



## AGENDA REPORT SUMMARY

**Meeting Date:** September 26, 2023

**Subject:** Housing Element Implementing Ordinance

**Prepared by:** Nick Zornes, Development Services Director

**Reviewed by:** Jon Maginot, Assistant City Manager

**Reviewed by:** Jolie Houston, City Attorney

**Approved by:** Gabe Engeland, City Manager

**Attachment(s):**

1. Draft Ordinance
2. Appendix A – Chapter 14.16
3. Appendix B – Chapter 14.18
4. Appendix C – Chapter 14.20
5. Appendix D – Chapter 14.22
6. Appendix E – Chapter 14.24
7. Appendix F – Chapter 14.40
8. Appendix G – Chapter 14.44
9. Appendix H – Chapter 14.48
10. Appendix I – Chapter 14.52
11. Appendix J – Chapter 14.54
12. Appendix K – Chapter 14.80

**Initiated by:**

City of Los Altos adopted 6<sup>th</sup> Cycle Housing Element, Program 3.B, 3.C, 3.F, 3.G, and 3.N.

**Fiscal Impact:**

No fiscal impacts are associated with the adoption of these implementing regulations.

**Environmental Review:**

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970.

**Summary:**

The draft ordinance incorporates regulations implementing Program 3.B: Modify building height in mixed-use zoning districts, Program 3.C: Remove floor-to-area ratio (FAR) restriction at Rancho Shopping Center and Woodland Plaza, Program 3.F: Reduce Conditional Use Permit

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City Manager

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**Reviewed By:**

City Attorney

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requirement for residential mixed-use and multi-family, Program 3.G: Amend Conditional Use Permits findings applicable to housing Developments, Program 3.N: Modify standards in the R3 zoning districts of the adopted Housing Element.

**Staff Recommendation:**

Introduce and Waive Further Reading of Zoning Ordinance Text Amendments which implement programs identified in the adopted housing element, Program 3.B: Modify building height in mixed-use zoning districts, Program 3.C: Remove floor-to-area ratio (FAR) restriction at Rancho Shopping Center and Woodland Plaza, Program 3.F: Reduce Conditional Use Permit requirement for residential mixed-use and multi-family, Program 3.G: Amend Conditional Use Permits findings applicable to housing Developments, Program 3.N: Modify standards in the R3 zoning districts and consideration of the City of Los Altos Planning Commission’s September 7, 2023 decisions; Action (1) on Program 3.C, PASSED (4-Yes, 1-No, 1-Rescue, 1-Absent); Action (2) on Program 3.B, 3.F, 3.G, 3.N, PASSED (6-Yes, 1-Absent) both recommendations approved the proposed amendments with minor modifications. The proposed amendments are exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since there would be no possibility of a significant effect on the environment.

**Background:**

On January 24, 2023, the Los Altos City Council adopted the City’s 6th Cycle Housing Element 2023-2031. As required by law, the adopted housing element has several housing programs contained within. The City of Los Altos identified specific programs in its housing element that will allow it to implement the stated policies and achieve the stated goals and objectives. Programs must include specific action steps the City will take to implement its policies and achieve its goals and objectives. Programs must also include a specific timeframe for implementation, identify the agencies or officials responsible for implementation, describe the city’s specific role in implementation, and (whenever possible) identify specific, measurable outcomes.

Programs 3.B, 3.C, 3.F, 3.G, and 3.N are prescribed under Goal 3 in the adopted Housing Element which is intended to remove constraints to the development of housing. The proposed amendments contained in the draft ordinance help to further Policy 3.1 promote housing through city regulation, and Policy 3.2 modify zoning code to assist in meeting housing needs.

The draft ordinance under consideration implementing Programs 3.B, 3.C, 3.F, 3.G, and 3.N are required to be adopted at various times within the planning cycle. Due to the various requirements and deliverables of the 6<sup>th</sup> Cycle Housing Element the draft ordinance was prepared early to help ensure that ample time is available to execute several other adopted programs. By providing additional time in amending each chapter of the draft ordinance the city helps to provide additional buffer in creating the regulatory environment to allow for the approval and creation of housing units.



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**Analysis:**

The City's adopted 6<sup>th</sup> Cycle Housing Element 2023-2031, included Program 3.B. The housing program requires the proposed ordinance amendments to *Modify building height in mixed-use zoning districts*. The draft ordinance included in this agenda packet effectively completes these deliverables as explicitly called out within the housing program.

