



## AGENDA REPORT SUMMARY

- Meeting Date:** March 28, 2023
- Subject:** Housing Element implementing ordinance for certain provisions of Housing Program 3.H and 3.K of the Adopted 6<sup>th</sup> Cycle Housing Element.
- Prepared by:** Nick Zornes, Development Services Director
- Reviewed by:** Jolie Houston, City Attorney  
Jon Maginot, Assistant City Manager
- Approved by:** Gabe Engeland, City Manager
- Attachment(s):** 1. Draft City Council Ordinance with Appendix A, B, C, and D  
2. CSC Comprehensive Review
- Initiated by:** Adopted 6<sup>th</sup> Cycle Housing Element 2023-2031 Program 3.H and 3.K

### **Fiscal Impact**

No fiscal impacts to the City of Los Altos are associated with the draft ordinance. However, it is important to note that should the adoption of this ordinance not take place the City of Los Altos runs the risk of losing State funding (grants, etc.), and potential legal fees and penalties associated with housing element noncompliance.

### **Environmental Review**

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

### **Staff Recommendation**

- A. Adopt, An Ordinance of the City Council of the City of Los Altos Amending Chapters 2.08, 12.44, 13.04, 14.76, and 14.78 of the Los Altos Municipal Code to Implement Certain Provisions of Program 3.H and 3.K of the Sixth Cycle Housing Element Update and consider findings that the City Council's action in adopting the ordinance exempt from review under CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and that none of the circumstances in CEQA Guidelines Section 15300.2 applies.

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**Prepared By:**

Development Services Director

**NZ**

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**OR**

- B.** Introduce and Waive Further Reading of An Ordinance of the City Council of the City of Los Altos Amending Chapters 2.08, 12.44, 13.04, 14.76, and 14.78 of the Los Altos Municipal Code to Implement Certain Provisions of Program 3.H and 3.K of the Sixth Cycle Housing Element Update with an effectiveness date of January 1, 2024 for multimodal transportation review and consider findings that the City Council’s action in adopting the ordinance exempt from review under CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and that none of the circumstances in CEQA Guidelines Section 15300.2 applies.

### **Summary and Key Considerations**

The draft ordinance before the City Council is to implement adopted programs from the City’s 6<sup>th</sup> Cycle Housing Element 2023-2031. These actions are called out in the adopted housing element and were designed to remove any barriers or impediments to the creation of new housing within Los Altos. Additionally, there are amendments to the municipal which further clean up each Chapter which is required to be amended in order to implement the housing program.

### **Background**

On January 24, 2023, the Los Altos City Council adopted the City’s 6<sup>th</sup> 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.

### **Analysis**

The City’s adopted 6<sup>th</sup> Cycle Housing Element 2023-2031, included Program 3.H. The housing program contains several deliverables of those the following necessitate the proposed



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ordinance amendments: 1. Consolidation of the Design Review Commission and Planning Commission, 2. Designate the Development Services Director as the review authority for projects of five or fewer residential units, 3. Limit the Number of Public Hearing to no more than three (3) for Design Review projects only, 4. Designate the City Council only as the Appeal Authority for Land Use decisions, 5. Clarify that appeal of decisions on housing developments shall be only on objective standards and must be filed within 14 calendar days (this has been highlighted in yellow below). The draft ordinance included in this agenda packet effectively completes these deliverables as explicitly called out within the housing program.

