

**From:** [Aram James](#)  
**To:** [Vara Ramakrishnan](#); [Emily Mibach](#); [Emily Mibach](#); [Braden Cartwright](#); [Robert. Jonsen](#); [Cerise Castle](#); [Cecilia Taylor](#); [Sheriff Transparency](#); [Shikada, Ed](#); [Jethroe Moore](#); [Sean Allen](#); [Dave Price](#); [Human Relations Commission](#); [EPA Today](#); [Diana Diamond](#); [REDACTED]; [Binder, Andrew](#); [Council, City](#); [Planning Commission](#); [Shana Segal](#); [Reitschneider, James](#); [Michael Gennaco](#); [frances.Rothschild@jud.ca.gov](mailto:frances.Rothschild@jud.ca.gov)  
**Subject:** Stop gassing prisoners!  
**Date:** Friday, September 1, 2023 5:52:10 PM

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> My dear friend Linda Jolly sent this powerful letter to Santa Clara County Sheriff Robert Jonson today. With her permission, I am circulating her letter to you.

>

> Aram

>

>

>

>

>

>>

>> Sheriff Jonson -

>>

>> I was deeply moved by Aram James' editorial letter about prisoners being tortured with gas in their cells. I want you to stop

>> this practice immediately.

>>

>> Social scientists are increasingly convinced that a major cause of crime is the torture of children in their homes. When people with

>> this background are further tortured in the penal system do we expect they will emerge as loving people upon their release??

>>

>> I have been exposed to pepper spray and it is despicable.

>>

>> I have seen police abuse firsthand and now fighting it in Menlo Park. As you know, my friend Aram makes war on police abuse.

>> Eventually we will see to it that abusers in the justice system will be thrown out. Do not put yourself on our hit list.

>>

>> Linda Jolley [REDACTED]

**From:** [Chao Lam](#)  
**To:** [Council, City; Planning Commission](#)  
**Subject:** Housing Element Big Four  
**Date:** Saturday, September 2, 2023 11:42:44 AM

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Hello,

This is Chao Lam from [REDACTED]. As a long-time Palo Alto resident, I would like you to know I support more housing types in Palo Alto and following four principles:

1. Better Zoning
2. More sites for housing
3. Fast Process
4. Less red tape

Thanks for listening,  
Chao Lam

**From:** [Ken Joye](#)  
**To:** [Planning Commission](#); [Council, City](#)  
**Subject:** Housing Element  
**Date:** Saturday, September 2, 2023 7:27:55 PM

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I understand that the Housing Element is due to come before the Planning Commission. I would be happiest if the approval of that plan resulted in reduced barriers to construction so that a wider spectrum of people are able to live in our community.

We raised our two children here but because neither of them hold high paying jobs it is difficult or impossible for them to afford to live here.

I would like the people who work at the grocery stores or restaurants which I patronize to be my neighbors, rather than force them to drive to work from far away.

One clear way to remove barriers is to allow increased density in our town. The block I live on has ten or eleven parcels, depending upon how you count. There are two parcels with ADU's, two duplexes and one four-plex. I like to think that our block is quite liveable and invite you to take a stroll with me to see for yourself.

I believe that all parts of Palo Alto could be like my block, hope that you would agree.

Please remove barriers to building more reasonably priced housing.

thank you for your service,  
Ken Joye  
Ventura neighborhood

**From:** [Adam Schwartz](#)  
**To:** [Planning Commission](#); [Council, City](#)  
**Subject:** Planning Commission September 13 meeting - Housing Element  
**Date:** Saturday, September 2, 2023 8:09:05 PM

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To the Palo Alto City Council and Planning Commission:

Greetings. I write regarding the Palo Alto Housing Element. I understand it will be discussed at the Commission's September 13 meeting.

I urge you to make substantial changes from the last draft, in order to ensure that Palo Alto builds abundant homes for people at all income levels.

Specifically, please:

- 1. Allow housing on more sites-** New housing should be more fairly dispersed throughout the city to provide access to transit, schools, retail, and services.
- 2. Upgrade zoning standards-** This includes changing outdated floor area, parking, height, and density requirements that prevent projects from being built.
- 3. Speed up approvals -** Our planning process is convoluted and complicated, with some of the longest processing times in the entire state.
- 4. Eliminate barriers-** Update the tree and retail ordinance and review impact fees, which are unfairly borne by smaller condos/apartment units.

My wife and I have lived in Palo Alto for eight years, and we plan to stay here. I hope that my mother can move here, and that my young adult children can stay here. But it is very difficult for them to do so, given the scarcity and high price of homes. Building more homes is the local issue that is most important to me, by far.

Thank you for your time and consideration.

Sincerely,

Adam Schwartz



**From:** [Bill Fitch](#)  
**To:** [Planning Commission](#); [Council, City](#)  
**Subject:** Changes to housing element  
**Date:** Sunday, September 3, 2023 12:53:08 PM

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As a 47 year Palo Alto home owner, I support the Palo Alto Forward proposal for increasing housing. I can see the highrise Stanford graduate student housing from my yard and would like to see my lot converted to a highrise apartment in the next ten years.

Bill Fitch  
[REDACTED]

**From:** [REDACTED]  
**To:** [Council, City; Planning Commission](#)  
**Cc:** [Lait, Jonathan; Shikada, Ed; Stump, Molly](#)  
**Subject:** files and comments  
**Date:** Monday, September 4, 2023 12:19:51 PM  
**Attachments:** [sclPaloAltoadoptout080323.pdf](#)  
[sclSan-JoseADOPTEDOUT082823.pdf](#)  
[HCD Menlo Park letter.pdf](#)  
[2023-08-18 - Grubb Letter to HCD re Palo Alto HUE \(002\).pdf](#)

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Happy Labor Day,

I am attaching some files to make sure everyone has all of them.

The first three are the HCD letters re the Palo Alto, San Jose and Menlo Park housing elements.

Though each letter is specific to that city, there are common elements particularly re the PA and SJ letters:

--concern with the fair housing implications of how BMR housing is distributed around the city

--a request for more evidence that non-vacant sites has a realistic/feasible chance of housing development

--a request for more evidence that constraints to housing are being addressed with the suggestion that additional sites and programs

may be required. For PA fees, the RPO and tree ordinance are called out for review

--a request to see evidence that review and processing reforms are actually working

Next is a letter sent by the attorneys for the owner of the property at 788-796 San Antonio to HCD with a cc to the Planning Director.

I will be interested to see how the city responds or whether the project needs to be removed from the site inventory.

Finally, I hope the city attorney can provide advice on the various legal cases pending re denial of builder's remedy projects.

Stephen Levy



**Cox, Castle & Nicholson LLP**  
50 California Street, Suite 3200  
San Francisco, California 94111-4710  
P: 415.262.5100 F: 415.262.5199

Margo N Bradish  
415.262.5105  
MBradish@coxcastle.com

August 18, 2023

**VIA EMAIL**

Attn: Irvin Saldana  
California Department of Housing & Community Development  
Housing Accountability Unit  
2020 West El Camino Avenue  
Sacramento, CA 95833  
Email: [Irvin.Saldana@hcd.ca.gov](mailto:Irvin.Saldana@hcd.ca.gov)

**Re: Barriers to Housing in Palo Alto's Sixth Cycle Housing Element Update**

Dear Mr. Saldana,

On behalf of Grubb Properties ("Grubb"), we would like to provide information regarding existing and worsening barriers to housing in the City of Palo Alto ("City") by detailing how the City's existing development standards and fees are threatening the viability of an approved multi-family project, as explained below. We are asking the California Department of Housing and Community Development ("HCD") to consider these very real constraints on housing in undertaking its continued compliance review for Palo Alto's Draft Sixth Cycle Housing Element Update ("HEU"), which as of the date of this letter remains out of compliance. As further detailed below, Grubb's experience trying to develop a residential project in the City is emblematic of many concerns raised by HCD in its letter dated August 3, 2023 ("August Letter") regarding the City's May 8, 2023 HEU.<sup>1</sup>

**A. Grubb's Multi-Family Project on San Antonio Road Is In Jeopardy.**

Grubb is a multi-family and commercial developer with a rich history and a deep commitment to creating housing for those who have historically been excluded from homeownership. Founded in 1963, Grubb has delivered essential housing for underserved communities for six decades. As a vertically integrated company, Grubb not only builds housing, but also owns and operates its projects. Grubb aims to provide housing at a price point that serves the missing middle and intentionally *avoids* building "luxury" products.

Grubb is the owner of the property located at 788-796 San Antonio Road, Palo Alto (APNs 147-03-041 and -042) ("Property"), a 0.99-acre site that currently is entitled for a mixed-use condominium project consisting of 102 units and 1,803 square feet of ground floor retail, with two levels of basement parking containing 126 stalls ("Project"). As currently entitled, 16

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<sup>1</sup> All citations to the City's HEU are to the May 2023 version unless otherwise noted.



of the Project units would be restricted as affordable, with 11 units for low-income families and five units for moderate income families. The City approved the Project in late 2020, and Grubb subsequently purchased the Property with the intention of building the Project as a rental project (not condominiums).<sup>2</sup> Unfortunately for Grubb, and the Palo Alto community, the Project is now in jeopardy.

Difficulties with development of the Property pre-date Grubb. The Property was included in the City's Site Inventory for the Fifth Cycle Housing Element Update, but due to market conditions and significant delays associated with the permit process, the original developer chose to sell the project. The City now relies on the Project to meet its Sixth Cycle Regional Housing Needs Allocation ("RHNA"), identifying it as an "Entitled and Proposed Development," also known as a "pipeline project." In the August Letter, HCD stated "[i]n order to demonstrate the likelihood that the units will be built in the planning period the analysis must consider any barriers to development, phasing, anticipated build-out horizons, market conditions, and other relevant factors to demonstrate their availability in the planning period." and "an analysis of cost and financial feasibility is required." (August Letter, pp. 2, 4.) The Property serves as a prime example of how barriers to development in the form of restrictive development standards, permitting delays, and high development fees, combined with poor market conditions, prevent residential units from getting built in the City, as detailed below.

**B. The City's Zoning Ordinance and HEU's Proposed Policies Do Not Promote Residential Development.**

The August Letter states: "while the element provides some analysis on the likelihood of residential development in zones where 100 percent nonresidential uses are allowed, the analysis is unclear as to how and if existing policies incentivize residential development in nonresidential zones." (August Letter, pp. 2-3.) There are a host of policies that specifically disincentivize residential development in nonresidential zones, and these policies in turn threaten financial feasibility of multi-family housing development projects and the HEU's estimates of realistic capacity.

