



# STAFF REPORT

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July 19, 2023  
File Number 0875-70

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## SUBJECT

**CITY OF ESCONDIDO'S WRITTEN RESPONSE TO THE SAN DIEGO COUNTY GRAND JURY REPORT TITLED "HOUSING IN SAN DIEGO COUNTY"**

## DEPARTMENT

City Attorney and Development Services

## RECOMMENDATION

Request the City Council adopt Resolution No. 2023-78 approving the written response of the City of Escondido to the 2022/2023 San Diego County Grand Jury Report titled "Housing in San Diego County."

Staff Recommendation: Approval (City Attorney's Office: Michael McGuinness, City Attorney; Development Services Department: Andrew Firestone, Director of Development Services)

Presenters: Michael McGuinness, City Attorney

## FISCAL ANALYSIS

There is no fiscal impact for the approval and submission of the City's response to the Grand Jury Report. However, the implementation of various recommendations may have cost and benefit implications which have not been estimated or calculated at this time.

## PREVIOUS ACTION

On June 27, 2023, the City Council's Housing Subcommittee reviewed and commented on a draft response. The comments from the subcommittee are included in the proposed City Response to the Grand Jury Report attached as Exhibit "A" to Resolution No. 2023-78.

## BACKGROUND

### Civil Grand Jury

In California, each county convenes a civil grand jury on an annual basis to carry out various functions. Relevant to this matter, a grand jury has the authority to investigate and report on the operations of local government agencies, also known as the "watchdog" function. The Grand Jury serving in this role is an independent body and operationally separate from the entities and officials it investigates, including the



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County itself. The Grand Jury conducts its investigations under the auspices of the Superior Court and may summon for testimony public officials and employees as well as obtain records and information on the subject of the Grand Jury's investigation.

The Grand Jury's investigations result in written reports which contain background on the purpose of the investigation, the facts and evidence discovered, and specific recommendations which, in the opinion of the Grand Jury, may result in opportunities to improve government operations.

The Grand Jury does not have the constitutional or statutory authority to compel compliance with its Report recommendations. However, the Reports issued by the Grand Juries are an opportunity for one entity to investigate a public agency and identify potential solutions to issues which may or may not have already been considered by the subject agencies to prompt consideration and possibly action.

### Statutory Requirements for City Response

Under state law, the subject agency must respond to both Findings of Fact and Recommendations contained in the Grand Jury Report. As to Findings of Fact, the agency must either agree with the finding or disagree in whole or in part with the finding. If the agency disagrees with any part of the finding, it must explain the portion disputed. Penal Code § 933.05(a).

As to Report Recommendations, the subject agency has four alternative responses. The agency must indicate whether the agency: (1) has implemented the recommendation and a summary of such action; (2) has not yet been implemented the recommendation but will in the future, including an anticipated time frame; (3) the recommendation requires further analysis with an explanation of the scope and parameters of the analysis and a time frame for the matter to be prepared for consideration and discussion by the City Manager not to exceed six months from the date of publication of the Report; or (4) will not implement the recommendation because it is not warranted or is not reasonable, with an explanation therefor. Penal Code § 933.05(b).

### Grand Jury Report

On May 9, 2023, the Grand Jury filed its Report titled "Housing in San Diego County" (Report). The Report was sent to the city managers for every city in San Diego County and the Chief Administrative Officer of the County of San Diego. A copy of the Report is attached to this staff report as Attachment 1.

In general, the Report recounts the numerous challenges to the provision of adequate and affordable housing in the San Diego County region. The Report states, "[i]n recognition that San Diego County is failing to provide enough housing for its current and future citizens, the Grand Jury decided to look at the failure of the cities and County to meet their Regional Housing Needs Allocation [RHNA] goals and evaluate steps that could be taken to increase the regional housing stock." Report, page 2.



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The Report provides a table identifying each public agency's satisfaction of the allocation goals for the Fifth RHNA Cycle which spanned from January 1, 2013 to December 31, 2020 as to each income level goal. According to the Report, this information was obtained from an undated SANDAG Fact Sheet. Report, page 2, footnote 4. The income level goals are "Very Low Income" (<50% of AMI), "Low Income" (<50-80% of AMI), "Moderate Income" (80-120% of AMI), and "Above Moderate Income" (>120% of AMI).<sup>1</sup> The Report notes that only the City of Lemon Grove satisfied each income level goal for this 5<sup>th</sup> Cycle, with all others failing to meet all four allocation goals and seven failing to meet any of the income goals.

