



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 01/11/2023

ITEM NO: 5

DATE: January 6, 2023
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider and Make a Recommendation to the Town Council on the Draft 2023-2031 Housing Element. Location: Town-Wide. General Plan Amendment Application GP-22-003.

RECOMMENDATION:

Consider and make a recommendation to the Town Council on the Draft 2023-2031 Housing Element.

EXECUTIVE SUMMARY:

The Town of Los Gatos has prepared a draft update to the Housing Element of the General Plan to affirmatively further fair housing and accommodate the 1,993-unit Regional Housing Needs Allocation (RHNA) for the 2023-2031 Housing Element cycle. The content of the draft 2023-2031 Housing Element is structured for consistency with the requirements set forth in State law. In addition to responding to requirements of State law, the Housing Element also demonstrates the Town of Los Gatos' strategy to meet the Town's locally determined housing needs, and that these needs are addressed through policies and programs outlined within the Housing Element. Public review and input have been a critical component of this 6th cycle Housing Element Update. A copy of the Draft 2023-2031 Housing Element is available on the Town's Housing Element website: <https://engagelosgatoshousing.com>.

BACKGROUND:

California Government Code Section 65580 and following regulates the use and requirements of housing elements in California. State law requires that the Town update its General Plan Housing Element every eight years. State law further requires adoption of an updated Housing Element that is substantially compliant with Government Code Sections 65580 and following by January 31, 2023.

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Associate Planners

Reviewed by: Planning Manager, Community Development Director, and Town Attorney

BACKGROUND (continued):

Starting in early 2021, the Town has worked diligently through the required steps to comply with State law with the goal of adopting a Housing Element prior to the January 31, 2023, deadline. Exhibit 3 presents a timeline outlining the ongoing efforts that have been completed toward achieving this goal. Guidance was also provided by the California Housing and Community Development Department (HCD) throughout the process.

On October 14, 2022, the Town submitted the Draft Housing Element and a response to public comments received during the 30-day public comment period to HCD for preliminary review, which consists of a 90-day review.

On December 13, 2022, Town staff met with the HCD reviewer and received verbal, preliminary input on the Draft Housing Element.

On December 20, 2022, the Town Council recommended that the current version of the Draft 2023-2031 Housing Element, as submitted to HCD on October 14, 2022, be considered for adoption prior to the statutory deadline of January 31, 2023. In addition, the Town Council recommended that the Sites Inventory of the Housing Element utilize the minimum density, requiring additional sites to be added in order to comply with the Town's RHNA as determined by the Association of Bay Area Governments (ABAG) and required buffer. The sites added are detailed in the Discussion Section of this report.

The primary purpose of this agenda item is to provide a recommendation to Town Council on whether to adopt the Draft 2023-2031 Housing Element (Exhibit 1) with the revised Sites Inventory Analysis (Exhibit 4) and revised Sites Inventory Form (Exhibit 5).

DISCUSSION:

The following section summarizes the required components of housing element updates per State law, new requirements included since the 5th cycle Housing Element adoption (2015-2023), and penalties for non-compliance with Housing Element law. The section also includes a summary of public meetings related to the 6th cycle Housing Element Update prior to today's meeting.

Required Components of a Housing Element

Pursuant to Government Code Section 65583, local governments are required to include the items below within their Housing Elements, and subsequent updates thereto. Newly required components introduced as part of the 6th cycle are included in *italics* below and discussed in further detail within the "New Requirements for the 6th cycle Housing Element Update" Section on the following page.

DISCUSSION (continued):

1. Housing Needs Assessment: Examine demographic, employment, housing trends and conditions, and identify existing and projected housing needs of the community, with attention paid to special housing needs (e.g., large families, persons with disabilities). This Section includes a community's RHNA as determined by a community's regional planning body in partnership with HCD.
2. Evaluation of Past Performance: Review the prior Housing Element to measure progress in implementing policies and programs.
3. Housing Sites Inventory: Identify locations of available sites for housing development or redevelopment to demonstrate there is enough land zoned for housing to meet future need at all income levels.
4. Community Engagement: Implement a robust community engagement program that includes reaching out to individuals and families at all economic levels of the community, plus historically underrepresented groups.
5. Constraints Analysis: Analyze and recommend remedies for existing and potential governmental and nongovernmental barriers to housing development.
6. Policies and Programs: Establish policies and programs to be carried out during the 2023-2031 planning period to fulfill the identified housing needs.
7. *Affirmatively Furthering Fair Housing (AFFH): Analyze and address significant disparities in housing needs and access to opportunity by proposing housing goals, objectives, and policies that aid in replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.*

New Requirements for the 6th Cycle Housing Element Update

Pursuant to recent State legislation, the following items are now required as part of the housing element update process:

- *Affirmatively Furthering Fair Housing (AFFH)*. Assembly Bill (AB) 686, passed in 2018, created new requirements for jurisdictions to affirmatively further fair housing. According to AB 686, affirmatively furthering fair housing means to take “meaningful actions, in addition to combating discrimination, which overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics” and is Federally mandated by the 1968 Fair Housing Act. The four main goals are to:
 - Address significant disparities in housing needs and in access to opportunity;
 - Replace segregated living patterns with truly integrated and balanced living patterns;
 - Transform racially and ethnically concentrated areas of poverty into areas of opportunity; and

DISCUSSION (continued):

- Foster and maintain compliance with civil rights and fair housing laws.
- *Public Comment on Draft Revisions.* AB 215 (2021), requires local governments to make the first draft revision of their housing element update available for public comment for at least 30 days. Further, if any comments are received, a local government must take at least ten additional business days to consider and incorporate public comments into the draft revision before submitting to HCD. HCD must review the draft and report its written findings to the planning agency within 90 days of receiving the first draft submittal for each housing element revision or within 60 days of its receipt for a subsequent draft amendment or adoption.

Penalties for Non-Compliance

In the current 6th cycle, jurisdictions face a number of new consequences for not adopting a Housing Element that is substantially compliant with state Housing Element law by the statutory deadline of January 31, 2023. Under legislation enacted in recent years, if a jurisdiction does not comply with State housing law, HCD may refer the jurisdiction to the Attorney General and significant fines may be imposed. A court finding a Housing Element inadequate may limit local land use decision-making authority until the jurisdiction brings its Housing Element into compliance, or local governments may lose the right to deny certain projects.

Conversely, an HCD-certified Housing Element makes jurisdictions eligible for, or with higher priority for, numerous sources of funding.

Builder's Remedy

Under the Housing Accountability Act, jurisdictions who do not have an adopted Housing Element that is in substantial compliance with State law by the statutory deadline (January 31, 2023, for the Bay Area) could be required to approve a residential development even if it does not meet local General Plan and zoning regulations. The "builder's remedy" has been in the Housing Accountability Act since 1990 and pertains to residential developments that have at least 20 percent low-income units or 100 percent moderate income units. HCD has confirmed that no such 120-day grace period will apply this cycle and any jurisdiction that adopts a Housing Element later than January 31, 2023, will be subject to the "builder's remedy." This provision in the Housing Accountability Act has been available for quite some time and in Los Gatos no applications have come forward during previous Housing Element cycles when the Town missed the statutory deadline for adoption of a Housing Element.

Staff fully recognizes that the current Housing Element cycle is unlike any past cycle. It is possible that a developer could invoke the "builder's remedy" in connection with a planning

DISCUSSION (continued):

application submitted in February if the Town Council does not adopt a Housing Element that is in substantial compliance with Housing Element law by January 31, 2023.

Housing Element Requirements

The following section summarizes the major topics covered by the Town's Housing Element.

A. Housing Needs Assessment

As part of the housing element update process the Town is required to analyze the existing and projected housing needs of the Town, including its fair share of RHNA requirements. The Town's analysis of housing needs is required to include an assessment of detailed demographic data including: population age, size, and ethnicity; household characteristics; overpayment trends; housing stock conditions; units in need of replacement or rehabilitation; and needs of special needs populations including the elderly, persons with disabilities, unhoused persons, extremely low-income households, and farmworkers. Utilizing the Housing Needs Data Report provided by ABAG, the 6th cycle Housing Element Update outlines the Town's housing needs. See Appendix B of the Draft 2023-2031 Housing Element.

B. Regional Housing Needs Allocation (RHNA)

In January of 2022, HCD approved ABAG's adopted *Final RHNA Plan for the San Francisco Bay Area: 2023-2031 (Plan)* which establishes a total RHNA for the San Francisco Bay Area of 441,176 residential units for the 6th cycle housing element update 2023-2031 planning period. ABAG's *Plan* further distributes this RHNA across the Bay Area's nine counties, and 101 cities based on demographic and population data received from the California Department of Finance (DOF). Local jurisdictions must then utilize their ascribed RHNA to update the housing elements of their general plans for the 6th cycle planning period, inclusive of identifying eligible land resources to accommodate their RHNA.