***Program 3.B: Modify building height in mixed-use zoning districts.***

*Various mixed-use zoning districts limit development to 30 feet or no more than two stories. To facilitate housing development in mixed-use zoning districts, the City will amend the Zoning Code to increase allowed building heights as referenced in the Downtown Vision Plan height recommendation section, at minimum if not greater, than the following:*

- *First Street and San Antonio District*
  - *Standalone Residential: 40 feet, 4-stories*
  - *Mixed-Use: 45 feet, 4-stories*
- *Edith District*
  - *Standalone Residential: 40 feet, 4-stories*
- *Main and State Street District*
  - *Mixed-Use: 36 feet, 3-stories*

*The City will then evaluate and update allowed heights in the Commercial Neighborhood (CN) District at minimum allowing an additional 10 feet and one story to maintain first floor commercial uses and accommodate residential uses on upper floors to be provided as mixed-use development. This effort will include modifying existing objective design standards as necessary to accommodate anticipated housing capacity while addressing community design goals.*

***Responsible Body:*** *Development Services Department, Planning Commission, City Council*

***Funding Source:*** *General Fund*

***Time Frame:*** *Amendments to Zoning Code for increased building heights in downtown by December 2023; zoning code amendments to increase allowed heights in Commercial Neighborhood (CN) District by December 2024*

The City's adopted 6<sup>th</sup> Cycle Housing Element 2023-2031, included Program 3.C. The housing program requires the proposed ordinance amendments to *Remove floor-to-area ratio (FAR) restriction at Rancho Shopping Center and Woodland Plaza*. The draft ordinance included in this agenda packet effectively completes these deliverables as explicitly called out within the housing program.

***Program 3.C: Remove floor-to-area ratio (FAR) restriction at Rancho Shopping Center and Woodland Plaza.***



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*The City will remove the site-specific 0.35 floor-to-area ratio (FAR) limitation applicable to the Rancho Shopping Center and Woodland Plaza, as the FAR limit presents a constraint to housing and is more restrictive than the FAR standard in the Commercial Neighborhood (CN) District. The City will create new development standards reflective of a mixed-use zone that requires both commercial and residential uses for the Rancho Shopping Center and Woodland Plaza properties.*

**Responsible Body:** *Development Services Department, Planning Commission, City Council*

**Funding Source:** *General Fund*

**Time Frame:** *December 2024*

**Objective:** *Remove site-specific 0.35 floor-to-area ratio (FAR) and create development standards that require both commercial and residential uses for the Rancho Shopping Center and Woodland Plaza properties to incorporate needed housing units and preserve essential shopping services.*

The City's adopted 6th Cycle Housing Element 2023-2031, included Program 3.F. The housing program requires the proposed ordinance amendments to *Reduce Conditional Use Permit requirement for residential mixed-use and multi-family*. The draft ordinance included in this agenda packet effectively completes these deliverables as explicitly called out within the housing program.

**Program 3.F: Reduce Conditional Use Permit requirement for residential mixed-use and multi-family.**

*To facilitate housing, the City will amend the Zoning Code to allow the following as permitted uses (and no longer requiring a conditional use permit):*

- *Residential mixed-use in the CN, CD, CRS, CT, and CRS/OAD districts; and*
- *Multi-family in appropriate areas of mixed-use districts (e.g., not on the ground floor, etc.).*

**Responsible Body:** *Development Services Department, Planning Commission, City Council*

**Funding Source:** *General Fund*

**Time Frame:** *September 2024*

**Objective:** *By allowing the residential use by-right the time for City review of and action on residential mixed-use and multi-family developments will be shortened compared to typical processing times of a conditional use permit (see Appendix C, Table C-8).*

The City's adopted 6th Cycle Housing Element 2023-2031, included Program 3.G. The housing program requires the proposed ordinance amendments to *Amend Conditional Use*



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*Permits findings applicable to housing developments.* The draft ordinance included in this agenda packet effectively completes these deliverables as explicitly called out within the housing program.

