



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** John Swiecki, Community Development Director

**Subject:** Response to Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

### **Community Goal/Result**

Safe Community

### **Purpose**

For the City Council to review to the City’s draft response to the 2022-2023 Civil Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

### **Recommendation**

Approve the attached response letter to the Grand Jury Report on Accessory Dwelling Units (ADUs).

### **Background**

The 2022-2023 Civil Grand Jury filed a report on June 12, 2023 (Attachment 2) which contains findings and recommendations pertaining to municipalities’ use of ADUs to avoid the construction of multifamily low-income housing over the next eight years. The City of Brisbane must submit comments to Hon. Nancy L. Fineman by September 11, 2023 and the response must indicate that it was approved by the City Council at a public meeting.

The Grand Jury report contains seven findings that the City must indicate if it wholly or partially agrees or disagrees with for each finding. Additionally, the report contains six recommendations that the City must indicate has been implemented, will be implemented, requires further analysis, or will not be implemented.

### **Discussion**

The 2022-2023 Civil Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?” generally found that:

- Counting ADUs as affordable housing may result in cities issuing permits for fewer deed-restricted low-, very low-, and moderate-income apartments and homes; and
- Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units through ADU construction.

While the City of Brisbane counts ADUs toward meeting our Regional Housing Needs Allocation (RHNA), it is one of many strategies and ADUs account for less than five percent of our total

RHNA. Additionally, the City of Brisbane is one of two San Mateo County jurisdictions with an adopted and certified 2023-2031 Housing Element with a State-approved method of monitoring the affordability of ADU rental rates to ensure their affordability to lower-income households are at the ratios assumed within our Housing Element. The City is also committed to act accordingly should the ratios of affordability differ from those assumed, per Housing Element Program 3.A.3.

The City also works collaboratively with San Mateo County jurisdictions through 21 Elements to develop, adopt, and implement housing policies and programs within the County to specifically address the recommendations contained within the Grand Jury report related to establishing a countywide ADU monitoring program and the development of a new countywide ADU nonprofit with programs to incentivize the production of affordable ADUs within San Mateo County.

Staff has collaborated with San Mateo County and cities within the county, where applicable, in developing consistent responses (Attachment 1) to the Grand Jury Report. The City's responses follow each finding and recommendation from the Grand Jury.

### **Fiscal Impact**

None.

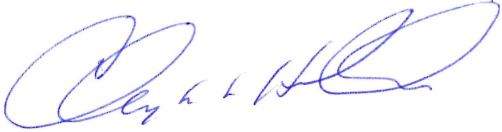
### **Measure of Success**

Submission of a timely response to the Grand Jury's report.

### **Attachments**

1. Draft Response to Grand Jury Report
2. June 12, 2023 Grand Jury Report

  
\_\_\_\_\_  
John Swiecki, Community Development Director

  
\_\_\_\_\_  
Clay Holstine, City Manager

September 8, 2023

Honorable Nancy L. Fineman  
Judge of the Superior Court  
c/o Bianaca Fasuescu  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?**

Dear Honorable Nancy L. Fineman and members of the Grand Jury,

This letter is in response to the 2022-2023 Grand Jury report of June 12, 2023 which contained findings and recommendations pertaining to the City of Brisbane. Listed below are the Jury's findings and recommendations followed by the City of Brisbane's responses, as reviewed and approved by the Brisbane City at a public meeting on September 7, 2023.

**The San Mateo County 2022-2023 Grand Jury makes the following findings (F1 through F7) to the City Councils of the cities of San Mateo County:**

**F1.** Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

**RESPONSE:** *The City of Brisbane agrees with this finding.*

**F2.** San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

**RESPONSE:** *The City of Brisbane partially agrees with this finding. While the City of Brisbane counts ADUs to meet affordable housing commitments under RHNA, it is one of many strategies. Specifically, the City of Brisbane has a total affordable housing RHNA of 803 units and ADUs make up only 36 of these, or less than five percent of our total. Additionally, the City of Brisbane's adopted and certified 2023-2031 Housing Element contains the following programs, that will be implemented within the next eight years, to meet our affordable housing commitments:*

- *Develop an affordable housing policy to promote the distribution of affordable housing equitably across the City (program 1.B.1);*

- *Require an affordable housing plan as part of the approval for development at the Baylands (program 2.A.2);*
- *Grant priority water and sewer service to housing with units affordable to lower-income households (program 2.B.6);*
- *Amend the Density Bonus Ordinance to allow for both greater bonuses and bonuses for small projects that would not otherwise qualify under State law (program 2.C.1);*
- *Evaluate methods to subsidize the cost of affordable and/or special needs housing development (program 2.D.1);*
- *Adopt and implement an Affordable Housing Strategic Plan (AHSP) that includes the following components (program 2.E.1):*
  - I. *Identifies programmatic funding goals, objectives, and priorities;*
  - II. *Evaluates and prioritizes new ongoing revenue streams for affordable housing development;*
  - III. *Evaluates preferences for current Brisbane residents in new special needs and affordable housing; and*
  - IV. *Engages community stakeholders, including landowners, affordable housing developers, and lower-income households within Brisbane and San Mateo County to identify opportunities for affordable housing development.*
- *Update the Inclusionary Housing Ordinance to consider in-lieu fee alternatives for for-sale developments that may provide additional affordable housing revenue to the City (program 2.E.4);*
- *Amend the Zoning Ordinance to require a higher minimum (20 percent) of new units in certain zoning districts be affordable to lower income households (program 2.E.4);*
- *Adopt an ordinance establishing and imposing a nexus fee applicable to new commercial development to fund affordable housing development (program 2.E.5);*
- *Study vacant and/or underutilized City-owned parcels for use as affordable and/or special needs housing sites (program 2.E.6);*
- *Develop relationships with nonprofit housing development corporations to maximize affordable housing opportunities within Brisbane (Program 2.F.2);*
- *Evaluate the potential for the City to acquire vacant sites and underdeveloped properties within the City to land-bank for future affordable housing projects (program 2.F.3);*
- *Establish how City funding sources will be used to subsidize development costs in residential and mixed-use projects to encourage inclusion of more affordable housing units than required by the City's Inclusionary Housing Ordinance (program 2.F.4);*

- *Implement affordable housing preservation and management policies identified within the AHSP (program 3.A.1).*
- *Amend the Zoning Ordinance to require one-to-one replacement of deed-restricted affordable housing units converted to market-rates (program 3.A.5);*
- *Amend the Inclusionary Housing Ordinance to extend the required timeframe of affordability covenants on new affordable housing development (program 4.A.11); and*
- *Implement preservation policies identified in the AHSP (program 4.B.2).*

**F3.** Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

**RESPONSE:** *Not applicable. The City of Brisbane is not named in this finding and therefore has no comment.*

**F4.** HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

**RESPONSE:** *The City of Brisbane partially agrees with this finding. The City of Brisbane did not receive comments from HCD requiring the City to specify how to verify the income levels of ADU occupants prior to their certification of our 2023-2031 Housing Element. However, program 3.A.3 of the City of Brisbane's adopted and certified Housing Element stipulates the City will annually survey rental rates for permitted ADUs to ensure their affordability to lower-income households are at the ratios assumed within the Housing Element. It further states that if survey results show that ADUs are being rented at levels that are not affordable to low-income households at the ratios assumed, the City will provide targeted outreach to homeowners regarding tenant placement assistance provided by HIP Housing (program 4.A.9). Finally, the City of Brisbane is in support of a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.*

**F5.** Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

**RESPONSE:** *The City of Brisbane agrees with this finding. As certified by HCD, program 3.A.3 of the City of Brisbane's adopted Housing Element specifies how the City of Brisbane will monitor and verify ADU production annually.*

**F6.** Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

**RESPONSE:** *The City of Brisbane agrees with this finding. As stated above, the City of Brisbane is committed to annually surveying rental rates for permitted ADUs to ensure their affordability to lower-income households are at the ratios assumed in our adopted and certified 2023-2031 Housing Element and the City of Brisbane supports a regional approach to monitoring ADU affordability.*

**F7.** ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

**RESPONSE:** *The City of Brisbane agrees with this finding. HIP is one potential partner agency and the City of Brisbane's adopted and certified 2023-2031 Housing Element contains a number of programs that leverage assistance and resources offered by HIP Housing.*

**The San Mateo County 2022-2023 Grand Jury made a number of recommendations to the City Councils of the cities of San Mateo County. The Grand Jury requested responses from the City of Brisbane regarding R1, R2, R3, R4, R5, and R6.**

**R1.** San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

**RESPONSE:** *The recommendation will not be implemented because it is not warranted. While the City of Brisbane shares the Civil Grand Jury's goal to increase ADU affordability monitoring, the City of Brisbane has an adopted and certified 2023-2031 Housing Element that was developed through a rigorous process of multiple years of public input and revisions and ADUs account for less than five percent of our required affordable units. It is not reasonable to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals when, over the last five years, 67% of survey respondents to the City's annual rental rate survey have indicated their ADU is rented at a rate that is considered affordable, based on the income limits established by the U.S. Department of Housing and Urban Development (HUD) for San Mateo County, suggesting ADUs are rented at affordable levels within the City of Brisbane. Furthermore, the City's certified Housing Element already articulates how the City will monitor and verify ADU production or*

*affordability, including what action to take should the affordability ratios differ from that assumed within the Housing Element, and contains a number of strategies to meet our affordable housing needs under RHNA.*

*The City of Brisbane is committed to complying with State housing law and supporting the development of an effective regional ADU monitoring program that will be operated by 21 Elements or ABAG. The City of Brisbane also supports the development of a new ADU nonprofit with programs to incentivize the production of affordable ADUs in San Mateo County. The City expects to have this monitoring program in place for future Housing Element cycles.*

**R2.** By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

**RESPONSE:** *The recommendation has been implemented for the City of Brisbane. The city has been, and will continue per Housing Element program 3.A.3, to annually survey rental rates (and occupancy) for permitted ADUs within the City to ensure their affordability to lower-income households are at the ratios assumed in our adopted and certified 2023-2031 Housing Element. The City of Brisbane has also committed to act accordingly should the ratios differ from those assumed.*

*The City of Brisbane agrees that it is important to have high quality information about who is living in ADUs so the City will also participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. However, due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU within the county.*

**R3.** By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

**RESPONSE:** *This recommendation has yet to be implemented but will be implemented in the future. The City of Brisbane agrees with the goal of adopting an affordable ADU program. The City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the City, has been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of*

*affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy, if possible. Additionally, programs 2.D.1, 2.D.2, 2.E.2 and 2.E.3 of the City's adopted and certified 2023-2031 Housing Element, planned to be implemented between Fall 2023 and January 2025, aim to reduce construction costs and identify private and public funding sources specifically for the construction of affordable ADUs.*

**R4.** By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

**RESPONSE:** *This recommendation has yet to be implemented but will be implemented in the future. As part of the ABAG or 21 Elements ADU monitoring program (also referenced in response to R2), the City of Brisbane will track the intended use of ADUs during the permitting process. The monitoring is projected to launch in January 2025. Additionally, the City of Brisbane supports the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in exchange for affordability requirements, such as deed restrictions, in San Mateo County.*

**R5.** By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

**RESPONSE:** *The recommendation will not be implemented because it is not warranted or is not reasonable. While the City of Brisbane agrees with the importance of an accurate affordability distribution formula, given the relatively small size of Brisbane, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across multiple jurisdictions. The City of Brisbane's adopted and certified 2023-2031 Housing Element specifies a ratio of affordability to lower-income ADU households utilizing the UC Berkeley study which surveyed thousands of homeowners statewide with repeat mailing and data that was aggregated to reduce the margins of errors. Furthermore, the recommendations of the UC Berkeley study (30 very low/30 low/30 moderate/10 above moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed, and there is no evidence in the data to suggest significant variation from city to city.*



*Additionally, the City of Brisbane is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels within San Mateo County.*

**R6.** *San Mateo County and each City should consider working together to address Recommendations 2 and 3.*

**RESPONSE:** *This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs within the county and San Mateo County jurisdictions are already working together to address recommendations R2 and R3. The City of Brisbane is one of many San Mateo County jurisdictions planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements and supports the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County.*

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On behalf of the City of Brisbane, I would like to thank the members of the Grand Jury for their efforts.

