

August 2, 2024

VIA E-MAIL AND
FIRST CLASS MAIL

California Department of Housing
and Community Development
P.O. Box 278180
Sacramento, CA 95827-8180

Irvin Saldana
Housing Specialist
California Department of Housing and
Community Development
Email: Irvin.Saldana@hcd.ca.gov

Melinda Coy
Proactive Housing Accountability Chief
California Department of Housing and
Community Development
Email: Melinda.Coy@hcd.ca.gov

Re: City of Palo Alto Housing Element -- Comments and Concerns

Dear Mr. Saldana and Ms. Coy:

We, again, respectfully take this opportunity to provide input, comments, and objections to the latest version of the proposed new “2023-2031 Housing Element” (“Housing Element”) submitted by the City of Palo Alto (“City” or “Palo Alto”) to the Department of Housing and Community Development (“HCD”) on July 26, 2024. As mentioned in our July 2, 2024 letter to you and HCD, we represent many members of the Palo Alto community who are concerned about critical errors and flawed assumptions that undercut certain aspects of the proposed new Housing Element. Those errors will preclude the City from being legally-able to provide the housing opportunities envisioned by the proposed Housing Element as it specifically relates to housing development on parking lots (Program 1.4) part of the Downtown Parking Assessment District (“Assessment District”). Assessment District parking lots, four of which are shown on Figure 3-8 of the Housing Element, were acquired and are maintained by Assessment District funds, paid for based on agreements regarding the purpose and use of the assessments, i.e., to acquire and provide these parking lots for the specific and limited use as parking facilities serving Downtown Palo Alto. The City is not free to now disregard those agreements or its duty to act as a fiduciary to those who paid into the Assessment District.

Attached as **Exhibit 1** is our July 2nd letter, which discusses several comments and objections to Housing Element Program 1.4, all of which are still fully relevant to the new housing element recently submitted by the City and entirely incorporated within this letter. In addition to the July 2nd letter, we submit this current letter to include additional comments related to the most updated version.

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HCD stated in its July 9, 2024 letter that the City's "housing element adopted May 8, 2023, and received for review on May 10, 2024 along with technical modification received on July 9, 2024" needed "additional revisions" to substantially comply with State Housing Element Law.

One such required revision, specifically related to Program 1.4 (City-Owned Land Lots), states:

While the element commits to releasing a request for interest and selecting a development partner for 50 units in 2024, the element must include a schedule of actions to facilitate the development of city-owned lots for the remaining 240 units on city-owned sites. A schedule of actions may include coordination with appropriate entities, including potential developers, disposition of the land, zoning, funding, facilitating other entitlements, and issuing permits. Lastly, the program should identify and make alternative sites with zoning of equivalent capacity and density by a specified date if sites are not made available by a date early in the planning period.

The City wholly fails to make the substantive revisions to Program 1.4, as required by HCD's letter. In fact, the City barely adds three sentences. Those superficial additions do not commit the City to any course of action and merely purport to call for the City to "remove these sites and identify alternative" only if --by the City's sole and exclusive discretion -- the City itself somehow "determines" that it is not on track (a vague metric) to meet the required housing objectives by halfway through the planning period.

These superficial "further revisions" fail to meet the HCD's specific requests and fail to comply with Housing Element Law. There is no "schedule" of actions to confirm and commit the availability of the purported "city owned lots" nor any enforceable commitment to do so.

More significantly, HCD's letter requires Program 1.4 to "identify and make alternative sites with zoning of equivalent capacity and density by a specified date." The City does not provide either a specific date or identify any potential "alternative sites" that will allow for such capacity in the likely event that these parking lots are not be available in the planning period.

We accordingly request that you carefully scrutinize the errors discussed in this and our July 2nd letter, and determine that the Housing Element fails to comply with requirements of the Housing Element Law, to the extent that it relies on the threatened conversion of the restricted Downtown

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parking facilities to housing uses. Those provisions and unfounded assumptions regarding the potential housing use of such sites should be removed from the Housing Element Site Inventory.

