From: Hamilton Hitchings
To: Planning Commission
Cc: French, Amy; Lait, Jonathan
Subject: V2 Public Comments PTC Noise Making Equipment Setbacks
Date: Wednesday, December 14, 2022 3:53:53 PM

Dear PTC,

After talking again with Amy French, I was able to streamline my proposed motion and comments further. Here is an updated proposed motion to consider for todays PTC action item "Zoning Code Changes to Facilitate Residential Electrification":

Please forward staff's recommended changes to city council with the following changes:

1. **Under section 18.10.040 add an explicit carve out for specific types of electrical equipment that should not be housed and insulated, which are: electric HVAC, ESS, ESVE and standalone electric heat pump compressors for hot water heaters (currently the SANCO2)**

2. **Section 18.54.020 section 4 ii) please clarify ESVE and other electrical equipment can be placed on either side of the car as long as their is clearance to open the car doors, regardless of the length of the garage and parking spot.**

------ Explanation Below ------

A little background. This fall I signed a contract to install an all electric heatpump HVAC minisplit system so I would no longer need to rely on burning gas to heat my home and also to provide some air conditioning on particularly hot summer days. Most people, including myself, want to install this equipment in their side yard or in or behind their garage so it's not visible and is quieter. Because I am on a corner lot I am subject to special zoning limitations that require a 20 foot setback for what I consider my side yard but Palo Alto municipal code considers my back yard. Thus the current code did not allow me to place my electrification equipment on the side of my garage or even behind it. Therefore I temporarily canceled my contract to install a minisplit HVAC heat pump until changes to the building code are instituted. I also had to put on hold, installing the one electric hot water heater I would actually consider installing, SANCO2, which allows me to place the whisper quiet compressor outside thus negating any of the negative impacts including making my

laundry room very cold.

Thus allow me to explain my recommended minor tweaks to staff's proposal:

Under section 18.10.040 add an explicit carve out for specific types of electrical equipment that should not be housed and insulated. These are: electric heat pump HVAC, ESS, ESVE and standalone electric heat pump compressors for hot water heaters (currently the SANCO2)
The way staff has written this would require special approval by the Planning Director for equipment which is not designed to be housed or insulated, yet require special Planning Director approval to not house or insulate them. If we want to remove barriers to electrification, let's not institute new artificial, unneeded ones that waste staff's time. For example, HVAC heat pumps, where maximum air circulation with the fan is required to properly exchange heat. It is fundamentally counter to its design to house and insulate it.

In section 18.54.020 section 4 ii) please clarify ESVE and other electrical equipment can be placed on either side of the car as long as there is clearance to open the doors, regardless of the length of the garage and parking spot.

My garage is a substandard garage that was built in the 1960s and could be considered to have a parking length of 19 feet, which is below the 19 and half feet allowed for substandard garages in the current staff text. Therefore by one reading it could be interpreted as preventing installation of any electrical equipment anywhere in my garage except in the rear four feet high. This is just a wordsmithing correction and was not staff's intent but regardless is much needed.

Thank you very much.

Hamilton Hitchings

From: Aram James
To: Afanasiev, Alex; Lee, Craig; citycouncil@mountainview.gov; Human Relations Commission; Planning Commission; Shana Segal; Doug Fort; Figueroa, Eric; Michael Gennaco; Foley, Michael; Tony Dixon; [redacted]; Josh Becker
Subject: FCop Tackles Black Man On His Property For Filming Him
Date: Wednesday, December 14, 2022 3:22:05 PM

Sent from my iPhone

Begin forwarded message:

From: Aram James [redacted]
Date: December 14, 2022 at 3:12:45 PM PST
To: Jethroe Moore [redacted], Pat Burt [redacted], Greer Stone [redacted], Ed Shikada [redacted]>, Andrew Binder <[redacted]>, City Council [redacted]>, Sean Allen [redacted]>, Jeff Rosen [redacted]>, Julie Lythcott-Haims [redacted]>, Winter Dellenbach [redacted]>, [redacted], Richard Konda [redacted]>, Rebecca Eisenberg [redacted], Jay Boyarsky [redacted]>, Josh Becker [redacted], James Reifschneider [redacted]>, Nicholas Enberg [redacted]>, chuck jagoda [redacted]>, ladoris cordell [redacted]>, Human Relations Commission [redacted]>, April Wagner [redacted], Cecilia Taylor [redacted]>, Zachary Perron [redacted], Tony Dixon [redacted] Joe Simitian [redacted]
Subject: Cop Tackles Black Man On His Property For Filming Him

https://youtu.be/FqRhrfQRwXw

Sent from my iPhone

From: Aram James
To: [redacted] Brian Welch; Anna Griffin; Planning Commission
Subject: Time to ban police attack dogs
Date: Wednesday, December 14, 2022 11:43:43 AM

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https://youtu.be/Txf-ncYm7cU

Sent from my iPhone

From:	Hamilton Hitchings
To:	Planning Commission
Cc:	French, Amy; Lait, Jonathan
Subject:	PTC Comments for "Zoning Code Changes to Facilitate Residential Electrification"
Date:	Tuesday, December 13, 2022 8:24:35 PM

Dear PTC,

Here is a proposed motion to consider for Wednesday's PTC action item "Zoning Code Changes to Facilitate Residential Electrification":

Please forward staff's recommended changes to city council with the following changes:

1. **Do not require electrification equipment to be "insulated and housed" as required in section 18.10.040 for outdoor equipment.**

2. **For electric car chargers, please reduce the distance for substandard garages by 6" from 19 ½ feet to 19 feet.**

3. **For the purpose of noise setbacks, please allow corner lots to consider the front of their house the side with their front door.**

4. **Allow exceptions for the noise ordinance up to 66 dBA maximum for electrification if the ambient noise level is lower than 60 dBA.**

------ My commentary below ------

This fall I signed a contract to install an all electric HVAC minisplit system so I would no longer need to rely on burning gas to heat my home. Most people, including myself, want to install this equipment in their side yard or in or behind their garage. The current codes do not allow me to do this and thus I temporarily canceled my contract until a more reasonable building code was instituted. I also had to put on hold the one electric hvac hot water heater I would consider installing, SANCO2, which allows me to place the whisper silent compressor outside.

I strongly support staff's proposed changes with the following additional changes:

1. **Do not require electrification equipment to be "insulated and housed" as required in section 18.10.040 for outdoor equipment.** Heat pump compressors

are designed to circulate air to achieve heating and cooling by transferring heat. Enclosing them fundamentally defeats the purpose for which they were designed. While most electric HVAC hot water heaters can be insulated and housed, these are almost always placed inside. HVAC systems are not insulated and housed, nor is the outdoor compressor for the SANCO2 hot water heater.

2. **For electric car chargers, please reduce the distance for substandard garages by 6" from 19 ½ feet to 19 feet.** As currently written in section 18.44.070 I might have to place my car charger on the back wall, which would create a trip hazard.

3. **For the purpose of setbacks for noise, please allow corner lots to consider the side of their house with the front door as the front.** There are a lot of mentions of different specific setbacks for front and side yard placement of equipment and screening requirements. However, according to Palo Alto code, which I think is the only or one of only in the Bay Area, to not allow your front door to be considered the front of your house for the purpose of setbacks. Instead, Palo Alto considers the short street side of your lot the front, regardless of whether your front door is located on that side. My house like many others has our door on the long side, this makes all setbacks essentially wrong for how our house was actually built (back in 1948). This was the root cause of blocking my installation of my electric minisplit HVAC system. It also will prevent a lot owners from placing electrification equipment on the street side.

4. **Allow exceptions for the noise ordinance up to 66 dBA maximum for electrification if the ambient noise level is lower than 60 dBA.** The current noise ordinance will prevent some electrification projects since some popular minisplit HVAC systems exceed 6 dbA above ambient noise.

I noticed staff said that electric batteries cannot be placed in sunlight because of concern of them catching on fire. First, they are referring to Lithium or NMC batteries like Telsa's current Powerwall but a new generation of home electric batteries are coming out which cannot catch fire because they are made of a different chemistry, often referred to as LFG batteries so a ban on electric batteries in sunlight would make no sense. Examples of LFG batteries already on the market include the Franklin Whole Home Battery and Enphase batteries. In addition, even for Tesla and Lithium/NMC batteries the incidence of catching on fire is almost non-existant for residential homes. If you insist on restricting Lithium batteries I would allow partial daylight exposure.

Thank you.