***Program 3.H: Amend design review process and requirements.***

*The City's Design Review Commission and Planning Commission had previously been one commission with a Design Review Committee comprised of two assigned Planning Commissioners. In recent years the purview of land use and design review was split into two separate commissions, currently the Planning Commission and Design Review Commission. The current structure of the Design Review Commission is a five-person body appointed by the City Council, while the Planning Commission is a seven-person body. Recent changes in State law drastically reduced the Design Review Commission's purview, and the City's well-developed objective design standards for a variety of development types (adopted in 2021) effectively created an Administrative Design Review that has been well implemented by City staff. In order to remove constraints arising from design review, the City will:*

- Consolidate the Design Review Commission and Planning Commission into one body comprised of a maximum of seven appointed residents which will review mixed-use, multi-family and commercial developments, consistent with the majority of jurisdictions throughout the County of Santa Clara;*
- Eliminate 3rd party independent architect review (which applies to projects in the downtown);*
- Amend its Zoning Code to allow any design review and discretionary approvals for a project of five or fewer units to be approved by the Development Services Director;*
- When hearings are required, limit the number of hearings for solely design review approval (i.e., not including subdivision maps or other applications that may be involved) to no more than three hearings;*
- Develop standard conditions of approval to provide consistency and certainty to applicants and approving bodies;*



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- *Modify its design review process and applicability thresholds so that City Council serves only as the decision-making authority for appeal of design review and land use decisions, consistent with the majority of jurisdictions throughout the County of Santa Clara;*
- *Clarify that decisions on appeals of housing developments must be based on objective standards consistent with State law and any appeal filed with the City shall be done within 14 calendar days post project approval; and*
- *Amend its Zoning Code to ensure that housing developments and emergency shelters are only subject to objective design standards consistent with State law.*

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

**Funding Source:** *General Fund*

**Time Frame:** *Any code amendments required to be completed by December 2023; Design Review Commission to be dismissed and duties reassigned to Development Services Director upon local adoption of the 6<sup>th</sup> Cycle Los Altos Housing Element or sooner. Evaluate progress and take additional action if improvements in the design review process have not resulted by January 2027.*

**Objective:** *The time for City review of and action on residential, mixed-use and multi-family developments will be shortened compared to typical processing times (see Appendix C, Table C-8) with the reduction of discretionary reviews and commissions.*

Additionally, the City's adopted 6<sup>th</sup> Cycle Housing Element 2023-2031, included Program 3.K. The housing program contains one overarching goal of streamlining the development review for multimodal transportation requirements. The proposed zoning ordinance implements the city's adopted 6<sup>th</sup> Cycle Housing Element Program 3.K as the adopted program explicitly commits the City of Los Altos that housing developments will no longer undergo review by the Complete Streets Commission.

***Program 3.K: Standardize multimodal transportation requirements.***

*An application for City Council design review is subject to a multimodal transportation review by the Complete Streets Commission as part of the approval process in order to assess potential project impacts to various modes of transportation. The City will streamline the Development Review process for multi-family housing projects by adoption of Development Standards for multimodal transportation such as bicycle, pedestrian, parking traffic and public transportation issues. **The development of standards will no longer require housing development projects to be***



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***reviewed by the Complete Streets Commission. The City Council will utilize previous recommendations and approvals as a basis for the creation of the development standards in consultation with the appointed Complete Streets Commission.*** A recommendation by the Complete Streets Commission on Bicycle Stall, Storage and Charging shall be made timely and considered at no more than two hearings; final recommendation to the City Council shall be made no later than May 2023.

***Responsible Body:*** Development Services Department, Complete Streets Commission, City Council

***Funding Source:*** General Fund

***Time Frame:*** December 2023

***Objective:*** See Program 3.H.

## **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 accomplish the majority of 2 of the 26 items or milestones to be achieved in the first 12-months. Some of the action items to be completed are quicker than others which is why these items are before the City Council now for adoption. The City of Los Altos does not have a robust or large Planning Division and several of the items to be completed within the first year will take a great amount of time; all items included in the draft ordinance are required to maintain compliance with HCD.

## **February 28, 2023, City Council Ordinance Introduction**

On February 28, 2023, at the City Council public hearing the draft ordinance was introduced. The item was well discussed by the City Council and commented on by the public. The Development Services Director provided extensive analysis of the potential modifications to the draft ordinance and advised the City Council that in order to remain consistent with the recently adopted housing element and compliant with housing law they should introduce the draft ordinance as proposed.



