A and 1.1B (rezoning housing inventory sites) and creating a new chapter of the PAMC. Program 1.3 implementation was inadvertently omitted from that ordinance.

## **Ordinance Review Process**

To implement Program 1.3 by the January 31, 2024 deadline, staff prepared an urgency ordinance concurrently with the permanent ordinance. With staff's recommended action, the urgency ordinance will become effective immediately for 45 days and the permanent ordinance will go into effect prior to the expiration of the urgency period.

## **PTC Review**

On December 13, 2023 the PTC recommended (6-0) City Council adoption of the permanent ordinance to implement Housing Element Program 1.3. The PTC was supportive of the proposed by-right application review process that will comply with state law, while also allowing the Director to refer projects to the Architectural Review Board (ARB) for one Study Session. The PTC discussion was minimal and included some clarifying questions.

## **ANALYSIS**

The following section outlines the state law requirements for by-right development and the existing and proposed application review processes.

### **By-Right State Law for Recycled Sites**

Housing Element Program 1.3 implements a requirement of state law that requires a “by-right”<sup>1</sup> approval process for certain housing projects on housing opportunity sites that were included in a prior housing element(s).

The attached ordinance (Attachment A) would provide a new mechanism for by-right zoning approval of qualifying projects on these “recycled” Housing Element sites. Pursuant to state law, jurisdictions cannot require a discretionary approval process<sup>2</sup> for projects that utilize certain Housing Element inventory sites that were used in prior Housing Elements cycles and designated as meeting the City’s lower income regional housing needs allocation. Additional criteria apply and include:

1. Qualifying sites may be non-vacant sites used in one previous housing element cycle, *or* vacant sites included in two previous housing element cycles;
2. Projects must provide 20% of its total units to lower income households; and
3. Sufficient water, sewer, and other dry utilities available and accessible.

In total, 16 sites in the adopted Housing Element meet criterion 1, above. Applicability of the by-right provision for these sites depends on a project specific application and demonstrated compliance with Criteria 2 and 3. As defined in state law, by-right zoning approval means the City cannot require a conditional use permit, planned unit development permit, or other discretionary local government review, or any approval that would constitute a “project” under the California Environmental Quality Act (CEQA).

In addition to these procedural requirements, state law requires that recycled sites be zoned to require a minimum density of 20 dwelling units per acre, while allowing at least 30 dwelling units per acre. State law also requires density and development standards that would allow development of at least 16 units per site. The recently adopted ordinance implementing Housing Element Program 1.1 satisfied all of these density and development standards requirements.

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<sup>1</sup> Per Government Code § 65583.2 “Use by right” means “local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a ‘project’ [under CEQA].”

<sup>2</sup> Projects requiring subdivision would not be eligible for by-right approval and still be subject to all requirements of the Subdivision Map Act and the City’s subdivision ordinance, including any discretionary review required thereunder.

### Existing Development Review Process

Under the City’s current development review process, multifamily developments are subject to the architectural review process set forth in PAMC Section 18.77.070. This allows the ARB to make a recommendation to the Planning and Development Services Department Director (Director). There is also an alternative streamlined review process (PAMC Section 18.77.073) for eligible mixed-use and multi-family projects which utilize the objective design standards outlined in PAMC Chapter 18.24. This streamlined process allows applicants with compliant projects to go through a staff level review and attend one study session with the ARB prior to the Director’s decision.

**Table 1: Key Differences in the Multifamily Development Review Process**

	Existing		Proposed
	Standard Review (PAMC 18.77.070)	Streamlined Review (PAMC 18.77.073)	By-Right Review (PAMC 18.77.074)
ARB Purview	Review & recommendation required for projects not compliant with Objective Standards	Study Session review following a staff-level review of projects compliant with Objective Standards	Study Session review, if referred by the Planning Director, following a staff-level review of projects for Objective Standard compliance
CEQA	Applicable	Applicable	Not Applicable
Decision	Planning Director	Planning Director	Planning Director

### New By-right Review Process for Eligible Sites

The proposed ordinance outlines a new ministerial approval process for by-right projects which includes staff review for compliance with the City’s objective standards in the Comprehensive Plan, Specific Plans, Area Plans, PAMC (including Section 18.77.074), and other rules and regulations. At the discretion of the Director, applicants may also have their projects reviewed by the ARB at a study session. No CEQA review would be associated with developments eligible for the by-right process. The Director would make the final staff level decision on by-right projects. This process is similar to how 525 East Charleston Road was processed under AB 2162.

The attached ordinance makes minor changes to Chapters 18.76 (Permits and Approvals) and 18.77 (Processing of Permits and Approvals) to clarify which projects are subject to streamlined review and ministerial review. The ordinance also clarifies that such projects are required to obtain a planning entitlement prior to issuance of a building permit, even if they are only subject to ministerial review.

### FISCAL/RESOURCE IMPACT

This action has no fiscal or resource impact.

**STAKEHOLDER ENGAGEMENT**

Notice of the ordinance will be made available online, posted on the public noticing kiosk at King Plaza, City Hall, and published in the Daily Post at least 10 days in advance of the meeting.

**ENVIRONMENTAL REVIEW**

The adoption of the ordinances would implement Program 1.3, Sites Used in Previous Housing Cycle, of the adopted Housing Element. An Addendum to the Comprehensive Plan Environmental Impact Report (EIR) was prepared to analyze the potential environmental impacts of the Housing Element and the sites inventory contained therein. This environmental analysis under CEQA includes all components of the Housing Element, including implementation of Program 1.3 and the associated text amendments.

**ATTACHMENTS**

Attachment A: Urgency Ordinance to Implement Housing Element Program 1.3 Creating By-Right Zoning Approval for Specific Housing Element Inventory Sites

Attachment B: Ordinance to Implement Housing Element Program 1.3 Creating By-Right Zoning Approval for Specific Housing Element Inventory Sites

**APPROVED BY:**

Jonathan Lait, Planning and Development Services Director