Sincerely,

Madison Davis  
Mayor



Superior Court of California, County of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

ATTACHMENT 2

NEAL I. TANIGUCHI  
COURT EXECUTIVE OFFICER  
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June 12, 2023

*Re: Grand Jury Report: "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"*

Dear Clay Holstine:

The 2022-2023 Grand Jury has publicly released a report on June 12, 2023 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Nancy L. Fineman. Your agency's response is due no later than **September 11, 2023**. **Please note that the response should indicate that it was approved by your governing body at a public meeting.**

For all findings, your responding agency shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to Grand Jury recommendations, your responding agency shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.

- Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Fineman.

Hon. Nancy L. Fineman  
Judge of the Superior Court  
c/o Bianca Fasuescu  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

2. Responses to be placed at the Grand Jury website.

- Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)

3. Responses to be placed with the clerk of your agency.

- File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please email [bfasuescu@sanmateocourt.org](mailto:bfasuescu@sanmateocourt.org).

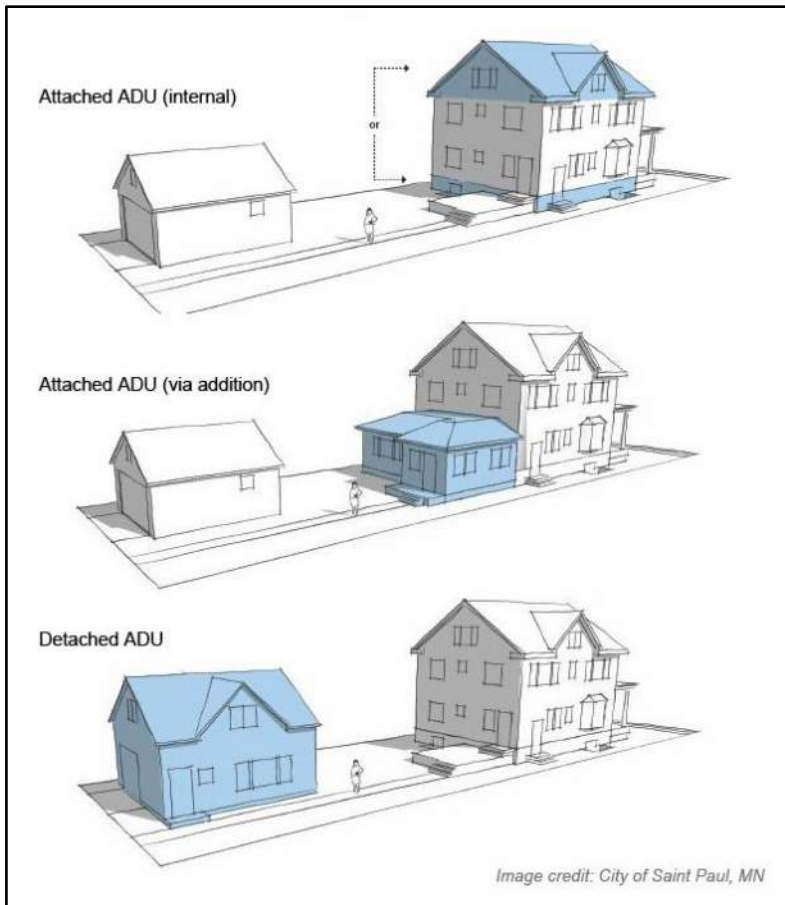
If you have any questions regarding these procedures, please do not hesitate to contact David Silberman, County Attorney at email [dsilberman@smcgov.org](mailto:dsilberman@smcgov.org).

Very truly yours,

  
Neal I. Taniguchi  
Court Executive Officer

Enclosure

cc: Hon. Nancy L. Fineman  
David Silberman



# Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?

Release Date: June 12, 2023  
2022-2023 San Mateo County Grand Jury

***“You can always count on Americans to do the right thing – after they’ve tried everything else.” Winston Churchill***

***“Every man must decide whether he will walk in the light of creative altruism or in the darkness of destructive selfishness.” Martin Luther King, Jr.***

[Issue](#) | [Summary](#) | [Background](#) | [Discussion](#) | [Findings](#) |  
[Recommendations](#) | [Requests for Responses](#) | [Methodology](#) | [Glossary](#) | [Bibliography](#) | [Appendices](#)

## ISSUE

Are some San Mateo County communities misusing Accessory Dwelling Units (ADUs) to avoid the construction of multifamily low-income housing over the next eight years?

## SUMMARY

Anointed the “epicenter of America’s housing dysfunction” by Harvard Business Review this year, the San Francisco Bay Area has faced an acute housing shortage at all levels for decades, especially for those who have the least.

And it is no longer news that many of the workers that San Mateo County communities depend upon daily – first responders, teachers, nurses, city employees, gardeners, and housekeepers, to name just a few – cannot afford a decent place to live and raise their families close to their jobs.

To address the issue, the State Legislature in 1969 passed the Housing Element Law, which says all California cities, towns, and counties, every eight years, must plan for the housing needs of all their residents regardless of income, which effectively requires development of affordable housing. Many changes and additions have been made to the law over the years, most recently eliminating zoning restrictions governing ADUs – small homes or apartments that share a single-family lot of a larger primary residence – and allowing communities to count them as affordable housing in their Regional Housing Needs Allocation (RHNA) plans.

At issue:

- Although their intentions have been good, the State has neglected to include any form of regulation to ensure low-income tenants ultimately use these ADUs as planned.
- Because owners often rent their ADUs to family and friends, they can exacerbate patterns of segregation and exclusion.<sup>1</sup>
- And perhaps most importantly – counting ADUs as affordable housing will likely result in cities issuing permits for fewer deed-restricted low-, very low-, and moderate-income apartments and homes.

Without accountability through oversight and regulations, low-, very low-, and moderate-income housing now planned in some San Mateo County jurisdictions may end up existing solely on paper and never in operation.

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<sup>1</sup> Association of Bay Area Governments, “Final Regional Housing Needs Allocation (RHNA) Plan, San Francisco Bay Area, 2023-2031”, accessed May 27, 2023, [https://abag.ca.gov/sites/default/files/documents/2021-12/Final\\_RHNA\\_Allocation\\_Report\\_2023-2031-approved\\_0.pdf](https://abag.ca.gov/sites/default/files/documents/2021-12/Final_RHNA_Allocation_Report_2023-2031-approved_0.pdf)

This problem is most acute in Atherton, Hillsborough, Portola Valley, and Woodside, where some residents are up in arms over the State-mandated housing requirements, and the city governments, trying to appease them, are proposing counting on ADUs to meet as much as 80 percent of their affordable housing targets.

Assembly Bill 72 (2017) gives the California Department of Housing and Community Development (HCD) enforcement capability on local government's land use, planning, and zoning requirements. In the current RHNA-6 (2023-2031) planning cycle, HCD demands that San Mateo County jurisdictions monitor and verify ADU affordability every two years. However, HCD has not specified how to prove the ADUs are rented to very low-, low- or moderate-income households, leaving it to the communities to find a solution.

So far, jurisdictions have yet to do so, even though local independent agencies such as HIP Housing have systems and services in place, which they use to verify affordability of deed-restricted affordable housing, and that could be adapted Countywide to monitor and verify ADUs' affordability and occupancy in a manner that adheres to fair housing guidelines.

California needs to build 2.5 million homes by 2030 to meet current housing demands, according to the HCD. But the State averages only about 125,000 new homes annually – a shortfall by nearly two-thirds.

ADUs can, indeed, provide affordable housing. And to many citizens of affluent communities, they are an appealing alternative to multi-family, deed-restricted affordable housing projects. However, just because the law makes it possible to count ADUs as affordable housing, it does not exempt cities and towns from credibly planning for badly needed affordable housing.

## **BACKGROUND**

One of the State's long-standing priorities has been to increase the availability of affordable housing for all economic segments.

HCD – the California Department of Housing and Community Development – focuses on making this happen by working with local jurisdictions to create rental and homeownership opportunities for all Californians, including individuals and families who are experiencing homelessness.

Beginning in 1969, the State mandated that all California cities, towns, and counties must plan for the housing needs of all Californians, regardless of income. They meet this mandate by developing and updating a Housing Element, part of a local jurisdiction's General Plan, which shows where they will allow new housing and describes the policies and strategies necessary to support building new housing.

The process of updating the Housing Element involves HCD working with various Councils of Governments (COG) to develop a RHNA plan that includes the Regional Housing Needs Determination (RHND), which assigns the number of housing units that each county and city are expected to facilitate being built in the subsequent eight years to accommodate projected growth.

In the case of the Bay Area, this Council of Governments is the Association of Bay Area Governments (ABAG), which represents all nine Bay Area counties, including San Mateo County and its 20 cities and towns. Components that ABAG considers in determining each Bay Area county's and city's allocation of housing units include population, employment potential, proximity to transportation centers, open space,

inclusivity, and diversification, all of which are becoming increasingly important to the State, according to ABAG reports.

Multiple bills in both houses of the State Legislature have been proposed over the years to change the process and increase the amount of State control over housing development. Particularly significant changes occurred during the 2017 legislative session when senators and assembly members proposed approximately 150 housing bills. That year the Governor ultimately signed a package of 15 bills related to funding for housing, streamlining development approvals, and increasing accountability for meeting the requirements of the Housing Element Law. These included bills that significantly changed the RHNA process, requiring additional outreach and reporting, modifying how to calculate the RHND to reflect unmet housing needs better, increasing the number of topics to be considered in the allocation methodology, and giving HCD, on behalf of the State, the ability to sue individual counties or cities for not meeting requirements.

Updating the Housing Element every eight years is an iterative process involving HCD, the regional COGs, the State Department of Finance (DOF), and local jurisdictions. (See Appendix D.) But the ultimate authority for approval of the RHNA, the RHND, and the associated Housing Elements resides with HCD.

The current approved RHNA plan developed by ABAG is known as RHNA-6, which spans 2023 to 2031.

HCD requires each jurisdiction to submit its completed Housing Element for review and approval by a specific date. For RHNA-6, the due date for San Mateo County and its cities was January 31, 2023. Before the due date, the jurisdictions were able to send their draft Housing Elements to HCD for preliminary review and comments and make necessary modifications that HCD highlights. Any jurisdiction which fails to meet the deadline for submission of their completed Housing Element is subject to a potential "builders remedy" action that forces a city to allow building projects regardless of whether they meet most of the local zoning restrictions.

Once Housing Elements are approved, HCD monitors the progress of approved RHNA plans by requiring each jurisdiction to report its building permit activities annually. If progress is below expectations, the jurisdiction must develop alternative strategies for review and approval by HCD.

During the RHNA-5 (2015-2023) progress reviews submissions, cities began including ADUs as part of the overall housing inventory in their annual reports because State legislation (Government Code section 65852.150) that became effective in January 2017 stated that ADUs are a valuable form of housing in California, which also "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods."

Numerous Senate and Assembly bills were enacted in 2018 and 2020, requiring local jurisdictions to streamline and allow for ease of ADU production to increase housing for all income categories. With these encouragements, ADUs being deemed a viable housing option, and facing stringent RHNA-6 requirements of approximately three times more housing units than in the RHNA-5 cycle, a few affluent San Mateo cities have proposed using ADUs to satisfy most of their plans to meet the required number of housing units in the various income categories.

"ADUs are not a panacea, but they're a good tool in the toolbox," said a planning consultant working for a San Mateo County city. "Most land on The Peninsula is single-family homes. ADUs are opening land that was not open before. But higher density housing near transit is better."



Added a city manager: “I think they (ADUs) are a piece of the solution, but not all of it. I think ADUs are an important way to provide opportunities for other things – where people want multigenerational living on-site, for caretakers, or other folks – they can reside in an ADU even if they’re not paying rent.”