Sincerely,

RUTAN & TUCKER, LLP



David P. Lanferman

Attachment:

Exhibit 1 – Letter dated July 2, 2024

cc: Molly Stump, City Attorney
Jonathon Lait, Planning Director

Exhibit 1

July 2, 2024

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Re: City of Palo Alto Housing Element -- Comments and Concerns

Dear Mr. Saldana and Ms. Coy:

We respectfully take this opportunity to provide input, comments, and objections to the latest version of the proposed new “2023-2031 Housing Element” (“Housing Element”) submitted by the City of Palo Alto (“City” or “Palo Alto”). We represent many members of the Palo Alto community who are concerned about critical errors and flawed assumptions that undercut certain aspects of the proposed new Housing Element. Those errors will preclude the City from being legally-able to provide the housing opportunities envisioned by the proposed Housing Element.

We understand that the City’s 2023-2031 Housing Element (“Housing Element”) is currently under review by the California Department of Housing and Community Development (“HCD”). We respectfully call your attention to the fact that portions of this new version of the Housing Element erroneously propose to unlawfully “convert” existing parking facilities to future housing uses (e.g. Program 1.4) and the Housing Element erroneously identifies these legally-restricted parking facilities as potential housing sites. That is misleading and inconsistent with the Housing Element Law.

We and our clients have previously informed the City of such concerns on several occasions throughout the process of developing the amended Housing Element, but these objections have not been addressed by the City. Our clients include numerous businesses, property owners, residents, merchants and others dedicated to preserving and improving the vitality of the City’s downtown core areas – including efforts to ensure that Palo Alto successfully provides its fair share of regional housing needs at all levels of affordability -- but this is not the way.

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Specifically, while we appreciate and support the City's efforts to address its responsibilities in meeting regional housing needs, such efforts cannot come at the expense of violating the City's commitment to maintaining the existing Downtown parking facilities, paid for and maintained by assessments on private Downtown property owners and businesses, including our clients. As we have repeatedly pointed out to City officials, the City does not have the unfettered right or legal authority to convert any of the existing Downtown parking lots. The acquisition and maintenance of those facilities is funded by assessments approved by property owners and businesses through a distinct Downtown Parking Assessment District ("Assessment District"). The use of those properties is restricted to parking to serve the Downtown community.

The City's proposed new Housing Element now contemplates unilaterally converting one or more of those Downtown parking facilities into sites for new housing – in disregard of decades of City commitments and Downtown planning enactments. The City may not unilaterally transform those properties into housing sites -- as it now proposes to do through Housing Element Program 1.4. Notably, the City's proposed Housing Element now refers to these sites as "City-Owned Parking Lots" -- but that is inaccurate and misleading.

To the contrary, the parking facilities were acquired through and for the Assessment District. The City acts only as trustee for the Assessment District – and has **fiduciary responsibilities** in its role of maintaining and administering the parking lots acquired by the Assessment District, as a fiduciary for the property owners and businesses in the Downtown area who formed and funded the Assessment District. The existing Downtown parking facilities were paid for by several hundred property owners who have been paying assessments for many years, based on commitments inducing the creation of the Assessment District and agreements regarding the purpose and use of the assessments to be undertaken, i.e., to acquire and provide these parking lots for the specific and limited use as parking facilities serving Downtown Palo Alto. The City is not free to now disregard those agreements.

Indeed, the City has never sought – much less secured – the consent or approval to deviate from the express and limited use of these sites for parking purposes. Therefore, the City is acting in excess of its legal authority and in derogation of the rights of the Assessment District assessed owners by including these parking facilities as future housing sites in the proposed new Housing Element. We have previously informed the City of the limitations as to the permissible use of these sites in letters to the City Council dated December 11, 2023, attached hereto as **Exhibit A**, and April 15, 2024, attached hereto as **Exhibit B**.