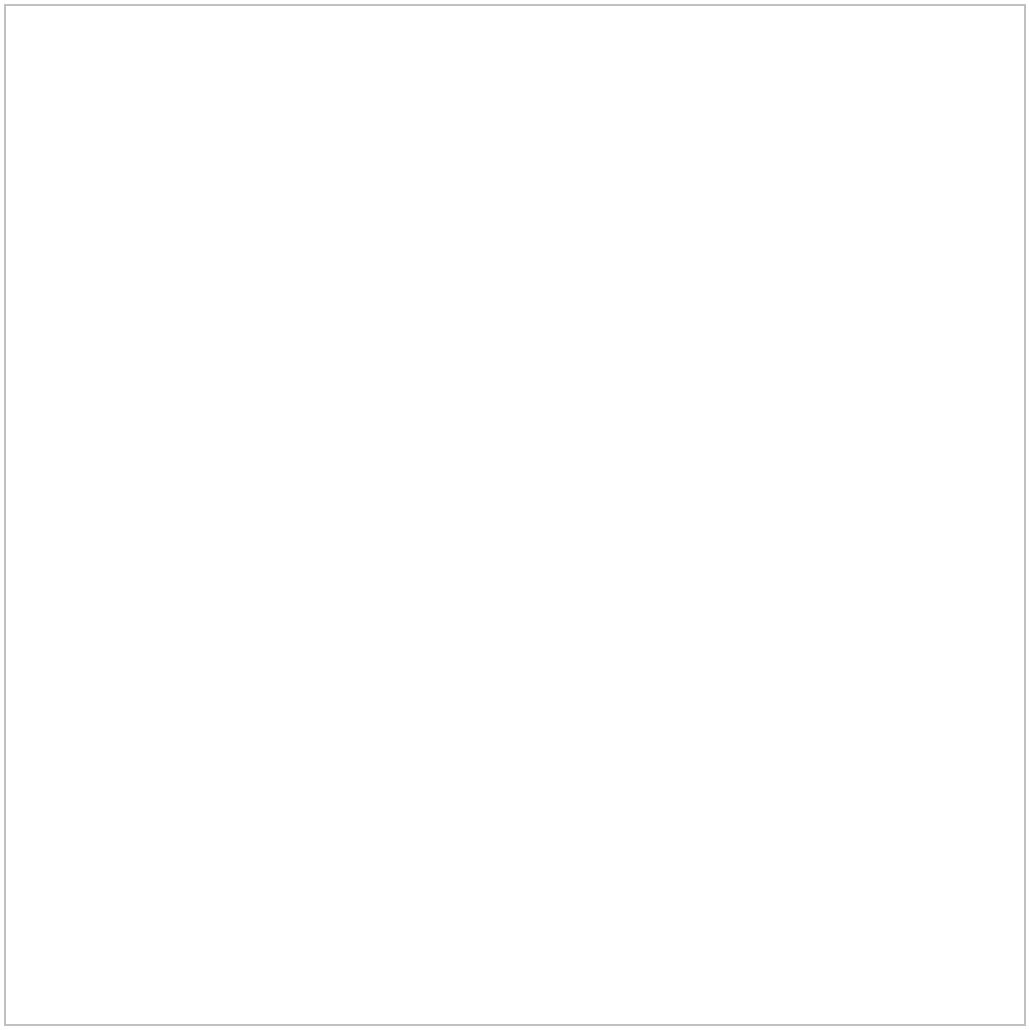
Hamilton Hitchings

From: Aram James
To: Pat Burt; Council, City; Binder, Andrew; Jethroe Moore; Jeff Rosen; Shikada, Ed; Sean Allen; Joe Simitian; Winter Dellenbach; Josh Becker; Jay Boyarsky; Human Relations Commission; Cindy Chavez; Otto Lee; chuck jagoda; Greer Stone; Shana Segal; citycouncil@mountainview.gov; GRP-City Council; Planning Commission; ParkRec Commission
Subject: Only 2K more to go! Stand up to the pro-Israel lobby and help us reach our goal
Date: Tuesday, December 13, 2022 2:03:20 PM

Sent from my iPhone

Begin forwarded message:

From: "Avi Lewis, IJV" [redacted]
Date: December 13, 2022 at 12:35:29 PM PST
To: Aram James [redacted]
Subject: Only 2K more to go! Stand up to the pro-Israel lobby and help us reach our goal



Dear Aram,

After years of following and supporting Independent Jewish Voices' work, I finally decided to join as a member in September of this year. And I couldn't be more fiercely proud to have done so.

When I joined, it was at the height of a nasty smear campaign led by the Centre for Israel and Jewish Affairs (CIJA) against the NDP and our leader, Jagmeet Singh. CIJA had the chutzpah to go after Jagmeet simply because the NDP had recently released a bold policy platform that condemned Israeli violations of Palestinian human rights.

The attacks, as usual, were cartoonishly vicious and entirely unfounded. IJV was the **only Canadian Jewish group** to stand up and say "not in our name", and to defend Jagmeet and the NDP from this broadside in bad-faith. Regardless of your political leanings, our democracy is diminished when people, parties, or organizations get misrepresented and smeared simply for defending human rights.

Aram, IJV is in the very last week of our

fundraising campaign. We only have $2000 left to go before we make it over the finish line and hit our goal of $75 000. Will you join me in making a donation today to get us there?

Donate today and help us over the finish line

Or better yet, why not **join as a member or supporter** as I did? Joining is the best way to show our strength in numbers and build the Palestine solidarity movement in Canada.

As a Jewish New Democrat, and former federal candidate, I'm proud of the NDP's new 13 point policy on Israel-Palestine. It's grounded in a moral clarity that is vanishingly rare in Canadian foreign policy, and it came about because grassroots activists like you and I fought for it.

Conservative Zionist groups like CIJA are out of touch and out of sync with the progressive Jewish community on Israel-Palestine. That's why more and more of us are joining IJV, and expressing outrage over Israel's many indefensible policies. With Israel having elected its most right wing and overtly racist government ever, we are seeing CIJA and its allies reach new heights of desperation, viciousness, and moral bankruptcy. We need IJV to embody the values of social justice and respect for fundamental human rights that are so starkly absent in those aggressively puffed-up self-proclaimed pillars of the Jewish community in Canada.

Challenge the pro-Israel lobby: donate today

So I was also proud to sign IJV's **Together Against Apartheid pledge** earlier this year, and I was thrilled to see my signature alongside dozens of Canadian elected officials from all levels of government! This is really the first time in Canadian history that so many of our leaders have been unafraid to use the term "Israeli apartheid", and it's much on account of IJV's work.

This crucial organization, and the inspiring and thankless work it does deserves your support today. Please consider **donating** whatever your means allow.

In passionate solidarity,

Avi Lewis,

IJV member, filmmaker and Associate Professor of Geography at UBC

communications@ijvcanada.org

Donate to IJV or become a member!

PO Box 6, 216 Broadway
Orangeville, ON L9W 1K3
Canada

From:	Aram James
To:	Binder, Andrew; Sean Allen; Jeff Rosen; Council, City; Julie Lythcott-Haims; Vicki Veenker; Shikada, Ed; Rebecca Eisenberg; Pat Burt; Shana Segal; Jethroe Moore; Greer Stone; Greer Stone; Planning Commission; ParkRec Commission; Human Relations Commission; Winter Dellenbach; Joe Simitian; Council, City; Josh Becker; ladoris cordell; Enberg, Nicholas; Wagner, April; Tannock, Julie; Reifschneider, James; Cecilia Taylor
Subject:	Police dog bites 20-year-old pregnant woman unrelated to chase for suspect
Date:	Tuesday, December 13, 2022 11:22:38 AM

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https://youtu.be/5h1BizuCKAY

Sent from my iPhone

From:	Aram James
To:	Sean Allen; Binder, Andrew; Jethroe Moore; Julie Lythcott-Haims; [redacted]; Council, City; Rebecca Eisenberg; Shikada, Ed; ParkRec Commission; Pat Burt; Shana Segal; Tanaka, Greg; Kou, Lydia; Planning Commission; Jeff Rosen; Jay Boyarsky; Josh Becker; chuck jagoda; Greer Stone; ladoris cordell; Enberg, Nicholas; Human Relations Commission; Wagner, April; Reifschneider, James; Cecilia Taylor; Tony Dixon; Perron, Zachary
Subject:	Palo Alto needs to shelve its Tasers now —
Date:	Tuesday, December 13, 2022 10:57:22 AM
Attachments:	Aram James (DJ-1-12-18) (00000003).pdf

12/13/2022

Hi Folks,
Although the title of this piece suggests the article was focused on Not allowing Tasers in our jails the concepts explored in the piece make a compelling case for shelving Tasers altogether. Tasers are very expensive to purchase and maintain and the weapon fails in the field approximately 50% of time they are deployed. Tasers deaths in this country are now well over 1000. 85% or more of those who die were unarmed at the time the Taser was deployed. A hugely disproportionate number of those who die after being tasered are black, brown or suffering from a severe mental illness. It is time we ask our city manager and police chief to explore the possibility of shelving Tasers permanently in Palo Alto.

Sincerely,

Aram James

Sent from my iPhone

LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com
FRIDAY, JANUARY 12, 2018
PERSPECTIVE

There's no excuse for Taser use in our jails

By Aram James
and Richard Konda

Watchdogs across the country are organizing to oppose police practices that run contrary to community values and our constitutional rights. In Santa Clara County in the spring of 2017, Sheriff Laurie Smith, a longtime opponent of Tasers, in a surprising shift of policy, announced her plan to introduce Tasers into the Santa Clara County jails. Local civil rights organizations immediately began organizing to resist the sheriff's call for Tasers.

One of our first strategies was to ensure that members of the community were as fully informed as possible regarding the risks that Tasers pose to human life. We reviewed materials on Tasers and got ourselves current on the nuances of the issue. Next, we scheduled meetings over a seven-month period with key elected and non-elected officials who we felt could influence the sheriff's decision. This included members of the Santa Clara County Board of Supervisors who ultimately will vote to decide whether the sheriff will be allowed to purchase Tasers. We also met with the elected Santa Clara County district attorney, the Santa Clara County public defender and the county counsel. And most importantly, we met with the sheriff and her staff to open up a dialogue on this critical issue.

Here are some of the arguments and information we provided much of which came from a recent fivepart series by Reuters ("Shock Tactics: Inside the Taser, the Weapon that Transformed Policing") and the Bar Association of San Francisco.

New York Times News Service

Taser-Related Deaths and Litigation

Critically important to convincing our sheriff of the inappropriateness of bringing Tasers to the jails is Reuter's recent finding that the death toll associated with Tasers is substantially more than previously reported by mainstream civil rights organizations like Amnesty International. Using rigorous journalistic standards, Reuters documented 1,005 deaths related to Taser use by law enforcement.