Putting aside the issue of whether the City's RHNA allocation goals were reasonable, fair and justified, as to the City, the Report indicates that it failed to meet the goals for all four income categories in the 5<sup>th</sup> Cycle. It should be noted that according to the California Department of Housing and Community Development (HCD)'s data portal, Escondido did meet its "Moderate Income" goal. The SANDAG Fact Sheet used by the Grand Jury as a reference for this portion of the Report is not readily available on its website to examine and it is possible that SANDAG used a different date range than HCD which is the state agency responsible for overseeing the annual progress of RHNA.

In addition to the RHNA goals, the Report discusses various planning tools and recent legislation to encourage housing production including accommodations for the construction of Accessory Dwelling Units (ADU); using expedited ministerial approvals for certain housing developments; waiving certain development fees; using specific plans to streamline development and take advantage of existing mobility hubs; issuing bonds and implementing other revenue-raising activities to construct affordable housing; and increasing taxes and fees on businesses and developers to fund projects. Additionally, the Report cites to recent legislation enacted to encourage school and community college districts to utilize their properties to develop workforce housing for their educators and employees. The Report reviews the ongoing work being done by two transit agencies, North County Transit District (NCTD) and Metropolitan Transit System (MTS), to develop their properties for housing, including the Escondido Transit Center. Finally, the Report outlines various current projects where religious institutions are using their land holdings for housing projects and identifies a pending piece of pending legislation, Senate Bill 4 (Weiner), which proposes to allow religious and non-profit organizations to develop their properties "by right" under certain circumstances.

### City Response to the Report

As noted above, the City is required to respond to each of the Findings of Fact and Recommendations included in the Report by agreeing with or disputing the stated finding. The Housing Subcommittee considered the Report Findings and Recommendations and submits to the full City Council its

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<sup>1</sup> According to the Report, in 2022, the Average Median Income (AMI) in San Diego County was \$106,900 for a family of four. Report, page 4.



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recommended language for the City Manager's written response the draft of which is attached as Exhibit "A" to Resolution No. 2023-78.

### A. Findings of Fact

At pages 11-13 of the Report, the Grand Jury includes six fact Findings accompanied by twenty-two facts. The City does not dispute the Findings and facts as stated and the City's response affirms those Report statements. See, Exhibit "A" to Resolution No. 2023-78 at pages 1 and 2.

### B. Recommendations

At pages 14-15 of the Report, the Grand Jury makes a total of nine Recommendations to varying public agencies. (Recommendations 23-01 through 23-09). As to the City of Escondido, seven Recommendations are made which require a response. (Recommendations 23-01 through 23-06, and 23-08). The City Response to the seven Recommendations can best be broken down by grouping the responses by category of implementation.

#### 1. Recommendations Already Implemented

The City has already implemented Recommendations 23-01, 23-04 and 23-08. Recommendation 23-01 involves consideration of the use of specific plans to help facilitate the development of housing. The City has already adopted two Specific Plans including the Downtown Specific Plan and the South Centre Specific Plan. The council will be considering a third with the proposed adoption of East Valley Specific Plan (EVSP) on July 19, 2023. Recommendation 23-08 asks the City to consider continuing to work with NCTD on potential development of its transit property in Escondido. The City is fully engaged with NCTD in both development of the transit property as well as with studying a potential land swap between NCTD and the City to include the City's Public Works Yard and Quince and Spruce Street properties. Recommendation 23-04 involves the consideration of drafting a local revenue-generating ordinance to fund affordable housing construction. The City's proposed EVSP contains an affordable housing trust fund funded through an in-lieu fee operative when a development project fails to meet the target density provided for in the Plan.

#### 2. Recommendations Requiring Further Analysis

The City response to Recommendations 23-02 and 23-03 is that they require further analysis. Recommendation 23-02 includes consideration of working with schools and community college districts to identify developable land. Recommendation 23-03 suggests consideration of working with local religious institutions to identify developable land within the City's jurisdiction. As the draft Response states, the City is not opposed to the Recommendations, and in the case of schools and religious institutions, already has cooperative relationships with these entities and looks forward to opportunities to review housing projects brought to staff. However, in order to respond that the City will implement the recommendation, by statute the City must identify the specific time frame for implementation. Penal



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Code § 933.05(b)(2). The City is best served with a response that provides that further analysis is warranted so the City Manager can receive City Council direction on the issue and manage staff workloads in undertaking any new program for a specific outreach program implementing the recommendations.

### 3. Recommendations Which Will Not Be Implemented

The City response to Recommendations 23-05 and 23-06 is that the recommendation will not be implemented because it is not warranted nor is it reasonable.