RHNA requirements are organized into four affordability categories, established according to the Area Median Income (AMI) of a geography. These categories include very low-income residential units, which are affordable to households earning less than 50 percent of AMI; low-income residential units, which are affordable to households earning between 50 percent and 80 percent of AMI; moderate income residential units, which are affordable to households earning between 80 percent and 120 percent of AMI; and above moderate-income residential units which are affordable to households earning over 120 percent of AMI. The Town's RHNA is summarized on the following page:

DISCUSSION (continued):

Town of Los Gatos RHNA		
Income Category	5 th Cycle RHNA (2015-2023)	6 th Cycle RHNA (2023-2031)
Very Low (less than 50% of AMI)	201	537
Low (50-80% of AMI)	112	310
Moderate (80-120% of AMI)	132	320
Above Moderate (More than 120% of AMI)	174	826
Total	619	1,993

RHNA Buffer

New “no net loss” provisions of Government Code Section 65863 require the Town to ensure an adequate supply of land be made available for housing development throughout the duration of the 2023-2031 planning period. This means that if housing sites identified within the jurisdiction’s 6th cycle Housing Element are developed with non-residential uses, lower residential densities, or residential uses at affordability levels that are different than anticipated by the Housing Element, the Town’s Housing Element could be determined to be out of compliance. Accordingly, the Town’s Sites Inventory was compiled with a 16 percent buffer to address future compliance with “no net loss” provisions.

C. Constraints Analysis

In addition to analyzing the existing and projected housing needs of the Town, the Housing Element must also identify and analyze potential and actual governmental and nongovernmental constraints to the maintenance, improvement, or development of housing for all income levels in the community, regardless of protected class. A summary of constraints to the development and improvement of housing in the Town is included in Appendix C of the Draft 2023-2031 Housing Element.

D. Housing Resources and Sites Inventory

As part of the 6th cycle housing element update, the Town is also required to identify resources available to the Town for the preservation, rehabilitation, and production of housing throughout the community. These resources also include land within the Town of Los Gatos that are identified as eligible for accommodation of the Town’s RHNA requirements. Pursuant to Government Code Section 65583.2(a), the following resources are eligible for accommodation of the Town’s RHNA: vacant sites zoned for residential use; vacant sites zoned for nonresidential use that allows residential development; residentially zoned sites that are capable of being developed at a higher density; or sites zoned for nonresidential use that can be redeveloped for residential use, and for which the Housing

DISCUSSION (continued):

Element includes a program to rezone the site. The Town's Housing Sites Inventory is summarized in Appendices D and H of the Draft 2023-2031 Housing Element.

In response to Town Council direction given on December 20, 2022, a revised Sites Inventory Analysis (Exhibit 4) and revised Sites Inventory Form (Exhibit 5) have been prepared with the calculations based on an assumption of housing development at the minimum density for sites that accommodate affordable units. As a result, two additional sites were added to maintain the RHNA plus buffer discussed above. Those sites include:

- Site C-7 – 15495 Los Gatos Boulevard (APN: 424-22-030); and
- Site C-8 – 15445 Los Gatos Boulevard (APN: 424-19-068).

As a result, the revised Sites Inventory Analysis (Exhibit 4) and revised Sites Inventory Form (Exhibit 5) include sufficient sites to meet the RHNA requirement in each income category, plus a buffer of 319 housing units (16 percent).

E. Goals, Policies, and Implementation Programs

The Housing Element includes a set of goals, policies, and implementation programs intended to promote the preservation, rehabilitation, and production of housing throughout the Town. Goals are long-range, broad, and comprehensive targets that describe future outcomes the Town desires. A policy is a specific instructional guideline that seeks to promote a goal. Together, goals and policies are implemented through a series of programs that identify specific, quantifiable actions the Town will undertake during the 6th cycle planning period. The Town's Draft Goals, Policies, and Implementation Programs are summarized in Section 10.6 of the Draft 2023-2031 Housing Element.

F. Affirmatively Furthering Fair Housing (AFFH)

Assembly Bill (AB) 686, passed in 2018, created new requirements for jurisdictions to affirmatively further fair housing as part of the housing element update process. These requirements, found in Government Code Section 8899.50, are intended to address racial inequalities seen today throughout California which developed through historical policies and practices enacted at Federal, State, regional, and local levels and across the public and private sectors. Though many of these explicit forms of historical discrimination have been outlawed, the results of these systems have left a lasting imprint on both the Bay Area region and the Town. Racially explicit practices (e.g., racial covenants) which excluded persons of color from predominately white neighborhoods have been replaced with race-neutral land use policies that continue to exclude these same groups. Furthermore, rapidly increasing housing costs have deepened racial and economic disparity and segregation,

DISCUSSION (continued):

displacing many low income people and people of color to the peripheries of the region or out of the Bay Area all together.

Accordingly, the Town must incorporate fair housing considerations into its 6th Cycle Housing Element to increase housing opportunities in high resource neighborhoods. The following summarizes the components of the required AFFH component of the Town's Housing Element and can be found in Appendix A of the Draft 2023-2031 Housing Element:

- Targeted Community Outreach;
- Assessment of Fair Housing;
- Fair Housing Outreach Capacity and Enforcement;
- Segregation and Integration Patterns;
- Racially and/or Ethnically Concentrated Areas of Poverty (R/ECAPS) and Racially Concentrated Areas of Affluence (RCAA);
- Disparities In Access to Opportunity;
- Sites Inventory Relative to Affirmatively Further Fair Housing; and
- Goals, Policies, and Implementation Programs that Affirmatively Further Fair Housing.