In addition, Reuters completed a thorough examination of the monies paid out by cities across the country in Taser related litigation. Reuters identified and reviewed 442 wrongful death lawsuits in which Tasers were a factor that may have caused death. "In 120 of the 442 cases or 27%, the Taser was the only force alleged in the claim; in the remaining 322 cases, the stun guns were alleged to have been part of a broader array of police force. More than three-fifths of the 366 of the concluded lawsuits against governments, or 232, resulted in judgments or settlements for the plaintiffs: 220 settlements and 12 judgments. *Reuters was able to determine payouts in 193 cases, totaling $172 million paid by cities and their insurers*. That dollar figure does not include three dozen cases in which settlements remained confidential or were unavailable." (Emphasis added.)

These findings regarding the cost of litigation should trouble any law enforcement agency, city or county contemplating the purchase of Tasers.

Taser Warnings

Historically the manufacturer had very few warnings regarding the safety of its weapon. Increasingly and in order to shift liability to cities and police departments, Taser now has a 4,500-word, seven-page warning. The warning advises users not to deploy the Taser in the area of the face, eyes, neck, chest, heart and the genitals. And not to Taser a variety of populations including the frail, mentally ill, pregnant women and those with heart problems. *By warning police departments regarding the risk of death and serious injury when a Taser is improperly used, the manufacturer has effectively shifted liability from itself to police departments and municipalities.*

Reuters also explored in detail the progression of Taser warnings that includes a comprehensive interactive guide.

The progression of increasingly restrictive warnings issued by Taser has led some police agencies to either shelve Tasers all together or not to purchase them at all after having reviewed the extensive warnings. Ed Davis, former Boston police chief from 2006-2013, in ultimately declining to purchase Tasers for his department said the following: The warnings "made the weapon impractical to use, and it gave a lot of us the impression that we weren't getting the full story. I didn't want to take the risk. The potential litigation costs absolutely were a factor."

The tragic death of Everette Howard, a young African-American student, is a case examined in the Reuter's series. One Taser blast by University of Cincinnati police officer Richard Haas, a certified Taser instructor, resulted in Everette Howard's death. "Haas fired his stun gun. One electrified dart hit below Howard's lower left chest, the other near his waist. The 18 year-old collapsed, unconscious, and was pronounced dead at the hospital." Haas subsequently said, "I did not in my wildest dreams expect this kid to die."

As part of his role as a certified Taser trainer, Haas acknowledged that he had studied the Taser safety warnings over a 10-year period and noted that they had become more complex over the years. Ironically, the Taser blast that killed Everette Howard was the first time Haas had deployed a Taser in the field. He ultimately concluded, "it seemed like it was getting harder and harder to use the Taser." The University of Cincinnati ultimately settled the Howard's family wrongful death lawsuit for $2 million. Taser was not sued in the matter.

In another case explored by Reuters, Linwood Lambert was

tasered some 20 times by South Boston, Virginia, police officers. He died. There was substantial evidence that the three officers involved ignored the manufacturer's warning regarding the risk of repeatedly tasering victims. In addition, the officers ignored other warnings issued by the manufacturer. Under oath at a deposition, one of three officers involved, Corporal Tiffany Bratton, acknowledged that she was aware of the manufacturer's warnings. In a chilling statement, she said, "If I read and abided by every single warning ... I would not Taser anyone."

Catch-22

More and more attention is being paid by commentators to the fact that the use of Tasers is a Catch-22. Failure by police departments to follow closely the ever growing restrictions on the use of Tasers issued by the manufacturer has resulted in unnecessary deaths and a huge increase in the costs of litigation borne by municipalities. On the other hand, where police departments are closely complying with the manufacturer's complex warnings, they are finding it increasingly impractical to use Tasers. The Oakland Police Department has over 700 police officers on their force, all are armed with Tasers. The Bar Association of San Francisco Criminal Justice Task Force, Committee on Tasers contacted the Oakland Police Department to determine how frequently Tasers were deployed.

"To help answer some of the questions, the BASF also reached out to the Oakland Police Department (OPD) to determine how often Tasers are used, and how often they are effective. It is well known that LAPD reports 47% efficacy, but LAPD far exceeds the size of SFPD. The OPD which is closer in size to the SFPD, reported that in 2015 Tasers were deployed on just 37 occasions and 32 times in 2016. Oakland reported for each year, the efficacy was 50%." Other studies have confirmed that where warnings are complied with the use of Tasers drops dramatically. Similarly, numerous studies have confirmed that Tasers have an unacceptably high failure rate putting both the officers and intended victim at risk.

Moreover, Tasers are not effective. Michael Leonesio, a retired Oakland peace officer, provided answers to questions posed by the Bar Association of San Francisco. "Given the warnings issued by Taser International, does this diminish the weapon's efficacy and/or circumstances otherwise warranting Taser use[?] … Answer: The latest manufacturer warnings and trainings, as well as the Courts and current case law decisions, have absolutely limited the circumstances when a TASER, can and/or, should be used. Combine this with the fact that the new generation weapons are generating only half the electrical output of the previous generations, and I question the current weapons' ability for consistent, reliable, subject incapacitation."

Worth the Cost?

In June 2017, Taser expert Michael Leonesio, was called as an expert witness before the San Francisco Police Commission on the potential costs of outfitting all members of the SFPD with Tasers. "During his testimony, he estimated the first year in costs to San Francisco at $8,000 to $10,000 per officer which included the purchase price, maintenance, training and oversight. Assuming a department size of 2,200 officers, the cost is between $17.6 million and $22 million." Clearly, the sheriff and the Santa Clara County Board of Supervisors need to consider the cost factors raised above before expending millions of tax payer dollars on a weapon that is increasingly seen as impractical to use.

Final Argument

Tasers kill on the average of one person per week in the United States. According to the Reuters series, nine out of 10 who die are unarmed. Tasers are unsafe to use in jails because of the substantial risk of injury or death to both inmates and correction officers. The strongest single piece of evidence of this lack of safety is the 1,005 Taser related deaths reported in the Reuters fivepart series on Tasers. Equally powerful evidence of why Tasers should be banned is the ever growing list of restrictions/warnings issued by the manufacturer themselves regarding the serious risks of injury and death related to the use of Tasers.

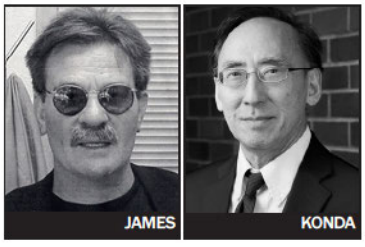
The millions that would be spent in arming the correctional officers in the jails with Tasers would be better spent on hiring more and better trained correctional officers. Finally, given the recommendations of the Santa Clara County Blue Ribbon Commission on Improving Custody Operations, the purchase and use of Tasers in the jails runs counter to the community's loud and repeated calls for a more humane approach to incarceration.

Call to Action

When your community is faced with a questionable police practice be it the use of Tasers, inhumane jail conditions, unconstitutional surveillance tactics, racially discriminatory police enforcement; be confident that there is a way to organize your community to effectively challenge these issues. Meet early and often with the community and with your local elected officials. Provide them with the necessary information to fully educate them on the issues. Call on your local district attorney, who is the chief, law enforcement officer in every community, to support your efforts to challenge and end police practices that diminish public trust for local law enforcement. Remember police practices are not some obscure body of knowledge that we the community need sit back and passively accept. We can in fact make a difference.

Aram James *is a retired Santa Clara County deputy public defender, a member of CJA and a co-founder of the Albert Cobarrubias Justice Project (ACJP), a grassroots legal advocacy organization located in San Jose.*

Richard Konda *is an attorney and executive director of the Asian Law Alliance and the Chairperson of the Coalition for Justice and Accountability (CJA). Konda and James have challenged the use of Tasers by law enforcement for more than a decade.*


JAMES KONDA

From:	Aram James
To:	Binder, Andrew; Tannock, Julie; Jethroe Moore; Sean Allen; Julie Lythcott-Haims; Council, City; Shikada, Ed; [redacted]; Jeff Rosen; Joe Simitian; Cindy Chavez; Josh Becker; Javier Ortega; Reifschneider, James; Jay Boyarsky; Council, City; Shikada, Ed; chuck jagoda; Greer Stone; ladoris cordell; Shana Segal; Enberg, Nicholas; Human Relations Commission; Wagner, April; Cecilia Taylor; Tony Dixon; Perron, Zachary; Planning Commission
Subject:	Off-duty K9 officers bites teen I KMSP FOX 9
Date:	Tuesday, December 13, 2022 9:36:11 AM

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https://youtu.be/5mNab0S5y1k

Sent from my iPhone

From:	Aram James
To:	Josh Becker; Vicki Veenker; Jethroe Moore; Binder, Andrew; Jeff Rosen; Sean Allen; Shikada, Ed; JIM MINKLER1; Afanasiev, Alex; ParkRec Commission; Planning Commission; Bil Barber; Sean Webby; Rob Baker; Van Der Zwaag, Minka; Don Austin; Danny Garza; Anna Griffin
Subject:	Police dogs used as judge, jury and executioner—and must be banned now
Date:	Monday, December 12, 2022 11:51:11 PM

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https://youtu.be/Txf-ncYm7cU

Sent from my iPhone

From: Jeanne Fleming
To: French, Amy
Cc: Clerk, City; DuBois, Tom; Kou, Lydia; Planning Commission; Architectural Review Board; Lait, Jonathan; [redacted]; [redacted]; [redacted]
Subject: FW: Cell Tower Applications
Date: Monday, December 12, 2022 3:11:32 PM

Dear Ms. French,

I haven't heard from you, so—with the thought that you might have missed my email—I am resending it below.

Thanks and best,

Jeanne Fleming

Jeanne Fleming, PhD
[redacted]

From: Jeanne Fleming [redacted]
Sent: Monday, November 28, 2022 5:53 PM
To: 'French, Amy' [redacted]
Cc: 'Clerk, City' [redacted]; [redacted]; Planning.Commission@CityofPaloAlto.org; 'Architectural Review Board' [redacted]>; 'Jonathan'' [redacted]>; [redacted]
Subject: Cell Tower Applications

Dear Ms. French,

I would appreciate it if you would answer this question:

> How many cell tower applications—including applications to modify existing cell towers—have been submitted or resubmitted to the City of Palo Alto since June 1, 2021?

