



AGENDA REPORT SUMMARY

Meeting Date: November 29, 2022

Subject: Study Session with the Los Altos City Council regarding status of the Sixth Cycle Housing Element 2023-2031, and report on initial findings letter from the Department of Housing and Community Development (HCD) post 90-day review, and proposed timeline and response to required amendments to the draft Housing Element to comply with State law.

Prepared by: Nick Zornes, Development Services Director

Attachment(s):

1. November 10, 2022, Findings Letter from HCD regarding City of Los Altos 6th Cycle Housing Element.

Environmental Review:

The action before the City Council is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262, Feasibility and Planning Studies. The direction is not a final action or approval in regard to the Housing Element Update and does not have a legally binding effect on any possible future discretionary action.

Background:

Every eight years the State requires that each jurisdiction update its Housing Element to address future housing needs. The Department of Housing and Community Development (HCD) is the agency responsible for tracking and determining compliance with the State Housing Law. The City must adopt the 6th Cycle Housing Element Update (2023-2031) by January 31, 2023.

There are consequences for the city if the Housing Element is adopted after January 31, 2023, or if the Housing Element is not found to be in substantial conformance with State law within 120-days after the statutory due date of January 31, 2023. If a Housing Element is not in substantial conformance with State law, the City will be vulnerable to litigation by the State Attorney General and other interested parties, be potentially ineligible for some state and regional funding, and other penalties as allowed by State law or as determined by a court.

The Regional Housing Needs Allocation (RHNA) methodology for the 6th Cycle (2023-2031) was established by the Association of Bay Area Governments (ABAG) and approved by the Department of Housing and Community Development Department (HCD).

City of Los Altos final allocation is 1,958 units which are distributed between the following four (4) income categories:



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- Very Low Income (Less than 50% of Area Median Income): 501 units
- Low Income (50-80% of Area Median Income): 288 units
- Moderate Income (80-120% of Area Median Income): 326 units
- Above Moderate Income (More than 120% of Area Median Income): 843 units

On April 26, 2022, at a Joint Session Planning Commission and City Council meeting. On June 22, 2022, the City of Los Altos made available the Public Review Draft of the Sixth Cycle Housing Element 2023-2031, opening the required minimum 30-day public participation requirement. On July 7, 2022, the Public Review Draft was presented to the Planning Commission. On July 12, 2022, the City Council meeting, accepted public testimony regarding the Public Review Draft, discussed the draft, and directed staff to consider and incorporate appropriate public comments into the Draft Housing Element during the required 10 business days, and then transmit the document for HCD’s formal first review.

The City formally submitted the first Draft of the Sixth Cycle Housing Element on August 12, 2022, to HCD. During HCD’s 90-day review, the City received initial verbal comment from HCD prior to receiving the department formal Findings Letter. On November 10, 2022, the City of Los Altos received its formal comment letter from HCD regarding the Draft Sixth Cycle Housing Element (Attachment 1).

Housing Element Update Timeline:

City Council Study Session	11/29/2022
OPEN Public Review (30-days) Initial Study-Mitigated Negative Declaration	11/30/2022
CLOSE Public Review Initial Study-Mitigated Negative Declaration	12/30/2022 at 5:00pm
Planning Commission Hearing	1/5/2023
City Council Hearing	1/24/2023
Housing Element Adoption-Statutory Due Date	1-31-2023

The timeline presented above reflects the critical milestones that the City must adhere to in order to adopt and be found to be in substantial compliance by HCD. The City will continue to engage the community throughout the development of the Sixth Cycle Housing Element until it is found to be in substantial compliance with housing element law.



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On-time Housing Element Importance:

The City must adopt the Sixth Cycle Housing Element 2023-2031 by January 31, 2023. The City must be found to be in substantial compliance (meaning a letter from HCD affirming compliance with Housing Element Law) within 120-days of the statutory deadline of January 31, 2023. If the City is not found in substantial compliance within 120-days of the statutory deadline, all rezoning required within the housing element shall be completed within one year of the housing element due date (as opposed to three years) to maintain housing element compliance. Additionally, an approved Housing Element makes Los Altos eligible for a variety of State grants, including funds for affordable housing, parks, and infrastructure. If the City does not meet its deadline to adopt its updated Housing Element, it could face fines and lawsuits from the State. A court may limit local land use decision-making authority until the City brings its Housing Element into compliance, and ultimately a receiver may be appointed by the court to take control of City operations as necessary to bring the City into substantial compliance with the Housing Element Law.

Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583(c)(9).)

- Public Participation is a fundamental of any housing element. As noted in HCD's Findings Letter the draft housing element summarizes the public participation that was completed, however the City must further demonstrate how it included all economic segments of the community. Additionally, the City must commit to additional public participation in the future, and deploy methods that specifically includes lower-income and special needs households. To further help shape the development of programs identified in the housing element, the City must commit to further involving all segments of the community to gain comments that will provide meaningful change and further help to create affordable housing in Los Altos.
- On Friday, November 18, 2022, Director Zornes met with five members of The Los Altos Affordable Housing Alliance virtually for a 2-hour meeting to discuss HCD's Findings Letter, and potential solutions for the City to consider to be found in substantial compliance.



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- On December 7, 2022, Director Zornes will present to the Los Altos Chamber of Commerce regarding the status of the City’s Sixth Cycle Housing Element. The chamber reached out to Director Zornes requesting a presentation on the Housing Element, which was happily accepted.
 - On December 16, 2022, Director Zornes will present to the Los Altos Community Coalition regarding HCD’s Findings Letter, and what is next for the Sixth Cycle Housing Element. The Coalition reached out to Director Zornes requesting a presentation and discussion on the Housing Element, which was happily accepted.
 - Requests for additional outreach are welcomed by the Development Services Director, as this helps to further facilitate meaningful dialogue with the Los Altos Community. Director Zornes will also be looking for opportunities to meet with the Community and any interested parties to discuss the Housing Element, and how we can further better the Planning Process here in Los Altos.

Analysis:

The HCD Findings Letter dated November 10, 2022, provided comments that were organized under the following topics: Housing Needs, Resources, and Constraints, Housing Programs and Public Participation. A summary of HCD’s comments and discussion are provided below.

Housing Needs, Resources, and Constraints

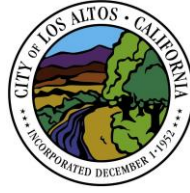
1. *Affirmatively furthering fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583(c)(10)(A).)*
 - AFFH was first required with the adoption of AB 686 which was signed in 2018. Importantly AB 686 also created new housing element requirements applying to all housing elements due to be revised on or after January 1, 2021. This is the first housing element for the City of Los Altos where the specific requirement for Affirmatively Furthering fair Housing must be included within our analysis. The goal of Affirmatively Furthering Fair Housing (AFFH) is to combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access in order to foster inclusive communities and achieve racial equity, fair housing choice, and opportunity for all Californians.
 - In general, the City’s AFFH section of the draft housing element is strong but does require additional data to be incorporated into the document. Important to note is that some of the data already is within the draft housing



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element however revisions will be required to link or indicate where in the document information is located.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583(a)(2).)*
 - Overpayment and Housing Costs sections within the draft housing element must quantify and analyze existing data within the document or provide additional information. The draft housing element must add or modify policies and programs as appropriate which support this requirement.
3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583(a)(3).)*
 - In general, HCD's Findings Letter articulates fundamentals for the site inventory analysis which is required of all housing elements. Progress towards meeting RHNA will require the City to provide additional analysis of "Pipeline" projects and the probability of those projects being constructed in the Planning Period (2023-2031). City staff is confident that the all-pipeline projects will be constructed within the Planning Period as the majority of those projects/units have submitted their construction documents to the city for Plan Check.
 - Additional information will be provided within the draft housing element which supports the capacity assumptions that have been made for sites. Analysis such that reviews the development activity within nonresidential zones, and how frequent residential development occurs will be further supported. This analysis is supported by the zoning within the City already allows for the creation of residential units within many nonresidential zones i.e. mixed use zones.
 - The draft housing element relies heavily on nonvacant sites; over 50% of sites identified. This is common in most jurisdictions that are close to buildout much like the City of Los Altos. The draft housing element must further demonstrate that the existing uses is not an impediment to additional residential development; should impediments be identified the City must further demonstrate how programs and policies will support the development of residential uses on nonvacant sites.
 - Environmental constraints must be analyzed within the draft housing element. Further analysis will be included that assesses the seismic activity and wildfire threats and whether those will impact the creation of additional housing.