**DISCUSSION**

While HCD-approved RHNA Housing Elements do not require the cities and counties to build affordable housing, the jurisdictions must adjust zoning ordinances, issue permits to allow construction of affordable housing, and initiate programs that incentivize such construction.

However, as shown in Chart 1 below, significant portions of San Mateo County's affordable housing in RHNA-5 (2015-2023) plans did not materialize – most likely due to a lack of permit applications.

With RHNA-5’s significantly lower targets, the less-than-expected performance during the RHNA-5 cycle foreshadows the enormous challenge the County’s cities and towns now face in meeting the RHNA-6 goals for the next eight years, which are approximately three times larger, as shown in Chart 2 below.

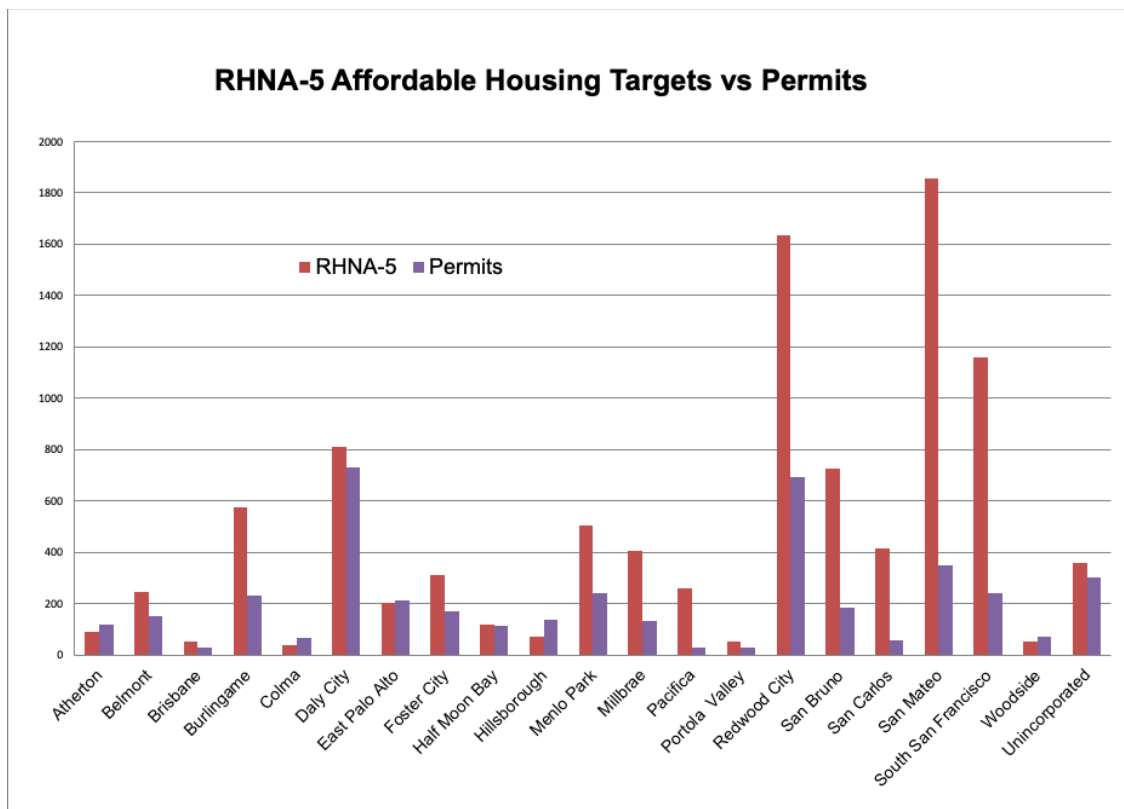


Chart 1: RHNA-5 Affordable Housing Required vs. Permitted

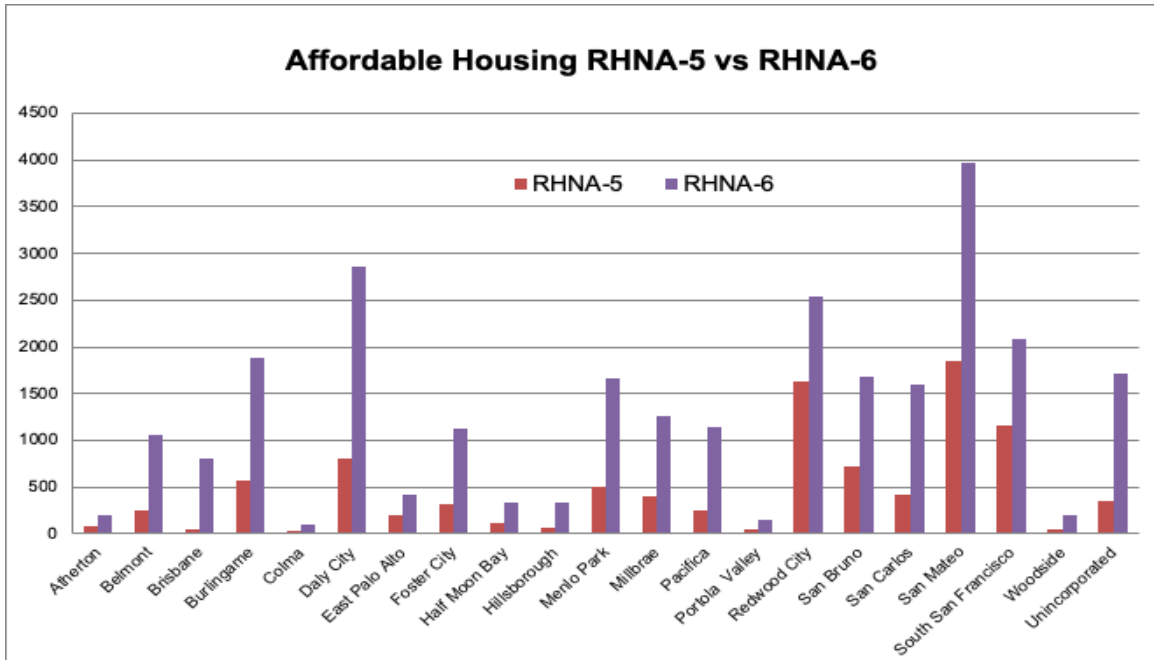


Chart 2: RHNA-5 Affordable Housing Allocations vs RHNA-6

Besides increasing affordable housing targets by nearly 300 percent, the State has made other significant changes in the ADU laws to address the current housing crunch.

Law	Year	Impact
AB671	2019	Through Housing Elements, HCD to promote ADUs for affordable rent
AB670	2019	Any local covenants and restrictions on new housing are void
AB587	2019	Deed-restricted sale of ADU is allowed separately from the main house
AB 68	2019	Removes local restrictions on minimum size, requirement of owner occupancy, parking requirements for garage conversion, and any impact fee.
AB 3182	2020	Permitting process within 60 days
SB9	2021	Facilitates lot split and allows more than 1 ADU per property
AB 345	2021	Allows owners to sell ADUs separately
AB 2221	2023	Pre-specific time permit frame for approval of ADU applications
SB 897	2023	Increases the ADU height limit to 18' and allows retro permitting of previous unauthorized ADUs.

The net effect of these changes was to minimize municipal-level regulations on ADUs – such as parking requirements, property line setbacks, height limits, or the number of ADUs on one property – and make

ADUs an acceptable means to meet affordable housing obligations. Given these changes, namely high mandatory targets for affordable housing, enthusiastic support by the State of ADUs as affordable housing, and requiring zero land use rezoning for ADUs, nearly all San Mateo County cities and towns include ADUs in their RHNA-6 Housing Elements.

The issue, however, is that for every ADU included in a Housing Element – regardless of whether the ADU is built and rented to very low-, low-, or moderate-income tenants – one verifiable, deed-restricted affordable housing unit will not be built in that jurisdiction by a developer.

**So, How Did We Get Here?**

California cities and counties can now use ADUs to help satisfy their RHNA requirements. But calculating how many ADUs to put into a Housing Element and how to distribute them into each income category, differ from other housing options.

ABAG instructs San Mateo County jurisdictions that the standard method is first to estimate the number of ADUs that homeowners will build in a planning period, which is 2023 through 2031 for RHNA-6.

In its technical memo “Using ADUs to Satisfy RHNA,” ABAG advises members that the estimate should be based on the average number of ADU building permits issued each year, multiplied by eight, because there are eight years in a housing element cycle.

“Most cities base their determination of annual ADU permits by averaging the building permits approved each year since 2019 when State law made it easier to construct the units,” the technical memo explains:

“There is a small amount of flexibility in the calculations,” the memo continues. “If numbers were low in 2019 but were high in 2020, 2021, and 2022, a jurisdiction could potentially use 2020-2022 as the baseline. This rationale would be bolstered if there was a logical explanation for the change, e.g., the jurisdiction further loosened regulations in 2020. Projecting a higher number of ADUs than what has been demonstrated through permit approvals in recent years may be possible, but more challenging. A slightly larger number may be warranted if a robust, funded, and clear plan to increase production has been put in place. However, you are strongly encouraged to coordinate with HCD before deviating from the standard methodology.”

Once cities complete their estimate, they must distribute those units into each income category.

To help its members, ABAG analyzed ADU affordability. Using data from a 2020 statewide survey of homeowners who had constructed ADUs in 2018 or 2019, ABAG concluded that the assumptions in the chart below are generally applicable in most jurisdictions. Many Bay Area jurisdictions chose to use these numbers instead of conducting their own affordability analysis.

Percent	Income Category
30%	Very Low Income
30%	Low Income
30%	Moderate Income
10%	Above Moderate

“UC Berkeley Turner Center did a statewide survey of ADU affordability, and they worked with ABAG to adjust it for the Bay Area specifically,” said a San Mateo County planner. “So those (numbers) are based on surveys and data analysis of actual ADUs that have been produced, and the rents that are being offered to tenants. We are just accepting their analysis as is.”

San Mateo County jurisdictions have almost unanimously adopted ABAG’s 30-30-30-10 formula.

However, a 2021 report and recommendations for RHNA-6 prepared by ABAG’s Housing Technical Assistance Team, titled “DRAFT Affordability of Accessory Dwelling Units,” says that although ADUs are often affordable, jurisdictions should be cautious about relying on them too heavily because of fair housing concerns:

“Many ADUs are affordable to lower and moderate-income households because they are rented to family and friends of the homeowners,” the report states. “If minorities are underrepresented among homeowners, the families and potentially friends of the homeowners will be primarily white. Therefore, relying too heavily on ADUs could inadvertently exacerbate patterns of segregation and exclusion.”

The report also acknowledges that ADUs often do not serve large families, another critical fair housing concern.

And while ADUs accomplish an essential fair housing goal by adding new homes in parts of the municipality that are more likely to be areas of opportunity, the report recommends that jurisdictions with fair housing concerns “may want to use more conservative assumptions based on open market rentals, excluding units made available to family and friends,” as summarized below:

Percent	Income Category
5%	Very Low Income
30%	Low Income
50%	Moderate Income
15%	Above Moderate

So far, 16 San Mateo County cities have chosen the 30-30-30-10 formula, implying there are no fair housing concerns in their jurisdictions.

Only two cities – San Carlos and San Mateo – use ABAG’s more conservative formula of 5-30-50-15 in their plans. One city – Belmont – used its own judgment.<sup>2</sup> And one – Colma – does not use ADUs in their plans at all to meet State requirements.

But in all cases, these statistical estimates may not reflect the actual usage of constructed ADUs. Determining that would require actual verification by each local jurisdiction.