As you know, I receive both Building Eye's automatic messaging with respect to building and planning information in Palo Alto, as well as the City's "Hot Topics" cell tower website automatic messaging. Neither has notified me of any new or resubmitted cell tower applications during this period. So I believe the answer to my question is "zero," but I want to be sure.

Thank you for your help.

Sincerely,

Jeanne Fleming

Jeanne Fleming, PhD
[redacted]

From:	Aram James
To:	Greg Tanaka; Bains, Paul; Pat Burt; Jeff Rosen; Binder, Andrew; Council, City; Julie Lythcott-Haims; Shikada, Ed; Sean Allen; Jethroe Moore; Joe Simitian; Rebecca Eisenberg; Winter Dellenbach; Jay Boyarsky; Human Relations Commission; Planning Commission; ParkRec Commission; Tannock, Julie; Reifschneider, James; Council, City; Sean Allen; Josh Becker; chuck jagoda; ladoris cordell; Enberg, Nicholas; Wagner, April; Cecilia Taylor; Tony Dixon; Perron, Zachary
Subject:	From The Mercury News e-edition - Police accused in degree scam (more on cops acting badly)
Date:	Sunday, December 11, 2022 5:33:47 PM

I saw this The Mercury News e-edition article on the The Mercury News e-edition app and thought you'd be interested.

Police accused in degree scam
https://edition.pagesuite.com/popovers/dynamic_article_popover.aspx?guid=91b8e84a-efcf-494f-b901-ba626f81e0c6&appcode=SAN252&eguid=292fd9e2-7303-4dcd-8768-4ce619b289da&pnum=2#

For more great content like this subscribe to the The Mercury News e-edition app here:

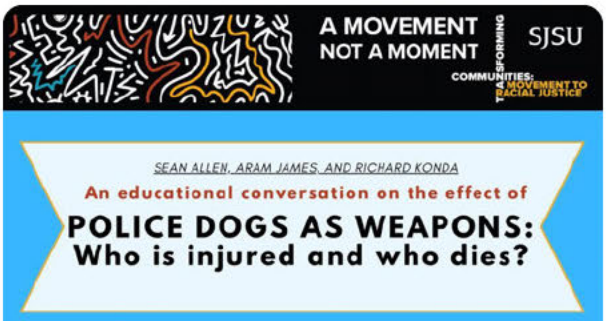
Sent from my iPhone

From: Aram James
To: Binder, Andrew; Afanasiev, Alex; Cindy Chavez; Jethroe Moore; chuck jagoda; Pat Burt; Lee, Craig; cromero@cityofepa.org; rabrica@cityofepa.org; EPA Today; Shikada, Ed; Stump, Molly; Planning Commission; Vara Ramakrishnan; citycouncil@mountainview.gov; Tony Dixon; Salem Ajluni; Jack Ajluni; [redacted]; Michael Gennaco
Subject: SJSU Transforming Communities Conference: Police Dogs as weapons-who is injured and who dies?
Date: Saturday, December 10, 2022 4:06:44 PM

12/10/22

Hi Chief Andrew Binder,
Here is a 17 min version, edited down from our over one hour original webinar, on weaponized canines. SGT. Sean Allen is the star of the webinar. Let me know what you think.

Best, aram



Police Dogs as Weapons Webinar - 2022 SJSU Transforming Communities Conference
youtu.be

Sent from my iPhone

From: Aram James
To: ladoris cordell
Subject: The Secretive World Of Police Canines
Date: Saturday, December 10, 2022 1:52:28 AM
Attachments: The Secretive World Of Police Canines 12-9-22.docx

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_____
>>>>>>>> Sent from my iPhone

Coalition for Justice and Accountability
""Building a community where everyone feels safe."
c/o ALA
991 West Hedding Street, Suite 202
San Jose, CA 95126

December 8, 2022

The Secretive World of Police Canines

Since the release of the Pulitzer Prize award-winning 13-part series: ***Mauled: when police dogs are weapons*** [1], the first nationwide expose on police canines, we've now begun to realize how little our community members and political leaders know about the extreme danger weaponized police dogs pose to our community.

Locally both the Santa Clara County Sheriff's Department and the San Jose Police department's canine units' attack community members at a rate among the highest in Northern California. In a five-year period, the San Jose Police Department reported 167 canine bites disproportionately attacking African Americans and Hispanics. During the same time frame, the Santa Clara County Sheriff's department reported 80 canine bites but did not report the race of the dog bite victims.[2]

Nationally, police canine attacks necessitate emergency room admissions for approximately 3600 individuals annually. In fact, the most likely police use of force resulting in a hospital admission each year result from police canine bites.[3]

Santa Clara County Sheriff Sergeant Sean Allen Weighs In

A member of our coalition, Sergeant Sean Allen, who has been employed by the Santa Clara County Sherriff's department for 33 years, 24 of which were spent in the San Jose Main Jail, can describe in detail, as an expert witness, the number of police canine attack victims he has seen in his years working in the San Jose main jail. All police agencies in Santa Clara County book those bitten by a police canine, after the individual is arrested and released from the hospital, to the San Jose Main Jail. Once booked the canine attack victims are placed in the main jail's infirmary unit.

Sergeant Allen has observed approximately 200 police canine bites reaching from the feet to the head of the victims. The bites he has observed have been to the legs, groin area, arms and backs of the victims, face, and scalp area. Sergeant Allen describes some of the bites penetrating the flesh all the way to the bone of the victims. Sergeant Allen and other experts on the subject describe some of the bites as looking like shark bites.

In addition to describing the nature of the canine bites, Sergeant Allen can address the law enforcement culture surrounding these canine bites.

Transparency issues abound

One of the biggest problems in drawing the public's attention to the horrendous injuries inflicted by police canines is law enforcement's unwillingness to release the body-worn camera footage of these attacks, the still photos of the injuries, and the medical records. Similarly, the monies spent, the annual budget, of maintaining canine units, the dog handlers, the dogs themselves, their food, training, and veterinarian costs remain mostly secret or very difficult to obtain.

[1] https://www.themarshallproject.org/2020/10/15/mauled-when-police-dogs-are-weapons
[2] https://www.ktvu.com/news/by-the-numbers-how-often-bay-area-police-agencies-deploy-k-9s-to-bite
[3] https://www.themarshallproject.org/2020/10/15/mauled-when-police-dogs-are-weapons

Liability and Cost

The city of Hayward settled a lawsuit for $1.5 million stemming from an incident in 2011, when a Police dog attacked the wrong person. That man died two months later from complications resulting from the incident. Court records indicate that the dog had made previous mistakes.[4] Joel Alejo of Mountain View was wrongly attacked by a Police Dog in June 2020 while sleeping in his backyard. His lawsuit settled for $135,000.[5] In 2015 Richard May was bitten by a San Mateo County Sheriff's K-9. May recovered $1.1 million from San Mateo County.[6] These are only a few examples of the high costs to taxpayers of police dog attacks.

Conclusion

It is past time that canine units maintained to apprehend and bite, maul, and maim and even kill human beings should be banned. The state of California must enact legislation that would end the use of attack canines by law enforcement.

Sincerely,
Coalition for Justice and Accountability
NAACP – San Jose/Silicon Valley Chapter
Asian Law Alliance
La Raza Roundtable
Silicon Valley De-Bug
Billy DeFrank LGBTQ+ Community Center
San Jose Nikkei Resisters
San Jose Peace and Justice Center
National Lawyers' Guild – SF Bay Area Chapter

Resources on Police Dogs as Weapons

Mauled: when police dogs are weapons
https://www.themarshallproject.org/2020/10/15/mauled-when-police-dogs-are-weapons

The Inherently Dangerous Nature Of Attack-Trained Police K-9, by Richard Polsky, PhD D(2017)
https://www.plaintiffmagazine.com/images/issues/2018/07-july/reprints/Polsky_The-inherently-dangerous-nature-of-attack-trained-police-K-9s_Plaintiff-magazine.pdf

Black Perspective - Police Dogs and Anti-Black Violence by Professor Tyler Perry (2017)
https://www.academia.edu/34103711/_Police_Dogs_and_Anti_Black_Violence_Black_Perspectives_July_31_2017_

Sniffing the Past – Dogs and History by Dr. Josh Doble (2021)
https://sniffingthepast.wordpress.com/

Slave Hounds and Abolition in America by Tyler D. Parry, and Charlton W. Yingling (2020)
https://academic.oup.com/past/article/246/1/69/5722095

KTVU Unleashed Force Power and Police Dogs (2022)
https://www.ktvu.com/shows/unleashed-force-power-and-police-dogs

[4] https://www.plaintiffmagazine.com/images/issues/2018/07-july/reprints/Polsky_The-inherently-dangerous-nature-of-attack-trained-police-K-9s_Plaintiff-magazine.pdf
[5] https://www.ktvu.com/shows/unleashed-force-power-and-police-dogs
[6] https://www.ktvu.com/shows/unleashed-force-power-and-police-dogs

From: BIKARAN, MARYAM (She/Her/Hers) on behalf of Van Dyck, Thomas (RBC Wealth Mgmt)
To: Van Dyck, Thomas (RBC Wealth Mgmt)
Cc: Bacani, Gwenne; Chen, Catherine R (RBC Wealth Mgmt); Eshoo, Alexander D; Maldonado, Hector; Schiro, Michelle; Theriault, Jon; Udom, Farralon; BIKARAN, MARYAM (She/Her/Hers); Yee, Karen C
Subject: Week in Review 12-09-2022
Date: Friday, December 9, 2022 3:10:22 PM

Week in Review 12-09-2022

SRI Wealth Management Group

In Focus: Bright spots; Follow the science and the money.

