



## Planning & Transportation Commission Staff Report

**From: Planning and Development Services Director**  
**Lead Department: Planning and Development Services**

**Meeting Date: December 13, 2023**  
Report #: 2311-2301

### **TITLE**

Recommendation on an Ordinance Amending Palo Alto Municipal Code Title 18 (Zoning) Chapters 18.14 (Housing Incentives), 18.76 (Permits and Approvals), and 18.77 (Processing of Permits and Approvals) to Implement Housing Element Program 1.3 Creating By- Right Zoning Approval for Specific Housing Element Inventory Sites

### **RECOMMENDATION**

Staff recommends that the Planning and Transportation Commission (PTC) review and recommend City Council adoption of the attached draft ordinance (Attachment A) to implement Housing Element Program 1.3 creating by-right zoning approval for specific Housing Element inventory sites, and making conforming changes to Title 18.

### **BACKGROUND**

The Housing Element is one of seven mandatory elements that must be included in Palo Alto's Comprehensive Plan. This element evaluates housing needs and issues in the City, and contains goals, policies, programs, and implementing objectives that the City uses to guide actions related to housing. The City Council adopted the 2023-2031 Housing Element (Housing Element) on May 8, 2023. The State Department of Housing and Community Development (HCD) provided a letter on August 3, 2023, requesting additional revisions to the Housing Element. Staff anticipates the Housing Element will be brought to the City Council for re-adoption to address HCD's requested revisions in early 2024. More information about the Housing Element can be found at the project website: [www.paloaltohousingelement.com](http://www.paloaltohousingelement.com).

The adopted Housing Element includes 122 implementation programs with several key programs needing to be completed by January 2024; the implementation of Program 1.3, Sites Used in Previous Housing Cycle, is one of those programs that must be completed. Council took action on November 13, 2023 adopting an ordinance implementing Housing Element programs 1.1A and 1.1B (rezoning housing inventory sites) and creating a new chapter of the PAMC. Program 1.3 implementation was inadvertently omitted from that ordinance.

### **Ordinance Review Process**

To implement Program 1.3 by the January 31, 2024 deadline, staff will prepare an urgency ordinance concurrently with the permanent ordinance, based on the PTC recommendation. Both the urgency and permanent ordinance are anticipated to be considered by the City Council on January 22, 2024. With this action, the urgency ordinance will become effective immediately for 45 days and the permanent ordinance will go into effect prior to the expiration of the urgency period.

**PROJECT DESCRIPTION AND ANALYSIS**

**By-Right State Law for Recycled Sites**

Housing Element Program 1.3 implements a requirement of state law that requires a “by-right” approval process for certain housing projects on housing opportunity sites that were included in a prior housing element(s).

The attached ordinance (Attachment A) would provide a new mechanism for by-right zoning approval of qualifying projects on these “recycled” Housing Element sites. Pursuant to state law, jurisdictions cannot require a discretionary approval process,<sup>1</sup> for projects utilizing certain Housing Element inventory sites which were used in prior Housing Elements cycles, were designated as lower income, and meet the following specific criteria:

- 1. Non-vacant sites in one previous housing element cycle, *or* vacant sites included in two previous housing element cycles;
- 2. 20% of units affordable to lower income households; and
- 3. Sufficient water, sewer, and other dry utilities available and accessible.

In total, 16 sites in listed in Program 1.3 meet criterion 1 above. Criteria 2 and 3 would not be established until a development proposal is submitted. As defined in state law, by-right zoning approval means the City cannot require a conditional use permit, planned unit development permit, or other discretionary local government review, or any approval that would constitute a “project” under the California Environmental Quality Act (CEQA).

In addition to these procedural requirements, state law requires that recycled sites be zoned to require a minimum of 20 dwelling units per acre, while allowing at 30+ dwelling units per acre. State law may also require density and development standards for these sites that would allow at least 16 units per site. The recently adopted ordinance implementing Housing Element Program 1.1 satisfied all of these requirements.

The attached ordinance defines projects entitled to multi-family housing as a “use by-right” in a new Section 18.14.060.

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<sup>1</sup> Projects requiring subdivision would not be eligible for by-right approval and still be subject to all requirements of the Subdivision Map Act and the City’s subdivision ordinance, including any discretionary review required thereunder.

**Existing Development Review Process**

Under the City’s current development review process, multifamily developments are subject to the architectural review process set forth in PAMC Section 18.77.070. This allows the Architectural Review Board (ARB) to make a recommendation to the Planning and Development Services Department Director (Director). Appeals, if filed, are heard by the City Council.