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<sup>2</sup> City of Belmont, “General Housing Element Draft 2023-2031”, p. 25, accessed May 27, 2023, <https://www.belmont.gov/home/showpublisheddocument/21721/637968613354630000>

**ADUs planned in RHNA-6  
(May 11, 2023)**

City	Very Low	Low	Moderate	Above Moderate	Total ADUs	Total RHNA-6 Requirement
Atherton	56	56	56	112	280	348
Belmont	0	0	80	0	80	1785
Brisbane	12	12	12	4	40	1588
Burlingame	50	50	50	17	167	3257
Colma	-	-	-	-	0	202
Daly City	151	151	151	50	503	4838
East Palo Alto	35	34	34	12	115	829
Foster City	7	7	7	3	24	1896
Hillsborough	84	84	84	28	280	554
Menlo Park	26	25	26	8	85	2946
Millbrae	34	34	33	11	112	2199
Pacifica	56	56	56	19	187	1892
Portola Valley	28	28	28	8	92	253
Redwood City	152	152	152	50	506	4588
San Bruno	72	72	72	24	240	3165
San Carlos	10	61	102	30	203	2735
San Mateo	22	132	220	66	440	7015
South San Francisco	113	113	113	38	377	3956
Unincorporated San Mateo	107	107	107	36	357	2833
Woodside	36	36	36	12	120	328

*(This table includes all San Mateo County jurisdictions that have submitted Housing Element plans to HCD for review. As of June 1, 2023, Half Moon Bay and Daly City have not submitted RHNA-6 plans for HCD review.)*

Accordingly, if HCD approves cities and towns' current Housing Elements, San Mateo County may end up with many affordable housing units that exist only on paper because they are counted as affordable units by the State but never made available or occupied by people who need affordable housing:

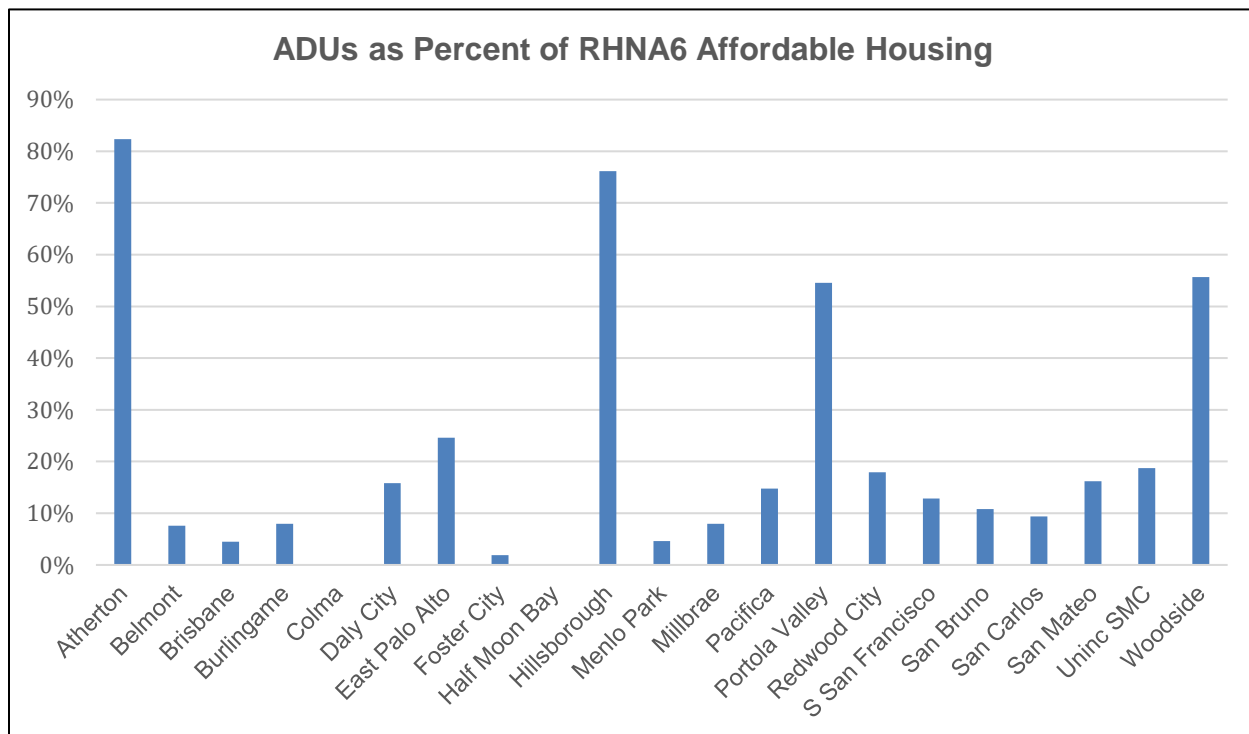
“BMR (below market rate) unit displacement is a legitimate issue,” said a city planning consultant. “RHNA looks at (the number of) units, not the number of people being housed. For the State, they’re all counted the same – an ADU or three-bedroom apartment, five vs. one or two people. In the eyes of the State, they’re all the same.”

Finally, the cities and towns relying primarily on ADUs to meet their RHNA-6 housing targets do not meet the overall objectives required by HCD and RHNA of:

- Increasing the housing supply and mix of housing types, tenure, and affordability
- Promoting infill development and socioeconomic equity, protecting environmental and agricultural resources, and encouraging efficient development patterns
- Promoting an improved intraregional relationship between jobs and housing
- Balancing disproportionate household income distributions
- Affirmatively furthering fair housing

**Housing and Community Development Pushes Back**

Four San Mateo County municipalities – Atherton, Hillsborough, Portola Valley, and Woodside – rely heavily on ADUs to meet low-income housing requirements in their RHNA-6 Housing Elements.



May 17, 2023

While HCD does not single out those four cities for their heavy reliance on ADUs to meet their affordable housing needs, throughout the process of submission and review of draft RHNA-6 plans, HCD consistently instructed San Mateo County cities and towns that they must monitor and verify ADU production and affordability at least every two years but has not specified an acceptable process for verifying the affordability level of ADUs as planned.

Should San Mateo County and its cities seek outside help on this issue, there are a handful of independent non-profit agencies and for-profit real estate management companies operating today in the Bay Area that have established systems and processes for monitoring and verifying rented occupied housing for continued affordability and adherence to fair housing guidelines while maintaining tenant and owner privacy – which was an issue continually raised by City Managers and other officials during Grand Jury interviews.

### **ADU Affordability Monitoring Emphasized in HCD Review Letters to Jurisdictions**

#### **Atherton (4-4-23)**

Program 3.812 (New Construction of Affordable Accessory Dwelling Units): While the element was revised to include timing of each action, it is unclear how affordability will be established. The program should be revised to clarify actions to establish and track affordability.

#### **East Palo Alto (4-25-23)**

Accessory Dwelling Units (ADU): As noted in the prior review, the element should include a program that commits to frequent monitoring (every other year) for production and affordability, and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) as needed.

#### **Foster City (4-24-23)**

*Program H-D-4-h (ADU Monitoring)*: While the program commits to evaluating alternative actions by the end of 2026, it must commit to specific alternative actions and monitor production and affordability of ADUs more than once in the planning period (e.g., every two years).

#### **Hillsborough (1-10-23)**

This analysis should specifically address whether the ADU strategy to accommodate lower-income households contributes to continued exclusion and disparities in access to opportunity and how the strategy promotes housing choice for a variety of households including lower-income households, and large families.

To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors, and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year), and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) if ADU production assumptions are not being achieved.

#### **Millbrae (1-24-23)**

Accessory Dwelling Units (ADU): To support assumptions for ADUs in the planning period, programs should commit to additional incentives and strategies, frequent monitoring (every other year) of production and affordability and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed.

Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers within a specified time period (e.g., within six months).

#### **Redwood City (7-8-22)**

Programs must be expanded to include incentives to promote the creation and affordability of Accessory Dwelling Units (ADUs).

Examples include exploring and pursuing funding, modifying development standards and reducing fees beyond State law, increasing awareness, pre-approved plans and homeowner/applicant assistance tools. In addition, given the city's assumptions for ADUs, the element should include a program to monitor permitted ADUs and affordability every other year and take appropriate action such as adjusting assumptions or rezoning within a specified time period (e.g., 6 months).

#### **San Bruno (3-29-23)**

Accessory Dwelling Units (ADU): While the element revised the ADU assumptions, Program 4-P must be revised to commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed. The element must also address affordability assumptions for ADU projections.

#### **San Mateo (3-27-23)**

Accessory Dwelling Units (ADU): Program 1.4 must commit to also monitoring affordability of the ADU units that are permitted as well as provide additional incentives or identify additional sites if production and affordability assumptions are not met.

#### **County of San Mateo (4-20-23)**

Accessory Dwelling Units (ADU): Further, programs should commit to additional incentives and strategies, frequent monitoring for production and affordability (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed. The element must also address affordability assumptions for ADU projections, by clarifying what ABAG assumptions are utilized.

#### **South San Francisco (3-30-23)**

The element should include a commitment to reconcile trends with reported units within the Cities submitted annual progress report. Further, as Stated in the previous review, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) if number and affordability assumptions are not met.

#### **Woodside (10-14-22)**

Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers within a specified time period (e.g., within six months).

In their HCD approved housing plans, Brisbane and Redwood City aren't definitive about how they will monitor ADU affordability but imply they will use surveys to comply with HCD instructions.

Redwood City plans to collect ADU rental data during its permitting process. And Brisbane says, if available, it will participate in a regional forgivable ADU construction loan program in exchange for limiting rentals of the ADUs to extremely low-income households for 15 years. Brisbane said it is also exploring a possible city forgivable loan program if the regional program doesn't materialize.

"We can't force people to report to us or to be honest with us," said one jurisdiction's planner.

Another city's chief planner concluded that a deed restriction – any limitation on a property that affects the ability of the property owner to utilize the property as they wish, such as a requirement to verify a tenant's income and rent charged – "is the best way to (enforce) affordability." Alternatively, one city planning official suggested the formation of a Countywide nonprofit to income-qualify and match renters to available ADUs, thereby monitoring and enforcing affordability because the smaller towns and cities don't have the resources to perform that function on their own.

Finally, a fourth city planner offered an alternative view: "We're not a city hiding behind ADUs. ABAG gave us a formula. We plopped it in. If the State said you can't count ADUs at all, that would be fine."

### **A Long, Long Way to Go**

The Superior Court of California requires all San Mateo County Civil Grand Jury investigation reports to be completed and published by June 30 annually.

And although the law required San Mateo County cities and towns to submit their housing plans by January 31, 2023, as of June 1, Daly City has yet to adopt and submit a draft plan to HCD for review and approval.

Meanwhile, plans from Foster City, Half Moon Bay, Millbrae and Pacifica are now under HCD review.

So far, HCD has reviewed and rejected plans from 14 jurisdictions: Atherton, Belmont, Burlingame, Colma, East Palo Alto, Hillsborough, Menlo Park, Portola Valley, San Bruno, San Carlos, San Mateo, South San Francisco, Woodside, and San Mateo County, which is responsible for unincorporated areas.

As of the publication of this report, only Redwood City and Brisbane had completed the process and received the green light from HCD to proceed.

One reason cited for the delay is most San Mateo County cities and towns don't have a large enough staff to manage the workload that RHNA planning represents, so they outsource. And many could not find timely help because the consultants were busy preparing RHNA-6 plans for Southern California cities, which were due before San Mateo County municipalities. That caused many communities here to fall behind and are now out of compliance with the timing of their Housing Element submissions.

These delays, coupled with citizen objections to multifamily housing in their communities, almost guarantee RHNA-6 disputes will end up in the courts and remain unresolved for many years to come and postpone the building of sorely needed affordable housing indefinitely.



## FINDINGS

- F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.
- F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.
- F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.
- F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.
- F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.
- F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.
- F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

## RECOMMENDATIONS

- R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.
- R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.
- R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.
- R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.
- R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.
- R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Civil Grand Jury requests responses from San Mateo County and all 20 cities' governing bodies for each and every Finding and Recommendation.

The governing bodies should be aware that their comments or responses must be conducted subject to the Brown Act's notice, agenda, and open meeting requirements.

## RESPONSE REQUIREMENTS

California Penal Code Section 933.05 provides: For purposes of subdivision of Section 933, as to each Grand Jury finding, the responding person or entity shall report one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the disputed finding and shall include an explanation of the reasons.

