



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Chris Burton  
Jacky Morales-Ferrand

**SUBJECT:** UPDATE ON THE DRAFT 2023-2031 HOUSING ELEMENT    **DATE:** February 9, 2023

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Approved

Date

2/10/23

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## INFORMATION

**SUBJECT: UPDATE ON THE DRAFT 2023-2031 HOUSING ELEMENT**

The purpose of this memorandum is to provide an update on the preparation of the Draft 2023-2031 Housing Element, the California Department of Housing and Community Development's (HCD) first review of the document, and the status of the Prohousing Designation Program application.

## BACKGROUND

Since 1969, the State of California has required local governments to adequately plan to meet the housing needs of everyone in their communities by adopting Housing Elements as part of their General Plan (also required by the state). General plans serve as a local government's "blueprint" for how the city will grow and develop and include eight elements: land use, transportation, conservation, noise, open space, safety, environmental justice, and housing. Every eight years, every city, town, and county must update their Housing Element and have it certified by HCD. The Housing Element must be internally consistent with other parts of the General Plan and is critical to having a legally adequate General Plan.

At its core, a Housing Element is an opportunity for a community conversation about how to address local housing challenges and find solutions. While the Housing Element addresses a range of housing issues such as affordability, design, housing types, density, and location, it also establishes goals, policies, and programs to address existing and projected housing needs. State law does not require that jurisdictions build or finance new housing, but they must plan for it.

The Housing Element must identify how the City will meet its share of the region’s housing need, called the Regional Housing Needs Allocation (RHNA).<sup>1</sup>

California Assembly Bill 686 (2018) established an independent state mandate that expands the duty of all California’s public agencies to affirmatively further fair housing. This means taking meaningful actions that address significant disparities in housing needs and access to opportunity, 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. Because of these new requirements, the City’s draft Housing Element includes an assessment of fair housing practices, an analysis of the relationship between available sites and areas of high or low resources, and concrete actions in the form of programs to affirmatively further fair housing.

In addition to responding to requirements of state law, the Housing Element also demonstrates the City’s strategy for meeting its locally determined housing needs, and that these needs are addressed through policies and programs outlined within the Housing Element.

Staff has prepared a [Draft 2023-2031 Housing Element](#) that will affirmatively further fair housing and accommodate the City’s 62,200-unit RHNA for the 2023-2031 Housing Element cycle. **Table 1** indicates the City’s RHNA by income level, expressed as a percentage of Area Median Income (AMI).

<b>Table 1: Final RHNA Unit Allocation for the Housing Element 6<sup>th</sup> Cycle</b>				
<b>Very Low-Income</b> (<50% of AMI)	<b>Low-Income</b> (50%-80% of AMI)	<b>Moderate-Income</b> (80%-120% of AMI)	<b>Above Moderate-Income</b> (>120% of AMI)	<b>TOTAL</b>
<b>15,088</b>	<b>8,687</b>	<b>10,711</b>	<b>27,714</b>	<b>62,200</b>

Especially given the many new requirements for the 2023-2031 Housing Element, preparation of the document is technical in nature, complex, and time intensive. The team staffed to this effort includes mid- and senior-level staff from the Department of Planning, Building and Code Enforcement, the Housing Department, and the City Manager’s Office of Economic Development and Cultural Affairs.

On September 28, 2022, Councilmembers Jimenez and Cohen issued a memorandum to the Rules and Open Government Committee directing the City Manager and the City Clerk to agendize a City Council discussion regarding the Draft Housing Element after receiving the feedback letter from HCD. After further discussion and consultation with staff, the Committee voted to have staff issue an informational memorandum following receipt of the HCD first review letter. Following receipt of this informational memorandum, the City Council could then

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<sup>1</sup> See City Council memorandum dated 10/14/20, “[Update on the 6th Cycle Regional Housing Needs Allocation](#)” for additional information on RHNA.

decide whether a hearing regarding the Draft Housing Element is warranted based on the HCD comments.

## **ANALYSIS**

### *HCD First Review Letter*

After months of staff analysis and multiple community engagement and outreach events with more than 4,100 participants,<sup>2</sup> the Draft 2023-2031 Housing Element was posted for public comment on July 15, 2022 for 30 days. After incorporating changes to the document based on public feedback and further staff analysis, the first official draft was submitted to HCD on September 16, 2022, initiating HCD's 90-day review period. Staff opened a second public comment period, which exceeded the state law requirements, from September 16 to December 17, 2022. Staff received [HCD's first review letter](#) on December 15, 2022 and posted it to the City's website. HCD's review letter provided positive feedback on many of the approaches in the Draft Housing Element, but also specified additional changes and analyses.

The review letter identified four sections (*Review and Revision, Housing Needs, Resources and Constraints, Housing Programs, and Quantified Objectives*) of the Draft 2023-2031 Housing Element that will require changes and additional analysis to bring the City's Housing Element into compliance. Some of the issues raised include providing specific metrics and timelines for certain programs and policies; clarifying the methodology used to determine residential capacity on the sites inventory; and clarifying required rezoning actions.

Staff is working diligently to respond to the comments in the letter and is coordinating closely with HCD staff. Staff has had several meetings with HCD staff and understands the revisions that need to be made to address the comments in the first review letter. However, the work will require a considerable amount of staff time to complete and meet the current anticipated timeline. Staff expects to complete the environmental review and present the final document for City Council's approval in June 2023. Prior to the next submittal to HCD, per state law the document will be posted for public review for seven calendar days.<sup>3</sup>

### *Consideration of a City Council Hearing Prior to June 2023*

Currently, staff is working on revisions to the Draft Housing Element to respond to HCD feedback. While the HCD comments are technical in nature, it will require staff to undertake additional analysis and provide clarification and/or justification. Given the time needed for staff to complete this work, an additional City Council hearing prior to June 2023 is not recommended. Staff's efforts to prepare for and participate in a City Council hearing would delay their ability to fully complete the revisions requested by HCD in a timely manner and would cause a delay of the currently anticipated June 2023 timeline to City Council. Further

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<sup>2</sup> Participant number is duplicated, meaning stakeholders may have attended more than one meeting and been counted for each meeting.