The base densities alone are too low to provide a sufficient economic incentive for redevelopment with residential uses. Presidio Bay Ventures previously raised this issue as to the GM/ROLM Zones specifically, as did Palo Alto Forward.<sup>3</sup> The CS zone has a maximum height

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<sup>2</sup> While the City's code currently only requires a below market rate ("BMR") in lieu fee for apartment projects, Grubb remains willing to build the 16 affordable units on the Project site.

<sup>3</sup> Presidio Bay Ventures Letter: <https://drive.google.com/file/d/1oBYfQ3dNzsmBoGDe7Dbo1BX8VijX4jsA/view>

Palo Alto Forward Letter:

<https://static1.squarespace.com/static/62a9436bd6d4d10e631a56f0/t/6498936afc23ab3227c261db/1687720813232/PAF+Cmnts+-+Adopted+Housing+Element+%2806.14.23%29.pdf>

of 50 feet, maximum of 30 dwelling units per acre,<sup>4</sup> and maximum floor area ratio (“FAR”) of 0.6 for residential floor area under base zone standards.<sup>5</sup> Here, the Project’s FAR increased to 2.0 only *after applying* the City’s Housing Incentive Program (“HIP”). Note, projects using the HIP cannot use the State Density Bonus Law (“DBL”), and as a result the higher FAR allowed with application of the HIP cannot be treated as part of a site’s base zoning when estimating realistic capacity for residential development in the HEU.

The approved Project, constrained by maximum density, FAR, and height restrictions, in addition to burdensome parking requirements and park fees (discussed further below), is not economically feasible with 102 units. For context, a seven to eight story mid-rise product is abundantly common throughout California and is largely the standard in multi-family development. Grubb’s Project in the City is the only one in its portfolio that does not fit this product type. Similar to the points made by Presidio Bay Ventures, Grubb’s average density in California is in the range of 180+ dwelling units per acre. An FAR of 4:1 and a maximum height of 85 feet is what is generally needed to make this product type work. Given the land costs and development impact fees in the City are some of the highest (if not the highest) in Grubb’s entire California portfolio, achieving these densities and allowing for greater height is even more critical to making a project pencil. These issues are not exclusive to Grubb or the Project and call into question the City’s assumption in the HEU that sites in the CS and CC zones can provide up to 1,049 RHNA units, as identified by Palo Alto Forward in its June Letter.<sup>6</sup> Even with the HEU’s proposed up-zoning of CS and CC zones to 40 dwelling units per acre, this density is *less than half* the density for the Project as approved, and as stated above, even with 102 units the Project is not financially feasible. The City’s HEU acknowledges that limitations on density represent a constraint due to economies of scale (HEU, p. 4-4), and yet no major changes are proposed to fix the issue in the HEU. Instead, the HEU repeatedly points to a pending economic feasibility study. (See e.g., HEU, pp. 4-23, 4-43, 5-16.)

Another constraint is the City’s Retail Preservation Ordinance (“RPO”), which prohibits conversion of “ground-floor Retail or Retail-Like” uses that were operating as of March 2, 2015, with any non-Retail or non-Retail-Like uses, absent a specific exemption. (Palo Alto Municipal Code (“PAMC”), § 18.40.180.) The available exemptions are narrow, including two exemptions for certain 100 percent affordable housing projects and one partial exemption for residential or mixed-use projects in the CS zone with 30 dwelling units per acre or more. The latter exemption—one of several zoning ordinance amendments approved in connection with the entitlement of the Project—applies to projects that are outside the Ground Floor (GF) combining district and that replace at least 1,500 square feet of any existing Retail or Retail-Like use.

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<sup>4</sup> The Grubb Project entitlements included a zoning code amendment that eliminated maximum residential density for sites on San Antonio Rd between Middlefield Road and E. Charleston Road (Ord. 5512), but it appears that revision was un-done as the City’s code no longer provides this exemption in Table 4 of Section 18.16.060.

<sup>5</sup> See PAMC, § 18.16.060.

<sup>6</sup> See FN 3.

(PAMC, § 18.40.180(c)(4).) The City’s parking requirements also were modified in connection with the entitlement of the Project to provide that “on CS zoned sites abutting San Antonio Road between Middlefield Road and East Charleston Road, the first 1,500 square feet of ground-floor retail uses shall not be counted toward the vehicle parking requirement.” (PAMC, § 18.52.040, Table 1, note 4.) The HEU proposes to further refine the RPO by waiving its applicability to properties listed in the Sites Inventory (except for 51 sites located on strategic retail/pedestrian nodes on El Camino Real and sites within the GF/R combining district). (HEU, p. 4-47.) HCD directed the City to “provide additional analysis on the City’s RPO” and “how units that are not exempt . . . will develop.” Grubb’s Project as approved must provide 1,500 square feet of retail use, and this requirement is one of several economic constraints weighing down the Project. The retail use requires a higher clearance, and alongside existing height and FAR restrictions, results in yet another limit on the number of units that can be built. In addition, while the City’s zoning code allows a parking reduction for up to 1,500 square feet of retail use, the Project as approved includes parking for the retail space because during the public hearing process there was significant community concern about parking for the retail space.

**C. The City’s Parking Requirements Are a Significant Barrier to Multi-Family Residential Development.**

The City’s current zoning requirements with respect to parking and height pose additional burdens and barriers to the development of multi-family housing. Of all the jurisdictions where Grubb is developing, Palo Alto is the only jurisdiction that counts above-ground parking in a project’s FAR calculation. (Palo Alto Mun. Code, § 18.04.030(65).) This methodology has the impact of either limiting the number of units that can be built on site based on FAR and height limits or forcing the applicant to build costly subterranean parking. The City’s HEU identifies this issue, acknowledging that “height limits, combined with parking requirements, can pose a challenge in attaining maximum allowable density,” yet the HEU only identifies vague proposed policies of incentivizing “smaller unit sizes and reduced parking” as well as a look at building heights, all of which would be reviewed in a *future* financial feasibility study. (HEU, p. 4-43.) Specific recommendations and reductions in parking requirements need to be implemented now in the City’s HEU and later zoning code amendments. Delaying action until a later undetermined economic feasibility study is not an acceptable means of brining the HEU into compliance.

The HEU identifies the cost of parking construction as ranging from \$25,000 to \$75,000 per space (or more given increases in land and construction costs) and acknowledges that parking “in underground or structure parking facilities, or if required to be covered or enclosed, can significantly increase the cost of housing and could affect the feasibility of various housing projects in the city.” (HEU, p. 4-44.) The Grubb Project is proof that the City’s development standards surrounding parking—which either force a project to construct underground parking or to reduce density—directly threaten economic feasibility of projects. Grubb’s latest construction estimates reveal that the per-space parking cost is approximately \$100,000 for underground parking. Based on the number of stalls required, if Grubb were to construct above-ground

parking non-compliance with FAR and height restrictions, the Project would lose two floors of residential units, cutting the Project’s density in half.

The City should revise its development standards and parking requirements to ensure multi-family development projects do not continue to be faced with such barriers. These revisions could be achieved through various mechanisms, such as not counting above-ground parking toward FAR, increasing height limits, and reducing per-unit parking requirements. Grubb would suggest that the HEU implement the following parking reductions, with the ability of a project to further reduce these counts through additional transportation demand management (“TDM”) measures:

Type	Parking Ratio
Studio	0.75/unit*
1-bedroom	0.75/unit*
2-bedroom	1.5/unit*
*Inclusive of guest parking and van/ADA spaces.	

If applied to the Grubb Project, parking ratios would reduce the total number of parking stalls required from 126 spaces to 80 spaces. If applying a cost ratio of \$100,000 per stall, this revision would reduce the Project’s costs by \$4.6 million.

**D. The City Must Evaluate Its Development Impact Fees as a Constraint on Housing Development and a Threat to the Financial Feasibility of Housing Projects.**

The Project is subject to payment of the City’s parkland dedication in-lieu fee (“Parkland Dedication Fee”) (a Quimby Act fee triggered by subdivision) as a condition of approval. At the time of Project approval, the Parkland Dedication Fees for the Project were estimated to be approximately \$4,116 per unit, and the fee structure took into consideration the square footage of units. Toward the end of 2021, however, the City significantly increased its park fees based on findings by the firm DTA in a “Park, Community Center, and Library Development Impact Fee Justification Study.” In the City’s 2023 Fee Schedule, the Parkland Dedication Fee is \$75,076.89 per single family unit and \$51,747.91 per multi-family unit, regardless of unit square footage. For projects that do not require subdivision, a separate park impact fee (“Park Impact Fee”) applies, which the 2023 Fee Schedule indicates is \$62,039.67 per single-family unit and \$45,884.72 per multi-family unit. The City’s proposed 2024 Fee Schedule would increase these fees by an additional 5.27 percent to reflect the most recent public Construction Cost Index for the Bay Area.<sup>7</sup> As applied to Grubb’s Project, the Parkland Dedication Fee alone is now 13 times the amount it was in 2020, reflecting an estimated aggregate change from about \$420,000 for the Project to \$5.28 million—or an increase of approximately \$4.86 million. If the Project

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<sup>7</sup> <https://www.cityofpaloalto.org/files/assets/public/administrative-services/city-budgets/fy-2024-city-budget/proposed/municipal-fee-schedule-amendments-fy24.pdf>

were to be constructed as an apartment project and pay the Park Impact Fee, the aggregate fee change would be approximately \$4.26 million.

As acknowledged in the City's HEU, the Annual Report on City Services for 2019-2020 identifies the City as "one of the highest impact/capacity fee charging cities for both single-family and multiple-family home construction," and this finding was made prior to the City's adoption of the increased park fees. (May HEU, p. 4-66.)

As mentioned above, the City identifies the Project as one of the pipeline projects being used to meet its Sixth Cycle RHNA requirement. As a direct result of the increased park fees, the Project (either as a condominium project or an apartment project) no longer is financially feasible as entitled. The City's draft HEU includes a buffer of 780 units with respect to identification of units needed to satisfy its RHNA obligation, but that buffer will be reduced immediately by more than 10 percent if the Project does not move forward—an outcome that is a very real possibility given the Project's entitlements are due to expire in early 2024, and there is no resolution in sight on either park fee.

