



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/20/2022

ITEM NO: 13

DATE: December 15, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss the Housing Element Update and Provide Direction on Next Steps.

RECOMMENDATION:

Discuss the Housing Element Update and provide direction on next steps.

BACKGROUND:

The Town of Los Gatos is required to adopt an updated Housing Element for the period covering 2023-2031 by January 31, 2023. The Housing Element is one of nine State-mandated elements that must be included in every General Plan. The Housing Element assesses housing needs for all income groups within the community and identifies implementation programs to meet those housing needs. Unlike other General Plan elements, the Housing Element must be updated every eight years, rather than every 10 to 20 years, must address statutory requirements regarding its content, and is subject to mandatory review and certification by the California Housing and Community Development Department (HCD).

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. Attachment 1 presents a timeline outlining the ongoing efforts that have been completed toward achieving this goal. In the event the Town does not have an adopted Housing Element by January 31st, this report discusses the "Builders Remedy" and scheduling options.

The primary purposes of this agenda item are:

- (1) Provide direction on the Town's potential modifications to the Housing Element in response to the preliminary, unofficial comments to the Town from HCD;

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Associate Planner and Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Community Development Director, and Finance Director

BACKGROUND (continued):

- (2) Provide direction on the Town's potential modifications to the Housing Element in response to the official HCD comments received by some other cities in the Bay Area; and
- (3) Provide direction on the timing for Housing Element adoption.

DISCUSSION:

Preliminary Comments to the Town from HCD

Staff met with the Town's HCD reviewer on December 13, 2022, to receive preliminary, verbal feedback on the Draft Housing Element. The following topics were identified by the HCD reviewer as requiring additional information and/or analysis. Many of these topics, listed below, were discussed at the December 1, 2022, Housing Element Advisory Board (HEAB) meeting as potential comments that the Town may receive.

1. The referendum status of the Land Use and Community Design Elements of the 2040 General Plan;
2. The housing needs assessment;
3. The site inventory;
4. The governmental and non-governmental constraints;
5. Affirmatively Furthering Fair Housing;
6. The implementation programs;
7. Documented compliance with State law, including, but not limited to transparency laws, Senate Bill 330, and Assembly Bill 139; and
8. Additional information for the Pipeline Projects and the projections used for calculating Accessory Dwelling Unit (ADU) and Senate Bill 9 (SB 9) projects.

Comments to Other Cities from HCD

In anticipation of the Town's first review comment letter from HCD, staff reviewed comment letters received by other jurisdictions, including, the cities of Campbell, Dublin, Menlo Park, Mountain View, Redwood City, Saratoga, and Sunnyvale. Staff identified the following recurring topics in the comment letters from other jurisdictions which the Town may also receive and presented this information to the HEAB at their December 1, 2022, meeting. The HEAB discussed each of the topics described below, agreed with staff's recommended approach to each issue, and provided a general consensus to the Town Council that the Draft Housing Element as submitted to HCD be adopted by the statutory deadline of January 31, 2023.

DISCUSSION (continued):

Implementation Programs

1. Provide more definitive implementation timelines and objectives, quantified where appropriate, for each Implementation Program.
2. An Implementation Program to modify the Town's Density Bonus Ordinance for compliance with Assembly Bill 1763, which became effective in January 2020. The Town's Density Bonus Ordinance was last modified in June of 2012.
3. An Implementation Program to modify the Town's ADU Ordinance for compliance with State law. For example, the Town's current ADU ordinance requires that a new ADU in the Hillside Residential (HR) zone comply with the primary structure setbacks for the rear and side setbacks; whereas, HCD has previously provided correspondence to staff that the Town may only utilize minimum rear and side setbacks of four feet.

Site Inventory List

1. HCD provided a comment in the City of Menlo Park comment letter that the Housing Element could utilize a minimum density and this methodology may be accepted without further analysis or methodology. The Town's current methodology for calculating the realistic residential capacity for the Site Inventory utilizes the typical density identified in the 2040 General Plan Residential Buildout table. The following table demonstrates the existing 2020 General Plan Land Use designations, the 2040 General Plan minimum density, and the 2040 General Plan typical density. Should the Town choose to utilize a minimum density for calculating the residential capacity of the Site Inventory, additional sites would be required to be selected from either the Tier 2 or Tier 3 Site Inventory list.