For purposes of subdivision of Section 933, as to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has yet to be implemented but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall be at most six months from the Grand Jury report's publication date.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

## METHODOLOGY

The San Mateo County Civil Grand Jury used numerous approaches to develop this report.

- **Preliminary Research**

The Grand Jury studied RHNA-5 historical information and RHNA-6 Housing Elements submitted to HCD by the cities and towns in San Mateo County as they became available.

Before conducting in-depth research, the Grand Jury studied ABAG's reports on RHNA-6 housing allocations, introducing numerous issues and a means to understand how jurisdictions establish housing allocations. Additionally, the Grand Jury reviewed a 2021 ABAG report on ADU affordability for RHNA-6 and RHNA-5 annual progress reports to understand history.

The Grand Jury also reviewed a report on ADUs titled “A Solution on the Ground: Assessing the Feasibility of Second Units in Unincorporated San Mateo County, Implementing the Backyard Revolution: Perspectives of California’s ADU Owners,” April 22, 2021, Karen Chapple, Dori Ganetsos, Emmanuel Lopez, UC Berkeley Center for Community Innovation.

An additional resource for Preliminary Research has been the press. Particularly following the January 31, 2023 deadline for RHNA-6 submissions, nearly 60 articles provided insights and analysis the Grand Jury could not find elsewhere.

For a complete list of sources, see the Bibliography below.

- **Survey**

After conducting its Preliminary Research, the Grand Jury sent an eight-question survey in October 2022 to the city managers of the 20 San Mateo County cities and towns and the San Mateo County planning and building department responsible for the County’s unincorporated areas.

See Appendix A for survey results.

- **Interviews**

Much of the time spent by the Grand Jury on this investigation was in more than 30 interviews with 21 city managers and planning managers, five heads of nonprofit housing entities in San Mateo County, and executives at ABAG, HCD, and several other government bodies.

- **Continued Research**

Because RHNA-6 submissions and HCD replies are ongoing, the Grand Jury has continued to monitor the status of RHNA-6 submissions and HCD responses.

This report reflects submissions received prior to the report’s due date of June 30, 2023.

## GLOSSARY

### **Accessory Dwelling Units (ADUs)**

An accessory dwelling unit (ADU) is a legal and regulatory term for a secondary house or apartment that shares the building lot of a larger primary home. The unit is often used to provide additional income through rent or to house a family member. For example, an elderly parent could live in a small unit and avoid having to move to an assisted living facility. (Source: [Investopedia](#))

### **Affordable Housing: Very Low Income; Low Income; Moderate Income; Above Moderate Income**

Affordable housing is generally defined as housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities. (Source: [www.hud.gov](http://www.hud.gov))

Income Category Definitions	
Acutely Low	0 – 15% of area median income
Extremely Low	15% - 30% of area median income
Very Low	30%-50% of area median income
Lower <sup>2</sup>	50%-80% of area median income
Moderate	80%-120% of area median income
Above Moderate	Above 120% of area median income

San Mateo County Annual Income Limits (2021)					
Income Category	Number of Persons Per Household (Maximum Income)				
	1	2	3	4	5
Extremely Low	\$38,400	\$43,850	\$49,350	\$54,800	\$59,200
Very Low	\$63,950	\$73,100	\$82,250	\$91,350	\$98,700
Low Income	\$102,450	\$117,100	\$131,750	\$146,350	\$158,100
Median Income	\$104,700	\$119,700	\$134,650	\$149,600	\$161,550
Moderate Income	\$125,650	\$143,600	\$161,550	\$179,500	\$193,850

### Association of Bay Area Governments (ABAG)

The Association of Bay Area Governments (ABAG) is the Council of Governments (COG) for the nine-county Bay Area. One of California's earliest COGs, ABAG was founded to protect regional assets from State control. ABAG continues to serve the Bay Area by providing a regional venue for collaboration and problem-solving. ABAG's work program includes management over key regional assets, such as the San Francisco Estuary and the Bay Trail Project. It also offers a variety of cost-effective member services programs such as Pooled Liability Assurance Network (PLAN) Corporation (offering affordable liability, property insurance, claims management, risk management, and bond coverage to 30 municipalities) and financial services (offering tax-exempt capital financing for the acquisition, construction, and rehabilitation of affordable multifamily housing, health care facilities, schools, and other community facilities). ABAG POWER Natural Gas Pool conducts pooled purchasing of natural gas on behalf of 38 local governments and special districts. ABAG is also the COG that allocates the regional housing needs assessment (RHNA). (Source: [CALCOG](#))

### Below Market Rate (BMR)

A BMR unit is a housing unit that is priced to be affordable to households that are of moderate income or below. These housing units are often built by local government, nonprofits, or as a requirement of the developer (Inclusionary Affordable Housing Ordinance). As a result, these homes have certain deed restrictions recorded on the property, ensuring the home remains affordable for future generations. (Source: [County of San Mateo](#))

### California Department of Finance (DOF)

The California Department of Finance is a state cabinet-level agency within the government of California. The Department of Finance is responsible for preparing, explaining, and administering the state's annual financial plan, which the Governor of California is required under the California Constitution to present by January 10 of each year to the public. The Department of Finance's other duties include analyzing the budgets of proposed laws in the California State Legislature, creating, and monitoring current and future economic forecasts of the state, estimating population demographics and enrollment projections, and maintaining the state's accounting and financial reporting systems.

### California Department of Housing and Community Development (HCD)

The California Department of Housing and Community Development (HCD) develops housing policy and building codes (i.e., the California Building Standards Code), regulates manufactured homes and mobile home parks, and administers housing finance, economic development, and community development programs. (Source: <https://www.hcd.ca.gov/about-hcd>)

**Council of Governments (COG)**

Councils of Governments (COGs) are voluntary associations representing member local governments, mainly cities, and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines. (Source: [WRCOG](#))

**Deed Restrictions**

A deed restriction is a term widely used in real estate to refer to any limitation on a property that limits the ability of the property owner to utilize the property as they wish. (Source: [CA Realty Training](#))

**General Plan**

State law requires every city and county in California to prepare a General Plan for its future growth and development. A General Plan covers land use, transportation, housing, open space, natural resources, and public services. Local General Plans have been mandatory in California since the 1950s. State law also requires the cities and counties to periodically update their General Plans in response to changing conditions. Each General Plan includes maps expressing the community's vision of how and where it will grow and change. The General Plan typically has a time horizon of about 20 years. Once a General Plan is adopted, it is used by the City Council, local commissions, and City Staff as they make day-to-day decisions about the community's future. (Source: [City of San Rafael](#))

**Housing Element**

Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing plans as part of their General Plan (also required by the State). General Plans serve as the local government's blueprint for how the city or county will grow and develop and include eight elements: land use, transportation, conservation, noise, open space, safety, environmental justice, and housing. California's Housing Element Law acknowledges that, for the private market to address Californians' housing needs and demand, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain) housing development. As a result, housing policy in California rests mainly on the effective implementation of local General Plans and, in particular, local Housing Elements. (Source: [California Department of Housing and Community Development](#))

**Jurisdiction (city, town, or county)**

- 1: the power, right, or authority to interpret and apply the law; a matter that falls within the court's jurisdiction
- 2: a: the authority of a sovereign power to govern or legislate  
b: the power or right to exercise authority: CONTROL
- 3: the limits or territory within which authority may be exercised (Source: [Merriam-Webster](#))

**Regional Housing Needs Allocation (RHNA)**

Every eight years, ABAG develops the Regional Housing Needs Allocation (RHNA) plan approved by HCD and used to assign each city and county in the Bay Area their fair share of new housing units to build. These housing units are intended to accommodate existing needs and projected growth in the region. The RHNA process is critical because it requires all cities and counties to plan for the region's housing needs, regardless of income, to prepare for future growth and ease the California's acute housing crisis. (Source: [ABAG](#))

### Regional Housing Needs Determination (RHND)

The California Department of Housing and Community Development (HCD) identifies the total number of homes each region in California must plan to meet the housing needs of people at all income levels. They base the number on population projections produced by the California Department of Finance and adjustments incorporating the region's current housing needs. The jurisdictions separate the total number of housing units from HCD into four income categories that cover everything from housing for very low-income households to market-rate housing. ABAG is responsible for developing a methodology to allocate a portion of this housing need to every local government in the Bay Area. (Source: [ABAG](#))

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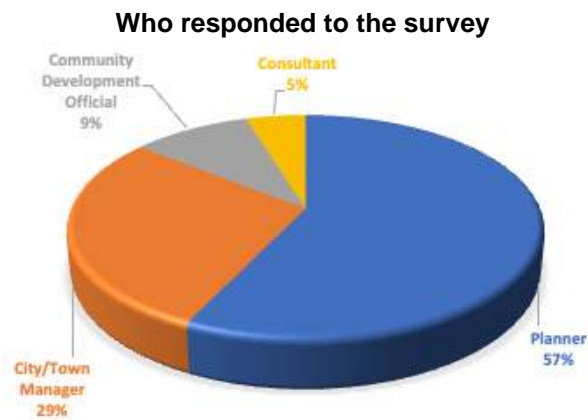
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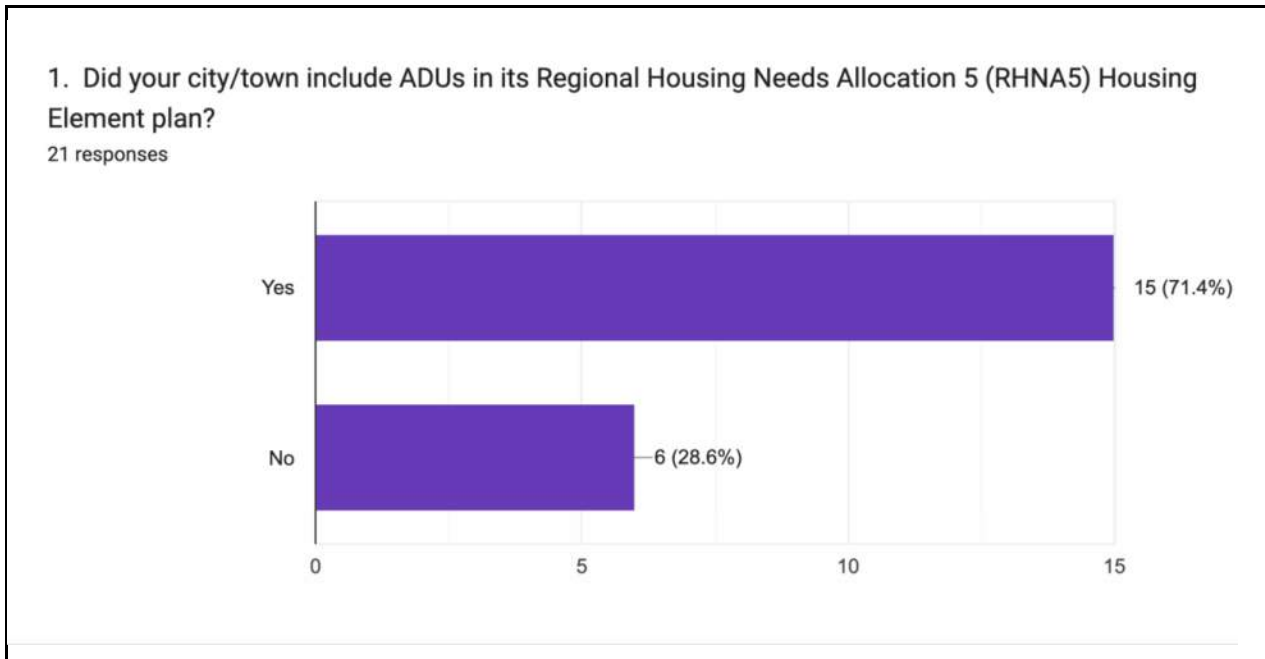
**APPENDICES**

- **A: Survey Results**
- **B: Timeline of Important Legislative Events**
- **C: ADUs: An American Tradition**
- **D: Housing Elements Are an Iterative Process**