It would be misleading and imprudent for the City to base any portion of its new revised Housing Element on the erroneous assumption that any of the Assessment District parking lots can be unilaterally transformed into potential "housing sites." It would further be imprudent, and a violation of Housing Element Law, for HCD to certify the Housing Element, based on the City's

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improper designation of those sites as potential housing opportunities in an effort to meet the City's RHNA obligation.

Government Code § 65583.2(g)(1) requires the Housing Element to "specify the additional development potential for each [nonvacant] site" and "consider," among other factors, "any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site." The City's proposed new Housing Element does not provide for such analysis and the City has failed to discuss with relevant stakeholders its plan regarding these sites.

Moreover, when a city "rel[ies] on nonvacant sites . . . to accommodate 50 percent or more of its housing need for lower income households," (as Palo Alto does here with 80% [Housing Element, p. 3-28]) then each existing use is "presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued." (Gov. Code § 65583.2(g)(2).) The City and proposed Housing Element has not made such findings.

We accordingly request that you carefully scrutinize these errors in the City's current proposed Housing Element, and determine that the Housing Element fails to comply with requirements of the Housing Element Law, to the extent that it relies on the threatened conversion of the restricted Downtown parking facilities to housing uses. Those provisions and unfounded assumptions regarding the potential housing use of such sites should be removed from the Housing Element Site Inventory.

Thank you for consideration of these concerns.

Sincerely,

RUTAN & TUCKER, LLP



David P. Lanferman

Attachments:

Exhibit A – Letter dated December 11, 2023

Exhibit B – Letter dated April 15, 2024

Exhibit A

December 11, 2023

VIA E-MAIL

Honorable Mayor and Members of the City Council
CITY OF PALO ALTO
250 Hamilton Avenue
Palo Alto, CA 94301

Re: **City Council Meeting – December 11, 2023 – Agenda Item #8:**

“Direction to Pursue New Parking and Refined Proposals for Housing in the University Avenue Downtown, etc.”

Comments, Questions, and Objections

Honorable Mayor and Members of the City Council:

We understand that this Agenda Item requests that the City Council “provide direction” to Staff with regard to two separate items:

(a) resuming efforts to provide a new parking structure at Lot D (formerly known as the “Downtown Parking Garage Project”), and

(b) the possibility of pursuing more detailed proposals for potential construction of new “affordable housing” projects on one or more of the existing surface parking lots located in the University Avenue downtown area.

While it is gratifying that the **first Item** confirms that City Staff recognizes the importance and need for the creation of more new off-street parking opportunities to serve the Downtown community, including a Downtown Parking Garage, the **second Item** on the Agenda – seeking guidance for the possible conversion and loss of existing parking lots – is very problematic. This letter highlights just a few of the more obvious failings and errors of that proposal.

On behalf of many merchants, business, and property owners in that Downtown area, including many who have been paying assessments for the acquisition, improvement and maintenance of those parking facilities for decades, we take this opportunity to call your attention to some of the many flaws, conflicts, and dangers posed by that extraordinary proposal. The proposal to replace vital Downtown parking facilities with housing is inconsistent with many land use plans and policies, and is in disregard of the rights and interests of the Downtown community served by the existing parking lots.

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The City's laudable and long-overdue efforts to provide suitable sites for housing, including "affordable" housing, should not be pursued at the expense of demolishing the critically-needed existing public parking resources strategically located throughout Downtown to serve the community. The recent approval of many curbside "parklets" has removed more than 100 previously-available parking spaces. The City's planned "University Streetscape Project" will also result in a reduction of the parking supply in Downtown. Even the Staff Report (p. 6) acknowledges the continuing critical need for adequate parking in the Downtown: "[D]emand for parking in the downtown has increased since the COVID-19 pandemic...."

Accordingly, with regard to the possibility of pursuing proposals to destroy one or more existing parking lots in speculative pursuit of a few, poorly-located, incredibly expensive, affordable housing units, we would respectfully urge Council to provide Staff with direction to "go back to the drawing board" and to come back with more reasonable, viable, and lawful plans consistent with the City's Comprehensive Plan and other controlling plans and policies.