2020 General Plan Designation	2040 General Plan Minimum Density (du/ac)	2040 General Plan Typical Density (du/ac)
Low Density Residential	0	4
Medium Density Residential	14	18
High Density Residential	30	36
Neighborhood Commercial	10	18
Central Business District	20	26
Mixed-Use	30	36

2. HCD has deemed sites smaller than a half-acre as inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or unless the Housing Element provides other evidence to HCD that the site is adequate to accommodate lower-income housing. The Town's Site Inventory includes eight sites that are less than half an acre (Site A-1, Site A-7, Site B-1, Site C-6, Site D-3, Site D-4, Site D-7, and Site G-1).

DISCUSSION (continued):

- a. Site A-1 (50 Park Avenue) is identified in the Site Inventory; however, it has not been identified as a site to accommodate lower-income housing.
 - b. Site A-7 (165 Los Gatos-Saratoga Road) is identified in the Site Inventory; however, it has not been identified as a site to accommodate lower-income housing.
 - c. Site B-1 (APN 529-24-003) has been identified as a site to accommodate lower-income housing units as it is consolidated with the Los Gatos Lodge property. The Town has received a Property Owner Interest form for this property. Programs BF and BG of the Draft Housing Element propose to amend the Zoning Code and General Plan to include a Housing Element Overlay Zone to apply to the sites included in the Site Inventory to increase the development standards. For this particular consolidated site, the minimum density would be 30 du/ac. The HCD Housing Element Site Inventory Guidebook allows jurisdictions to use a higher density (default density of 30 du/ac) as a proxy for lower income affordability.
 - d. Site C-6 (16492 Los Gatos Boulevard and APN 532-07-085) is identified in the Site Inventory; however, it has not been identified as a site to accommodate lower-income housing.
 - e. Site D-3 (16240 Burton Road), Site D-4 (16270 Burton Road), and Site D-7 (14823 Los Gatos Boulevard) have been identified as sites to accommodate lower-income housing as they are located within the North Forty Specific Plan Area. Program D of the Draft Housing Element proposes to amend the North Forty Specific Plan to increase the density to more than 30 du/ac and to increase the total number of dwelling units allowed in the Specific Plan. The HCD Housing Element Site Inventory Guidebook allows jurisdictions to use a higher density (default density of 30 du/ac) as a proxy for lower income affordability.
 - f. Site G-1 (445 Leigh Avenue) is identified in the Site Inventory; however, it has not been identified as a site to accommodate lower-income housing.
3. HCD has stated that the Housing Element must demonstrate that existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. The Site Inventory currently relies upon nonvacant sites to accommodate more than 50 percent of the Regional Housing Needs Allocation (RHNA) for lower-income households. Sites that are nonvacant have been included in the Site Inventory due to either a Property Owner Interest Form being submitted to the Town, staff contact regarding potential residential development, or submittal of a Conceptual Development Advisory Committee application.
 4. HCD has stated that in order for SB 9 housing units to be included as a strategy to accommodate the Town's need of above-moderate housing, additional analysis will be required to be provided. The analysis may include, but is not limited to: experience; trends; and market conditions that allow lot splits; and the likelihood of redevelopment, including whether existing uses constitute an impediment for additional residential use to support

DISCUSSION (continued):

the proposed projection within the eight-year planning period. The Town has provided a SB 9 projection of 96 housing units within the eight-year planning period.

5. It is likely that HCD is aware of the 2040 General Plan referendum for the Land Use and Community Design Elements, as demonstrated in their comment letter to the City of Menlo Park regarding a voter initiative for a proposed ballot measure for single-family rezoning. In response to the referendum to repeal the Land Use and Community Design Elements of the 2040 General Plan, the Draft Housing Element included Implementation Programs BF and BG to amend the Zoning Code and General Plan for the sites that are included in the Site Inventory. The amendments would consider modification of the development standards, including, but not limited to the: density; lot coverage; floor area ratio; and height for the parcels in the Site Inventory.

Public Participation

1. HCD has commented that Housing Elements need to describe the efforts made to circulate the document to low-and moderate-income households, and organizations that represent them, and to involve such groups and persons in the update of the Housing Element throughout the process. Staff has also seen feedback requesting information on how the Housing Element has targeted outreach efforts to renters. In response, staff and the Housing Element consultant created an anonymous, online survey that is available on the Town's Housing Element Update website. Hard copies of the survey are available at the Community Development Department counter, and the Town Library. Staff has also reached out to West Valley Community Services and SV@Home regarding other community outreach opportunities.