<sup>3</sup> Cal. Gov. Code Section 65585 (a)(b).

postponement in the adoption of the Housing Element will extend risks to the City, such as the potential loss of local permitting authority for permit applications submitted before state certification of the Housing Element and the ability to qualify and obtain state and regional funding sources for parks, affordable housing, and infrastructure, among other projects. It must be noted that the authors of the September 28, 2022 Rules and Open Government Committee memorandum stated that they anticipated that the City would receive substantial comments on the Housing Element from HCD that would necessitate substantive revisions to the draft Housing Element. Given this likelihood, the authors recommend that the Housing Element be agendaized for discussion by the City Council to discuss and provide direction regarding the Site Inventory, Housing Goals and Strategies, and other components to address HCD comments. The comments received from HCD, however, are only technical in nature, requiring further clarifications and analysis to support the existing strategies proposed in the Draft document. HCD did not identify the need for substantive changes. Given this, staff does not see it as imperative for City Council to hold an additional hearing to discuss HCD's comments and the technical changes proposed to address them.

As an alternative approach to holding an additional Hearing, staff recommends additional individual briefings for Councilmembers and their staffs in February/March to provide an opportunity for in-depth questions and discussion.

#### *Prohousing Designation Application*

The State of California's Prohousing Designation provides incentives for cities and counties in the form of additional points or other scoring preferences in competitive state funding programs for housing, community development, transportation, and infrastructure. The program's application includes identifying pro-housing programs that jurisdictions already have in place or pledge to put into place within a defined period of time. The application also requires a City Council resolution that states that the City agrees to put in place the policies and programs receiving credit in the application. HCD reviews applications for the Prohousing Designation on a rolling basis and requires a certified Housing Element as threshold eligibility. Given the application's direct reliance to planned programs and efforts contained in the Housing Element, staff is preparing the City's application for a Prohousing Designation concurrently with completion of work on the Housing Element. Staff plans to bring the Prohousing Designation application to the City Council for its consideration at the same time the City Council considers the final draft Housing Element. The Prohousing Designation application would then be submitted to HCD immediately following City Council approval of the Housing Element.

#### *Potential Transfer of RHNA Allocation from the County of Santa Clara (County) to the City of San José*

In fall 2019, the Association of Bay Area Governments (ABAG) established a Housing Methodology Committee, on which a City staff member served, to advise on the development of a methodology to distribute the Bay Area's total housing allocation among the individual jurisdictions by income category consistent with state law. During this process, discussions

began regarding a potential RHNA transfer from the County to cities throughout the County, including San José, as the County's RHNA allocation significantly increased (from 277 units to 3,125 units). The concern shared was that the unincorporated County is planned for rural, open space, and agriculture uses, with urbanization planned to occur within cities. On October 27, 2020, staff provided a report on the RHNA process to City Council and shared that a potential transfer of a portion of the County's RHNA allocation could be a resolution and that County staff were leading an effort among cities to gauge support for a RHNA transfer, as well as exploring other options.

In July 2021, the County submitted an appeal of its 2023-2031 RHNA allocation to ABAG. In November 2021, ABAG ratified a written final determination and denied the County's appeal. During 2022, discussions between City staff and County staff were generally paused as both staffs were focused on negotiations regarding the North San José agreement. The uncertainty created by the protracted nature of those negotiations meant that the City was unable to commit to a RHNA transfer while questions remained about the City's ability to include those units in the City's draft Housing Element.

On December 22, 2022, County staff provided City staff with a draft Memorandum of Agreement regarding the transfer of the County's RHNA allocation of 3,125 units to the City. On January 6, 2023, County staff submitted a request to the ABAG Executive Board to approve the RHNA transfer from the County to the City. On January 19, 2023, the ABAG Executive Board tentatively approved the requested transfer, subject to certain conditions being satisfied including a voluntary agreement between the County and the City.

Despite efforts throughout January 2023, City and County staffs were not able to come to an agreement on the terms of the RHNA transfer. Key concerns for the City are the costs of providing City services for the additional housing units and the long-term impact to the City's General Fund; the impact to the City's current timeline for the draft Housing Element, particularly the environmental analysis; and risks associated with further delay in obtaining State certification of the Housing Element, including potential loss of local permitting authority for permit applications and the ability to qualify and obtain state and regional funding sources for parks, affordable housing, infrastructure, and other projects. Given these significant factors, staff did not believe there was sufficient agreement, or time, to bring an item to the City Council for approval by the January 31, 2023 statutory deadline.

While the statutory date has passed, City staff understands that the County may be pursuing an extension of this deadline. City staff remains open to continuing discussions with the County if an extension is granted, so long as any potential transfer can be accommodated within the current timeline of the City's Housing Element and there is sufficient monetary and other consideration provided by the County to adequately compensate and offset the City's costs and obligations from the transfer.

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## **EVALUATION AND FOLLOW-UP**

Staff will continue to work towards a compliant Housing Element and adoption hearings in June 2023. Additional information can be found on the project website at [www.sanjoseca.gov/housingelementupdate](http://www.sanjoseca.gov/housingelementupdate).

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