



City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Planning and Development Services

Meeting Date: May 8, 2023

Report #:2304-1372

TITLE

Adoption of a Resolution Adopting the 2023-31 Housing Element and Consideration of the Associated California Environmental Quality Act (CEQA) Addendum to the Comprehensive Plan 2017 Final Environmental Impact Report

RECOMMENDATION

Staff recommends the following actions:

Planning and Transportation Commission:

1. Consider the Addendum (Attachment B) to the 2017 Comprehensive Plan Final Environmental Impact Report along with the 2017 Comprehensive Plan Final EIR;
2. Review the staff responses to the HCD Comment Letter, as incorporated in the Draft 2023-31 Housing Element (Attachment A) and recommend City Council adopt the Draft 2023-31 Housing Element.

City Council:

1. Consider and approve the Addendum the 2017 Comprehensive Plan Final Environmental Impact Report along with the 2017 Comprehensive Plan Final EIR;
2. Direct staff to make appropriate changes to the Draft 2023-31 Housing Element (Attachment A), including additional revisions recommended by staff in the staff report.
3. Adopt a Resolution (Attachment C) making the findings required under CEQA and Housing Element Law, and adopting the 2023-31 Housing Element, as revised, as an amendment to the City's Comprehensive Plan.

EXECUTIVE SUMMARY

On December 23, 2022, the City submitted its Draft 2023-31 Housing Element for its initial 90-day review by the State Department of Housing and Community Development (HCD). On March 23, 2023, at the end of the 90-day review period, the City received a 14-page comment letter from HCD. The letter requested greater research and analysis for a number of areas, but most comments focused on:

- More explicit revisions to development standards and permit processing (Housing Constraints),
- More Fair Housing Analysis including housing needs for Special needs Groups (Housing Need and Assessment of Fair Housing), and
- More Housing program implementation earlier in the planning period and commitments to specific actions and objectives (Housing Plan).

In response to HCD comments, staff revised the text of the Housing Element document where appropriate (see redline edits in Attachment A). A City Response Matrix that reflects HCD comments and proposed staff responses, with page numbers for easy reference, will be provided to the Council next week as Attachment F. The HCD comment letter is also provided as Attachment D.

During the 90-day HCD review period, on March 8, 2023, the Planning and Transportation Commission (PTC) reviewed the Draft Housing Element submitted to HCD and unanimously recommended adoption of the draft 2023-31 Housing Element, contingent on the refinements needed to address HCD comments.

Staff is requesting that: First, the PTC consider the EIR Addendum, review the staff responses to HCD comments, and recommend the City Council adopt the draft 2023-31 Housing Element with the proposed responses. Second, the Council consider the EIR Addendum, and adopt a resolution making all findings required by CEQA and state Housing Element Law and adopting the 2023-31 Housing Element, with any additional revisions it deems necessary.

BACKGROUND

The Housing Element is the City's plan to provide housing for its current and future residents. It is the only element of the City's Comprehensive Plan that requires certification by the State. The Housing Element covers a period of eight years; the 5th Cycle of Housing Elements that covered 2015 through January 31, 2023 ended recently. The 6th Cycle covers the eight years between 2023 and 2031. The deadline to adopt a compliant Housing Element for the 6th Cycle Housing Element was January 31, 2023. For reference, a copy of the 5th Cycle Housing Element is available online.¹

As part of the Housing Element, the City needs to plan for its "fair share" of housing for the 6th Cycle planning period. The City must plan for its Regional Housing Needs Allocation (RHNA) of 6,086 units. In addition, programs must be included in the Housing Element that support increased housing production in the City. Over the last two years, the City has evaluated and updated its draft Housing Element for the 2023-31 planning period. A history of City events and actions over the past two years is available online at www.paloaltohousingelement.com.

¹ 5th Cycle Housing Element: <https://www.cityofpaloalto.org/files/assets/public/planning-amp-development-services/3.-comprehensive-plan/comprehensive-plan/certified-15-23-housing-element.pdf>

Regional Housing Need Allocation

Per state law requirements, the draft Housing Element contains information about the City's housing needs, constraints to building housing, available housing sites, an explanation of City resources for supporting housing development, as well as goals, policies and programs that will help address the city's share of regional housing needs as identified by the Association of Bay Area Governments (ABAG). The City's housing needs are quantified in the RHNA, which includes housing targets at all income levels. As shown in Table 1, the minimum RHNA requirement for Palo Alto in the 2023-31 planning period is 6,086 homes across four income levels.