#### (a) Recommendation 23-05 (Senate Bill 1105)

Recommendation 23-05 asks the City to consider providing support to re-introducing Senate Bill (SB) 1105 (Hueso) to create a San Diego regional agency to raise revenue for housing. SB 1105, also known as the San Diego Regional Equitable and Environmentally Friendly Affordable Housing Act, would establish the SD REEF Agency (Agency) to purportedly increase the supply of equitable and environmentally friendly housing in San Diego County. The text of this lengthy bill can be found at:

Bill Text - SB-1105 San Diego Regional Equitable and Environmentally Friendly Affordable Housing Agency. (ca.gov)

The bill's author claimed it would provide enhanced funding and technical assistance across the San Diego region for equitable and environmentally friendly housing projects and programs, equitable housing preservation, and rental protection programs. The law would establish a board composed of 6 voting members including: (1) one member appointed by the Mayor of the City of San Diego; (2) one member appointed by the San Diego County Board of Supervisors; and (3) four members representing the subregions of east, north coastal, north inland, and south counties.

SB 1105 would authorize the Agency to, among other things, incur and issue indebtedness, place various measures on the ballot in the County of San Diego and its incorporated cities, to raise and allocate funds, and to issue general obligation bonds secured by the levy of *ad valorem* property taxes, for purposes of producing and preserving "equitable and environmentally friendly" housing and supporting rental protection activities. Among the funding measures, the bill would authorize the Agency to impose a parcel tax, a gross receipts business license tax, a special business tax, specified special taxes on real property, and a commercial linkage fee.

Finally, the bill would require that projects funded by the Agency include in their construction contracts certain wage and labor standards, including a requirement that all construction workers be paid at least the general prevailing rate of wages.

The bill made it fairly far through the 2022 legislative session before it was finally held in the Assembly Appropriations Committee on the suspense file. The bill suffered from significant opposition from various apartment and housing associations, contractors, and even some affordable housing developers who



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were concerned about the labor standards contained in the bill. Neither the County of San Diego nor SANDAG took an official position on the bill.

The City's response outlines several deficiencies and concerns regarding such a regional agency including that the law essentially creates a regional bureaucracy without adequate voter oversight, similar to SANDAG, which will not necessarily operate in the best interests of the City and its local residential needs. Additionally, the City already has the ability to create a Joint Powers Authority with one or more local agencies to accomplish the same purpose but in that circumstance, the City would have control over revenue-generating and funding decisions which would not exist with the SB 1105 model.

### (b) Recommendation 23-06 (SB 4)

Recommendation 23-06 asks the City to consider providing legislative support to SB 4 (Weiner). SB 4, also known as the Affordable Housing on Faith and Higher Education Lands Act of 2023, would allow a housing development project to be a use by right on land owned by an independent institution of higher learning or religious institution. The bill is pending in the California legislature and as of the date of the drafting of this report is currently in the Assembly Committee on Natural Resources. The full text of the bill as of the date of this report can be found at:

Bill Text - SB-4 Planning and zoning: housing development: higher education institutions and religious institutions.

In summary, and according to the Legislative Counsel's Digest, this bill would require that a housing development project be a use by right upon the request of an applicant who submits an application for streamlined approval, on any land owned by an independent institution of higher education or religious institution on or before January 1, 2024, if the development satisfies specified criteria. The bill would require that 100% of the units, exclusive of manager units, in a housing development project eligible for approval as a use by right be affordable to lower income households, with certain exceptions.

This bill would also provide that projects eligible for approval as a use by right are also eligible for certain density bonus, incentives, or concessions, or waivers or reductions of development and parking standards. The bill would also prohibit a local government from imposing any parking requirement on a development subject to these provisions if the development is located within a certain geographic proximity to public transit areas or car share vehicles.

This bill would include additional requirements on local government including timeframes for application review, provision of documentation to developers identifying conflicts with objective planning standards, and allow for design review only if such review focuses on compliance with the requisite criteria of a streamlined, ministerial review process. Finally, the bill requires the payment of prevailing wages to all construction workers employed on all projects involving more than 10 units.

The City's response outlines several deficiencies and concerns regarding a development-by-right bill including the further erosion of reasonable local control over projects without providing the City the ability to adopt reasonable conditions which protect surrounding properties; the payment of prevailing wages



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unnecessarily increasing the costs of construction; and, a general objection to Sacramento again using a complicated, ever-changing, one-size-fits-all methodology for housing production which fails to account for locale-specific issues.

### RESOLUTIONS

- a. Resolution No. 2023-78
- b. Resolution No. 2023-78 Exhibit "A" – City of Escondido Response to San Diego County Grand Jury Report Title "Housing in San Diego County"

### ATTACHMENTS

- a. Attachment 1 - 2022/2023 San Diego County Grand Jury Report titled "Housing in San Diego County"