With earnings reporting season mostly slowed, markets this week were anticipating the Producer Price Index data, a measure of wholesale inflation, which was released this morning and the CPI data to be released next week. On Friday, stocks fell with wholesale prices for November rising more than expected. The PPI increased 0.3% in November from October and 7.4% year over year. This compares to economist expectations of a 0.2% increase from last month. All eyes now turn to the Federal Reserve meeting this coming Tuesday and Wednesday where they Federal Reserve is expected to raise interest rate 0.5%. Markets ended the week down with the DJIA down 2.77%, the S&P 500 down 3.37% and the NASDAQ down 3.99% (CNBC).

Despite mostly tense relations between the two countries at the moment, the United States and Russia were able to negotiate prisoner swap this week. WNBA player Britney Griner arrived back on U.S. soil after ten months in a Russian penal colony where she was serving a nine year sentence on a cannabis charge. (NPR).

Incumbent Senator Raphael Warnock defeated Hershel Walker in the highly anticipated Georgia run-off election this week, giving democrats a 51 seat majority in the Senate (Politico). Three days later Arizona Senator Kyrsten Sinema announced she would change her party affiliation to “independent” from “democrat.” Senator Sinema indicated she will not caucus with Republicans and in many ways this change reflects her voting patterns during her political career. (Politico)

This week a bipartisan group in the House of Representatives passed the Respect for Marriage Act. The bill will go to President Biden who is expected to sign it, finally codifying into the law the rights for same sex couples to marry. The bill gained traction earlier this year when the Supreme Court indicated it was open to overturning previous rulings that provided protection for same-sex marriage (CNBC). Another initiative with bipartisan support that we hope to see signed into law this year is reforming the Electoral Count Act to clarify that the Vice President of the United States has no power to change the electoral counts in an election for President of the United States. This would take a step toward further ensuring the peaceful transition of power that is so critical to our democracy (Brennan Center). Here are a number of the other items Congress is focused on before a split Congress takes hold in January with a Republican majority house and a Democrat majority Senate (NYT).

The willingness to ignore science and preserve interests of oneself is sometimes truly stunning. A recent report studied the investments of several leading oil and gas companies from the beginning of 2021 through the first quarter of 2022. According to the report, “62% of investments approved in 2021/Q1 2022 (or $103bn) were inconsistent with a Paris-aligned pathway (the IEA’s 1.7°C Announced Pledges Scenario), including $58bn that was outside even a 2.5°C outcome” (Carbon Tracker). At the same time as it invests in such projects, the oil and gas industry alongside republican donors are providing financial support to a foundation in Texas which in turn is pushing policy initiatives and a mis-information campaign in an effort to slow the United States’ transition to clean energy. “”Just as the tobacco industry had front groups and the opioid industry had front groups, this is part of the fossil fuel disinformation playbook,” said David Michaels, an epidemiologist at the George Washington School of Public Health who has studied corporate influence campaigns. “The role of these so called policy organizations is not to provide useful information to the public, but to promote the interests of their sponsors, which are often antithetical to public health”” (NYT).

According to a recent report here are some reasons to enjoy nature throughout your workday: improved mood, increased concentration,

better performance, lower stress/less burnout, increased community and social cohesion, and more creativity. That all sounds pretty good! (Naturesacred.org).

Please reach out to us with any market questions or commentary. Have a good weekend!

Upcoming Event

Arabella Advisors Reckoning with the climate Emergency: Movements, Moonshots, and Philanthropy's Role in Securing a Just and Stable Future

Webinar | December 12th 2:30–3:45 pm ET

- This event will look into how philanthropy can best help tackle the climate crisis challenge going forward

Weekly Reads

RBC Global Insight Weekly December 8, 2022
RBC Global Insight 2023 Outlook
Washington Post Cutting-edge technology made The Netherlands a major food exporter
Politico The former presidential candidate running a green bank
WSJ Green Hydrogen Gets Boost in U.S. With $4 Billion Plant
Bloomberg Pension fund gets $36 billion bailout

Written by Thomas Van Dyck, Catherine Chen, and Michelle Schiro

From:	Aram James
To:	Binder, Andrew; Sean Allen; Stump, Molly; Jeff Moore; Shikada, Ed; Council, City; Planning Commission; Kevin Jensen; DuJuan Green; dennis burns; Winter Dellenbach; Jeff Rosen; Michael Gennaco; Foley, Michael; Tannock, Julie; Rebecca Eisenberg; Figueroa, Eric; Supervisor Susan Ellenberg
Subject:	Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement Brennan Center for Justice
Date:	Thursday, December 1, 2022 12:05:12 AM

> Nov 30, 2022
>
> Chief Andrew Binder open your eyes-this report is designed for you, think Zack Perron, officers suing over a BLM Mural and your own reasoning that you are apparently not offended by prolonged detentions targeting African American and other POC. Nor are you bothered by pretext searches, or consent searches or recent RIPA data, and the absents of African American in your command staff. Time to talk don't you-think?
>
> Aram
>
> https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law
>
>
> Sent from my iPhone

From: rob levitsky
To: Council, City; Planning Commission
Subject: Tree Ordinance Escapes
Date: Thursday, December 1, 2022 1:28:31 PM
Attachments: oak at 1125 byron being cut down, Nov23 2022. resized for email.PNG
575 Sierra ave Mountain View 7 Redwoods in backyard saved from being cut down by citizen action at Parks and Rec Commission, June 13 2018. resized for email.PNG
332 forest august 18 2021, cut down without cause or permit weekend of aug 14 2021. resized for email.PNG
downtown post office oak on Gilman, october 2020. healthy tree. resized for email.PNG
downtown post office oak Feb 9 2022, 1140am, stopping the chainsaws. resized for email.PNG

City Council members:

Last Wednesday, while most of you were preparing for the Thanksgiving holiday, a crew carrying chainsaws was ripping apart a large live oak at 1125 Byron street (see photos below). Why was this happening? Developer wants tree removed, so he can build a bigger house than currently fits on the lot, so he can make more money.

No matter that the tree is set way in the backyard, about 6 feet from the side fence, and maybe 15 feet from the rear fence. And it would be possible to build around the tree.
Former city arborist Dave Dockter's suggestion was always to "Build around Nature"

I believe that the tree ordinance was updated and effective in July 2022.

A similar situation was had in Mountain View 4 years ago, at 575 Sierra Ave.
A developer wanted to take down the house in the front of the lot, and remove 7 large redwoods in the backyard, to build a bigger house, and to make more money.

Fortunately, some Mountain View neighbors objected, and a public hearing was held
with the Parks and Rec Commission on June 21 2018, with many members of the public speaking in support of leaving the 7 redwoods alone. The result was that the 7 Redwoods were saved from the chainsaws, when the appeal by the developer was denied.

I believe we need a similar process in Palo Alto, as the planning department and urban forestry make mistakes, and generally look away once the tree is dead and gone.

A recent case was a large 30 inch diameter oak at 332 Forest Ave that was growing just fine, until the weekend of August 14 2021, when the tree was cut down - no inspection, no permits. Seems that the owners wanted to put pavers in the driveway,
and wanted this oak out of the way. I alerted many people, but no one at the city seemed to get past the fact that an LLC owns 332 Forest, and didnt know who to go after. (see photos)

There is another large oak on the Gilman side of the downtown post office.
I happened to be biking downtown when i heard chainsaws. I followed the sound to this Post office oak, where it was being cut by several men. I ran under the tree,
waving my arms, and getting the men to stop cutting. I called Peter Gollinger, who came over, and looked up the paperwork calling for the tree to be cut down.
Peter noticed that his Urban Forestry department had been bypassed, and a planning official had incorrectly authorized the removal.
Fortunately, enough of the tree was intact to keep it standing, though these
king of mistakes are inexcusable.
(see photos)

Sometimes its a bogus arborist report that gets a tree killed. Thats what happened with a 120 foot redwood at 1235 Emerson street. Arborist drills a few holes near the base of the tree (in scar tissue) and decides the tree is going to fall down. Without further study, Urban Forestry issues a permit. After the tree is cut down, its clear that the tree base was solid, in no danger of falling down due to structural failure. Use of Ground Penetrating Radar could have saved this tree, and this procedure should be used more often.

(see photos)

another case is an oak street tree in front of 1215 Emerson. there were 5 branches on this tree, until a city hired contractor trimmed 2 of the 5 branches, or 40% of the tree. Tree ordinance calls for no more than 15% to be cut in any year.

(see photo)

There are also incorrect interpretations of statutes, made by the planning department, making it difficult to save trees - a recent assertion on the Castilleja proposal was that if you mitigated the loss of a protected tree, you could go ahead and cut down that tree. Or if a building is planned for where a protected tree is standing, then the tree loses. Was this why the tree removal at 1125 Byron was approved?

Thanks for listening to my 3 minute talk. Lets try to save more trees, and have less tree ordinance escapes

rob levitsky
[redacted]


PARKING RESTRICTED
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TOWED AWAY
Ed's
TOW & CRADLE
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EDGE


VOTE
RAVEN
MALONE
STEVEN LEE
STEVEN LEE

575 Sierra Ave

575 Sierra Ave, Mountain View, CA 94041


Anita Tran · Community Cen...
2d

Nest & Google - The best of Goo | Nest & Google - The best of Goo | Nest & Google - The best of Goo | tree-removal-list.pdf

cityofpaloalto.org/files/assets/public/public-works/tree-section/tree-removal-list.pdf

tree-removal-list.pdf 4 / 4 100%

2

3

4

Address	Species	Diameter	Reason for removal
1800 University Ave	Magnolia	26"	Dying/dead.
915 Waverely St	Big Leaf Maple	16"	Dying/dead.
3728 Lindero Dr	Valley Oak	54"	Ganoderma conks, fruiting bodies, beetles
3325 Louis Rd	Raywood Ash	30"	Dying/dead.
11799 Page Mill Rd (Foothills Park)	Valley Oak	50"	Structural defects.
11799 Page Mill Rd (Foothills Park)	Valley Oak	26"	Structural defects.
11799 Page Mill Rd (Foothills Park)	Coast Live Oak	40"	Structural defects/multiple failures.