Table 1: City of Palo Alto 2023-31 RHNA Requirement

City of Palo Alto 2023-31 RHNA					
Income Level	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
Area Median Income (AMI)	<50% AMI	50-80% of AMI	80-120% AMI	>120% AMI	
Units	1,556	896	1,013	2,621	6,086

Housing Element Document Requirements

The Palo Alto 2023-31 Housing Element identifies and analyzes existing and projected housing needs and establishes goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing across income levels. It identifies areas in the City where new housing may be built and estimates how many housing units could be built on specific sites. Furthermore, it helps the City plan for future housing needs of all residents at all income levels, including emergency shelters, special housing for the elderly, persons with disabilities, large families, and unhoused residents.

The Housing Element contains several mandated sections including: Executive Summary; Introduction; Housing Needs; Housing Resources; Housing Constraints; and Housing Plan (includes Housing Element programs). Additionally, Appendix C in the draft Housing Element contains the City's analysis of Affirmatively Furthering Fair Housing (AFFH). AFFH is a new State requirement that mandates each jurisdiction take meaningful actions to further fair housing to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. The Housing Element, including the sites inventory and programs, must be reviewed through the filter of AFFH requirements.

Draft Housing Element Submittal to HCD

The City submitted its Draft 2023-31 Housing Element for its initial 90-day review by HCD in December 2022. This submittal included all the required components as well as the public comments received; the City received 14 comments from individuals and organizations. Due to the timing of the Council review and HCD submittal, Council did not have the opportunity to specifically review the comments collectively. A summary of the public comments, which were grouped into the 10 common themes, is included as Attachment E.

Planning and Transportation Commission Review

At its March 8, 2023 meeting, the PTC reviewed and considered a recommendation to the City Council to adopt the City's 2023-31 Housing Element². Staff reviewed the November 28, 2022 Council directed changes³ included in the draft Housing Element submitted to HCD, the CEQA Addendum, and next steps in the update process. The PTC reviewed the draft Addendum to the 2017 Comprehensive Plan Environmental Impact Report and did not have any requested changes. The PTC had clarifying questions regarding the City's process in meeting its RHNA, the adoption process and its relation to HCD certification of the Addendum. The PTC recommended that the Council adopt the draft Housing Element subject to refinement following receipt of the comments from HCD.

Council Adoption of the Housing Element

Following the PTC's recommendation action, the City Council can take the action to adopt the Draft Housing Element and then submit it to HCD, providing all the required findings outlined in the attached Resolution can be made. This action would mean that City has considered the HCD comments and appropriately responded to those comments and finds the Draft Housing Element to substantially comply with Housing Element Law.

ANALYSIS

On March 23, 2022, the City received HCD's comment letter (Attachment D) on the City's Draft Housing Element. In general, HCD's comments requested that the City provide additional analysis in a number of areas ranging from reviewing the City's development standards to the City's Code Enforcement practices within the Housing Element. HCD determined that the City's Initial Draft Housing Element addresses many statutory requirements, but revisions are necessary to comply with State Housing Element law. HCD's comment letter categorized the comments into the following four topics:

- A. Review previous housing element to evaluate cumulative effectiveness of special needs housing goals and programs;
- B. Housing needs, resources, and constraints (area with the majority of comments);
- C. Housing programs; and
- D. Quantified objectives.

Because of the wide breadth of comments received, highlights of the more notable comments and revisions are discussed below.

² March 8, 2022 PTC Housing Element Report

<https://cityofpaloalto.primegov.com/meeting/document/1784.pdf?name=Staff%20Report>

³ November 28, 2022 Council Action Minutes

<https://cityofpaloalto.primegov.com/Public/CompiledDocument?meetingTemplateId=12221&compileOutputType=1>

Housing Constraints

HCD requested greater analysis of housing constraints including the City's land use controls and, more specifically, a greater evaluation of the cumulative impacts of development standards on housing supply and affordability in the City.