A Housing Element must provide an analysis of potential and actual governmental constraints upon the development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, *as well as fees and other exactions required of developers*. (Gov. Code, § 65583(a)(5) (emphasis added).) HCD's prior comment on the City's April 2023 draft HEU identified the HEU's lack of explanation pertaining to high development impact fees, stating:

While the element describes required fees for single family and multifamily housing developments, including impact fees, [] the element states that impact fees/capacity fees are considered the highest in the County. In addition, [] the City recognizes that current planning/permitting and development fees add substantial cost to residential development. The element should provide a comprehensive analysis assessing all required fees and their proportion to the development costs for both single family and multifamily housing. In addition, the element could also provide information on how the city provides financial assistance to affordable housing developments. Based on a complete analysis, the City should provide additional policy and programs to mitigate the cost and impact of required fees on residential development.<sup>8</sup> (Emphasis added.)

The City's May 2023 draft HEU did not make any meaningful attempt to explain how the Parkland Dedication Fee and Park Impact Fee are not constraints on development. Indeed, the

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<sup>8</sup> <https://paltoaltohousingelement.com/wp-content/uploads/2023/03/ScIPaloAltoDraftOut032323-1.pdf>

City’s May 2023 HEU acknowledges that, as a percentage of development costs, fees on multi-family development (16 percent) are more than double the amount on single-family homes (7.2 percent), and the park fees are the single-biggest contributing factor to this cost. (May HEU, pp. 4-66, 4-67.) This disparity is unsurprising as the fee *is not* calculated on a per square foot basis. Grubb’s Project serves as a specific example of how the City’s fees directly inhibit multi-family development. As identified in the City’s HEU, the City provides development impact fee exemptions for accessory dwelling units (“ADUs”) of less than 750 square feet as to *all fee categories* and provides waivers of *most fees* for ADUs exceeding 750 square feet, while also making the fee proportional to the size of the primary unit. (HEU, p. 4-62.) Yet, multi-family units of the same size or even smaller are subject to all development fees and there is no correlation to the unit’s square footage. (*Id.*) In other words, as to the City park fees, a 5,000 square foot home with a 750 square foot detached ADU will pay the same fee as one 550 square foot multi-family unit. This result is precisely the type of constraint on housing that requires critical review and revision.

In 2021, the State Legislature specifically restricted the ability of cities and counties to do exactly what the City has done with its fee structure. Assembly Bill 602 added Section 66016.5 to the Government Code, which imposes new findings requirements for impact fee nexus studies prepared on or after January 1, 2022. The bill requires the nexus study to “calculate a fee imposed on a housing development project *proportionately to the square footage of proposed units of development*” unless the local agency can make alternative findings pertaining to why square footage was not appropriate as a metric including but not limited to an explanation of how the “fee bears a reasonable relationship between the fee charged and the burden posed by the development.” (Gov. Code, § 66016.5(a)(5)(emphasis added).) If set against new AB 602 standards, based on the above information, the City’s fee structure would not comply.

\* \* \* \* \*

We were not surprised to see that HCD found the City’s May HEU non-compliant with Housing Element Law. We request that HCD direct the City to fully address the constraints on housing and punitive development impact fees (in particular Parkland Dedication/Park Impact Fees) identified above. In order to demonstrate that its HEU is compliant, the City should be required to revise its zoning code to address barriers to housing in the areas of maximum density, FAR, and building height, and development standards pertaining to parking and per-unit parking requirements, as well as shifting all residential development fees for multi-family projects to a per-square-foot formula. Each of these issues represent unreasonable constraints on the development of sorely needed multi-family housing in the City.

Palo Alto City Council Members  
May 8, 2023  
Page 8

Please do not hesitate to contact me or my colleague Arielle O. Harris ([aharris@coxcastle.com](mailto:aharris@coxcastle.com)) should you have any questions with regard to this request.

Sincerely,

Cox, Castle & Nicholson LLP

A handwritten signature in black ink, appearing to read "Margo N. Bradish". The signature is fluid and cursive, with a long horizontal stroke at the end.

Margo N. Bradish

cc: Mr. Jonathan Lait, Planning Director  
Mr. Ed Shikada, City Manager  
Megan Watson, Grubb Properties  
Frank Tetel, Grubb Properties  
Ted O'Hanlon, Consulting Project Manager

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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August 29, 2023

Justin Murphy, City Manager  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA, 94025

Dear Justin Murphy:

**RE: City of Menlo Park's 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the City of Menlo Park (City) housing element that was adopted February 3, 2023 and received for review on June 30, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted housing element addresses many statutory requirements described in HCD's April 7, 2023 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), as follows:

1. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

Actions, Programs, Metrics, and Milestones: The element was revised to include geographic targeting and some additional actions. However, given the disparities in access to opportunity between the east and west side of the City, the element still must include a significant and robust suite of actions to 1) promote housing mobility 2) increase new housing choices and affordability in higher opportunity or relatively higher-income areas 3) place-based strategies for community preservation and revitalization and 4) displacement protection. Additionally, given the stark contrast between different parts of the City in terms of income and access to opportunity, the element must be revised to include significant numeric metrics (beyond the Regional Housing Needs Allocation (RHNA)) focused on all four program areas noted above. For your information, quantified metrics should target beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed). HCD will follow-up under a separate cover with additional guidance.



2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

*Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services... (Gov. Code, § 65583, subd. (c)(1).)*

Zoning for a Variety of Housing Types – Emergency Shelters: The element explains parking requirements for emergency shelters complies with AB 139 (Statutes of 2020). However, AB 139 provides that parking requirements shouldn't be more than what is necessary for staff working in the shelter. The City's requirements exceed the number of spaces necessary for staff and as a result, the element should add or modify programs to address the constraint.

In addition, Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

Electronic Sites Inventory: Although the City has submitted electronic sites inventory as described in the prior review, if any changes occur, the City should submit revisions as part of any future re-adoption or submittal. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for additional information.

Programs: As noted above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element must be revised, as follows:

The element includes many complex and challenging strategies that are essential to the City's approach in addressing its housing needs including identifying publicly-owned sites, large pipeline projects and complex nonvacant typologies. As a result, the element should include a program to evaluate the effectiveness of these approaches and commit to adjustments, as appropriate, to continue working toward the housing element's goals and objectives. Specifically, the element could include a program to conduct an in-depth mid-term evaluation

of identified sites and programs, including their effectiveness in addressing the RHNA, and commit to adjustments within a specified time period. Topics should include pipeline projects, nonvacant sites, rezoning, Affordable Housing Overlay zone and governmental constraints (e.g., parking, lot coverage, Floor Area Ratio (FAR), etc.).

Shortfall of Adequate Sites (Program H4.K – Rezone for Lower-Income Shortfall):

– HCD’s prior review found that this program must include several revisions related to appropriate statutory references, timelines and other provisions. While this Program was revised to address some of HCD’s prior review, it still must identify the shortfall by income group, acreage, allowable densities and commitment to appropriate development standards. Additionally, HCD’s prior review found that the element must clarify whether other programs are needed to meet the City’s RHNA and if so, it also needs to comply with the applicable rezone requirements under Government Code section 65583(c)). While the element clarified that Programs H4.I (Create New Opportunities for Mixed-Use Development) and H4.T (Residential Overlay) are needed to address a shortfall of sites and implement rezones, it did not revise these programs to comply with all applicable requirements.

Federally-Owned Sites and School Sites: HCD’s prior review found that the element must include sufficient analysis demonstrating the feasibility and likelihood of these sites redeveloping during the planning period. While the element now includes an analysis, it should also include a program committing to facilitating development on these sites during the planning period. Specifically, the element should include a program with numerical objectives that ensures, if applicable, compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development on these sites and alternatives (e.g., identifying additional sites) if production does not actualize as identified in the inventory. Actions could include but are not limited to outreach with owners, facilitating communications developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.

- 3. An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: HCD’s prior review found that the element must analyze development standards in the R-3 zones and whether standards facilitate achieving maximum densities. The element briefly discussed that landscaping, parking, and FAR requirements could act as a constraint to development and

included a program to evaluate and modify these requirements. However, the element must also include actions addressing lot coverage in R-3 zones as a constraint. Specifically, the element acknowledged that the City's current lot coverage requirements in these zones are generally lower than what's permissible in neighboring jurisdictions (p. 5-26). In addition, HCD finds that lot coverage for multifamily housing less than 50 percent is generally considered a constraint. The element must include or modify programs(s) committing to increasing lot coverage requirements in these zones.

State Density Bonus Law (SDBL): The element was revised to note that the City's affordable housing overlay zone conflicts with SDBL and included a program to address this conflict. However, irrespective of the City's overlay zone and as found in HCD's prior review, this analysis must specifically address how the City complies with SDBL. As found in HCD's prior review, the element could discuss the procedures, various levels of benefits (e.g., density, concessions and incentives, parking reductions), non-discretionary actions and burden of proof.

Affordable Housing Overlay Zone (AHOZ): HCD's prior review found that the element must describe the City's AHOZ including analyzing densities and development standards under this zone. The element was revised to briefly describe past projects that utilized this zone, available incentives, and compliance with SDBL (p. 5-19). The element also stated that when combined with other incentives such as SDBL, a project could potentially achieve 100 du/ac. However, this analysis still does not address HCD's prior review. The element must specifically discuss and analyze the framework of the overlay zone including thresholds for a project to qualify for the additional density under this zone and any other applicable requirements. Further, HCD now understands that the City is utilizing the potential density available through the overlay zone to calculate realistic capacity for sites identified in prior planning periods, rezoned sites to accommodate a shortfall, and potentially other types of sites. This information is supported by statements and assumptions on Table 7-7 (RHNA and Reuse Sites), Site-specific fact sheets (Appendix 7-5), sites inventory (Appendix 7-1). To utilize these capacity assumptions, the element must include evidence demonstrating the likelihood of developers taking advantage of the density bonus and circumstances where the density bonus will not be utilized. Based on a complete analysis, the element may need to rescale assumptions and include programs as appropriate.

Programs: As noted above, the element does not include a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

In addition, HCD's prior review found that the element must clarify what parking requirements will be reduced and ensure updates will not result in any

constraints to development. While the element was revised to specify that adjustments in standards will be to facilitate achieving maximum densities, Program H4.M (Update Parking Requirements and Design Standards) still should include specific information about reduction in parking requirements such as ensuring reductions will not constrain multifamily development and the number of spaces that will be considered (e.g., one space for smaller bedroom types).