Direction on Scheduling Options

To provide context to the scheduling options and potential consequences, this section first describes the Builder's Remedy.

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. In past Housing Element cycles, HCD has applied a 120-day grace period past the statutory deadline for local agencies to adopt a Housing Element. In early October 2022, HCD confirmed that no such 120-

DISCUSSION (continued):

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 deadlines for adoption of a Housing Element.

The statutory deadline for adoption of a Housing Element for the fourth cycle (2007-2014) was June 30, 2009. The Town Council adopted the fourth cycle Housing Element on November 1, 2010. On April 8, 2011, the Housing Element was certified by HCD pending a resubmittal once the element was adopted by the Town Council. On September 19, 2011, the Town Council considered amendments to the Housing Element and continued the matter to a date uncertain with direction to Town staff. On March 5, 2012, the Town Council adopted Resolution 2012-008 amending the Housing Element based on modifications to meet State Housing Law requirements. On September 20, 2012, the adopted Housing Element was found to be in full compliance with the State Housing Element law by HCD. The statutory deadline for adoption of a Housing Element for the fifth cycle (2015-2023) was January 31, 2015. The Town Council adopted the fifth cycle Housing Element on May 5, 2015. On May 20, 2015, the Housing Element was certified by HCD.

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 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.

The Council's options in response to the statutory deadline for adoption of a Housing Element by January 31, 2023, are:

A. Adopt a Housing Element Prior to January 31, 2023

Adopt the current version of the Draft Housing Element as submitted to HCD on October 14, 2022, making the findings that the Housing Element is in substantial compliance with State law. The Town expects to receive its comment letter from HCD on the Draft Housing Element by January 12, 2023. Should the HCD comment letter be provided to the Town prior to Council's adoption, a 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 would be prepared; however, the extent of the work that may be required to address those comments is not yet known. It is highly unlikely that staff and the consultants have the time or resources to produce a redline version incorporating all of the required changes.

DISCUSSION (continued):

If the Council decides to move forward with Option A, the Draft Housing Element would be reviewed by the Planning Commission in early January for a recommendation to the Town Council. Town Council would then consider adoption of the Draft Housing Element prior to or on January 31, 2023.

A revised draft or adopted Housing Element must be submitted to HCD in response to the initial comment letter. Subsequent reviews by HCD will take up to 60 days. Prior to submitting a revised draft or adopted Housing Element to HCD, 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 local government's Housing Element at least seven days before submitting the revised Housing Element to HCD.

Based on HCD's second review, it is possible that additional changes may be needed before HCD would certify the Housing Element. This means that the Planning Commission and Town Council hearings would need to be conducted again, using up two of the four allowed General Plan amendments for this Element.

B. Adopt a Housing Element After January 31, 2023

The Town expects to receive its comment letter from HCD on the Draft Housing Element on January 12, 2023. Modifications to the Draft Housing Element in response to the comment letter would be made and brought forward to the HEAB for consideration and discussion. A revised Draft Housing Element would be submitted to HCD for a subsequent review which will take up to 60 days. Once HCD has notified the Town that the Draft Housing Element is in substantial compliance with State law, the Draft Housing Element would be brought through the formal adoption process with a recommendation from the HEAB and Planning Commission, with the final decision by the Town Council. This option will be required, even if the Town Council decides to provide direction to adopt the current version of the Draft Housing Element prior to January 31, 2023.

PUBLIC COMMENT:

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

CONCLUSION AND NEXT STEPS:

Staff looks forward to the Town Council's discussion and direction.

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SUBJECT: Housing Element Update and Next Steps

DATE: December 20, 2022

COORDINATION:

The Community Development Department coordinated with the Offices of the Town Attorney and Town Manager in the preparation of this report.

ENVIRONMENTAL ASSESSMENT:

The Town Council's direction regarding the next steps of the Housing Element Update is not a project subject to the California Environmental Quality Act (CEQA). Environmental analysis for the Housing Element will be completed in accordance with CEQA requirements.

Attachments:

1. Housing Element Update Process Timeline