There is also an alternative streamlined review process (PAMC Section 18.77.073) for multi-family projects which utilize the objective design standards outlined in PAMC Chapter 18.24. This streamlined process allows applicants with compliant projects to go through a staff level review and attend one study session with the ARB prior to the Director’s decision. All appeals through the streamlined process go directly to City Council.

**New By-right Review Process for Eligible Sites**

The draft ordinance outlines a new ministerial approval process for by-right projects which includes staff review for compliance with the City’s objective standards in the Comprehensive Plan, Specific Plans, Area Plans, PAMC (including Section 18.77.074), and other rules and regulations. At the discretion of the Director, applicants may also have their projects reviewed by the ARB at a study session. No CEQA review would be associated with developments eligible for the by-right process. The Director would make the final staff level decision on by-right projects. This process is similar to how 525 East Charleston Road was processed under AB 2162.

The attached ordinance makes minor changes to Chapters 18.76 (Permits and Approvals) and 18.77 (Processing of Permits and Approvals) to clarify which projects are entitled to streamlined review and which to ministerial review. The ordinance also clarifies that such projects are required to obtain a planning entitlement prior to issuance of a building permit, even if they are only subject to ministerial review.

**FISCAL/RESOURCE IMPACT**

This action has no fiscal impact.

**ENVIRONMENTAL REVIEW**

The adoption of this ordinance would implement Program 1.3, Sites Used in Previous Housing Cycle, of the adopted Housing Element. An Addendum to the Comprehensive Plan Environmental Impact Report (EIR) was prepared to analyze the potential environmental impacts of the Housing Element and the sites inventory contained therein. This environmental analysis under CEQA includes all components of the Housing Element, including implementation of Program 1.3 and the associated text amendments.

**ATTACHMENTS**

Attachment A: Draft Ordinance

**AUTHOR/TITLE:**

Coleman Frick, Principal Planner

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapters 18.14 (Housing Incentives), 18.76 (Permits and Approvals), and 18.77 (Processing Permits and Approvals) of Title 18 (Zoning) of the Palo Alto Municipal Code to Implement Programs 1.3 of the City of Palo Alto 2023-2031 Housing Element

The Council of the City of Palo Alto ORDAINS as follows:

**SECTION 1.** Findings and Declarations.

(a) On May 8, 2023, the City Council adopted the City of Palo Alto 2023-2031 Housing Element (“Housing Element”) pursuant to Government Code Section 65585.

(b) In accordance with AB 1397 (2017), Program 1.3, Sites Used in Previous Housing Cycle, requires rezoning and a “by right” approval process for qualifying projects proposed on certain housing opportunity sites that were included as opportunity sites in prior housing elements.

(c) Government Code Section 65583.2, subdivision (c) and the Housing Element require that the City complete its implementation of Program 1.3 by January 31, 2024, which is one year from the statutory deadline for adoption of the Housing Element.

(d) Ordinance No. XXXX, adopted on December 11, 2023, accomplished the required rezoning for all sites subject to Program 1.3.

(e) This ordinance implements the “by right” development process for sites subject to Program 1.3 and makes conforming changes to existing provisions of Title 18.

**SECTION 2.** Section 18.14.050 (By Right Status of Qualifying Projects on Specified Housing Opportunity Sites) of Chapter 18.14 (Housing Incentives) of Title 18 (Zoning) of the Palo Alto Municipal Code is added to read as follows:

**18.14.050 By Right Status of Qualifying Projects on Specified Housing Opportunity Sites**

(a) Multi-family residential projects on housing opportunity sites shall be a “use by right,” subject to the following requirements:

- (1) The site is designated in Appendix D of the Housing Element to accommodate lower income households and it is either:
  - (A) a nonvacant site included in one prior housing element; or
  - (B) a vacant site that has been included in two or more consecutive, prior housing elements;
- (2) The site was not previously approved to develop a portion of City’s regional housing need allocation;
- (3) The project restricts at least 20 percent of the units to rents or sales prices affordable to lower income households.
- (4) The site has sufficient water, sewer, and other dry utilities available and accessible.

\*NOT YET APPROVED\*

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Attachment A - Draft  
Ordinance Amending Ch  
18.14, 18.76 and 18.77 of  
Title 18

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(b) "use by right" shall have the same meaning as provided in Government Code Section 65589.5, subdivision (i).

(c) Qualifying projects shall be reviewed pursuant to Section 18.77.074.

**SECTION 3.** Section 18.77.020 (Architectural Review) of Chapter 18.76 (Permits and Approvals) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows (additions underlined, deletions struck through, and omitted text left unchanged indicated by [. . .]):

**18.76.020 Architectural Review**

(a) Purpose

[. . .]