TREE REMOVAL LIS T10-19-2022

1125 Byron St	Coast Live Oak	32"	Approved as part of a development project.

Type here to search

AQI...

11:22 AM
11/23/2022


TOWED AWAY

F om	Matthew auly
To	Jann ng Comm ss on
Subject	Revital z ng ytton laza with Space Design
Date	Monday Decembe 5 2022 8 03 01 AM

You don't often get email from [redacted] Learn why this is important

CAUTION This email originated from outside of the organization Be cautious of opening attachments and clicking on links

Dear Planning Commissioners,

Lytton Plaza, a wonderful public space in the center of our downtown, has a problem: it is too open. People need a sense of enclosure in their public spaces in order to feel comfortable. Traditional, walkable urbanism is grounded in the idea that the space between buildings is what matters. This is what defines the public realm where social life flourishes or flounders. We should think of Lytton Plaza like a shared outdoor living room, where the space encourages us to feel cozy and comfortable. The best way to do this is to make the space feel smaller. Just think of how cats like to climb into cardboard boxes and tiny cat tower dwellings. We are not so different from them in our innate desire for enclosure. Less space is almost always better in public spaces.

Unfortunately, the adjacent parking lot not only makes Lytton Plaza feel too open, it also makes Emerson street feel too open. It's like a missing tooth—a raw vacancy of space akin to an empty, undeveloped lot. This lack of spatial comfort and visual beauty afflicts that entire stretch of Emerson. Consider, for a moment, why Ramona street, just one block over, has been so successful in attracting street life and outdoor dining that we are now considering permanently closing it to cars. It's in part because that's where the restaurants are, but it's also because it feels walkable and comfortable to pedestrians, being more fully enclosed by the surrounding buildings. Ramona's buildings with shops, awnings, and detailed facades are more interesting for pedestrians to view, and interestingness drives street life and undergirds walkability. Another great spot to compare is the square outside Verve. It is both smaller and better enclosed by buildings, and it's no surprise that it's busy so often. Emerson, on the other hand, can hardly compare to these locations with this gaping hole in its center.

The ideal solution is to redevelop the parking lot into a new 2–3 story building which will enclose both Lytton Plaza and Emerson St. This would completely transform the sense of comfort that these spaces provide and revitalize them with new life. It would also add space for more shops or restaurants, adding to the number of destinations in the area. Short of this goal, I believe a quick and inexpensive fix for Lytton Plaza would be to place a dense hedge or a beautiful brick, mural, or ivy-covered wall (must be visually interesting, with large and small-scale detail) between the plaza and the parking lot. This would partially solve the plaza's sense of openness and vacancy.

I have created a rendering of Lytton Plaza with a new two-story building in the place of the current parking lot: https://drive.google.com/file/d/1FDOkKhvAVUjZ_tjA1_9wgxHQ8vkn6yi1/view?usp_sharing. Please compare it to the original "before" photo, and think about which one is more inviting. To me, the plaza with the building looks not only more comfortable, but it also looks like it could even become the new center of social life in downtown Palo Alto.

Of course, the loss of parking will have to be taken into account. A comprehensive downtown parking plan that includes on-street and off-street parking in one framework is vitally important. Garages like the one proposed for Lot D at the intersection of Hamilton and Waverley are a step in the right direction, as they consolidate parking in structures with more capacity than surface lots while preserving street life and neighborhood character with ground floor retail space. These developments give us the freedom to reclaim valuable surface parking space in the center of downtown.

We should also be leveraging granular pricing mechanisms to encourage turnover for businesses while maintaining utilization, especially for centrally located spaces like those on University Ave. Customers who are more likely to pay for parking right on University are also more likely to bring in extra revenue to downtown businesses. We should achieve this with location-specific dynamic pricing adjustment with the objective of keeping parking spots at 85% utilization. This will reduce congestion by better matching parking demand to parking supply while generating city revenue and encouraging alternate transit modes. Available parking would become much easier for drivers to find, and time spent searching for spots will be dramatically reduced. As long as we underprice valuable parking space, demand will frequently outstrip supply, leaving everyone frustrated. When we fill our city with enough below-market parking to meet demand, we risk making our downtown easy to get to, but not worth arriving at.

These ideas, and many more, I feel compelled to share with you all as I read Jeff Speck's "Walkable City: How Downtown Can Save America, One Step at a Time." This letter was particularly inspired by the chapters "Shape the Spaces" and "Get the Parking Right." There are many more excellent ideas in its pages that I believe you would find delightful and exciting.

We are fortunate to have inherited from our predecessors such a beautiful and and walkable city as Palo Alto. And we know that we would not have it so without their tolerance, devotion, sincerity of leadership, and social mindedness to advance the general welfare. I commend all you commissioners and your staff for continuing in this endeavor and upholding these ideals. Thank you for your service and your consideration.

Matthew Pauly

From:	Aram James
To:	Planning Commission; Human Relations Commission; citycouncil@mountainview.gov; Council, City; Shikada, Ed; Jeff Rosen; Binder, Andrew; Jethroe Moore; Jay Boyarsky; Joe Simitian; Supervisor Susan Ellenberg; Sean Allen; Cindy Chavez; Michael Gennaco; Jack Ajluni; Lewis. james; Josh Becker
Subject:	How Jared Kushner Lost at the World Cup in Qatar
Date:	Sunday, December 4, 2022 11:45:38 PM

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https://theintercept.com/2022/12/04/world-cup-qatar-jared-kushner-israel/

Sent from my iPhone

From: Van Dyck, Thomas (RBC Wealth Mgmt)
To: Van Dyck, Thomas (RBC Wealth Mgmt)
Cc: Chen, Catherine R (RBC Wealth Mgmt); Bacani, Gwenne; Udom, Farralon; Schiro, Michelle; BIKARAN, MARYAM (She/Her/Hers); Maldonado, Hector; Eshoo, Alexander D; Theriault, Jon; Yee, Karen C
Subject: RBC SRI Week in Review 12-02-22
Date: Friday, December 2, 2022 4:39:13 PM

Week in Review 12-02-2022

SRI Wealth Management Group

In Focus: Anti-ESGers Coming in January

The US economy grew much faster than expected in the third quarter, according to the latest GDP report released Wednesday, which showed GDP rose by an annualized rate of 2.9%. That's an improvement from the initial government reading in October that showed 2.6% growth in economic activity, and better than the Refinitiv forecast of 2.7%. It's a marked turnaround from economic contractions of 1.6% in the first quarter of the year and 0.6% in the second. (CNN)

US employers added 263,000 jobs in November as hiring remained steady despite rising interest rates, high inflation and mounting recession worries. That was only a slight drop from the revised figure of 284,000 for October, even as a wave of layoffs in the tech industry made headlines in November. The unemployment rate was steady at 3.7%, while wages have risen 5.1% over the year, more than expected. (NYT) For the week, markets were positively influenced by Fed Chairman Powell's signal that smaller interest rate hikes may be coming and ended higher with the S&P 500 up 1.1%, the DJIA up 0.2%, and the NASDAQ up 2.1%.

The US Department of Labor finalized a rule last week to explicitly permit retirement plan fiduciaries to consider climate change and other environmental, social and governance (ESG) factors when selecting investments and exercising shareholder rights. First proposed in October 2021, the rule which was called *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights* is a reversal of two rules promulgated under the Trump administration. The rule will become effective on January 30, 2023. (ESGClarity)

Meanwhile, the state of Florida will divest $2 billion worth of its assets managed by the world's largest asset manager. This would be the biggest such divestment by a state opposed to the asset manager's ESG policies. Republicans are set to assume control of the US House of Representatives in January which will allow them to hold hearings on ESG and grill company executives about their policies, and also pressure regulators to scrutinize them. (Reuters) Despite the Republican attacks on ESG, most in finance have decided that ESG is here to stay. A survey of 550 Bloomberg Terminal users found that more than 60% expect ESG to be standard part of, or increasingly critical to, running a business. (Bloomberg)

A British aircraft engine maker has successfully run an aircraft engine on green hydrogen, a world aviation first. This marks a major step towards proving hydrogen could be key to decarbonizing air travel. Hydrogen is one of a number of competing technologies that could help the aviation industry achieve its goal of becoming net zero by 2050. A European airplane maker has started developing a fuel-cell engine, sticking with plans to introduce a hydrogen-powered commercial aircraft by 2035. The system is one of several options being considered for a potential zero-emission aircraft based on hydrogen. (FT)

While many call for content moderation on social media, a social media ethicist tells 60 Minutes that government needs to regulate beyond moderating content. It is not about regulating based on speech or censorship, instead regulate the industry's business model of maximizing engagement for profit which has amplified America's political divide.

Please reach out to us with any market questions or commentary. Have a good weekend!

Upcoming Event

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Webinar | December 12th 2:30–3:45 pm ET

- This event will look into how philanthropy can best help tackle the climate crisis challenge going forward

Weekend Listen

NYT Anderson Cooper Explores Grief and Loss in Deeply Personal Podcast

- Over the eight episodes of “All There Is,” the CNN anchor digs into his own family traumas as well as those of others

Weekend Watch

As You Sow Workplace Diversity and Financial Performance

- New report links workplace diversity to financial outperformance

Weekend Reads

RBC Global Insight Weekly December 1, 2022

BBC San Francisco to allow police ‘killer robots’

Forbes In Search of Alpha Through ESG In The Private Markets

Global News 1st lab-grown meat product cleared for human consumption in the U.S.