***Program 3.G: Amend Conditional Use Permits findings applicable to housing developments.***

*Conditional Use Permit (CUP) approval is subject to findings listed in Zoning Code Section 14.80.060. CUP findings will be amended so that only objective findings and standards are applicable to housing developments, including single-room occupancy units, consistent with State law. Additionally, the City will designate the review and approval of conditional use permits for housing developments to the Authority of the Development Services Director.*

***Responsible Body:*** Development Services Department, Planning Commission, City Council

***Funding Source:*** General Fund

***Time Frame:*** March 2024

The City's adopted 6th Cycle Housing Element 2023-2031, included Program 3.N. The housing program requires the proposed ordinance amendments to *Modify standards in the R3 zoning districts.* The draft ordinance included in this agenda packet effectively completes these deliverables as explicitly called out within the housing program.

***Program 3.N: Modify standards in the R3 zoning districts.***

*The City will amend its Zoning Ordinance to allow building heights of 35 feet and three stories in all R3 zoning districts. The City will also increase allowed site coverage in the R3 zoning districts to ensure maximum densities can be achieved.*

***Responsible Body:*** Development Services Department, Planning Commission, City Council

***Funding Source:*** General Fund

***Time Frame:*** December 2026

**Discussion:**

The actions included within the attached draft ordinance are requirements pursuant to the City's adopted 6<sup>th</sup> Cycle Housing Element. Once a jurisdiction takes final action by adopting its housing element this requires immediate action in order to remain compliant with State housing law. The City of Los Altos Housing Element contains 26 major action items or milestones that must be completed within the first 12-months post adoption. The draft ordinance will effectively



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accomplish multiple components of the required housing programs within the adopted housing element.

**Housing Element Noncompliance:**

Should the Los Altos City Council vote not to proceed with the implementing actions discussed in this report the City will be vulnerable to penalties and consequences of housing element noncompliance. HCD is authorized to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local governments actions do not comply with state law. Examples of penalties and consequence of housing element noncompliance:

- **General Plan Inadequacy:** the housing element is a mandatory element of the General Plan. When a jurisdictions housing element is found to be out of compliance, its General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan can no longer make permitting decisions.
- **Legal Suites and Attorney Fees:** local governments with noncompliant housing elements are vulnerable to litigation from housing rights' organization, developers, and HCD. If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid by its own attorneys. Potential consequences of lawsuits include: mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.
- **Loss of Permitting Authority:** courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction's General Plan and housing element into substantial compliance with State law. The court may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring its housing element into compliance.
- **Financial Penalties:** court-issued judgement directing the jurisdictions to bring its housing element into substantial compliance with state housing element law. If a jurisdictions housing element continues to be found out of compliance, courts can multiply financial penalties by a factor of six.
- **Court Receivership:** courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction's housing element into substantial compliance with housing element law.



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**Petition for Writ of Mandate – California Housing Defense Fund, Yes In My Back Yard v. City of Cupertino.**

So that the City Council and public are well-informed the City of Los Altos has included this information with this agenda item so that all circumstances are understood as housing law is rapidly evolving.

Early this year Californians for Homeownership, California Housing Defense Fund, and YIMBY Law had filed 12 lawsuits in Contra Costa, Santa Clara, Marin, and San Mateo County Superior Courts with the intention to file more in the coming weeks. The cities and counties sued include: Belvedere, Burlingame, Cupertino, Daly City, Fairfax, Martinez, Novato, Palo Alto, Pinole, Pleasant Hill, Richmond, and Santa Clara County. Each municipality has been sued by one or two of the non-profits.

With the Bay Area's 109 cities and counties at widely varied stages in the process of Housing Element adoption and compliance, these twelve lawsuits mark the first round of what will likely be many rounds of judicial review for noncompliance with state housing law in the Bay Area. The initial lawsuits focus on cities with a long history of exclusionary housing practices, cities that adopted housing elements unlawfully, and localities that have made little progress in developing their draft housing elements. The organizations will continue to file suits in the coming weeks, prioritizing cities with the most egregious violations in each organization's judgment.

A Petition for Writ of Mandate in the State of California is used by superior courts, courts of appeal and the Supreme Court to command lower bodies (such as lower level of government agencies, in this case a city) to do or not do specific actions. In this case, a Writ of Mandate can result in the city being directed to adopt a compliant housing element or other associated actions in order to comply with State law. A Writ of Mandate could also be petitioned for and direct a city to specifically implement programs that were included in their adopted housing element.

Given the current and ongoing legal climate around housing element law it is vital for the City of Los Altos to expeditiously implement the adopted 6<sup>th</sup> Cycle Housing Element 2023-2031. As noted above the potential legal risks associated with housing element noncompliance could be further enforced by similar legal actions.