(b) Applicability

No permit required under Title 2, Title 12 or Title 16 shall be issued for a major or minor project, as set forth in this section, unless an application for architectural review is reviewed, acted upon, and approved or approved with conditions as set forth in Section 18.77.070.

(1) Exempt Projects. The following projects do not require architectural review:

[. . .]

(C) Housing development projects, as defined in Government Code Section 65589.5(h)(2) (the Housing Accountability Act), but only ~~to the extent if such projects qualify for ministerial review under Government Code sections 65913.4 or 65951, or if they comply with all applicable objective standards, in this code and the City's discretion is thereby qualify for streamlining under limited by~~ Government Code sections 65589.5, ~~65913.4, or 65905.5~~. Such projects shall be subject to the processes set forth in Sections 18.77.073 or 18.77.074, as applicable.

[. . .]

**SECTION 4.** Section 18.76.025 (Multi-Family Residential Projects Exempt Architectural Review) of Chapter 18.76 (Permits and Approvals) of Title 18 (Zoning) of the Palo Alto Municipal Code is added to read as follows:

**18.76.025 Multi-Family Residential Projects Exempt from Architectural Review**

No permit required under Title 2, Title 12 or Title 16 shall be issued for a multi-family residential project that is exempt from Architectural Review under Section 18.76.020, subdivision (b)(1)(C), unless it first receives a planning approval from the Planning Director under this Section. Projects subject to ministerial review or that are defined as a "use by right" under state law shall be reviewed under Section 18.77.074. Projects that are not subject to ministerial review, but that comply with all applicable objective standards, shall be reviewed under Section 18.77.073.

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Attachment A - Draft  
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Title 18

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**SECTION 5.** Section 18.77.073 (Streamlined Housing Development Project Review Process) of Chapter 18.77 (Processing of Permits and Approvals) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows (additions underlined, deletions struck through, and omitted text left unchanged indicated by [. . .]):

**18.77.073 Streamlined Housing Development Project Review Process**

(a) Applicability

This section shall apply to applications for residential mixed-use and multifamily housing development projects, as defined in Government Code Section 65589.5(h)(2), that comply with all applicable objective standards ~~in this code and for which the City's discretion is~~ thereby qualify for streamlining under limited by Government Code sections 65589.5, ~~or 65905.5.~~

[. . .]

**SECTION 6.** Section 18.77.074 (Ministerial and By Right Review Processes) of Chapter 18.77 (Processing of Permits and Approvals) of Title 18 (Zoning) of the Palo Alto Municipal Code is added to read as follows:

**18.77.074 Ministerial and By Right Review Process**

(a) Purpose and Applicability

This section is intended to define a streamlined, ministerial review process for qualifying Housing Development Projects that are submitted pursuant to streamlining provisions in AB 2162 (2018), AB 1397 (2017), and SB 35 (2017). This section shall apply to multi-family residential projects that are subject to ministerial review or defined as a "use by right" in state law, including, but not limited to, Government Code Sections 65651, 65583, 65583.2, and 65913.4. This section does not apply to the creation of an accessory dwelling unit and/or junior accessory dwelling unit.

The review required by this section shall not involve the exercise of discretion in a manner that would constitute a "project" for purposes of the California Environmental Quality Act (CEQA). This section does not, however, excuse a project involving a subdivision from compliance with Title 21 and the subdivision map processes set forth therein, which may result in a "project" for purposes of CEQA.

(b) Staff level review.

Applications under this section shall be reviewed by City staff for compliance with applicable objective standards in the City's Comprehensive Plan, Specific Plans, Area Plans, Municipal Code, and other rules and regulations. A decision on the application shall be made by the Planning Director within any timeframes dictated by applicable state law.

(c) Public study session.

Prior to preparing a written decision, the Director may, in his or her sole discretion, refer the application to the Architectural Review Board or to other advisory boards or commissions for informal review. The recommendations of such boards and commissions shall not be binding.

(d) Public notices. Notice of a public meeting to consider the application shall be given at least seven days prior to the meeting by mailing to the applicant and all residents and owners of property within 600 feet

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of the project. Notice shall include the address of the property, a brief description of the project, and the date and time of the hearing.

**SECTION 7.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 8.** In accordance with the California Environmental Quality Act (CEQA), the City prepared an Addendum to the 2017 Comprehensive Plan Environmental Impact Report (EIR), analyzing the potential environmental impacts of the 2023-2031 Housing Element. On May 8, 2023, the City Council adopted Resolution No. 10107, finding that the Addendum and the 2017 EIR adequately analyzed the environmental impacts of the Housing Element, including Program 1.3 of the Housing Element, which this ordinance implements.

**SECTION 9.** This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Development Services