The element will meet the statutory requirements of State Housing Element Law once it has been revised and re-adopted, if necessary, to comply with the above requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), Program H-4.K (Rezone for Lower Income Shortfall) and Program H4.Q (Reuse Sites) to accommodate the RHNA and make prior identified sites available must be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until all necessary rezones to make prior identified sites available and accommodate a shortfall of sites are completed pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to 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 to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Sohab Mehmood, of our staff, at [sohab.mehmood@hcd.ca.gov](mailto:sohab.mehmood@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall  
Senior Program Manager

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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August 3, 2023

Jonathon Lait, Planning Director  
Department of Planning and Development  
City of Palo Alto  
250 Hamilton Avenue, Fifth Floor  
City of Palo Alto, CA 94301

Dear Jonathon Lait:

**RE: City of Palo Alto's 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the City of Palo Alto's (City) housing element, which was adopted May 8, 2023 and received for review on June 7, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from Palo Alto Moving Forward and the League of Women Voters; pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many statutory requirements described in HCD's March 23, 2023 review; however, additional revisions will be necessary to comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), Program 1 (Maintain Sites) to rezone 4,511 units to accommodate the regional housing needs allocation (RHNA) and Program 1.3 (Sites Used in Previous Housing Cycle) must be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) are completed.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Affordable Housing and Sustainable

Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

HCD appreciates the commitment and cooperation the housing element update team provided during the update and our review. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Irvin Saldana, of our staff, at [Irvin.Saldana@hcd.ca.gov](mailto:Irvin.Saldana@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long horizontal stroke extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief

Enclosure

## APPENDIX CITY OF PALO ALTO

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Housing Needs, Resources, and Constraints**

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Racially Concentrated Areas of Affluence (RCAA): As mentioned in HCD's previous letter, the element provided a limited analysis of factors contributing to RCAA's. While the element was revised to include a few general statements, the analysis should be revised to include local data and knowledge, and other relevant factors. For example, the element could examine past land use practices, investments, and quality of life relative to the rest of the City and region and then formulate appropriate programs to promote more inclusive communities and equitable quality of life. For example, the City should consider additional actions (not limited to the Regional Housing Needs Allocation (RHNA)) to promote housing mobility and improve new housing opportunities throughout the City.

Disparities in Access to Opportunity: While the element was revised to include Table (C-6) on (P.C-48) the element must analyze these data points for trends and patterns throughout the City, and any concentrations or coincidences with other components of the fair housing analysis. A complete analysis should revise and or provide additional policies and programs that meet the need of each of the components mentioned above.

Disproportionate Housing Needs Including Displacement: While the element was revised to include additional analysis on displacement risk for areas defined as sensitive communities, the element must provide additional analysis on local and regional patterns for overcrowding, overpayment, and substandard housing including any identified trends and coincidence with other components of the fair housing assessment. In addition, the element briefly mentions persons experiencing homelessness, but should provide additional information on the need, including, impacts and patterns within the City. For instance, the element should examine disproportionate impacts on protected characteristics (e.g., race, disability) and patterns of need,



including access to transportation and services. HCD will provide additional guidance under a separate cover.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element was revised to include an analysis on site location and isolation by income group, the element must still relate site selection to all components of the fair housing assessment. In addition, the element should include additional information on how sites will improve fair housing conditions. For example, the element mentions the isolation of lower-income units in the Research; Office and Limited Manufacturing (ROLM) zone; however, the element provides minimal information on how this zone improves fair housing.

Local Data and Knowledge and Other Relevant Factors: As noted in the prior findings, the element must supplement the analysis and complement state and federal data with local data and knowledge to capture emerging trends and issues, including utilizing knowledge from local and regional advocates, public comments, and service providers.

Contributing Factors: The element identifies many contributing factors to fair housing issues but must prioritize these factors to better formulate policies and programs and carry out meaningful actions to AFFH.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress Towards the RHNA: As you know, the City's RHNA may be reduced by the number of new units built since June 30, 2022; however, the element must demonstrate the affordability of units in the planning period is based on actual sales price, rent level, or other mechanisms ensuring affordability (e.g., deed restrictions). Table 3-2 on (P.3-5) was revised to include the anticipated affordability of entitled and proposed developments and the element provides some information about past trends to demonstrate the likelihood these units will move from entitlement to building permits. In order to demonstrate the likelihood that the units will be built in the planning period the analysis must consider any barriers to development, phasing, anticipated build-out horizons, market conditions, and other relevant factors to demonstrate their availability in the planning period. For example, the element could apply past success rates to the projects listed on Table 3-2.

Realistic Capacity: As mentioned in HCDs previous letter, realistic capacity assumptions are generally conservative and based on existing or recently approved residential development within the City and the surrounding region. While development trends can be used to support realistic capacity assumptions, the element must still include an analysis that accounts for existing land use and site improvements. Based on a complete analysis, the element may need to revise current realistic capacity assumptions. In addition, while the element provides some analysis on the likelihood of residential development in zones where 100 percent nonresidential uses are allowed (P. 3-25), the analysis is unclear as to how and if existing policies incentivize residential development

in nonresidential zones. Finally, the element should commit to a mid-cycle assessment of residential development in zones that allow 100 percent nonresidential uses. Based on the results of this assessment, the City may need to identify additional sites to meet the RHNA.

Nonvacant Sites: As mentioned in HCDs previous letter, the element provides several factors that demonstrate the redevelopment potential of nonvacant sites, including, current and past development trends, improvement to land value ratios, existing use vs zone use, age of structure, floor area ratio (FAR), proximity to transit, TCAC/HCD designations, and community interest. While the element now includes some information on current market demand, the element must still include an analysis addressing HCDs previous finding on the suitability of nonvacant sites. The analysis must address nonvacant sites related to existing uses that may constitute an impediment to additional residential development, past experiences converting existing uses to higher-density residential development, existing leases or contracts that would perpetuate the existing use or prevent additional residential development or other relevant information to demonstrate the potential for redevelopment such as expressed owner and developer interest. Based on a complete analysis, the element may need to add or revise programs to facilitate redevelopment. In addition, please refer to Palo Alto Moving Forward's July 14, 2023, (P.12) letter for additional information on several data errors identified in the element related to nonvacant sites.

Finally, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the housing element must demonstrate that the existing use is not an impediment to additional residential development in the planning period (Gov. Code, § 65583.2, subd. (g)(2).). This can be demonstrated by providing substantial evidence that the existing use is likely to be discontinued during the planning period (Gov. Code, § 65583.2, subd. (g)(2).

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the County must submit an electronic sites inventory with its adopted housing element. The County must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The County can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element was revised to include an analysis on the suitability of the City's ROLM(E) zone to meet the City's unsheltered need, the element must be revised to include an analysis of potential reuse and redevelopment opportunities in this zone.

- 3. An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: As mentioned in HCDs prior review, the element must identify and analyze the impact of all relevant land use controls as potential constraints on a variety of housing types in all zones that allow residential uses. While the element now analyzes most zones, the City's CC, CS, and CD-N zones must still be analyzed. In addition, the element must also provide an analysis that addresses any impacts on cost, supply, housing choice, feasibility, timing, approval certainty, and ability to achieve maximum densities and includes programs to address any identified constraints. Currently, the element seems to rely on several factors such as the City's Housing Incentive Program (HIP) and Senate Bill 478 to reach maximum densities. While the HIP can be a great tool for development, the City must demonstrate that current land-use controls facilitate housing without the use of this tool. Finally, the element should link development standards used in recent projects (P.3-13-19) to current land-use controls.

Local Processing and Permit Procedures: The element was revised to include a discussion on the City's processing and permit procedures for potential constraints on approval certainty and timing. However, as mentioned in HCDs prior review, an analysis of cost and financial feasibility is required. Finally, the City relies on processes such as the City's expedited review process to mitigate timing constraints on approval certainty. While this process can be useful, only projects that adhere to base development standards qualify. As mentioned above, the City should analyze development standards used in recent projects to better understand the effectiveness of the City's expedited review process. Based on a complete analysis, the City may need to add or revise programs to address constraints on local processing and permit procedures.

On/Off-Site Improvements: As mentioned in HCDs previous letter, the element must identify subdivision-level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width) and analyze their impact as potential constraints on housing supply and affordability.

Local Ordinances: The element now analyzes the City's Inclusionary Housing ordinance, Tree ordinance, Short Term Rental ordinance, and Retail Perseveration ordinance (RPO). However, the element must provide additional analysis on the City's RPO and Tree ordinance. Specifically, how units that are not exempt from the RPO (along California Avenue) will develop. In addition, the element mentions the Tree ordinance has been identified as a potential constraint on Accessory Dwelling Units (ADUs). Given this finding, the element must analyze this ordinance as a potential constraint on a variety of housing types. Finally, the element mentions the City's Tree ordinance will not apply to state mandated ADUs. The element should be revised to include this language in a program with a specific date of completion early in the planning period.

## **B. Housing Programs**

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are*

*ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

As mentioned in HCDs previous letter, programs must have a specific commitment to housing outcomes and deliverables. While the element revised several programs, many programs include conducting a “study” prior to additional program commitment. HCD recognizes that program implementation may require a study; however, the element must make firm commitment to program outcomes upon the completion of the study or identify additional programmatic goals or actions that lead to housing outcomes.

Programs to revise may include but are not limited to the following: Program 1.6 (Lot Consolidation) Program 2.1 (Affordable Housing Development) Program 3.1 (Fee Waivers and Adjustments) Program 3.4 (Housing Incentive Program (HIP)) Program 3.5 (Accessory Dwelling Unit (ADU) Facilitation) Program 3.6 (Expedited Project Review) 4.2 (Housing and Neighborhood Preservations) Program 6.2 (Family Housing and Large Units) Program 6.5 (Alternative Housing) Program 6.6 (Fair Housing)

Finally, Programs (1.3), (1.5), (1.6), (2.1), (3.3), (3.4), (3.5), (3.6), (6.3), (6.5) and (6.6) will need to be revised with either refined commitment or timing. HCD will provide additional guidance under a separate cover.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

In addition, Program 1.4: (City-Owned Land Lots) should clarify that all City-Owned sites will comply with Surplus Land Act (SLA). In addition, and as mentioned in HCDs previous letter, the element will need to commit to numerical objectives, including affordability, aligned with assumptions in the inventory, and a schedule of actions to facilitate development. A schedule of actions may include coordination with appropriate entities, including potential developers, disposition of the land, zoning, funding, facilitating other entitlements, and issuing permits. Finally, this program should identify

and make alternative sites with zoning of equivalent capacity and density by a specified date if sites are not made available by a date early in the planning period.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding A3, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, the element should be revised as follows:

- Program 3.4 (Program 3.1 Fee Waivers and Adjustments): The Program should specifically commit to reducing impact fees comprehensively and not limit the scope of the program to park fees.
  - Program 6.5 (Alternative housing): The Program should commit to actively mitigating costs related to impact fees on alternative housing.
4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis. Actions must have specific commitment, milestones, geographic targeting and metrics or numeric objectives and, as appropriate; must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization, and displacement protection.