Development Standards

HCD had a number of questions related to the City's land use regulations as being a potential development constraint. Typically, the development standards are one of the main perceived "sources" of constraints to housing. In addition, development standards generally have been frequently mentioned by developers as a cause for higher housing costs. In response to the comments, the revised Housing Element provides additional analysis of the individual and cumulative impacts of the City's development standards to determine if they represent constraints to housing production.

Part of the additional analysis included the results of a physical site test modeling study currently underway (as part of Program 3.4). This study involves physical modeling of standards in the City's zoning districts to understand whether current development standards yield the densities identified in the Sites Inventory and required to meet the RHNA. An example of the preliminary modeling for the CN district is shown below; additional details and findings are described in Chapter 4: Constraints



Grade Level Plan

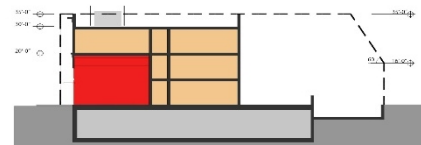
(residential layout similar on mezzanine level)



Third Level Plan



Underground Parking Plan



These graphics model a prototypical residential mixed use project in the CN district, given the required development standards, including setbacks, floor area ratio, height, daylight plane, retail requirements,

landscape coverage, and parking. In this example, the existing regulations yield 12 apartments and a ground-floor retail space, but necessitate underground parking. The analysis finds that the ground-level landscaping standard is a constraint to attaining the 40 du/ac density threshold identified in the Sites Inventory for this particular site/district.

Source: Lexington Planning, Urban Field Studio, City of Palo Alto, 2023.

The preliminary modeling revealed that some development standards are a constraint to housing production at the density levels identified in the Sites Inventory to meet the RHNA. These include:

- ground-level landscaping requirements that limit lot coverage in the commercial mixed use districts (e.g., CD(C), CS, CN), and
- in the case of the ROLM district, floor area ratio, height, lot coverage, and parking

As part of implementation of Program 1.1, the rezoning of sites to meet the RHNA, the City will need to update the zoning ordinance to increase residential densities as outlined in Chapter 3 of the Element and in the Sites Inventory and modify development standards to reduce these constraints.

To further increase housing production, beyond density thresholds identified in the RHNA, Program 3.4 proposes to expand the Housing Incentive Program, including more flexibility for development standards for market rate and 100% below-market rate projects.

Processing Timelines

HCD received public comment that the City's entitlement process is lengthy and burdensome. In response, staff added clarifying language about changes the City has made to decrease the amount of processing time while providing additional information on the City's efforts in reducing processing timelines with the approval of the Objective Standards and the Streamlined Housing Development Review Process. The response also noted that the City will institute Program 3.7 to consistently monitor progress in decreasing processing timelines, including Building Permit processes, to validate that the proposed measures will have the desired results.

Ordinances

HCD advised the City to review local ordinances that directly impact the cost of housing and specifically pointed to the City's Retail Preservation Ordinance and Tree Protection Ordinance. The State had requested additional information about the Retail Preservation Ordinance and why it was not a constraint. Staff outlined how future program proposals will limit the impact of the ordinance while achieving its intent to protect retail at key locations along El Camino Real and the City's two downtown areas as noted in Program 3.4. HCD received a public comment on how the revisions to the Tree Protection Ordinance could be a constraint to housing. Staff described that the City recognizes this potentially could be constraint and that the Council plans to reassess the new revisions later this year. Overall, the City will implement Program 3.2 which will analyze any new proposed ordinance to determine if it is a constraint to housing as well as annually monitoring current codes as constraints.

Housing Programs

More Specific Commitments and Timelines for Program Language and Implementation

HCD had comments about the City's programs. Specifically, a number of City's programs had language to "explore or consider" programs rather than "implement or establish." In addition, HCD felt that some programs needed to be completed sooner than what was specified so that they could make an impact during the 8-year planning period. Based on the HCD comment,

numerous programs have been revised. There will be more proactive measures included in each of the different programs including annual reporting, monitoring, and outreach than in the initial draft Housing Element version. To fully address these comments, it is anticipated that additional consulting resources will be needed to achieve more program implementation in a shorter amount of time.