Among the questions and problems most readily apparent from the Staff Report on this Item, are the following:

1. There Is No Apparent Parking Strategy or Plan for Downtown. When the Council suspended work on the former Downtown Parking Garage back in February 2019, the Council also "directed Staff ... to return ... with a broader parking management strategy and options to meet Downtown parking needs." (Staff Report, p. 2). Now, nearly five (5) years later, the City still has no strategy or plan "to meet Downtown parking needs." The second Item on this Agenda appears to be a proposal for nothing more than piecemeal action aimed solely at creating a few spots of misplaced housing at the expense of the existing Downtown community – and largely ignores "Downtown parking needs."

Far from presenting a coherent parking strategy for Downtown, the Staff's proposal for the destruction of the critically-needed existing Downtown parking facilities and imposition of new, non-conforming, high-density residential structures in their place is nothing more than narrowly-focused, uncoordinated, and patchworked "urban planning." The City's recent quest for more opportunities for residential development, though welcomed, should not become an excuse for shattering the character of the Downtown community or destroying the economic viability of the Downtown, which is highly-dependent upon the availability of adequate parking throughout the community in order to provide convenient access for vehicles and people.

As observed by a recent article by the American Planning Association offering guidance for municipal parking strategies:

Parking is not an island in itself; it's one element of a transportation program. On-street and off-street parking, transit, walking, biking, and curb management must

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be connected to plan for how many vehicles — and more importantly people — are provided access.¹

2. No Outreach to Downtown Stakeholders. Thus far, there has been little or no public outreach to the Downtown community regarding the possible loss of the existing parking lots — even though those facilities have been paid for, in large part, by the business and property owners and the University Avenue Parking Assessment District over many years. Since this idea has reportedly been under consideration by Staff at least since December 2021, the lack of such public outreach over the past two years is of concern and tends to alienate those who stand to be most impacted by such radical transformation of the Downtown area.

3. No Net Parking Loss: The City’s own proposed new **Housing Element** (not yet approved by the California Department of Housing & Community Development) expressly requires “no net loss” of existing parking. Program 1.4(a) would ostensibly allow existing City surface parking lots to be redeveloped to “replace and add” parking while creating new housing opportunities, including affordable housing. Lot T reportedly provides 51 parking spaces at present, and the new housing structures would increase the need for parking in close proximity to the proposed new housing, at least 40 new additional spaces if a 1.0 space/unit ratio were to be applied (the City’s standard requirement for all multifamily residential). Where and how could at least 91+ new public parking spaces be provided in Downtown? The Municipal Code generally requires that any “off-site” parking required in connection with a development project must be at least within 500 feet of the project site.

4. Location, location, location.... The Staff Report indicates that both the MidPen and Alta proposals would entail destruction of the existing surface parking at Lot T, loss of its 51 spaces, construction of new very tall residential structures, and “relocation” of parking spaces to an undisclosed “off-site” location. It is unclear whether or how such new and “re-located” off-site parking could be located in the Downtown area or would otherwise provide equivalent value and convenience as the existing Lot T serving Downtown. The need for parking is directly related to existing land uses in the Downtown, and such needs may not be served by random developer-provided parking spaces in remote parts of the City. For just one example, the loss of Lot T’s parking would immediately impact many nearby retailers including Sancho’s Taqueria, Vino Locale, Ike’s Love and Sandwiches and the high-traffic Apple retail store.

An important, and irreplaceable, feature of the existing Downtown parking is the “distributive” nature of the locations. The existing parking lots are well-located and distributed at strategic sites throughout the Downtown, providing accessibility and convenience for employees, visitors, customers and others. Such well-distributed parking is key to retail, hospitality, and office viability.

¹ Nichols & Dorsett, AICP, “8 Ways to Launch Your Parking Strategy,” PLANNING MAGAZINE (APA, Sept 29, 2021).