Programs requiring revisions include but are not limited to the following, Program 1.4 (City-Owned Land Lots) Program 1.6 (Lot Consolidation) Program 2.1 (Affordable Housing Development) Program 3.5 (Accessory Dwelling Unit Facilitation) Program 3.7 (Conversion of Commercial Uses to Mixed Use Development) Program 4.1 (Replacement Housing) Program 4.2 (Housing and Neighborhood Preservation) Program 5.1 (Preservation of At-Risk Housing) Program 5.2 (Funding Opportunities) Program 6.1 (Housing for Person with Special Needs) Program 6.2 (Family Housing and Large Units) Program 6.3 (Missing Middle) Program 6.4 (Homeless Program) Program 6.5 (Alternative Housing) and Program 6.6 (Fair Housing). Finally, based on a complete analysis, additional program and policy action may need to be included.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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August 28, 2023

Jennifer Maguire, City Manager  
City of San José  
200 East Santa Clara Street  
San Jose, CA 95113

Dear Jennifer Maguire:

**RE: City of San José 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the City of San José's (City) housing element, which was adopted June 20, 2023 and received for review on June 29, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation with Michael Brilliot, Kristen Clements, Ruth Cueto, Joshua Ishimatsu, and David Ying. In addition, HCD considered comments from Anthony Tordillos, SJSU Human Rights Institute California Faculty Association San Jose State Chapter, ¡Sí Se Puede!, Racial Equity Action Leadership Coalition and Silicon Valley Council of Non Profits, Maggie So, Pamela Campos, Alex Shoor, Matt Savage, Shiloh Ballard, Tom Skinner, Silicon Valley Young Democrats, Housing Action Coalition and Greenbelt Alliance, Human Agenda, Alli Rico, Law Foundation of Silicon Valley, and South Bay Yimby pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many of statutory requirements described in HCD's December 15, 2022 letter; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), see enclosed Appendix.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), Programs P-3 (North San José Affordable Housing Overlay Zones) to rezone 12,555 units to accommodate the regional housing needs allocation (RHNA) and P-38 (Adequate sites for lower-income households on nonvacant and vacant sites identified in previous housing element cycles) must be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government

Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) are completed.

Public participation in the development, adoption and implementation of the housing element continues to be essential to effective housing planning. During the housing element revision process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. HCD received several third-party comments expressing concerns that the draft revisions for the housing element did not include adequate time or opportunity to provide public input and comment. As part of the next revision to the housing element, the City should consider comments received including programmatic and policy suggestions. HCD will provide copies of third-party comments received under a separate cover.

Please be aware, any revisions to the element must be posted on the local government's website and to 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 to HCD.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Affordable Housing and Sustainable Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

Jennifer Maguire, City Manager  
Page 3

HCD appreciates the cooperation and dedication provided by City Staff throughout the course of the housing element review. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact me at [Melinda.Coy@hcd.ca.gov](mailto:Melinda.Coy@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long, sweeping horizontal stroke extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief

Enclosure



## APPENDIX A CITY OF SAN JOSÉ

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Review and Revision**

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)*

The housing element did not address this finding. As part of the evaluation of programs in the past cycle, the element must provide an explanation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness).

### **B. Housing Needs, Resources, and Constraints**

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

Contributing Factors to Fair Housing Issues: While Chapter Two of the element now includes a list of contributing factors, the element should prioritize these factors to better formulate policies and programs and carry out meaningful actions to Affirmatively Furthering Fair Housing (AFFH).

Regional Analysis: While element now describes regional trends for most areas, it must still analyze San José relative to the rest of the region for disability, familial status, and education.

Sites Inventory: While the sites inventory was updated to include data relative number of units per site by income group for each of the AFFH categories relative to the existing patterns, it did not analyze this data to determine how the sites AFFH. For example, the

element should utilize this data to analyze whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program actions that will be taken to promote equitable quality of life throughout the community (e.g., anti-displacement and place-based community revitalization strategies).

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress in Meeting the Regional Housing Needs Allocation (RHNA): Pursuant to third-party comments, it appears that some of the projects identified in the pipeline are no longer active projects or are planned at different units counts than identified in Appendix G. The element should verify the pipeline to ensure accuracy.

Realistic Capacity: While the element now includes additional information on the methodology to support the capacity assumptions in the housing element, the methodology still does not provide sufficient detail to demonstrate how the Tolemi Building Blocks platform, a data analysis and modeling tool that was used to calculate residential capacity. For example, it is unclear what comparable properties were utilized to calculate the densities, and how those projects represent typical densities of existing or approved residential developments at similar affordability levels to the assumptions in the element. In addition, for sites that assume 100 percent or above capacity, the element does not identify what assumptions led to the higher capacity estimates such as the presence of exceptions such as a density bonus.

Suitability of Nonvacant Sites: The element was revised to include some additional of projects listed in Appendix K, it is still unclear how the factors in the sites inventory methodology and these projects listed in Appendix K relate to the potential for residential development on nonvacant sites. For example, the element stated that a list of objective factors was used in choosing sites including existing land use, age of existing structure, land to improvement value, and ownership patterns, among others that was similar to comparable properties. However, it is unclear if the comparable properties were also nonvacant. In addition, the element must still analysis was provided to demonstrate whether these existing uses would impede development of these sites within the planning period. As stated in the previous letter, the element should summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. For example, the element includes existing uses such as offices, churches, gas stations, restaurants, preschools, grocery stores, hotels, banks, among others, but does not demonstrate how the selection criteria, nor the example projects listed in Appendix K relate to the selection of these sites and how these sites are likely to discontinue in the planning period.

In addition, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. The element must demonstrate existing uses are not an impediment to additional residential development (Gov. Code, § 65583.2, subd. (g)(2).). Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Suitability and Availability of Infrastructure: While the element includes a general discussion concluding there should be no unexpected constraints to public utilities and services, it does not specifically address available capacity and access of existing or planned water, sewer, and other dry utilities. (Gov. Code, § 65583.2, subd. (b).)

3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). (Gov. Code, § 65583, subd. (a)(5).)*

Local Processing and Permit Procedures: While the element was revised to describe several permit processing procedures, it does not analyze those procedures for potential constraints on housing supply, cost, timing, financial feasibility, approval certainty, and ability to achieve maximum densities. The element should analyze decision-making standards for their impact as potential constraints on housing supply and affordability. Based on the outcomes of a complete analysis, the element must add or modify programs as appropriate.

4. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

While the element was revised to include additional detail about at-risk properties, the element must still identify qualified entities that could assist with maintaining affordability.

## C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

As stated in the previous review, the element must provide quantified objectives where appropriate, and ensure provision of discrete timing (e.g., month and year) to account for how the action will occur as well as to ensure a beneficial impact throughout the planning period. While the element may include aspirational and complex programs with actions and timelines beyond the planning period (“ongoing,” “research” “create a study...”). However, these programs should be ancillary and denoted in some manner. Programs to be revised include, but are not limited to the following:

*Program P-4 (Affordable housing tools for North San José)* should be revised to include specificity on the types of tools that will be evaluated.

*Program P-10 (Standardize and streamline permitting, fees, applications)* should be revised to include specific timing on deliverables.

*Program P-11 (Explore Allowing “SB 9” Type Housing on Additional Properties)* should indicate if this is an aspirational program or include a specific commitment. “

*Program P-17/N-5 (Affordable Housing Siting Policy)* should describe the affordable housing siting policy.

*Program P-20 (Mixed-income housing)* the program should describe how will the City facilitate Mix-income housing and foster mixed income housing that 100% restricted to affordable.

*Programs P-21(Special needs housing NOFA), P-31 (Land acquisition for affordable housing in target locations), S-1 (Tenant Resource Centers and violations reporting), and S-13 (Affordable housing renter portal language access)* should be revised to include metrics.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding B2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

*Program P-48 (Implement Surplus Land Act (SLA) – The program should clarify if the SLA activities referenced to be completed in January 2024 include issuance of notice of availability or requests for proposals for the city owned sites identified in the element.*

Large Sites: As indicated in the housing element and pursuant to discussions with staff, sites larger than 10 acres that are identified in the housing element to accommodate a portion of the lower-income RHNA will include an overlay that requires at least 25 percent of the units to be affordable to lower-income commiserate with the capacity assumptions in the sites inventory. However, it is unclear if Program P-3 is intended to implement this requirement or if a new program should be added to ensure capacity estimates are realized.

*H-14 (Emergency Shelters) – The element should specify the remaining capacity that will be zoned, identify the proposed zones that will allow for emergency shelters by-right, and specify any standards that will apply (e.g., number of beds, length of stay requirement, etc.).*

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding(s) B3, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

*Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in the element Program R-4 to implement the Community Opportunity to Purchase Program (COPA) was struck from the adopted housing element, as a result the element must include specific commitments to prevent displacement including provision of tenant protections in order to address AFFH requirements. For example, the City could strengthen programs S-12 (Eviction Prevention and Housing Collaborative), S-29 (Rent Stabilization Program Strategic Plan and program assessment), S-30 (Just cause eviction protection amendment for affordable apartments), and S-31 (Tenant Protection Ordinance) to provide specific commitments, objectives, and metrics. The City could also consider strategies suggested through the public stakeholder process and referenced third party comment letters.

#### **D. Quantified Objectives**

*Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)*

The element must include quantified objectives estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

**From:** [Sam Gersten](#)  
**To:** [Planning Commission](#); [Council, City](#)  
**Subject:** Strong Support for Changing City Housing Rules  
**Date:** Wednesday, September 6, 2023 9:52:43 PM

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Hi Palo Alto Planning Commission and City Council,

I am a renter on Middlefield Road near the Safeway. I'd like to be able to continue to afford living in Palo Alto with my wife and baby daughter. For that reason, I strongly support changing city rules to promote more affordable housing in Palo Alto, including:

- 1) Allowing more housing to be built on more sites all around the city
- 2) Upgrading zoning standards, and eliminating strict floor area, parking, height, and density requirements that are holdovers from the mid-century era of racist redlining, and which drive up housing costs
- 3) Speeding up approvals. Please see this case study on how the suburb of New Rochelle in NY approached. There's no reason that our similarly-sized city can't mass approve housing and work side by side with a chosen developer and residents to get this done: <https://www.wsj.com/articles/the-suburb-that-defied-nimby-a9bf4af9>
- 4) Eliminating barriers like tree and retail ordinances and review impact fees. I'm on the board of my local synagogue (Emek Beracha) and have seen these same issues stymie our desire to build a security fence to protect our congregation from anti-Semitic threats.