With regards to the timing of implementing the various programs, staff is still evaluating this to make sure that the timelines are realistic. HCD was clear that they wanted to see more actions completed earlier in the planning period. However, nearly half of the approximately 120 implementing objectives are proposed for completion by the end of 2025. This expedited timeline presents a significant staffing resource impact for the PDS department. As noted below, staff requests Council direction to make further refinements subsequent to the Council's review to adjust the expectation of when some objectives will be initiated or completed.

As a side note about housing programs, while not a specific HCD comment, HCD wants to ensure the effectiveness of the proposed programs. Therefore, additional implementing objectives have been added to the Housing Plan chapter (Chapter 5) to monitor the effectiveness of some City actions (i.e. monitor activity from the revised ADU and HIP programs). In addition, HCD is emphasizing more proactive measures like reporting and outreach. There are approximately thirty annual actions the City must perform during each year in the revised Housing Element.

Other Program Modifications

To further address HCD comments, staff made the following additional changes:

- Revised several programs to include more stakeholder outreach, including, where appropriate, engagement with developers to help inform policy development.
- Added new Fair Housing program objective 6.3 Middle Housing Program to encourage and support lower price homeownership opportunities and a mix of housing types, particularly infill and converted existing housing. As described in Appendix C: Assessment of Fair Housing, although Palo Alto does not have Racially or Ethnically Concentrated Areas of Poverty (RECAPs), it does have Racially Concentrated Areas of Affluence (RCAs), as result of historic discriminatory redlining practices. This program will further leverage the development opportunities created by SB 9 state legislation to create by-right opportunities for up to four units on a single-family zoned lot to encourage housing for middle-income households. Specifically, the program proposes to increase the current floor area limitation from 800 to 1,200 square feet per unit for SB 9 projects so that projects could accommodate 1- and 2-bedroom units. In this way, the program aims to expand access to high resources neighborhoods and reduce RCAs. See the AFFH section below for further details.
- Clarified program objective 4.2 Housing and Neighborhood Preservation to include code enforcement protocols, including inspection and enforcement, when a complaint about substandard housing is received.
- Clarified program objective 6.6 Fair Housing/Tenant Protections regarding Tenant Relocation Assistance (TRA) to specify Code Enforcement will enforce TRA payments if a complaint is received. This represents a change from the City's current enforcement

philosophy, which would treat this as a civil matter between the tenant and property owner or landlord.

- Recommended Program Removals:
 - Staff recommends the removal of Program 3.5 Pedestrian and Transit Oriented Development (PTOD) that specifies a review of the existing development standards and review process to determine modifications that would support higher density development.

With the Housing Element focus on the Housing Incentive Program (HIP), it seems more appropriate to consider applying the HIP to the PTOD area. The HIP standards are focused on supporting housing development and would be appropriate for the Cal Ave PTOD area as well.

- Staff recommends the removal of the implementing objective 6.3 (D) to review the Workforce Housing Overlay regulations to better align with the intended housing population (120%-140% AMI). This task does not support new housing development and should be considered outside of the Housing Element initiatives.

Removing these two programs does not preclude the City from pursuing this work in the future. However, in light of the multitude of other assignments required of the new Housing Element, staff does not consider these two initiatives a top priority that would spur housing production.

Housing Needs

Meeting RHNA/Realistic Capacity

Public comments were received about the housing inventory and the ability for the City to meet its RHNA. The public comments included the possibility of entitled projects not moving forward to become housing, redevelopment of non-vacant sites, and ADU production. Staff responded with additional information using entitlement data since 2013 demonstrating that a high majority of entitled projects do move forward to obtain building permits and subsequently become housing units. Additional analysis was provided to substantiate the City's development history of converting non-vacant sites to residential developments. In addition, staff has engaged multiple times with large land-holding property representatives in the GM/ROLM zone districts to discuss potential significant housing development in the area, and property owners have expressed strong interest in housing development in this area. Through Program 3.2, the City will also annually monitor its current codes for potential housing constraints.

Special Needs Housing

The HCD letter requested greater analysis on the City's past actions in meeting the housing needs of special needs groups as well as providing more local knowledge of special needs populations in the City. The letter also pointed out more revisions were needed to the Housing Programs to provide for alternative housing types such as transitional housing and farmworker housing per State requirements. Understanding that more can be done to assist special needs groups, programs have been added to provide preferences to special needs population when affordable

housing units become available (Program 6.1) as well as encouraging alternative types of housing for special needs populations (Program 6.5).