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5. Need for dramatic changes to applicable Zoning: The Staff Report indicates that the proposed actions would require that the existing zoning and land use policies be substantially changed in order to pursue the possible construction of new tall housing structures – exceeding the existing zoning height limitations and increasing the density such as to require more intense Floor Area Ratios (FAR) than currently permitted. We believe that Lot T, for example, is currently zoned “PF: Public Facility.” “The PF designation is designed to accommodate governmental, public utility, educational, and community service or recreational facilities.” Currently, residential uses are not allowed on a PF zoned property, so a significant zone change would be required.

Other substantial deviations or changes to the City’s existing planning policies and zoning would likely also be required, i.e., Comprehensive Plan Policy L-5; Goal L-4.1 [“Encourage the upgrading and revitalization of selected Centers in a manner that is compatible with the character of surrounding neighborhoods, without loss of retail and existing small, local businesses.]; Policy B-4.5 [“Maintain distinct business districts as a means of retaining local services and diversifying the City’s economic base.”]

6. Wide impacts of zoning changes: It is likely that the City would not only need to change the zoning and other policies applicable to Lot T, but also as to many other similarly-situated properties, in order to avoid legal exposure to claims of unlawful spot zoning or arbitrary discrimination. Consequently, the zoning changes that would be necessary to accommodate housing on Lot T (or other existing parking sites) would likely need to be made applicable to wider areas of the City. A “domino effect” leading to many more tall, intensely-developed, office buildings and housing structures is a likely consequence, essentially transforming the Downtown area. The scope of these wide impacts would need extensive and careful study and public input.

7. Environmental impacts and need for CEQA compliance: To the extent that the feasibility of pursuing housing on the existing parking lots is dependent on the City being able to make necessary changes to the City’s Comprehensive Plan and Zoning Ordinance, the City would first need to conduct the appropriate environmental review of those proposed land use actions. Zoning changes, for example, are generally recognized as the type of discretionary “project” requiring detailed CEQA review and analysis. (Pub. Res. Code § 21080.)

8. Disregard of the Rights and Interests of Downtown Assesseees: The existing Downtown parking facilities have been paid for, in large part, by the owners of businesses and properties in the area by way of assessments approved by the owners based on the City’s representations and agreements that the funds would be used solely for the provision of publicly-accessible parking facilities serving the Downtown community. Although the Staff Report claims that the City holds “title to the fee interest” in the twelve (12) existing parking lots, the Downtown owners who have financed those lots over many years are the beneficial owners of those properties. The City merely has custodial rights, in the nature of a trustee, to manage the parking facilities for their committed parking uses, for the benefit of those who have paid for the parking facilities. The City would be at risk of being found in breach of those fiduciary responsibilities by attempting to unilaterally abandon the designated use of the sites for “parking” purposes and instead converting

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the use to housing, of any type, without compensation and without the consent of the assessed property owners.

9. Fiscal Uncertainties: The costs of realizing either of the proposed new housing on the existing public parking lots are speculative and enormous. There is no indication as to the source(s) of funding for the planning and public infrastructure that would be necessary to bring either proposal to reality. The Staff Report estimates that the costs to construct just the hypothetical new affordable housing units would be approximately \$1 million per unit – even if the City could legally contribute the site at no cost to the developers. In addition, the developers would be required to provide a suitable site to construct “replacement” public parking spaces. The Staff Report estimates that the costs of building the Downtown Parking Garage Project have escalated to approximately \$36 million. It also reports that the City has identified no more than \$12 million or so in accumulated “parking in-lieu fees” to fund that project (and Staff notes that even that amount is uncertain due to pending litigation requiring the City to refund at least part of those fees.)

Pursuant to the City’s own Municipal Code, the use of “parking in-lieu fees” that the City has previously collected, or may collect from future downtown non-residential development, is strictly limited: such fee may be used “only for construction of public parking spaces within the assessment district to serve the parking needs of the district created by the developments that paid the Fees.” (PAMC § 16.57.060).

The Staff Report does not adequately disclose or explain the sources of funding that would be required even to set the stage for pursuing the proposed affordable housing development in Downtown. Consequently, that second Item on the Agenda appears to be unrealistic and fiscally unsound. It has been suggested that this effort to envision new, very tall, high-density affordable housing construction in Downtown is little more than an effort to create the illusion of potentially “feasible” housing sites in order to temporarily appease the State HCD and help win approval for the new Housing Element.