I appreciate your openness to defy vested interests in order to achieve societal progress.

Thank you,  
Sam

--

Sam Gersten

[REDACTED] | [REDACTED]

**From:** [Sandhya Laddha](#)  
**To:** [Planning Commission](#)  
**Subject:** MTC Call for Interest Active Transportation Technical Assistance Program - now through 9.29  
**Date:** Thursday, September 7, 2023 8:00:14 AM

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Dear Planning,

Following is a message shared by MTC staff. Hope you can take advantage of this TA program!

MTC recently completed its first [Active Transportation Plan](#), which updated MTC's Complete Streets (CS) Policy (Resolution 4493), identified an Active Transportation (AT) Network and prioritized a 5-Year Implementation Plan (IP). The [AT Network](#) is a 3,244 mile network created using regionally significant segments of locally adopted plans/networks with equity, mode shift and safety as the core elements. Together, the CS Policy and AT Network will help the Bay Area reach mode shift, equity, and safety goals.

During the AT Plan process, MTC heard the need for various forms of AT Technical Assistance (TA), including project design assistance, help completing state Active Transportation Program (ATP) and other AT grant applications, as well as educational capacity-building assistance (e.g. working together with emergency response staff to deliver Complete Streets projects).

As part of the 5-Year IP, MTC is launching an AT Technical Assistance (TA) Program with a goal of spurring implementation of MTC's CS Policy and AT Network, while also securing additional statewide and other AT funding for the region. Up to \$5 million will be available through the AT TA Program (pending Commission final approval, anticipated September 2023).

MTC is soliciting a Call for Interest from local agencies that need or will benefit from AT TA to

- Advance an AT project to delivery and/or
- Compete for state ATP Cycle 7 funding anticipated in 2024.


**[Please find our more details here and fill out this form by September 29.](#)**

Thanks,  
Kara

Kara Oberg  
Senior Active Transportation Planner  
[koberg@bayareametro.gov](mailto:koberg@bayareametro.gov)

--

Cheers,  
Sandhya Laddha  
Policy Director

Silicon Valley Bicycle Coalition 



**From:** [Palo Altans for Sensible Zoning](#)  
**To:** [Planning Commission](#)  
**Subject:** letter to P&TC for September 13, 2023 agenda.  
**Date:** Sunday, September 10, 2023 9:05:36 PM  
**Attachments:** [PASZ Letter to PTC re HCD.pdf](#)

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To: Planning & Transportation Commission, City of Palo Alto  
From: Palo Altans for SENSIBLE Zoning  
Re: Letter for Meeting Packet for September 13, 2023 Meeting

Please see attached letter.



Planning and Transportation Commission  
City of Palo Alto  
mailto:planning.commission@cityofpaloalto.org

The State's Housing and Community Development Department (HCD) is using completely outdated job numbers and forbidding any public discussion of those job numbers to serve the State government's own interests. The Palo Alto City Manager, the City Attorney and City Council should press HCD, in open public session in Palo Alto, to justify developers use of the Builder's Remedy, which is based on outdated and inappropriate data, before any developers are permitted to receive the benefit of it with respect to any developments in Palo Alto.

HCD is using the state's mandated Housing Element in its Plan Bay Area to justify its actions. But the current Housing Element covering the years 2023-2031 is based upon outdated and misused data.

The process started in 2019 with HCD's overly aggressive new jobs forecast for the Bay Area and each city in the area for the period 2023-2031. Further, HCD issued a gag rule: that there could be no public discussion of lowering this job forecast number during the life of the Housing Element (2023-2031)! This is clearly a violation of democratic principles of free speech.

HCD plays a key role in this process, not only making a self-serving 2019 jobs forecast based on jobs growth in 'already jobs-rich areas', but also being the body that must approve each city's Housing Element as 'realistic' and then enforcing it with the 'Builder's Remedy' overriding local zoning. Until the City's Housing Element is deemed "compliant" by HCD, developers' rights under the "Builder's Remedy" are extended – potentially indefinitely throughout the entire eight period. A totally usurpation of the rights of this and every other city when HCD withholds approval of any city's Housing Element for all long as it likes.

The whole structure is built upon the overly aggressive and unrealistic new jobs growth forecast made by HCD in 2019. Since then, the following changes, including actions by HCD and the State's Department of Finance (DOF), have proven the jobs forecast on which every number in the Housing Element is based to be outdated and illogical:

- Rise of remote work: The COVID outbreak in 2021 led to a revolutionary growth in remote work, currently accounting for up to 40% of workdays in the larger Silicon Valley firms. Remote workers do not need housing near the workplace when they work at home.
- Reduction in employment: The big tech firms have seen a levelling or slight decrease in employment over the last four years and companies and workers have moved out of the area. Notice of layoffs appear almost daily in the local newspapers and online media.

- Increase in cost of market rate units: Plan Bay Area is based on the assumption that an increase in concentrated housing would lower Bay Area housing costs to the national level. Instead, the use of inclusionary zoning for affordable housing has actually increased the cost of market rate units and has kept Palo Alto and surrounding communities among the most expensive and unequal in the country.
- Population Decline: By Code, the DOF must be in agreement with the population forecast embedded in the Plan Bay Area. When the 2019 new jobs forecast were translated into new housing needs in 2019-2020, the DOF accepted them as reasonable and projected a population growth rate for the Bay Area of 17% between 2020 and 2030. But when the DOF population numbers were updated in April 2023, the population growth for the Bay Area 2020-2030 is now projected to be a DECLINE of 1.7 percent (and a decline of 1.2 percent for Santa Clara County)!
- The recent HCD demands for reduction in Palo Alto jobs is not reflected in the old jobs forecast: HCD rejected Palo Alto's two Housing Element revisions (in formal letters sent on March 23, 2023 and August 3, 2023) and demanded that Palo Alto zone for new housing in zones currently zoned nonresidential, even if they are currently in commercial use. The identification of future housing sites in areas that were commercially zoned in 2019 when the new jobs forecast was done would result in the loss of many retail businesses which serve the public and close to two thousand jobs being dropped from the total jobs forecast in 2019. This loss of jobs demanded by HCD should lower the 2019 jobs forecast that is still being used as the basis for new housing numbers.
- Selective adherence to the law: While HCD cites CA Codes as the justification for its overriding local zoning codes, it has completely ignored the Code (Section 65890) that requires them to publish a Guidebook outlining incentives that local communities can use to induce businesses to move jobs to provide better balanced communities.
- The building of congested housing will continue to hurt families. Palo Alto schools have reported a sharp decline in enrollment over the last few years despite an increase in smaller congested units.
- The State government gets huge financial benefits from concentrated big business employment remaining in California, through capital gains and income taxes. As Californians, we are not averse to financial benefits to the State. Local governments and school districts draw little of the financial benefit from these gains, but must pay the substantial new infrastructure costs that come with increased housing, or pass that on to the local residents.

We want our City Manager, City Attorney and City Council to confront representatives of HCD in open public sessions here in Palo Alto for them to justify HCD's continued use of outdated jobs data that it is using to reject our well intentioned Housing Element. That gives developers the opportunity to rely upon the 'Builder's Remedy', which is a gift to them at the expense of our local community. The use of the 'Builder's Remedy should be withheld until these public sessions are held.

We ask that the Planning and Transportation Commission urge the City to take that action to confront HCD and, if HCD refuses to participate, hold those public sessions and explain to the residents of the City what the impacts of the new Plan Bay Area will be on them. The residents need to know! Now!

Palo Altoans for SENSIBLE Zoning (PASZ)

(<https://sensiblezoning.org>)

Contact person: Greg Schmid [REDACTED]

From: [Kristen Brown, SVLG](#)  
To: [Planning Commission](#)  
Subject: SVLG's BAIR Newsletter: September 7th  
Date: Thursday, September 7, 2023 3:00:07 PM

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*September 7th, 2023*

TALK ABOUT TOWN

**Housing Elements Updates:** Jurisdictions throughout the region continue to

work through their Housing Element updates, with 90% of San Mateo County Jurisdictions and 68% of Santa Clara County Jurisdictions out of compliance. This means that they have adopted a Housing Element that the Department of Housing and Community Development (HCD) found did not comply with State housing element law, or they have not submitted an adopted Housing Element update to the State by the January 2023 statutory deadline. Non-compliant cities are facing the “Builders Remedy,” which prescribes that any city without a state-approved plan must approve a development that might not otherwise meet zoning or development requirements of the jurisdiction, so long as at least 20% of the units are cost-restricted at affordable rates. As of July, 34 “Builders Remedy” projects have been proposed in cities lacking compliant Housing Elements, including the Cities of San Jose, Palo Alto, Mountain View, and Menlo Park.

## SUSTAINABLE GROWTH

**Santa Clara City Council Approves New Housing:** The Santa Clara City Council has approved a new housing development near Santa Clara University. The project will transform a blighted corner into a high-density housing complex, providing much-needed housing near the city's transit center. The development will consist of a four-story mixed-use building with 39 homes and 1,500 square feet of retail space on the ground floor. Five of the homes, or 15%, will be designated as affordable housing. Construction is set to begin early next year with completion slated for the end of 2025. [Learn more here.](#)

**State Transportation Funds Benefit Local Projects:** A number of local transportation infrastructure projects are set to receive funding after the California Transportation Commission (CTC) allocated more than \$3.1 billion dollars to projects throughout the State. Locally, the Counties of Alameda, Santa Clara, and San Mateo will collectively receive \$191 million in funding for a total of 18 projects throughout the region. Find out which projects are being funded near you, [here.](#)

**Caltrain Introduces Fare Promotions:** Caltrain has announced four new temporary fare products to help riders save money. The promotional fares include a \$1 youth pass, a family day pass, group day pass, and three-day pass. In addition to the fare products, Caltrain is also cutting the price of parking at

its stations by 50%. [Learn more here.](#)

**Coastal Clean-Up Day in the Bay Area:** September 23rd marks the 39th annual Coastal Clean Up Day - the State's largest volunteer event that invites community members to clean up trash before it is washed to the coast and into the ocean. Several coastal clean-up day events are taking place throughout the Bay Area. Find out how to participate in an event near you, [here](#).