Affirmatively Furthering Fair Housing (AFFH)

AFFH is a new State requirement and it is defined as taking meaningful actions to:

- a) combat discrimination,
- b) overcome patterns of discrimination,
- c) foster inclusive communities,
- d) replace segregated living patterns with integration and,
- e) transform areas with racial and poverty concentration.

Programs must be created to have proactive measures that address these areas.

Since this is a new requirement with many jurisdictions still navigating through its requirements, a number of HCD comments focused on the City's AFFH discussion (Appendix C of the Housing Element) and programs. The City's fair housing analysis provided County and local information and trends. However, HCD comments requested a larger regional study of fair housing, as well as, greater local knowledge. The regional analysis has been expanded to the entire Bay Area instead of the County and additional sources of local knowledge have been added. Based on the new information, areas of discussion including Racially Concentrated Areas of Affluence (RCAAs) or housing for persons with special needs have been revised. Specifically, HCD requested to analyze additional trends and data for special needs groups/populations and further explanation about certain areas of the City regarding their racial and income demographics.

Based on the additional information and analysis, a significant amount of revisions and additions were made to the existing programs and implementing objectives for the fair housing programs to address HCD comments. (Program 6). Many of the existing programs and implementing objectives have been revised to provide more proactive measures and specifics.

Program 6.3 is proposed to address RCAAs. RCAAs are defined as affluent white communities where the census tract comprises of 1.25 times more white individuals than the general population and have 1.5 times the median income of the region or State, whichever is lower. Palo Alto does have ten RCAAs. The Housing Element provides some historical detail about the City practices of exclusionary zoning, redlining, and other discriminatory practices that led to these RCAAs. Although the discriminatory practices have been eliminated and high tech buyers, which are highly diverse, are purchasing throughout the City, the effects of historic redlining remain in persistent RCAAs. These trends will slowly reduce the number of RCAAs in the City. But to further help address RCAAs, staff has proposed Program 6.3, Middle Housing Program. Leveraging SB 9, the program will increase the floor area limitation that will allow for more units on a single family lot. This will also help promote housing mobility throughout the City, especially in the City's lower density areas. And it will also provide greater housing opportunities for more segments of the community.

Program 6.1 was revised to add specific commitments to supporting housing for persons with special needs. The City provided additional local data for persons with disabilities and seniors. Per information provided by AbilityPath, a high percentage of adults with a developmental disability are a risk of losing their housing within a decade. Also provided is a survey from Avenidas that shows 19% of the respondents earn less than \$50,000 per year. This demonstrates the immediate need for housing for persons with special needs. Program 6.1, “Housing for Persons with Special Needs” originally proposed preferences for populations with special needs. However, the revised program offers much greater detail and specificity. The City will now modify its Affordable Housing guidelines to facilitate special needs housing. The guidelines will include the annual preparation of a Notice of Funding Availability (NOFA) for future projects with scoring priorities for special needs housing units. The City will also offer streamlined permit processing. This will help provide for greater housing opportunities for persons or households with special needs.

There are five “objectives” to AFFH requirements. City staff has prepared an AFFH matrix to demonstrate how the City’s AFFH programs are meeting those five objectives. Please see AFFH matrix in Attachment A, Appendix C (Assessment of Fair Housing).

Additional Revisions Recommended by Staff

In order to permit the timely preparation of Attachment A, staff and the City’s consultant were unable to include a few final revisions that are important to a complete Housing Element. Staff therefore recommends that the City Council direct the following revisions to Attachment A as part of its adoption and prior to submittal to HCD.