**APPENDIX A  
Survey Results**

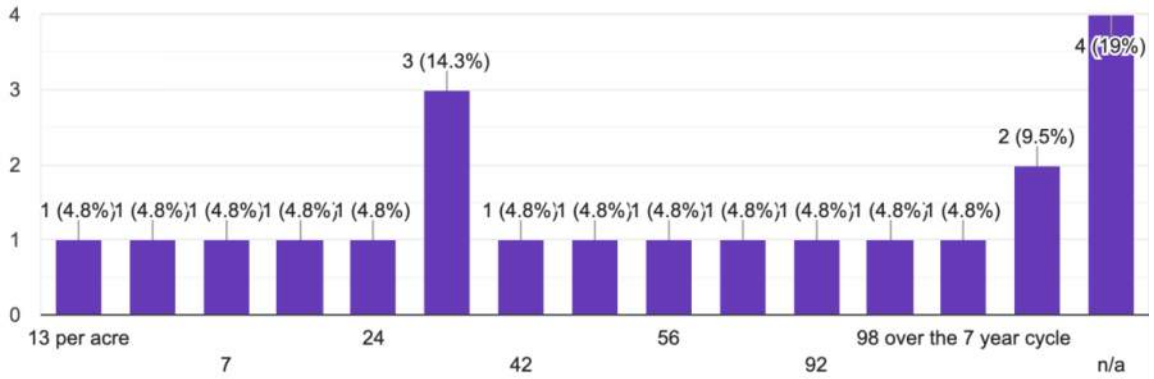


**Survey responses**



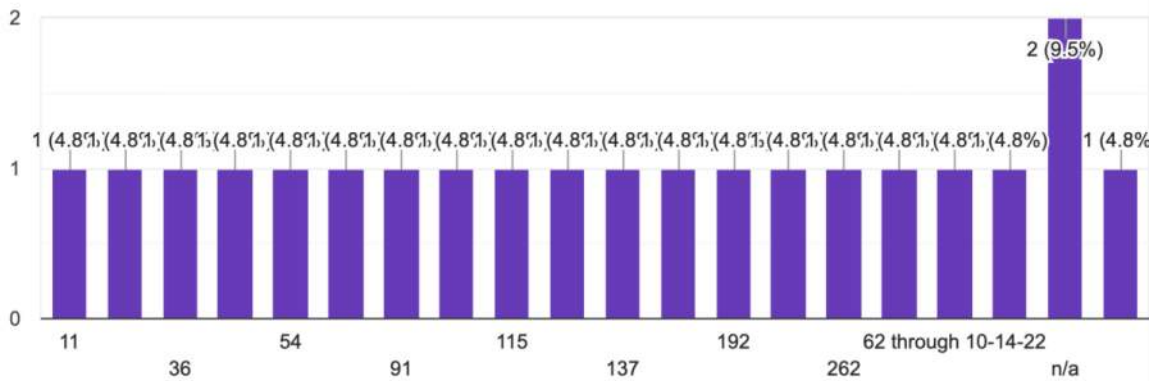
1A. If response was yes (indicate n/a if no): a. How many were planned?

21 responses



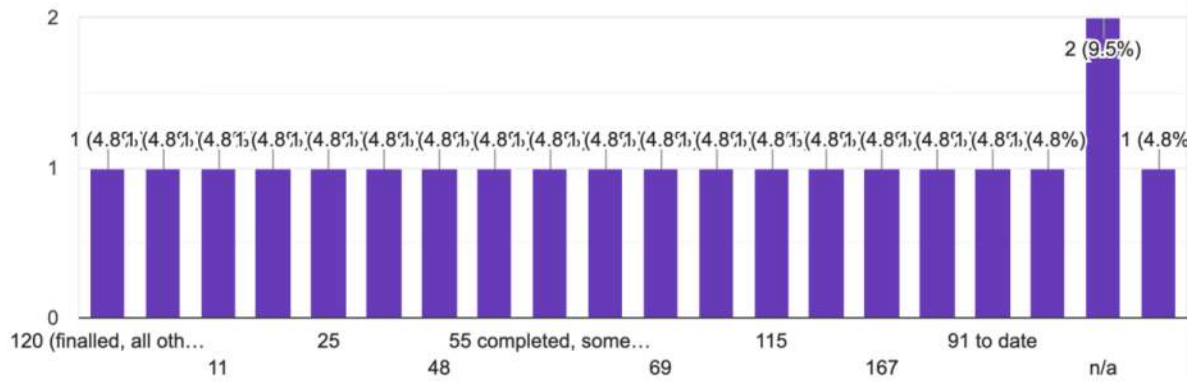
b. How many were permitted?

21 responses



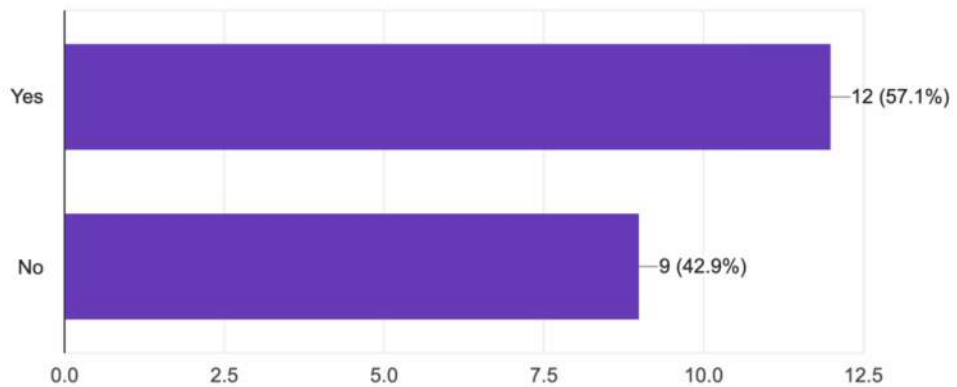
c. How many were built and completed?

21 responses



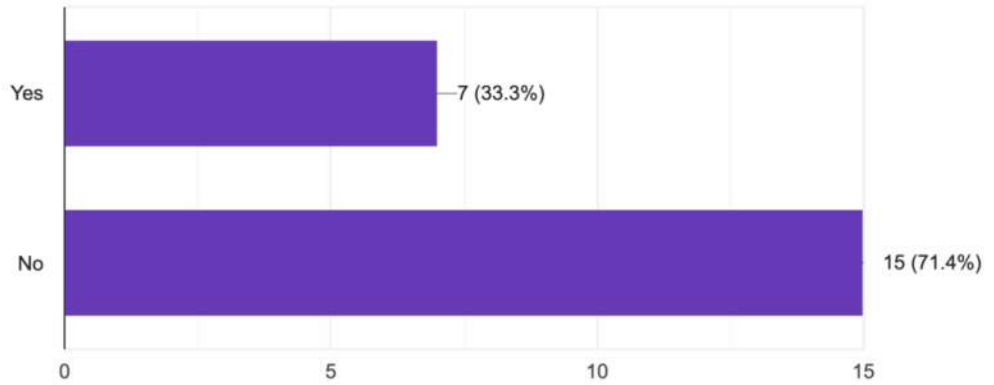
2. Were any of your city/town's RHNA5 ADUs designated to provide low, very low, and moderate income housing?

21 responses



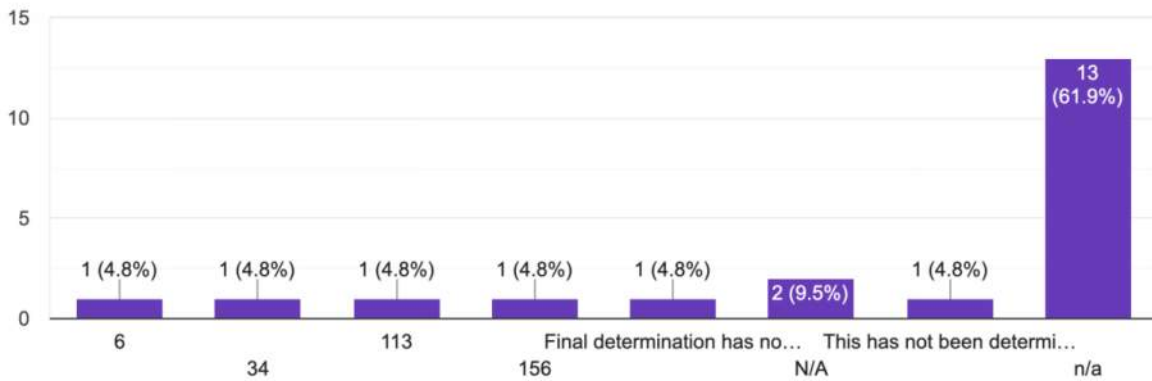
3. Is your city/town counting ADUs in RHNA6 Housing Element towards partial fulfillment of RHNA5 housing needs?

21 responses



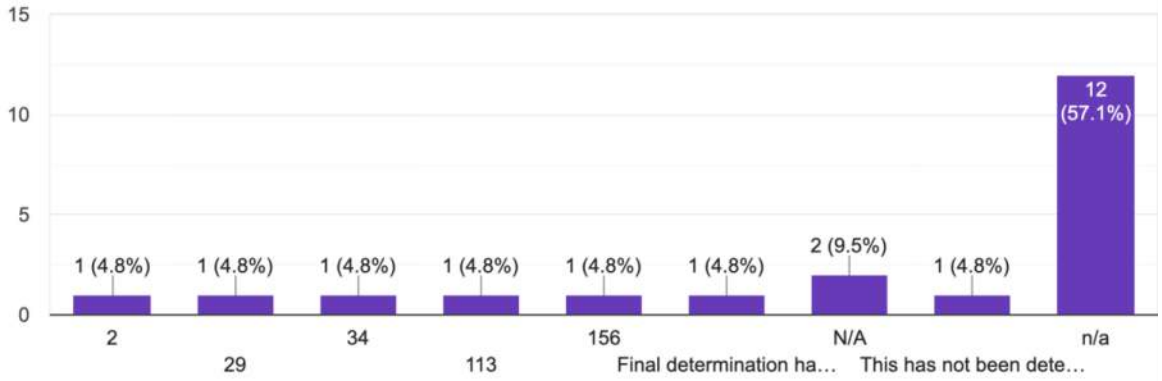
3A. If response was yes (indicate n/a if no): a. How many ADUs for very low-income housing?