Conclusion:

As noted at the outset, we respectfully support Staff’s requests for direction to pursue reasonable and lawful efforts to provide additional public parking in Downtown, consistent with the City’s planning and zoning, as well as reasonable pursuit of appropriate and feasible sites for housing development.

However, we respectfully object to the request for Council authority to pursue the second part of this Agenda Item, i.e., the unreasonable, unrealistic, and potentially unlawful attempt to destroy and misuse the existing public parking facilities and allow the construction of non-conforming housing (of any type or affordability) on those sites. For the reasons summarized above, and for such other reasons as may be raised at the hearing on this matter, we would urge the Council to direct Staff to consider other alternatives, and give further consideration to other, feasible and lawful, ways of attempting to address Council’s concerns about increasing the supply

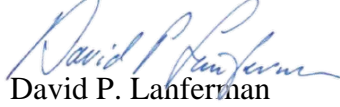
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of housing in the Downtown area consistent with existing local policies and commitments and that will not harm the economic vibrancy Downtown business owners are working so hard to maintain.

Thank you for your consideration of these concerns.

Very truly yours,

RUTAN & TUCKER, LLP


David P. Lanferman

cc: City Manager, *via email*
City Attorney's Office, *via email*

Exhibit B

April 15, 2024

VIA E-MAIL

Honorable Mayor and Members of the City Council
CITY OF PALO ALTO
250 Hamilton Avenue
Palo Alto, CA 94301

Re: **City Council Special Meeting – April 15, 2024 – Agenda Item # 13:**

“Resolution Amending the Comprehensive Plan by Adopting a Revised 2023-31 Housing Element”

Comments and Objections

Honorable Mayor and Members of the City Council:

We understand that the City Council for the City of Palo Alto (“City”) called this joint Special Meeting with the Planning & Transportation Commission, in part, to consider amendments to the Comprehensive Plan by adopting new set of proposed revisions to the 2023-31 Housing Element (“Housing Element”). We respectfully take this opportunity to – once again – express serious concerns regarding certain aspects of the proposed Housing Element amendments. While we appreciate and support the City’s efforts to address its responsibilities in meeting regional housing needs, we must again point out that such efforts cannot lawfully come at the expense of violating the City’s commitments to maintaining the existing Downtown parking facilities.

We are most specifically concerned that the Staff’s new proposed revisions to the Housing Element once again include unfounded assumptions that the City has the unfettered right and legal authority to convert any of the existing Assessment District-funded parking lots in Downtown to housing -- or to any uses other than **providing parking** to serve the Downtown community. It does not have such rights. We previously raised these and other concerns on behalf of many merchants, businesses, and property owners in the Downtown area, including many who have been paying assessments for the acquisition, improvement, and maintenance of these parking facilities for decades. Please see our letter to Council dated December 11, 2023, a copy of which is attached hereto as **Exhibit 1**.

The Staff Report refers to these sites as “City-Owner Parking Lots” -- but that is inaccurate and misleading. As we have previously pointed out, the existing Downtown parking facilities were paid for by several hundred property owners in the Downtown area who formed and funded the Parking Assessment Districts, and who have been paying assessments for many years in order to

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obtain these invaluable parking facilities that are critical to the vitality of the Downtown community. Accordingly, the City acts only as trustee for the Assessment Districts – and has **fiduciary responsibilities** in its role maintaining and administering the parking lots acquired by the Assessment Districts, consistent with the purposes, agreements, and limitations upon which the Districts were established and the assessments imposed. Those Districts were established and the assessments were imposed – and have been paid – based on the City’s agreements to acquire and provide these parking lots. The City is not free to now disregard those agreements.