1. Add to Chapter 2, Housing Needs, a discussion of the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions. Specifically, add the following paragraph to Page 2-84, following the paragraph ending “The shelter is hosted at rotating places of worship throughout Palo Alto and operates from November to April.”:
 - a. Based on information obtained from Hotel de Zink, unused beds on an average monthly basis between January 1, 2022 and December 31, 2022 ranged from 0.6 unused beds per night in May 2022 to 4.3 unused beds per night in September 2022, with an annual average of 2.6 unused beds per night. The County of Santa Clara provided slightly different data, but reached approximately the same annual average of 2.8 unused beds per night. The complete dataset is provided in Table 2.xx. Both Hotel de Zink and the County provided data that approximately 14% of individuals in the emergency shelter transitioned to permanent housing solutions. The City was not able to obtain information from Heart and Home Collaborative, nor was the County able to provide any data.

Table 2.XX Monthly Average Unused Emergency Shelter Beds – 2022						
	Data from Hotel de Zink			Data from County of Santa Clara		
Month	Daily Capacity	Average daily usage	Average daily unused beds	Monthly total capacity	Monthly total usage	Monthly total unused beds
January	12	8.2	3.8	310	253	57
February	15	11	4.0	336	309	27
March	15	11.8	3.2	434	365	69
April	15	14	1.0	450	419	31
May	15	14.4	0.6	496	447	49
June	15	12.6	2.4	480	379	101
July	15	12.7	2.3	496	393	103
August	15	11.4	3.6	496	353	143
September	15	10.7	4.3	480	321	159
October	15	12.5	2.5	496	380	116
November	15	12.9	2.1	480	356	124
December	15	13.8	1.2	372	337	35

2. Revise Chapter 5 Program 1.1A to clarify the City’s compliance strategy for Government Code Section 65583.2(h) as follows:
 - a. The rezone/upzoning shall include the following provisions of Government Code Section 65583.2(h) and (i) for sites accommodating lower incomes: (1) By-right development of multi-family developments in which 20 percent or more of units are affordable to lower income households and no subdivision is needed; (2) Accommodation of at least 16 units per site; (3) Minimum density of 20 units per acre; (4) At least Because 50 percent of the lower-income need must cannot be accommodated on sites designated for residential use only, a portion shall be accommodated or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites: allow 100 percent residential use, and require that residential use occupy at least 50 percent of the total floor area of a mixed-use project.
3. Authorize staff to refine the objectives timelines to meet the State’s interests to advance meaningful change early in the 6th Cycle to available staff resources, including reasonable expectations for Council-supported consultant resources.

FISCAL/RESOURCE IMPACT

The implementation of the Housing Element will require staff or consultant resources to complete rezones, program implementation, and prepare studies. Generally, all tasks will need to be completed within the first few years of Housing Element adoption. Now with the more

specific commitments and reduced timelines, staff will need to implement more programs in a shorter span of time. This will involve greater staff resources and the use of consultants for the studies. Budget requests related to these activities will be reflected in the annual budget development process.

STAKEHOLDER ENGAGEMENT

The Housing Element update process included substantial public outreach and engagement opportunities. The City formed the Housing Element Working Group (Working Group), a 17-member group that advised the City Council with the Housing element update. The Working Group represented a demographic cross-section of the City. The Working Group included renters, affordable housing residents, seniors, persons of color, a representative from the unhoused community, and an affordable housing developer.

There were other outreach efforts to educate the community about the Housing Element update effort and to receive community input. In addition to the project's webpage, the City conducted an online survey with 430 respondents, hosted three community workshops and held over 30 public meetings (includes Working Group, Council Ad-hoc, PTC, and City Council). Additionally, staff had numerous presentations with civic groups, meetings and calls with members of the public and developers to address questions and provide information. More recently, on April 21, 2023, in separate meetings, staff met with representatives from Palo Alto Forward and Palo Altans for Sensible Zoning. Staff also provided a Housing Element presentation to Leadership Palo Alto on April 20, 2023. Lastly, City staff was able to meet with its HCD reviewer on April 19, 2023. See Appendix B of the draft Housing Element (Attachment A of this report) for more details. The draft Housing Element Introduction also provides a more detailed breakdown of each of the public meetings as well as summaries of other community engagement efforts.

The Palo Alto Municipal Code requires notice of this public hearing to be published in a local paper. Notice of a public hearing for this project was published in the Daily Post on April 28, 2023, which is 10 days in advance of the meeting. Interested parties were sent the public notice via electronic mail. Notice of the public hearing was also posted on the City's Housing Element website at www.paloaltohousingelement.com.