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- The City is required to provide an Electronic Sites Inventory pursuant to government Code section 65583.3; the City will complete this as required by law.
 - Accessory Dwelling Unit ordinance shall comply with State law at all times. The City understands this requirement and will further add a program that clearly demonstrates this requirement as requested within the HCD Findings Letter.
 - Additional information was provided to City staff during a preliminary call with HCD. The City's ADU Ordinance has been determined to be inconsistent with State law, and revisions will be necessary. HCD verbally and in writing has stated that the City will receive a letter regarding noncompliance issues under a separate cover which will require zoning code amendments. Director Zornes will promptly review the letter of noncompliance and with consultation of the City Attorney will draft amendments to the zoning code based on HCD's noncompliance letter.
 - The draft housing element must further demonstrate that Emergency Shelters are allowed within the City, and clearly show what zones they are allowed by-right. Furthermore, the City must clarify that no discretionary action is required, what is the allowed capacity of an Emergency Shelter and the parking requirements. This will be accomplished by further clarifications in existing programs within the draft housing element.
 - Single Room Occupancy Units must clarify the procedures for permitting which encourages their development as well as clearly demonstrating what zones they are permitted within.
 - The draft housing element must clearly demonstrate that Manufactured Housing is allowed within the City and does not require any additional review in order to be located within the City.
4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583(a)(5).)*
- Land Use Controls. The draft housing element must analyze all relevant land use controls and if applicable remove any barriers that constrain the development of housing.

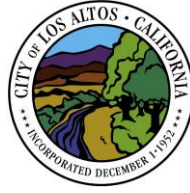


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- **Minimum Unit Sizes.** The Loyola Corner Specific Plan has a requirement for Minimum Unit Sizes, this requirement as well as other land use controls has not been enforceable since the adoption of the Housing Crisis Act. In order to demonstrate compliance, the City of Los Altos must formally remove this requirement as it is inconsistent with California Housing Law.
 - **Parking Requirements.** The draft housing element identifies a parking study shall be completed for the Downtown Area of Los Altos, however HCD's Findings Letter requires the City to expand this analysis to all parking requirements within the City. This will be included within the revisions to the housing element.
 - **Fees and Exactions.** The City will include a program that analyzes the Development Fee Schedule within Los Altos. A specific commitment to updating the City's Fee Schedule will be required for the draft housing element to be approved by HCD. In general, the City of Los Altos has an out-of-date fee schedule which is ripe for review and updating.
 - **Zoning and Fees Transparency.** The City already is compliant with this requirement, however the draft housing element will further demonstrate how the City is already in compliance with the State law.
 - **Local Processing and Permit Procedures.** The draft housing element must further indicate what is the average time for review of projects, what impediments likely result in delays, and how many hearings on average housing development projects are reviewed by. In general, the City must provide a commitment to streamlining the review process of housing developments which will result in fewer hearing bodies reviewing each project.

Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583(c).)*
 - **PROGRAM 1.B:** the program must commit and include an increase to height and story count and providing an earlier date of completion of the program
 - **PROGRAM 1.C:** rezoning of sites within the OA District must be completed sooner in the planning period. Staff recommends completion of this no later than December 2024; effectively this results in one year sooner than initial proposal.