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The City Council requested to modify the draft ordinance to allow for the effectiveness of the multimodal transportation review to begin on January 1, 2024.

Following additional discussion regarding multimodal transportation review the City Council was advised that the Complete Streets Commission **does not** have purview to review housing developments. The Complete Streets Commission serves as an advisory body appointed by the City Council and **does not** have quasi-judicial powers and duties as established in the Los Altos Municipal Code Section 2.08.160.

The Complete Street Commission was formed in late 2017 after it concurrently dissolved the Bicycle & Pedestrian Advisory Commission while also restructuring the purview of the Planning & Transportation Commission to only serve as a traditional Planning Commission. At that time the purview of the Complete Streets Commission was established by ordinance and assigned its powers and duties in Chapter 2.08.

In 2019, City Staff initiated a code amendment to clarify the role of the Complete Streets Commission within the Zoning Code as reflected in Section 14.78.090 however did not concurrently amend the powers and duties authorized within the municipal code. This has created an inconsistent municipal and zoning code.

Shortly after the above mentioned amendments were processed by staff, the governor signed into law Senate Bill No. 330 (SB330). In short SB330 does not allow any public agency to enforce a subjective standard, condition or policy on any housing development. In order to be applied equally and fairly to all housing projects a standard must be objective and in place prior to the initial submittal. *“Objective” means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.* (Government Code Section 65589.5(h)(8)). As extended by Senate Bill No. 8, all requirements of SB330 are in effect until January 1, 2030, which means that in order for the City of Los Altos to legally enforce requirements against any housing development the city must create objective standards to be equally applied to all projects.

As it remains today the City of Los Altos has very few adopted multimodal transportation standards which have been requested by the Complete Streets Commission at a public hearing. After review of all 57 meeting agendas of the Complete Streets Commission since the first meeting



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in January 2018 the commission has reviewed 15 different housing developments; 3 of the 15 were pre-application reviews which would allow the consideration and input of the Complete Streets Commission. After further analysis there is a clear trend of what the commission has “requested” or “recommended” of housing developments which includes: 1. Additional Bike Parking/Storage above the recommended amount by VTA, 2. Provide electrical outlets for e-Bike charging, 3. Increased Sidewalk Width adjacent to developments, 4. Additional EV Parking. Of the four main requested modifications to housing developments two (2) are being presented to the Complete Streets and Planning Commission on March 16, 2023. Of the remaining two items that are most frequently requested by the commission one (sidewalk widths) would be a modification of standards with the Public Works Department to require in the early design and development phases of a project, while the other (Number of EV Stalls) does not fall under the purview of the Complete Streets Commission and is something that is established by the Building Code, and local amendments recommended by the Environmental Commission. Attachment #2 provides a comprehensive review of what the Complete Streets Commission has reviewed over the last 5-years, while also providing detail of the requests or recommendations they have made of housing developments within the City of Los Altos.

As mentioned previously the Zoning Code Amendment for Bicycle Parking/Storage is set for hearing on March 16, 2023, and is two of the four main requests of the commission; one of the four (EV Stalls) is not of the purview of the commission. Until standards are codified into the Los Altos Municipal Code any recommendation or request of the Complete Streets Commission is unenforceable.

### **Penalties for Noncompliance of Adopted Housing Element:**

Should the Los Altos City Council not introduce the draft ordinance 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



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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.

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.

As of Friday, February 3, 2023, 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





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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 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.

### **Planning Commission Recommendation (February 16, 2023)**

The Planning Commission considered this item on February 16, 2023, at its regularly scheduled meeting. During the consideration of this item the Planning Commission accepted the draft ordinance with staff recommended amendments as well as providing further clarifying amendments which have been incorporated into the draft ordinance. At that time no public comments were received which spoke in opposition to the adoption of the changes presented within the draft ordinance.

### **Next Steps**

The Draft Ordinance becomes effective 30-days post adoption.