21 responses



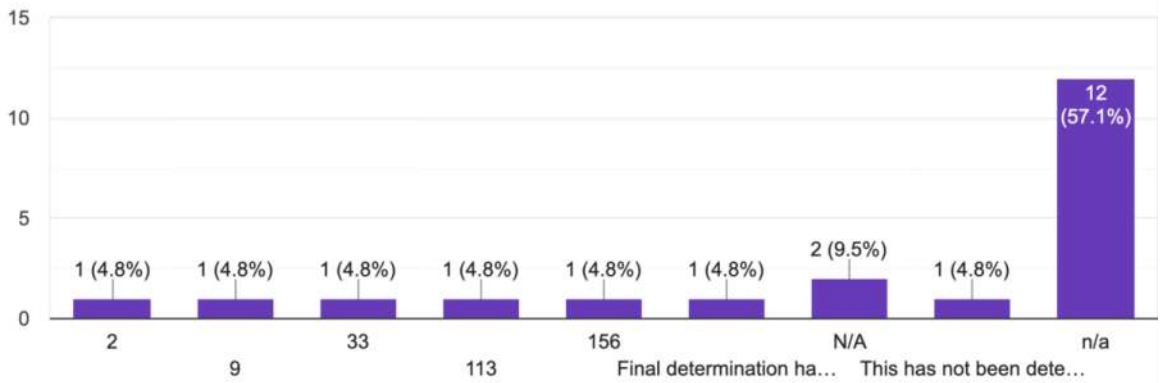
**b. How many ADUs for low-income housing?**

21 responses



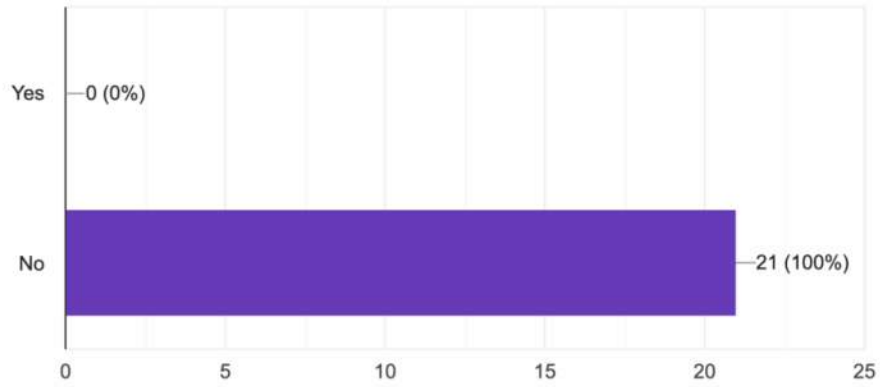
**c. How many ADUs for moderate-income housing?**

21 responses



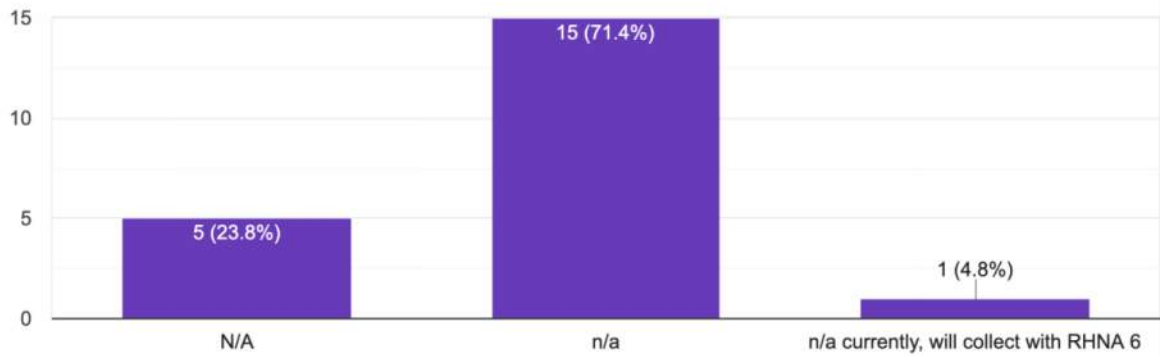
4. Does your city/town collect race and income data on who is renting or occupying ADUs in your city/town?

21 responses



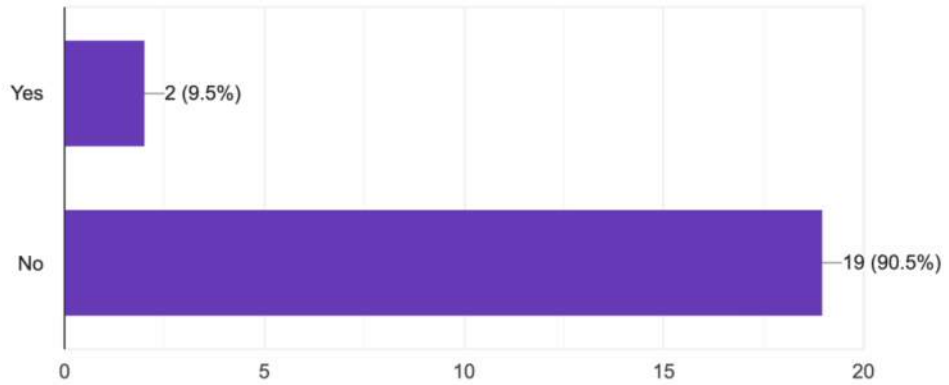
4A. If response was yes, when did you start collecting such data? (indicate n/a if no)

21 responses



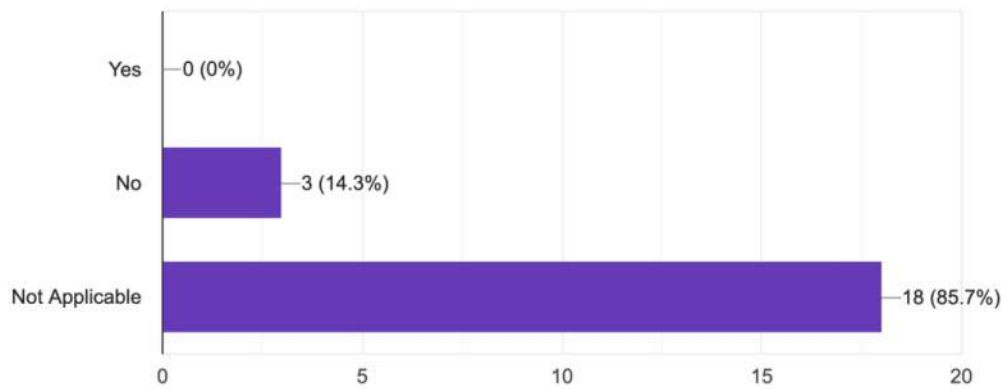
5. Does your city/town collect data on the range of the rents charged today for ADUs in your city/town?

21 responses



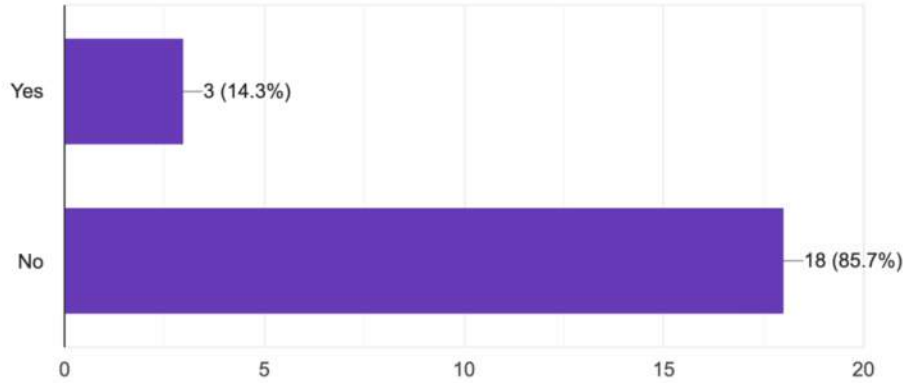
5A. If response was yes, does the data include details such as in-lieu services provided by the renter to the owner (i.e., landscaping, housekeeping, childcare services)?

21 responses



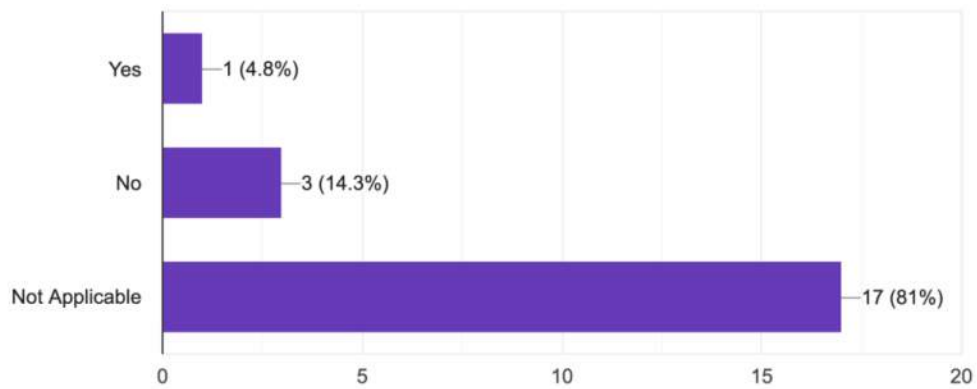
6. Are there any regulations or oversight systems in place in your city/town to monitor the status of very low-, low-, and moderate-income affordable ADUs?

21 responses



6A. If yes, does your city/town have regulations or oversight systems in place to monitor usage for ADUs over time, especially for ADUs in homes that are sold or remodeled or rebuilt?

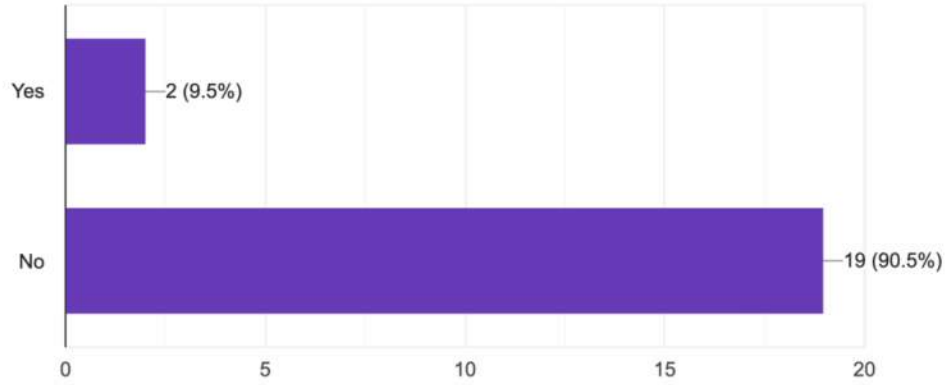
21 responses





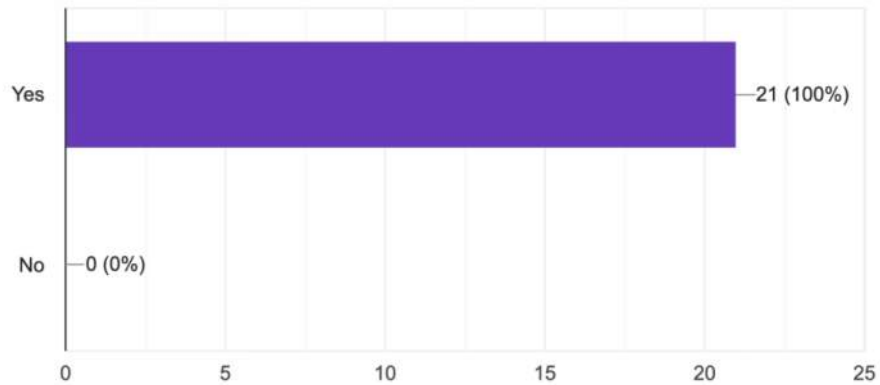
7. Does your city/town have long-term covenants for ADUs like those that regulate conventional low and very low-income housing units (e.g., tax-credits, voucher subsidized, or other)?

21 responses



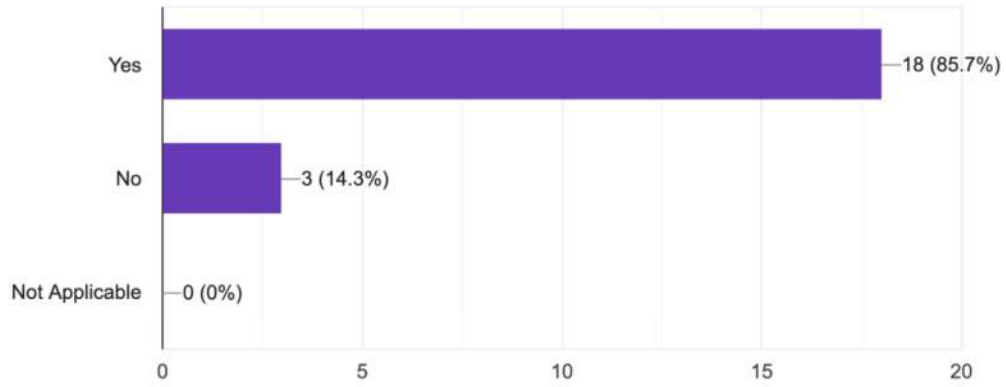
8. Does your city/town plan to include ADUs in its RHNA6 Housing Element submission?

21 responses



8A. If yes, will any of those ADUs be designated for very-low, low and moderate income, as defined by the U.S. Housing and Urban Development?