Insider Electric car maker just delivered its first all-electric Semi truck and said it can cover up to 500 miles on a single charge

Investment News Vatican report on faith-based investing crosses into ESG territory

NYT California Panel Sizes Up Reparations for Black Citizens

Reuters Analysis: RBC tightens grip at home with $10B HSBC Canada bid, regulatory risks loom

WSJ Sam Bankman-Fried ‘Wasn’t Even Trying’ to Manage Risk at FTX, He Says

Written by Thomas Van Dyck, Catherine Chen, and Gwenne Bacani

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Thomas Van Dyck, CIMA
Managing Director, Financial Advisor - SRI Wealth Management Group
RBC Wealth Management | [redacted]
NMLS # 1542136 through City National Bank
www.sriwealthmanagement.com

https://billmoyers.com/episode/putting-the-freeze-on-global-warming/

possible loss of the principal amount invested.

Disclosure information regarding potential conflicts of interest on the part of RBC Capital Markets, LLC in connection with companies that are the subject of any third-party research report included in this email message may be found at Third-Party Research Disclosures.

From: Rebecca Eisenberg
To: Aram James
Cc: Michael Gennaco; Shikada, Ed; Counc l, City; Jethroe Moore; Jul e Lythcott-Haims; Vicki Veenker; Jeff Rosen; Jay Boyarsky; Binder, Andrew; dennis burns; Joe Simitian; Winter Dellenbach; chuck jagoda; Bains, Paul; Human Relations Commission; Plann ng Commission; Stump, Molly
Subject: Re: I was asked to send this to those concerned
Date: Friday, December 2, 2022 3:48:33 AM

You don't often get ema l from [redacted] Learn why this is important

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Even if the Don't Vote for Bob Jonsen website (https://www.dontvoteforbobjonsen.com/) were created by Kevin Jensen, some of these claims have been around (and confirmed) for years. The gang connection, for example, is backed by credible information; the question is whether a person admits and acknowledges that these gangs have a proven, well-documented history of strong ties to white supremacist groups. Given the continuing, also well-documented problem of unwarranted, often deadly police violence against African-Americans, especially young Black men, it is rational and expected that any alleged ties to white supremacist gangs be taken very seriously.

One thing that concerned me about Jonsen was that he refused to do *any* investigation into whether any member of his force was involved in the January 6th insurrection, even though the majority of better-run police departments nationally were doing such an investigation as a matter of course. As I imagine most people saw, a large number of the individuals who planned and participated in the violent insurrection were members of various police forces. I continue to wonder how and why a high integrity police chief would not recognize the need to ensure that no member of their force took part in such an intolerable, grotesque, criminal act.

We are reaching a cultural moment where a growing number of people are losing faith in, and respect for, many police forces. Although the traditional approach for such a problem has been to continue to increase police budgets and grow police presences, those strategies are not helping and may be making things worse.

Perhaps a better approach might be to demand that all leaders enter their positions with clean records. I do not understand how so many community leaders choose to see past histories of racial discrimination, racial and sexual harassment, abuse of power, and alleged corruption. There is no shortage of talented, intelligent, hard-working, and ethical candidates in our county. Why not give an opportunity to someone else? Even if one of the accusations has merit, shouldn't that be disqualifying?

From the numerous troubling links and articles in the forwarded email, as a mother of two young adults, I was particularly impacted by this video, which illustrates some of the innumerous harms that result when police departments do not take adequate steps to eliminate systemic racism: https://www.instagram.com/tv/CDnvZRDBlRY/?utm_source=ig_web_button_native_share

Our community deserves better. I hope that these charges - many of which had been raised previously - will be taken seriously. Our streets should be safe for everyone.

Best,
Rebecca

On Thu, Dec 1, 2022 at 9:16 PM Aram James [redacted] > wrote:

FYI:
Certainly Bob Jonsen deserves due process and a right to respond to what at this time strikes me as allegations without necessary percipient witnesses

From: KEVIN JENSEN [redacted] >
Date: December 1, 2022 at 4:49:55 PM PST
Subject: **I was asked to send this to those concerned**

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Identity withheld for now due to harassment.

Inspector General Max Huntsman urged the Board of Supervisors to end Michael Gennaco's contract with the County

commendation comes a month after the FBI indicted deputies in a beating of an inmate on the basis of witness testimony Chaplain Paulino Juarez — the same witness testimony that OIR Chief Attorney Michael Gennaco said could not be backed sufficient evidence.

Office of Independent Review has functioned primarily as a part of the Sheriff's Department," Huntsman said. "The office has attorney-client relationship with the sheriff, was housed within the department, and assumed an integral role in the disciplinary system.

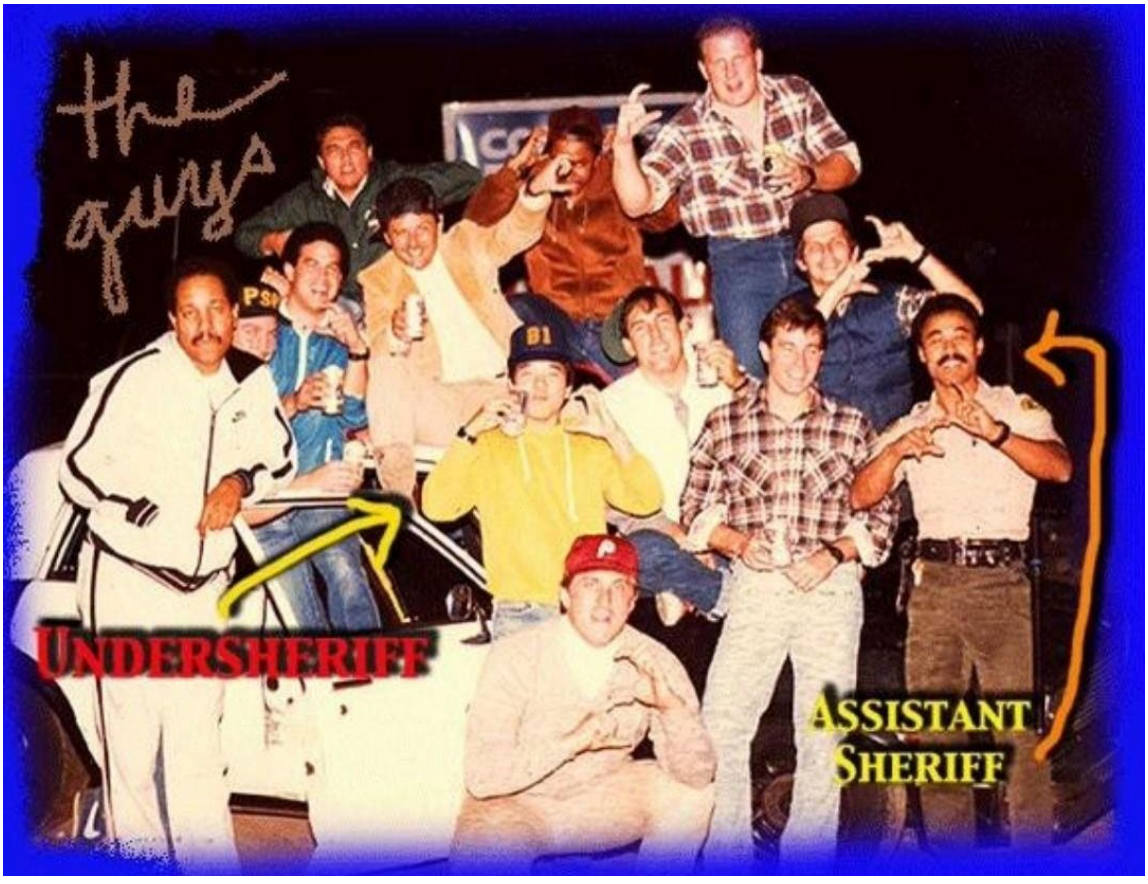
model has created the perception that OIR is not sufficiently independent to act as a civilian monitor," Huntsman added.

the OIR's role as a "trusted adviser" to former Sheriff Lee Baca, who had recommended its creation, "limited its effectiveness in reporting information ublic and the board."

http://www.dailynews.com/government-and-politics/20140318/inspector-general-end-la-county-contracts-with-office-of-independent-review-special-counsel-merrick-bobb

Max Huntsman

Michael Gennaco




LNX-03

From: Aram James
To: Michael Gennaco; Shikada, Ed; Council, City; Jethroe Moore; Council, City; Julie Lythcott-Haims; Vicki Veenker; Jeff Rosen; Jay Boyarsky; Binder, Andrew; dennis burns; Rebecca Eisenberg; Joe Simitian; Winter Dellenbach; chuck jagoda; Bains, Paul; Human Relations Commission; Planning Commission; Stump, Molly
Subject: I was asked to send this to those concerned
Date: Thursday, December 1, 2022 9:16:52 PM