In addition, as required by State law, the attached revised draft Housing Element (and any future revisions) must be made available for public review for at least seven days before any action can occur. The 7-day public review period for the revised Housing Element started on April 28, 2023 and concluded on May 5, 2023. The revised draft was available online at www.paloaltohousingelement.com.

Consequences for Non-compliance

The deadline for Bay Area jurisdictions to adopt a compliant Housing Element was January 31, 2023. As of April 19, 2023, no Santa Clara County jurisdiction is compliant or certified. The City of Campbell is the only Santa Clara County jurisdiction to be *substantially* compliant with State requirements. They will not be fully compliant until their Housing Element is adopted and resubmitted to HCD with additional revisions. On a regional level, of the 109 cities and counties

in the Association of Bay Area Governments, 19 jurisdictions are compliant with the State. For a broader perspective, according to HCD’s online housing element review and compliance report, only 50% of jurisdictions in the Southern California Association of Governments are compliant. Their State deadline was October 2021. Consequences for noncompliance include jurisdictions facing the possibility of loss of local housing land use discretion, housing grant ineligibility, and fines.

More recently, there has been statewide discussions about a “builder’s remedy” in the Housing Accountability Act (HAA) and jurisdictions with non-compliant Housing Elements. In short, the builder’s remedy refers to a provision of the Housing Accountability Act that obligates a jurisdiction that does not have a compliant housing element to approve certain affordable housing projects even if the projects are inconsistent with local zoning or general plan regulations. Staff previously provided a discussion of the builder’s remedy as a supplemental memo to Item #12 on the Council’s November 7, 2022 agenda.⁴ The City has received one “builders remedy” application explicitly invoking the “builder’s remedy” as of April 19, 2023. In the event the City adopts a Housing Element and denies a housing project for non-compliance with local regulations prior to receiving certification from HCD, a court would likely determine the adequacy of the City’s Housing Element.

TIMELINE

The Housing Element update process has been underway for over two years. Table 2 shows the significant milestones that have been achieved up with some significant milestones in the future. Concurrent with the preparation of the Housing Element, staff has already begun work on some of the programs, notably, updating the Housing Incentive Program (Program 3.4), as well as starting to prepare the needed zone changes to meet the City’s RHNA (Program 1.1).

Table 2: 2023-31 Housing Element Progress Milestones

MILESTONE	DATE
Formation of HE Working Group (HEWG)	Feb. 2021
1 st Meeting of HEWG	April 2021
PTC consideration of HE sites	February 2022
Council approval of HE sites	April 2022
PTC consideration of HE programs	August 2022
Council approval of HE programs	October 2022
Public Review HE draft released for 30-day comment period	November 2022
Draft HE submitted to HCD for 90-day review	December 2022
PTC adoption of HE	March 2023
HCD Comment letter received	March 2023
PTC & Council HE adoption	May 2023
Submittal of revised HE	June 2023

⁴ <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20221107/20221107pccsm-amended-linked-q.a-2.pdf>

NEXT STEPS

If the Council adopts the Housing Element, staff will make any required revisions to the Housing Element based on Council direction. The City then has 30 days from adoption to submit the adopted Housing Element to HCD; it is anticipated that HCD would review the revised Housing Element within 60 days following submittal.

If HCD determines the City's revisions address and meet all the comments in the HCD review letter, HCD may issue a "substantial compliance" letter to the City confirming compliance with the requirements of state law. Alternatively, if HCD believes only minor revisions are required, it may issue a letter stating that if the City adopts the Housing Element as outlined in HCD's responses, the Housing Element substantially complies with the State Housing Element requirements. Finally, if HCD believes significant revisions are required, it could simply issue further comments without any indication regarding compliance with state law.

Staff believe the Housing Element document before the Council fully responds to all of the comments in HCD's March 23, 2023 letter and that it meets all statutory requirements. Accordingly, staff believe the Housing Element is appropriate for adoption and are hopeful that HCD will confirm its compliance with state law. As noted above, even in the absence of a substantial compliance letter from HCD, the City may still assert that its Housing Element is substantially compliant.

ENVIRONMENTAL REVIEW

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the City, acting as the lead agency, has prepared an Addendum to the 2017 Palo Alto Comprehensive Plan Environmental Impact Report⁵ for the draft Housing Element.