## INCLUSION & BELONGING

**SC County Funds School Wellness Centers:** Santa Clara County's Board of Supervisors has approved a \$12 million grant program to establish and expand school-based behavioral health wellness centers. The funding will go towards creating new campus wellness centers, support the enhancement of existing wellness centers, and investing in facility and technology improvements. The program was proposed by Supervisor Susan Ellenberg in 2019 and is funded through the American Rescue Plan Act and the state's Mental Health Services Act. The goal is to provide better intervention and treatment for behavioral and mental health issues in teenagers, with expanded funding expected in the future. [Learn more here.](#)

## TECH & INNOVATION

**County Uses AI for Fire Prevention:** In Santa Clara County, Artificial Intelligence is being used to identify early-stage fires and alert first responders accordingly. Ten AI sensors that are trained to recognize different kinds of smoke will be installed across 6,000 acres as part of an expansion of a previously introduced AI fire prevention program. The County plans to further expand its AI efforts in fire prevention in the future. [Learn more here.](#)

## IN OTHER NEWS

[Beyonce Reacts to Being Honorary Mayor of Santa Clara: 'Today Is Special'](#)

[San Jose council eases transparency rules](#)

## UPCOMING EVENTS



### [September 22nd:](#)

#### [Diversity & Inclusion Post-Affirmative Action Roundtable](#)

On June 29, the Supreme Court changed the face of college admissions, with ripple effects likely to span from the classroom to the boardroom. This ruling is significant, and has the potential to alter the course and very composition of our academic, public and private institutions. More recently, both public officials and private actors have interpreted the ruling as a chance to attack DEI



efforts in the employment space.

SVLG and our members remain committed to removing barriers to opportunity and racial equity. As such, we invite you to join us in-person at our San Jose offices to continue this vital conversation

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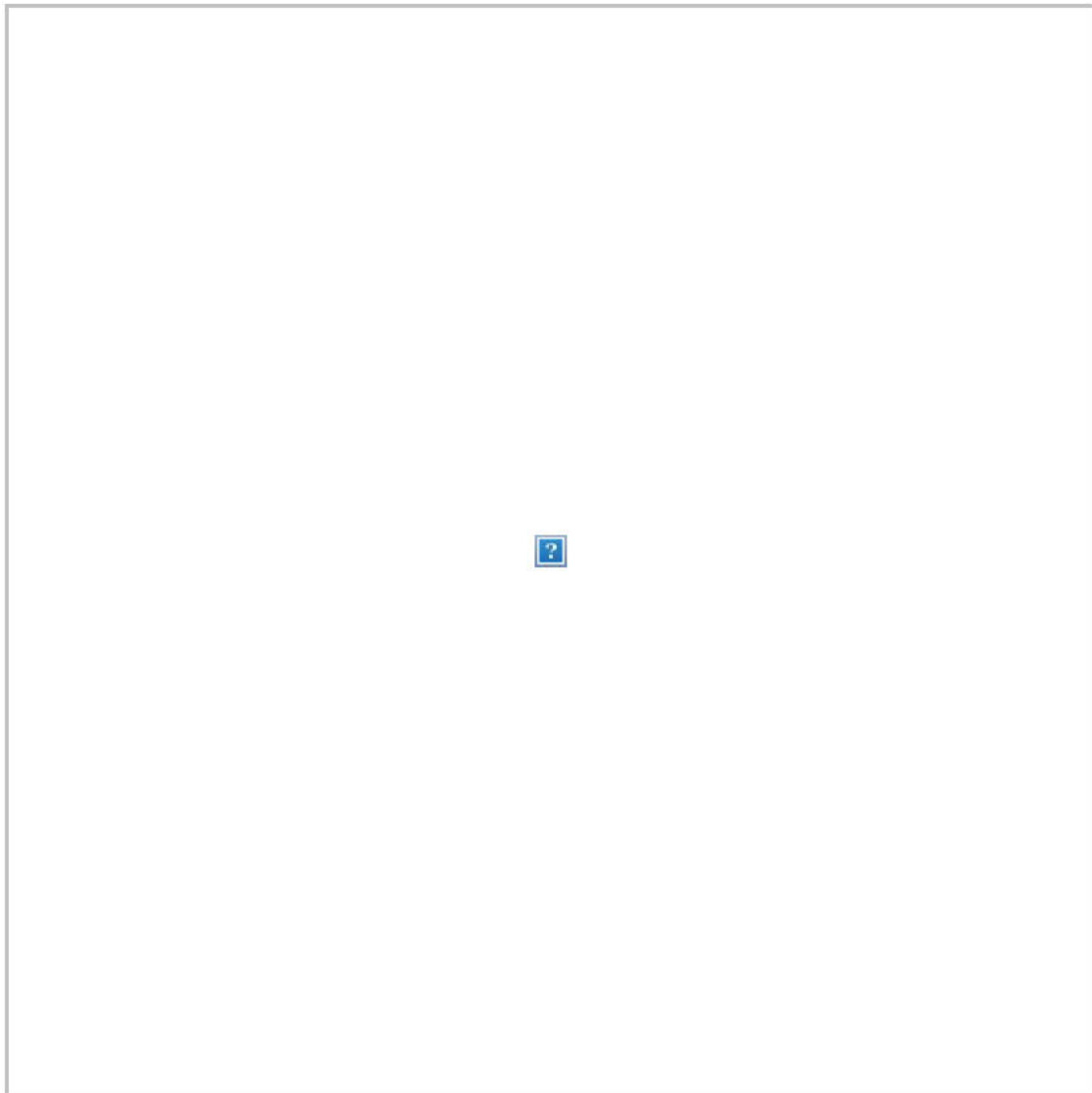
**September 26th:**  
**Women Leading the AI Transformation: Pioneering Change**

*This event is open only to SVLG women members, intended to create a safe space that is respectful to and inclusive of all those who identify as women.*

The AI revolution is upon us, and female innovators are at the forefront of

driving its evolution. The panel discussion brings together accomplished women from diverse backgrounds who are shaping the AI transformation across various industries. These trailblazers will share their experiences, perspectives, and insights on how their leadership is influencing the development, deployment, and ethical considerations of AI technologies.

We hope you can join us for this moderated discussion followed by exclusive networking, appetizers, and beverages.



**October 13th:**

**SVLG Retreat : Ideas, Innovation, and Priorities**

2023 has been a year filled with innovations and incredible transformation in

Silicon Valley. From the exponential growth of AI to advancements in healthcare and the continued progress of autonomous vehicle technologies, our region's innovation economy is powering the next era of growth, both in California and around the globe.

To explore these changes and what lies ahead, SVLG is proud to convene our inaugural event focused on technology & innovation, the Silicon Valley Retreat. The retreat will take place at Synopsys in Sunnyvale on Friday, October 13.

The morning will be focused on the ideas, innovations & priorities that have and will continue to propel our region forward. Through short, TED-style talks, we will feature those leading the way when it comes to the cutting-edge innovations that are driving advancements in technology and the wider business landscape.



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**From:** [Aram James](#)  
**To:** [Julie Lythcott-Haims](#); [Tannock, Julie](#); [Veenker, Vicki](#); [Tanaka, Greg](#); [Lauing, Ed](#); [Planning Commission](#); [Patricia.Guerrero@jud.ca.gov](#); [ParkRec Commission](#); [Shikada, Ed](#); [Jethroe Moore](#)  
**Subject:** Taser Forum: Tools or a Dangerous Weapon? ( September 5, 2023)  
**Date:** Thursday, September 7, 2023 3:24:25 PM

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[https://youtu.be/5Z-\\_BDoyhoc?si=mUYuUXs7RA-3cbR-](https://youtu.be/5Z-_BDoyhoc?si=mUYuUXs7RA-3cbR-)

Sent from my iPhone

**From:** [Hayden Kantor](#)  
**To:** [Planning Commission](#)  
**Subject:** Palo Alto's Housing Element  
**Date:** Thursday, September 7, 2023 4:05:56 PM

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Dear Members of the Planning Commission,

I am a Palo Alto resident. I am writing to express my enthusiastic support for changes to City rules that will make it easier to build housing of all types.

First, the Housing Element should allow new housing to be spread throughout the City. I would like to see much more housing and much more density along El Camino Real, near train stations.

Second, Palo Alto's zoning standards are outdated and really hinder what can be built, so that often nothing is built at all. I would like to see Palo Alto become a regional leader by removing, FAR, parking minimums, etc. I would like to see Palo Alto remove the height maximum. As someone who serves on the board in a four-storey building, I can tell you that it would be a lot more affordable if the costs were spread across more residents. If it were an 8-storey building, for instance, each unit would pay less for elevator maintenance. The biggest driver of Palo Alto's housing costs is Palo Alto's restrictive rules.

Third, the process takes too long. There are too many community meetings, which privilege homeowners who have the time to block it. Speed up approvals. The time adds to the costs of the projects. On this note: I am a parent of a young child and cannot attend community meetings. I hope my comments will be given equal weight to residents who appear before the Council in person.

Fourth, eliminate impact fees and other barriers to housing. These are not fair. The increased tax revenue gained from new projects will lift up our City.

Best,  
Hayden Kantor  
[REDACTED]

**From:** [Aram James](#)  
**To:** [Barberini, Christopher](#); [Lee, Craig](#); [Binder, Andrew](#); [Reifschneider, James](#); [Shikada, Ed](#); [Council, City](#); [citycouncil@mountainview.gov](#); [Jethroe Moore](#); [Sean Allen](#); [Robert, Jonsen](#); [Shana Segal](#); [Michael Gennaco](#); [Stephen.Connolly@oirgroup.com](#); [Wagner, April](#); [Josh Becker](#); [Foley, Michael](#); [Afanasiev, Alex](#); [Jeff Rosen](#); [Human Relations Commission](#); [Planning Commission](#); [Tannock, Julie](#)  
**Subject:** Taser Forum: Tools or a Dangerous Weapon? ( September 5, 2023) Critical to watch this webinar  
**Date:** Friday, September 8, 2023 1:55:12 PM

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Sent from my iPhone

**From:** [Aram James](#)  
**To:** [Patricia.Guerrero@jud.ca.gov](mailto:Patricia.Guerrero@jud.ca.gov); [Burt, Patrick](#); [Planning Commission](#); [Shikada, Ed](#); [Council, City](#); [Jethroe Moore](#); [Binder, Andrew](#); [Sean Allen](#); [Robert, Jonsen](#); [Shana Segal](#); [Angie Evans](#); [Josh Becker](#); [Mila Zelkha](#); [Michael Gennaco](#); [Wagner, April](#); [Reifschneider, James](#); [Foley, Michael](#); [Tannock, Julie](#); [Jeff Rosen](#); [Human Relations Commission](#)  
**Subject:** Los Angeles Times: How the L.A. Times helped write segregation into California's Constitution  
**Date:** Sunday, September 10, 2023 7:57:44 PM

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FYI: worth a second read. Sounds like Palo Alto 2023 on housing and reparations and oh, let's not forget racially discriminatory policing.