21 responses



## APPENDIX B

### Timeline of Important Legislative Events

1. 1970 — the Legislature directed HCD to develop guidelines for housing element preparation on one and five year cycles. SB 1489 (Moscone), emphasized housing need, passed in 1971, and ABX 1 of 1971 established more standards. The California Housing Finance Agency (CalHFA), which also assisted communities in providing affordable housing, was created in 1975. The legislation authorized HCD to review local housing elements for conformity to its guidelines.
2. 1976 — Fair-share was added to the guidelines by HCD. The COGs are now given the responsibility by HCD to distribute shares of low-income and moderate-income housing. The local housing element had to include these income requirements — whether or not communities wanted them. HCD also was given responsibility to review local housing elements. Statewide hearings in 1977 brought out a number of positions on housing elements and HCD requirements.
3. Mid 1980's — AB 2853 (Roos), provided for faster permit processing and higher densities, and allowed the housing element to meet State goals and be reviewed by HCD. COGs would continue to formulate the fair share for each community, but HCD had final approval of the numbers and each community was to revise its Housing Element every five years.
4. 1990s — Cities and counties looked at housing elements, if certified, as providing protection against lawsuits. In addition, this decade also created the concept of regional allocation “sharing burdens of lower- income households among geographic areas,” without mandated goals.
5. 1993 — The Senate Committee on Local Government held hearings on housing element progress and heard concerns that communities were not doing enough and that housing elements were despised by local governments. Bills changed the cycle timeframe, including AB 2172 (Hauser), SB 1703 (Costa) and SC 320 (Committee). Main topics for discussion by the Committee on Housing and Land Use hearings in 1995 were the housing allocations and the Department of Finance (DoF) projections. A common complaint was that the DoF projections were not complete enough for communities to develop appropriate allocations. The COGs projections also were criticized.
6. 1998 — AB 438 (Torlakson), allowing for the creation of sub-RHNA areas, looked at how housing units were counted. 2001 — SB 910 (Dunn) would have included imposing fines on jurisdictions not complying; and would have tied RHNA to transportation planning on a six year cycle. However, this bill did not pass. 2002 — SB 423 (Torlakson) created a jobs and housing balance incentive program, also known as Workforce Housing Incentive Program. In 2003, at HCD's request, a working group of stakeholders met to make recommendations, which included:
  - Develop more transparency in determining fair shares
  - Clarify land inventories of building sites
  - Ensure inventories were buildable
  - Increase HCD review consistency of local elements
  - Explore city self-certification
  - Devise better housing element enforcement that would penalize non-compliance.
7. 2004 — AB 2348 (Mullin) clarified the relationship between the land inventory and adequate sites requirement, provided guidance on the content of adequate land inventory, and provided greater development certainty. AB 2158 (Lowenthal) revised the process for determining allocation from just

DoF to include transportation planning numbers and created a review process.

8. 2005 — AB 1233 (Jones) assured that unmet need from previous RHNA cycles was added into the next cycle.
9. 2017 Housing Legislative Package  
Approximately 150 housing bills were submitted in 2017. Fifteen relating to funding, streamlining and accountability, were signed by the governor. These bills significantly changed how RHNA is conducted, requiring additional outreach and reporting, increasing the number of factors included, and the ability of HCD to sue individual cities for not meeting requirements.

SB 2 (Atkins) Building Homes and Jobs Act is projected to generate hundreds of millions of dollars annually for affordable housing, supportive housing, emergency shelters, transitional housing, and other housing needs via a \$75 to \$225 recording fee on specified real estate documents.

SB 3 (Beall) Veterans and Affordable Housing Bond Act of 2018 places a \$4 billion general obligation bond on the November 2018 ballot to fund affordable housing programs and the veterans homeownership program (CalVet).

SB 35 (Wiener) streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category.

SB 35 city approval of a qualifying housing development on a qualifying site is a ministerial act, without need for CEQA review or public hearings.

AB 73 (Chiu) streamlines the housing approval process by allowing jurisdictions to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the ordinance.

SB 167 (Skinner), AB 678 (Bocanegra), and AB 1515 (Daly) are three measures that were amended late in the 2017 legislative session to incorporate changes to the Housing Accountability Act (HAA). The HAA significantly limits the ability of a jurisdiction to deny an affordable or market-rate housing project that is consistent with existing planning and zoning requirements.

AB 1505 (Bloom) allows a jurisdiction to adopt an ordinance that requires a housing development to include a certain percentage of rental units affordable to and occupied by households with extremely low, very low, low or moderate income.

AB 879 (Grayson) expands upon existing law that requires, by April 1 of each year, general law cities and charter cities to send an annual report to their respective city councils, the State Office of Planning and Research (OPR) and HCD that includes information related to implementation of the General Plan.

AB 1397 (Low) makes numerous changes to how a jurisdiction establishes its housing element site inventory.

AB 72 (Santiago) provides HCD broad new authority to find a jurisdiction's housing element out of substantial compliance if it determines that REGIONAL the jurisdiction fails to act in compliance with

its housing element and allows HCD to refer violations of law to the attorney general.

10. 2018 — SB 828 (Wiener) changed the way HCD determines each region's RHND, adding a number of new factors for consideration and accounting for "unmet need" in the existing housing stock by applying "adjustment factors" to a region's total projected households, not just the incremental housing growth.
11. 2018 — AB 1771 (Bloom) and AB 686 (Santiago) strengthened the mandate for regions and local governments to combat discrimination, overcome historic patterns of segregation, and create equal access to opportunity through housing planning and decision-making, in other words, to "affirmatively further fair housing." AB 1771 (Bloom) added to RHNA an enhanced focus on racial equity with an explicit mandate that COGs' housing distribution plans affirmatively further fair housing and required COGs to survey jurisdictions on their fair housing activities, to identify regional barriers to furthering fair housing, and to recommend strategies or actions to overcome those barriers. AB 686 (Santiago) created a mandate that local jurisdictions plan and administer housing and community development programs and activities in a manner that affirmatively further fair housing.
12. 2019 — AB 1486 (Ting) strengthened the Surplus Lands Act (SLA), which requires that local agencies provide right of first refusal to affordable housing developers when disposing of surplus land by expanding the scope of land subject to the right of first refusal requirement, updating the mechanics of the surplus land disposal process, extending HCD's enforcement mandate to include the SLA and establishing financial penalties for violation of the act.

AB 1487 (Chiu), authorized ABAG and MTC to place on the ballot regional housing measures to help fund affordable housing and established 3 REGIONAL HOUSING NEEDS ALLOCATION the Bay Area Regional Housing Authority. The 2019-20 State Budget also included significant new resources to support housing planning, including \$250 million for local governments and COGs for planning activities. The Bay Area is receiving approximately \$50 million in combined funds, split between ABAG and local jurisdictions.

SB 330 (Skinner) made further revisions to the HAA, establishing new criteria for housing approvals at the local level, including prohibiting a local agency from subjecting a project to new ordinances, rules or fees after an application is submitted and limiting the number of hearings on a project to five. The bill also prohibits a local agency from lowering the allowed residential density below that level in effect on January 1, 2018 in high rent, low-vacancy areas, as defined. The bill's provisions sunset in five years.

AB-881, "Accessory dwelling units," and AB-68, "Land use: accessory dwelling units": Makes many of the current restrictions that cities place on ADUs obsolete. It also provides for a streamlined process for approvals.

These bills require permits for ADUs added to single-family and multifamily homes to be approved or denied faster. Current law permits these decisions to take 120 days, but this new law requires decisions within 60 days. These approvals or denials must be issued ministerially, so that way, there are fewer potential issues to encounter. Cities and counties may establish minimum and maximum ADU size requirements, but the maximum size cannot be less than 850 square feet for a one-bedroom ADU or 1,000 square feet for more than one bedroom.

Most importantly, these bills prohibit any lot coverage, minimum lot size, etc. requirements that municipalities have. Cities have enacted these laws to have the effect of making it impossible to build an ADU. Cities cannot require the correction of nonconforming zoning conditions as part of the approval process.

SB-13 Accessory dwelling units are similar to AB-881 and AB-68 with a couple of significant differences. Before this bill, local agencies could require that the person applying for the ADU occupy either the primary residence or the proposed new structure. This bill exempts from these requirements all proposed ADUs until Jan. 1, 2025. Additionally, this bill removes the impact fee for ADUs smaller than 750 square feet. Even for ADUs larger than that, the impact fees assessed must correlate with the square footage of the primary residence.

SB-13 makes building ADUs cheaper and also removes an essential regulation. Now, landlords who rent their properties out can apply for an ADU for their rental properties.

AB-670, "Common interest developments: accessory dwelling units," makes it easier for people within HOA complexes to construct ADUs. Specifically, it prevents banning or unreasonably restricting on single-family lots on the construction of these units. Presently, many HOAs have CCRs ("conditions, covenants and restrictions") that prevent people from building ADUs. HOAs may worry about the uniformity of the properties if one has an ADU on it, or they might be concerned that they don't know who is and who isn't renting from an ADU. Regardless, HOAs now need to have a way for people to construct ADUs if they so choose.

HOAs will likely challenge this bill, at least to some degree, in court, but for now, if you live in an HOA complex with single-family homes, you can construct an ADU.

AB-671, "Accessory dwelling units: incentives," requires that general plans incentivize homeowners in some way to construct these ADUs and make them available for low-to-moderate-income households to rent. While it doesn't specify what these incentives will be, it does require local agencies to think about financial incentives and construct a plan.

## APPENDIX C

### ADUs: An American Tradition

**A**ccessory dwelling units have been around for centuries, going by dozens of names over time, such as in-law apartment, guest house, granny flat, and carriage house.

The American Association of Retired Persons (AARP) traces the tradition of ADUs in the U.S. to early settlers who built small homes to live in while constructing their larger, primary house nearby. When farming was a source of survival for most of the nation's households, families commonly built additional homes on their property to live in during planting or harvesting seasons. Wealthy people with large lots frequently built secondary homes and other independent structures for household staff and guests.

Until the 20th century, there were few or no zoning rules restricting people with land from building as many homes as they wished on their land.

According to AARP a historic precedent for the modern ADU is the carriage house, or coach house, intended for horse-drawn carriages, and often large enough to include living quarters for workers.

Many years later, in response to housing shortages and economic needs, carriage houses were converted into rental homes. Garages have a similar history, and over time, many have been converted – often illegally – into small living spaces.

During World War II, for example, the Bay Area experienced a defense boom that created a high demand for workforce housing, resulting in many illegally constructed second units. By 1960, San Francisco counted between 20,000 to 30,000 secondary units, of which 90 percent were built illegally, according to the San Francisco Planning and Urban Research Association.

With the rise of suburban single-family home developments in the 1950s and 1960s ADUs practically stopped being built legally because zoning codes typically allowed only one home per lot.

Since then, some cities have grandfathered in pre-existing ADUs if the residences remained consistently occupied. But even today, many communities still don't allow new ADUs.

ADUs became popular again in the 1980s as cities looked for new sources of smaller and more affordable housing. And most recently, there's been increasing interest at the state and local levels in legalizing and encouraging the construction of ADUs, driven by the high cost of housing.

#### What is an ADU?

- An ADU is a small residence that shares a single-family lot with a larger, primary dwelling.
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. An ADU can be located within, attached to or detached from the main residence.
- An ADU can be converted from an existing structure (such as a garage) or built anew.
- ADUs can be found in cities, in suburbs and in rural areas, yet are often invisible from view because they're positioned behind or are indistinct from the main house.
- Because ADUs are built on single-family lots as a secondary dwelling, they typically cannot be partitioned off to be sold separately.
- An ADU can provide rental income to homeowners and an affordable way for renters to live in single-family neighborhoods.
- An ADU can enable family members to live on the same property while having their own living spaces — or provide housing for a hired caregiver.
- Unlike tiny houses, ADUs are compact but not teeny, so they're a more practical option for individuals, couples and families seeking small, affordable housing.
- For homeowners looking to downsize, an ADU can be a more appealing option than moving into an apartment or, if older, an age-restricted community.
- ADUs can help older residents remain in their community and age in place.

*Source: AARP, 2019*

### APPENDIX D Housing Elements Are an Iterative Process