The CEQA analysis for the Housing Element is focused on the resulting physical changes on the identified RHNA sites that would take place as a result of the implementation of the required rezonings to meet RHNA and implementing those programs which help increase housing production. For CEQA purposes, the review assessed a higher density on some of the identified RHNA sites than strictly required to meet RHNA as well as other sites that may be developed from the proposed incentives (i.e. expansion of the HIP program). For example, the City parking lots were assigned a maximum density of 50 du/ac for RHNA purposes however it was assigned a density of 100du/ac for the CEQA analysis. This is considered the "reasonable maximum development scenario," to fully analyze potential impacts if development occurs at a rate higher

⁵ <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Long-Range-Planning/2030-Comprehensive-Plan>. Please see "Additional Comprehensive Plan Resources".

than it has historically. This reasonable maximum development scenario assumes that the entire housing sites inventory would develop as housing and does not account for existing development (primarily low-rise commercial uses) that would be demolished to allow for housing. As a result, the impact analysis represents a conservative approach of potential impacts.

Table 3 shows the final unit count analyzed in the CEQA document, applying increased densities and assuming program implementation, primarily the expansion of the City's Housing Incentive Program (HIP).

Table 3: Total Housing Element Buildout for CEQA Analysis

	Sites	Units
RHNA Sites Inventory + Additional Density Assumption ¹	289	6,936
Sites removed from CEQA review ²	(123)	(1,387)
Increase in allowable density in ROLM/GM zones (Housing Element Program 1.1B) ³	13	294
HIP Standards Enhanced Citywide (Housing Element Program 3.4C) ⁴	0	294
HIP Expanded to All RM Zones (Housing Element Program 3.4D) ⁵	69	528
Total	248	6,665

() denotes subtraction

¹The CEQA unit yield is higher than the RHNA sites yield because of an assumed higher density development assigned to the sites.

²123 sites do not involve changes in development density; therefore, they have been excluded from the CEQA buildout because the development density is already permitted

³Additional sites added due to higher feasibility of development due to proposed upzoning.

⁴HIP allows for greater density and more relaxed development standards thus some developers will take advantage of the incentives.

⁵Extending the HIP to the RM zones will allow property owners to take advantage of the development incentives.

The projected Housing Element buildout of 6,665 units is slightly above the assumed 6,000 unit buildout of Scenario 6 of the 2030 Comprehensive Plan Supplement to the draft Environmental Review. Therefore, the Addendum focused on the impact of the 665 more residential units assumed in the Housing Element buildout. The Addendum focused on the potential impacts to circulation and air quality of the additional units. In the review, the new State metric of Vehicle Miles Traveled (VMT) instead of Level of Service (LOS) was used and the review concluded there would not be a significant impact in citywide circulation patterns.

Air quality was also analyzed based on the greenhouse gas emissions generated from the calculated vehicle trips. It was determined that the air quality impacts did not exceed the CEQA thresholds.

COUNCIL ALTERNATIVE ACTION

The following are alternative actions that Council can take:

1. Continue Council's deliberation to May 15.
2. Continue to date uncertain and direct staff to perform additional analysis/revisions and return with a revised draft for review and recommendation.
3. Direct staff to submit Attachment A as a subsequent *draft* to HCD for review and comment (rather than an *adopted* version). This will require the City to prepare an additional analysis to plan for emergency shelters pursuant to AB 2339. This analysis is

required for *drafts* submitted to HCD after April 1, 2023, but not for *adopted* housing elements.

ATTACHMENTS

- Attachment A: Clean and Strikeout/Underlined Draft 2023-31 Housing Element, April 2023 (hard copy of strikeout/underline provided to Council and available at Rinconada Library)
- Attachment B: Draft Addendum to the 2017 Palo Alto Comprehensive Plan Environmental Impact Report
- Attachment C: Draft Resolution to Adopt Housing Element and CEQA Findings
- Attachment D: HCD Comment Letter, March 23, 2023
- Attachment E: Summary of Public Comments Submitted to HCD, December 2022
- Attachment F: City Response Matrix to HCD Comment Letter (to be provided separately)

APPROVED BY:

Jonathan Lait, Planning and Development Services Director