How the L.A. Times helped write segregation into California's Constitution  
<https://www.latimes.com/opinion/story/2020-10-21/prop-14-ronald-reagan-la-times-vote-segregation-californias-constitution>

Sent from my iPhone



**From:** [Scott O'Neil](#)  
**To:** [Planning Commission](#); [HeUpdate](#)  
**Subject:** Comments on proposed rezoning  
**Date:** Monday, September 11, 2023 4:09:10 PM

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Dear Planning and Transportation Commission, and city staff,

I am writing in regards to the rezoning changes being considered on September 13.

This work is happening in the context of the Housing Element, which is still uncertified and will go through at least one additional round of revision. If that revision is unsuccessful in gaining certification, we will miss a deadline on Jan 31 of next year. The consequence is it would become impossible for the city to be in compliance until "planned rezoning" is implemented. HCD approval of plans will no longer be enough in future drafts, and such a rejection could send this body "back to the drawing board" on rezoning. It is critical that the rezoning being contemplated is sufficient to earn HCD approval in draft 3. I see three separate issues in this proposal which I believe would each make certification very difficult.

The first is that the draft ordinance language proposed starting on page 59 of the packet restricts the reforms to inventory sites. This is a problem because the city has a duty to mitigate constraints to housing production that goes beyond meeting RHNA, and most development does not happen on inventory sites. In their 2021 paper, "[What Gets Built on Sites That Cities "Make Available" for Housing?](#)", Kapur Damerdji, Elmendorf and Paavo projected that Palo Alto was on track to redevelop just 5.3% of its inventory sites in the 5th cycle.

I therefore do not believe the Housing Element has any chance of certification unless you direct staff to take rezoning broadly across zones. Failing to do so will leave almost all of the city zoned for physical infeasibility -meaning the densities that were claimed in the zoning code are literally illegal to build- and it is impossible for me to believe HCD will accept this in the context of the city's track record of development on inventory sites in the 5th cycle.

The second key issue is economic feasibility. The staff report says "*Notably, Housing Element law does not require an analysis of financial feasibility with respect to the permitted densities identified in the Sites Inventory.*" This might be a narrowly true statement about the inventory. But, again: the city has a broad legal duty to mitigate constraints. Constraint analysis is its own chapter in the Housing Element. HCD employed the language of constraint mitigation when telling city it needs to demonstrate feasibility and address cost. From their August letter:



One might hope “feasibility” here means physical. It cannot. The second Housing Element draft included physical models, and this is a list of things the city needs to do “in addition to that.” It therefore must mean economic or financial feasibility -which are the same thing.

In most zones, the contemplated development standards still do not approach Palo Alto’s historical track record of generating project proposals or development. See again Table 2 from Palo Alto Forward’s December letter for. [1] To get very concrete about this: when HCD is considering if a FAR of 1.25 is consistent with mitigating economic constraints on El Camino Real in Palo Alto, they will continue to be aware that Palo Alto does not get proposals for principally-residential apartment projects much below about 2.0 and averages closer to 2.5-2.7.

To support a robust mix of unit sizes, we should be going slightly farther, to 2.75-3.0 FAR in places where we want to enable apartments, and also allow up to 60 feet in height to be consistent with our track record.

Which brings us to the third key issue: Affirmatively Furthering Fair Housing (AFFH). So far, HCD has taken a dim view of Palo Alto’s plan to cram almost all of its planned redevelopment in one corner of South Palo Alto. From a purely technical perspective, I think their AFFH concerns are the hardest to see a solution to:



To speak frankly, the city is deep in a hole on AFFH, and really doesn’t need to be digging any deeper. Yet the GM/ROLM areas in the South of the city are the **only** place where the rezoning being contemplated is even arguably consistent with Palo Alto’s history of project

proposals. [1] Rezone as proposed, and the city confirms HCD's Fair Housing misgivings instead of making progress on addressing them.

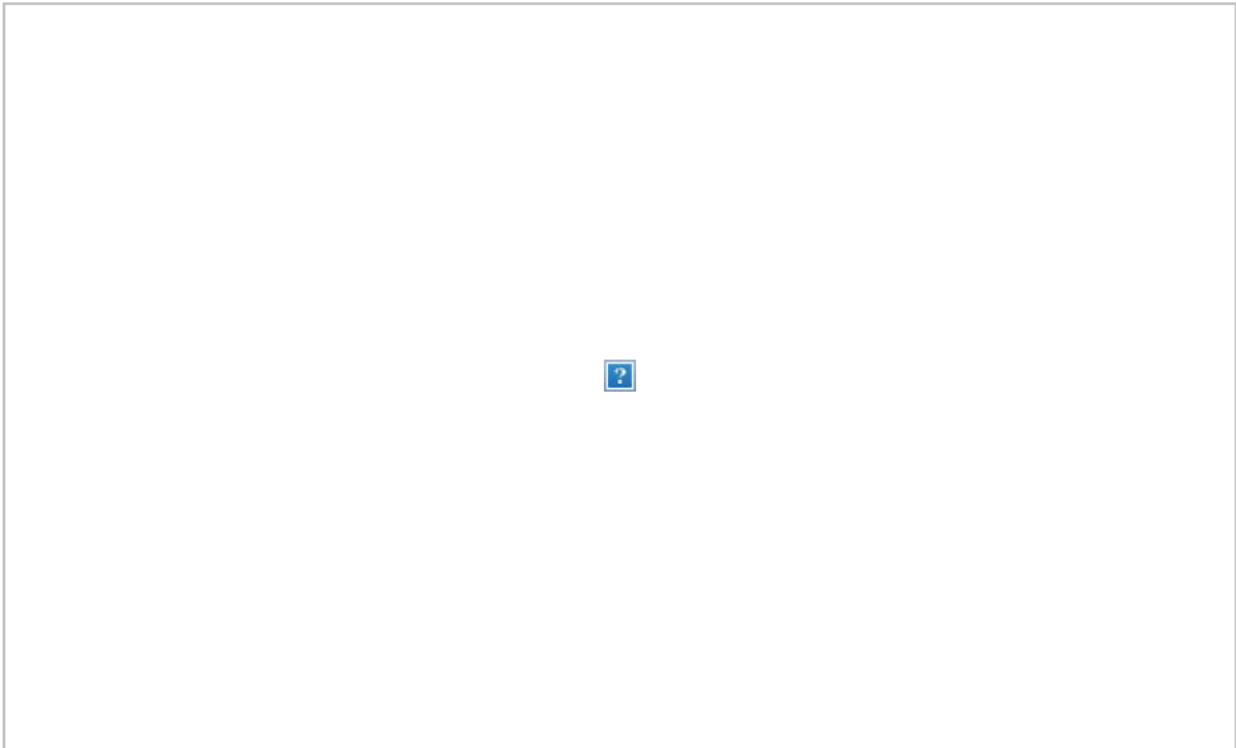
The good news is: this sets the commission up for a hat-trick: please direct staff to zone for economic feasibility broadly throughout the city. North *and* South. This will do more than addressing the three above problems all at once. It will save staff time by setting up to only have to do rezoning once in the coming years, and it will set us up to have an enforceable zoning code by January 31. That is not the track I believe we are on right now.

-Scott

P.S. I am a board member of Palo Alto Forward but am writing for myself today.

[1]

From Palo Alto Forward's December letter:



**From:** [Robert Neff](#)  
**To:** [Planning Commission](#)  
**Subject:** Support for more and denser zoning for housing in Palo Alto  
**Date:** Tuesday, September 12, 2023 11:45:05 PM

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Dear Planning and Transportation Commissioners,

I urge you to make choices which will maximize the number of new housing units during your study session on Sept. 13. Palo Alto has underbuilt housing for years, while over-building for jobs, leading to high cost of housing and long commutes. I want to see a sustainable future, with more opportunity for people to live in homes close to their work, where the typical Palo Alto High school graduate could consider finding a place to live here. Planning and encouraging space for more and denser (and taller) housing is the solution for housing, and for more people in our local shopping districts.

Thank you for your service to our city.

Robert Neff

Emerson near Loma Verde.

Palo Alto.

**From:** [Nancy Neff](#)  
**To:** [Planning Commission](#)  
**Subject:** Comment on proposed rezoning  
**Date:** Wednesday, September 13, 2023 11:54:42 AM

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To PTC and city staff:

I agree with the comments sent to PTC by Scott O'Neill.

I would like to see more housing built in Palo Alto. I would love it if my sons could afford to live here on their own.

Nancy Neff

[REDACTED]

**From:** [Suzanne Keehn](#)  
**To:** [Planning Commission](#)  
**Subject:** Hello and My concerns with the amount of housing  
**Date:** Wednesday, September 13, 2023 1:02:43 PM

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Palo Alto is slated to build without taking into account how, over 6000 dwellings, to be built over the next 8 years HCD has used dated/faulty numbers in coming up with this amount, plus there has been no public comment, which they, HCD are required to hold.

Much has transpired since 2019, covid (more working from home) sometimes half time at work and half from home, companies are moving out of the area, housing too expensive for many, teachers, office workers, people we depend on to serve and work for us, etc.

ONE size does not fit ALL, as we know. We do not need market rate housing, but we do need Below Market Rate dwellings, and for families, not studios and one bedroom apartments.

That BMR is tied to developers is Not working, please research a separate way, monies designated expressly for BMRs.

Palo Alto needs a diversity of residents, it makes us all richer.

Sincerely,  
Suzanne Keehn



**From:** [Russell Siegelman](#)  
**To:** [Planning Commission](#)  
**Subject:** housing in Palo Alto  
**Date:** Wednesday, September 13, 2023 2:00:23 PM

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Hi. I have been a Palo Alto resident since July 1996. I own a residence at [REDACTED], Palo Alto, CA 94301.

I want to register my desire to have more housing, including affordable housing, built in Palo Alto. I would like to see the planning commission and the city council approve more housing sites with more diverse buildings built, including multi-floor structures, reduce zoning impediments for development, speed up approvals for new construction, and reduce any environmental or other review barriers that you can to get projects approved. We need to follow the laws, but we need more housing. Palo Alto has been too restrictive and catering to NIMBYs for too long.

Best,  
Russell Siegelman  
[REDACTED]