G. Evaluation of Past Progress

Pursuant to State Law, the Draft Housing Element summarizes the implementation status of Goals, Policies, and Implementation Programs from the Town's 5th cycle Housing Element. See Appendix E of the Draft 2023-2031 Housing Element.

H. Community Engagement

Beginning the summer of 2021, the Town has conducted a comprehensive community engagement and outreach strategy, as required by Government Code, to inform the 6th cycle Housing Element Update process. This strategy has included a series of 13 Housing Element Advisory Board (HEAB) public meetings; two community meetings; a joint study session with the HEAB, Planning Commission, and Town Council; four Town Council meetings; and public engagement at staff hosted informational booths. The Town has a dedicated Housing Element Update website which has provided the public interactive engagement opportunities including the Balancing Act mapping tool, housing polls, and surveys. Community engagement opportunities have been publicized on the Town's website, through the Town's multiple social media platforms and through targeted email updates to the Town's Notify Me subscriber list for the 2040 General Plan Update and Housing Element Update. Postcards were also sent to all property owners and tenants in the Town for the Housing Element Community meeting. Announcements have been provided in the local newspaper for all HEAB meetings, community meetings, study

DISCUSSION (continued):

sessions, public hearings, and for the 30-day public review period of the Initial Public Review Draft Housing Element. Feedback received throughout the ongoing community engagement and outreach process has assisted staff and the consulting team in preparing the Draft Housing Element Update and related items.

Exhibit 3 presents a chronological timeline detailing the ongoing efforts that have been completed.

Next Steps

To complete the goal of adopting a Housing Element that is in substantial compliance with State law by the statutory deadline (January 31, 2023), the Town Council is scheduled to consider Planning Commission's recommendation on the adoption of the Draft Housing Element at a Special Town Council Meeting on January 30, 2023.

In parallel with the process under consideration tonight, Town staff and the consultants will continue to work with HCD to consider and respond to any comments from their review of the Draft Housing Element. The Town expects to receive its comment letter from HCD on the Draft Housing Element by January 12, 2023. Once the HCD comment letter has been received, a draft memorandum in response to the HCD comment letter, illustrating how each comment has been responded to and how it is in substantial compliance with State law will be prepared for review by the HEAB.

Based on review and recommendation from the HEAB, a revised draft will be submitted to HCD in response to the initial comment letter. Subsequent reviews by HCD will take up to 60 days.

The Town must post the revision on its website and email a link to all individuals and organizations that have previously requested notices relating to the Town's Housing Element for at least seven days prior to submitting a revised draft Housing Element to HCD.

Based on HCD's second review, it is possible that additional revisions may be needed before HCD would certify the Housing Element. This means that Planning Commission and Town Council hearings for adoption of a revised Housing Element would need to be conducted.

ENVIRONMENTAL ASSESSMENT:

An Environmental Analysis was prepared for the Housing Element Update. Although the Housing Element Update could have a significant effect on the environment, it was found that all potentially significant effects have been analyzed adequately in Town of Los Gatos 2040 General Plan Environmental Impact Report (EIR), pursuant to applicable standards including

ENVIRONMENTAL ASSESSMENT (continued):

CEQA Guidelines Section 15168(c)2, and the Housing Element Update is consistent with the growth projections evaluated in the General Plan EIR.

PUBLIC COMMENTS:

At the time of this report's preparation, the Town has not received any public comment.

CONCLUSION:

A. Recommendation

Staff recommends that the Planning Commission:

1. Receive and consider public comments;
2. Consider the Draft 2023-2031 Housing Element (Exhibit 1), the Environmental Analysis (Exhibit 2), and the Revised Sites Inventory (Exhibit 4); and
3. Forward a recommendation to the Town Council to adopt the Draft 2023-2031 Housing Element (Exhibit 1) with the revised Sites Inventory Analysis (Exhibit 4) and revised Sites Inventory Form (Exhibit 5);

B. Alternatives

Alternatively, the Commission can:

1. Recommend the Town Council not adopt the Draft 2023-2031 Housing Element; or
2. Recommend adoptions with modifications.

EXHIBITS:

Previously received (available online here: <https://engagelosgatoshousing.com>):

1. Draft 2023-2031 Housing Element
2. Environmental Analysis

Received with this Staff Report:

3. Housing Element Update Process Timeline
4. Revised Appendix D, Sites Inventory Analysis
5. Revised Appendix H, Sites Inventory Form