Since the City last adopted its proposed Housing Element in May 2023, Staff has made several changes to the “City Owned Parking Lots” section of the proposed new Housing Element – based on the erroneous assumption that the City can unilaterally convert the parking sites to other uses. For example, in this most recent version, the Staff Report has apparently increased the total number of parking lots targeted for “conversion” to housing (Housing Element Redline, p. 3-52)¹ as well as increased the estimated number of housing units that could be built on these parking lots, from 212 units to 290 units. The new proposed draft Housing Element states that “four of these sites are located in the University Avenue Downtown area and two additional sites are located near Page Mill Road, within the California Avenue Business District.” The Housing Element is further amended to state: “To further justify the redevelopment potential of these sites under the City-owned parking lot strategy and to evaluate the extent existing uses could impede development, the City identified specific sites to represent all of the inventoried sites included in this strategy (see Table 3-20).” (p. 3-52.) This version of the proposed new Housing Element includes three example sites that the Staff reportedly believes could accommodate between 37-46 units on each site. (p. 3-53 & 3-54.) These sites include: (1) Cowper Street & Hamilton Avenue (Lot H); (2) Waverly Street & Hamilton Avenue (Lot D); and Emerson Street (Lot O). Moreover, the Site Inventory (Appendix D) includes another other parking lot at Waverly Street & Lytton Avenue (Lot K) which can accommodate 59 units.

Since the City does not have such rights, however, it would be misleading and imprudent (at least) for the City to base any portion of its new revised Housing Element on the erroneous assumption that any of the Assessment District parking lots can be unilaterally transformed into potential “housing sites.” Submission of this inaccurate version of the proposed Housing Element to the California Department of Housing & Community Development (“HCD”) would therefore be inappropriate.

As the California Attorney General explained in a published Opinion: “[T]he voters or taxpayers who agree to assume the burden of a bonded indebtedness have a right to expect the benefit therefrom, at least within the terms and conditions of their authorization or ‘contract.’ See *Peery v. City of Los Angeles*, 187 Cal. 753, 765 (1922); *Hunter v. County of Santa Barbara*, 110 Cal. App. 698, 708, 712 (1930).” OPN. NO. 69-268; 53 Ops. Cal. Atty. Gen. 128 (1970).

¹ All page references herein are to the April 2024 Housing Element Redline, posted on the City’s Housing Element Website, unless otherwise stated.

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The City itself has confirmed its fiduciary responsibilities to the assessment districts. “[T]he City is the *fiduciary agent* for certain assessment districts such as the University Avenue Area Off-Street Parking Assessment District.” (Palo Alto’s Council-approved *Comprehensive Annual Financial Report*, 2014-2015, p. 8.)

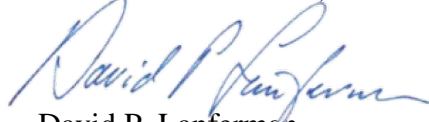
The City’s own studies have repeatedly confirmed that the system of parking resources provided by the Assessment Districts are essential to the City’s land use plans and policies. The environmental impact reports certified by the City for its Downtown plans have required such off-street parking facilities as mandatory mitigation measures. The City’s Comprehensive Plan requires “no net loss” of existing parking. (Housing Element Program 1.4(a).) Such plans and commitments to the provision of these parking facilities cannot be ignored – even under the pressure of trying to attain the City’s RHNA obligations.

For the reasons set forth above, and in our previous December 11, 2023 letter to the City Council, these existing Assessment District parking lots should not be included in the Housing Element’s “Site Inventory” nor should any part of the revised Housing Element be based on the misconception that these parking lots can be used for any purposes other than parking. Submission of the current proposed version of the amended Housing Element to HCD would, once again, fail to meet the City’s obligations to provide accurate and realistic information as to its ability and plans for meeting the City’s RHNA obligations, and would be inconsistent with State Housing Law. We trust that the Council will direct Staff to make the appropriate corrections to the draft Housing Element to more accurately reflect these facts before it is re-submitted to HCD.

Thank you for your consideration of these concerns.

Very truly yours,

RUTAN & TUCKER, LLP



David P. Lanferman

cc: City Manager, *via email*
City Attorney’s Office, *via email*