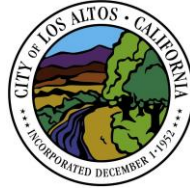
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- PROGRAM 1.D: housing on church owned sites. This must be completed earlier in the planning period. Staff recommends completion of this no later than December 2025, effectively this results in one year sooner than initial proposal.
 - PROGRAM 1.E: staff believes there was an error with this comment as it requests the city to remove an objective standard which is inherently something that is allowed by State law, this might have been meant as Subjective, however staff is uncertain and will seek further clarification. It is important to note that the Loyola Specific Plan is very out of date, and has several errors throughout the document, with several requirements that are unenforceable given the Housing Crisis Act.
 - PROGRAM 1.H: the city must identify specific incentives it is willing to commit to for the development of housing on city owned parking plaza 7 and 8. This could come in the form of Fee Waivers, or low-cost land leases.
 - PROGRAM 1.I: lot consolidation within the downtown area must commit to specific incentives.
 - PROGRAM 2.A: inclusionary housing program must commit to modification of the city fee schedule to address constraints in the development of affordable housing units.
 - PROGRAM 2.C: affordable housing fund which will be further established with an overall fee schedule update must provide outreach to developers to understand the trends of the market.
 - PROGRAM 3.A: the program specifically limits a parking study to the downtown area, although that still can be accomplished and overall review and update to parking standards must be provided within the scope of the program.
 - PROGRAM 3.B: building heights in mixed-use zones must specify the number of stories that will be allowed included with the increase of building heights.
 - PROGRAM 3.H: redesignation of design review and appeal authority is greatly needed as identified in the proposed program; however, the City must include specific limitations on what is a qualifying appeal and for what specific projects that will be allowed for. This will be included with the overall appeal authority matrix that was previously discussed with the City Council at the July 2022 Public Hearing. Lastly, the City will commit to reviewing this program for progress and make additional changes and necessary to streamline the process.
 - PROGRAM 4.C: Low Barrier Navigation Centers, is a program that was not completed within the last Planning Period which requires the City to complete the necessary zoning code amendments no later than December 2023; City staff will bring draft ordinances to the Planning Commission no later than May 2023 followed by City Council immediately thereafter.



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- PROGRAM 4.D: Transitional and Supportive Housing, is a program that was not completed within the last Planning Period which requires the City to complete the necessary zoning code amendments no later than December 2023; City staff will bring draft ordinances to the Planning Commission no later than May 2023 followed by City Council immediately thereafter.
 - PROGRAM 4.E: Employee/Farmworker Housing, is a program that was not completed within the last Planning Period which requires the City to complete the necessary zoning code amendments no later than December 2023; City staff will bring draft ordinances to the Planning Commission no later than May 2023 followed by City Council immediately thereafter.
 - PROGRAM 4.F: Reasonable Accommodations, is a program that was not completed within the last Planning Period which requires the City to complete the necessary zoning code amendments no later than December 2023; City staff will bring draft ordinances to the Planning Commission no later than May 2023 followed by City Council immediately thereafter.
2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobile homes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583(c)(1).)*
- PROGRAM 1.G: previous sites utilized in 5th cycle housing element must be up zoned for a minimum of 30 dwelling units per acre. This is a clarifying assertion within the draft housing element.
 - PROGRAM 3.E: the City's 6th Cycle Housing Element is already consistent with State law and was amended earlier this year. This requirement was discussed with HCD reviewers on the preliminary call to review the findings letter. No action is required.
 - NEW PROGRAM: the City must include a New Program which commits the City implementing SB 9 regulations consistent with State law.



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3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583(c)(3).)*
 - The City must provide additional clarifications with the draft housing element regarding potential governmental and nongovernmental constraints. Should any additional changes be required with the document it shall remove constraints that create any impediments to the creation of housing.
4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583(c)(5).)*
 - HCD's Findings Letter overarchingly requires the City to clarify the commitments of AFFH. Programs 2.D, 4.J, 6.C, 6.D, and 6.E, must commit the City to providing targeted outreach, ensuring safe and adequate infrastructure to all segments of the community, provide information on the City's website, track and modify how Section 8 Vouchers are being used, and shorten the timeframe for when each program will be completed by.
5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent. (Gov. Code, § 65583(c)(7).)*
 - Accessory Dwelling Unit ordinance shall comply with State law at all times. The City understands this requirement and will further add a program that clearly demonstrates this requirement as requested within the HCD Findings Letter.
 - The city must remove any barrier that hinder the development of Accessory Dwelling Units.
 - The City must specify the incentives such as expedited permit review or fees that will be included.