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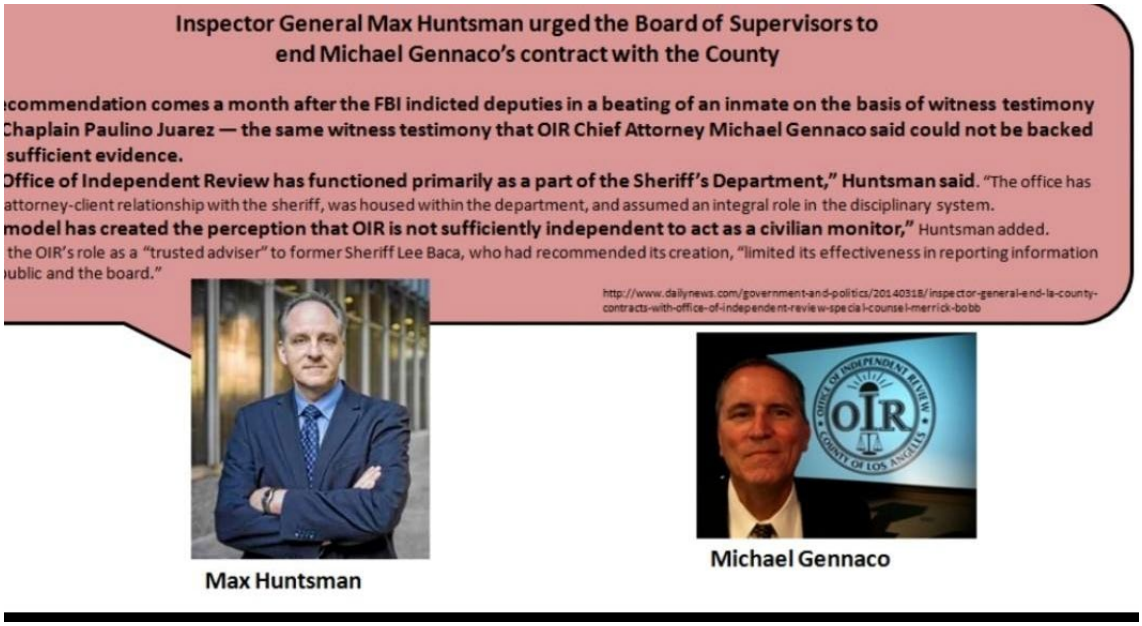

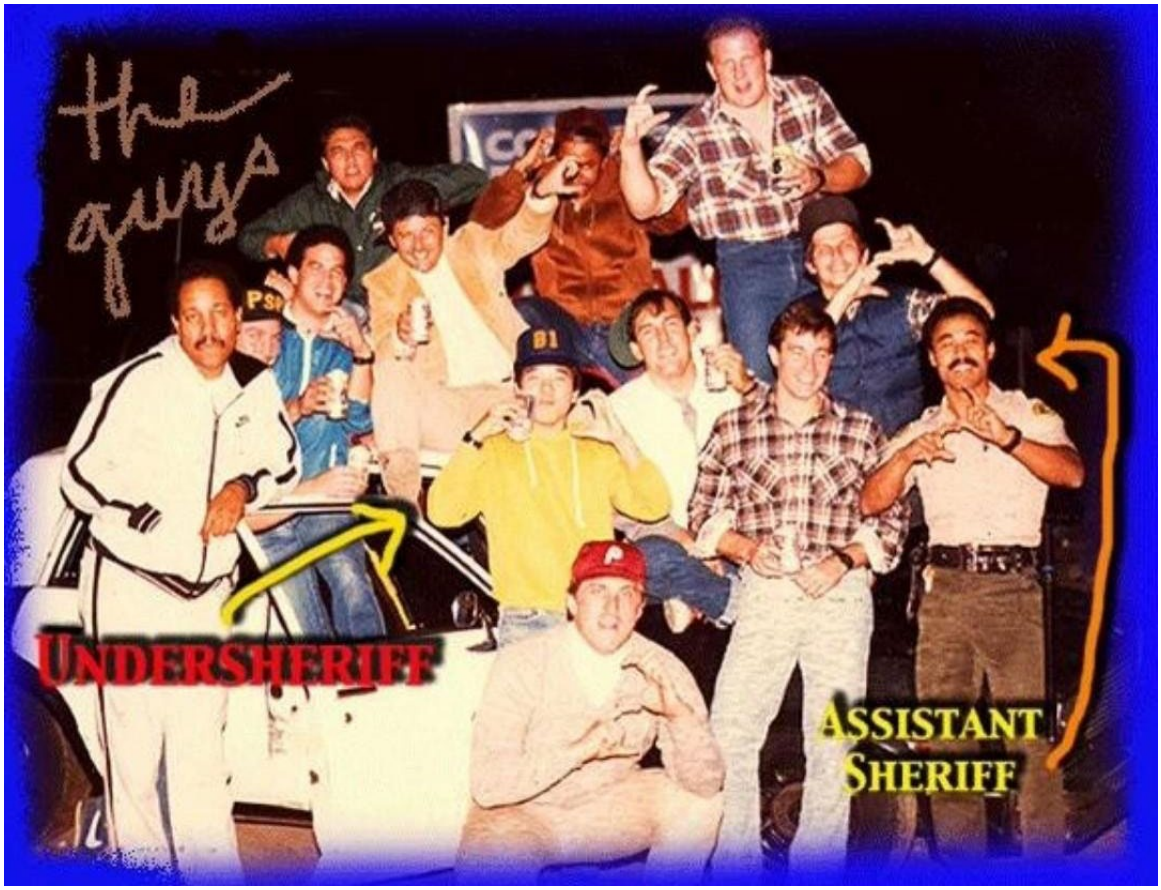
the gang
UNDERSHERIFF
ASSISTANT SHERIFF


LNX-03

From:	Aram James
To:	Binder, Andrew; Shikada, Ed; Sean Allen; Jethroe Moore; Jeff Rosen; Julie Lythcott-Haims; [redacted] Council, City; Rebecca Eisenberg; Planning Commission; Bains, Paul; Winter Dellenbach; Jay Boyarsky; Joe Simitian; Supervisor Susan Ellenberg; Supervisor Otto Lee; Josh Becker; ladoris cordell; Greer Stone; Human Relations Commission; Enberg, Nicholas; chuck jagoda; Reifschneider, James; Wagner, April; Perron, Zachary
Subject:	The Problem With Police Dogs.
Date:	Thursday, December 1, 2022 9:10:46 PM

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

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https://youtube.com/shorts/RbnWlzwI1pg?feature=share

Sent from my iPhone

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Subject:	CA judge dismisses CHP overtime fraud, wage theft cases | The Sacramento Bee
Date:	Thursday, December 1, 2022 3:45:13 PM

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https://www.sacbee.com/news/politics-government/the-state-worker/article269478482.html

Sent from my iPhone

From: Scott O"Neil
To: HeUpdate; Council, City; Planning Commission
Cc: [redacted]; Julie Lythcott-Haims [redacted]
Subject: Individual Comments on Housing Element Draft
Date: Wednesday, December 7, 2022 1:12:53 PM
Attachments: HE Letter - ONeil.pdf

Please find attached my personal comments on the Housing Element.

Thank you,

-Scott O'Neil

Dear Palo Alto City Council, Planning and Transportation Commission, and City Staff,

I share the concerns about the Housing Element expressed in Palo Alto Forward's recent letter, to which I was a contributor. I have some additional comments as an individual.

Comments

C1:
Time associated with preapplications, prescreens, and study sessions should be included in Annual Progress Reports to HCD. The Housing Element is clear enough that these are part of the process, and not an informal courtesy meeting. Ie: (bold mine)

> *"[Rezoning] begins with a **required prescreen** with the City Council. The applicant submits a prescreen application for a rezone proposal and the City Council generally hears the prescreen request within two months. **If the Council response is favorable, then the formal application for a rezone process can begin**." (p. 262)*

I've heard from someone who's done projects in Palo Alto that this first round of review is often the most laborious and impactful on timelines. It should be reflected in public data.

C2:
An attorney and housing activist in Walnut Creek has inspired many of us with his passion for compliance with the Permit Streamlining Act and ensuring Housing Elements spell out how they will comply with PRC 21080.1/.2. I would encourage the city to add detail to the Housing Element about when, how and who processes CEQA applications in Palo Alto until it is clear that this law is being followed.

To aid the City in making necessary changes, please find attached Exhibit A - HCD Letter to Berkeley.

C3:
Program 1.1 should clarify that all previously-described planned rezoning is covered under this program, ie: rezoning of RM and mixed-use zones outside of GM/ROLM.

Conclusion

I want to acknowledge that most of my role in this process has been as a critic, and say some things I know I don't say enough. First, I think staff has done very good work. I do not envy being trapped between rapidly changing state laws and Palo Alto politics, and am constantly impressed by how well they handle this unenviable position. Second, I want to say that the Housing Element Working Group and its members have no responsibility for the circumstances surrounding its creation, and do not believe any of them did anything wrong as individuals. Finally, I do want to see Palo Alto achieve certification of a compliant Housing Element as soon as possible, and want to helpful.

To that end: I think the most promising path forward for Palo Alto is to take the strategy it's adopting the GM and ROLM zones, and fix the issues with development standards that are creating constraints. That strategy should be extended by applying it to the University and California Avenue downtowns, including, in the case of Cal. Ave, the area across Alma northeast of the Caltrain station. This would dovetail with rationalizing zoning instead of spot zoning –a good unto itself. Having more sites will make it easier to satisfy the nonvacant sites analysis. Showing that zoning is adequate for feasibility and eligible for ministerial review at market-feasible IZ levels (ie: 15%) would fortify such a housing element against several of the governmental and nongovernmental constraints identified in the PAF letter while simultaneously addressing AFFH concerns.

Thank you, and all the best.

-Scott O'Neil

Exhibit A - HCD Letter to Berkeley

DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

June 3, 2022

Sharon Gong, Senior Planner
City of Berkeley
[redacted]

Dear Sharon Gong:

RE: Berkeley – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Berkeley (City). The California Department of Housing and Community Development (HCD) has become aware of potential conflicts between the practices of the City's Zoning Adjustments Board (ZAB) concerning determinations for projects determined to be exempt from the California Environmental Quality Act (CEQA) and timelines pursuant to Public Resources Code section 21080.1, subdivision (a), and Public Resources Code section 21080.2. HCD is concerned that these actions may act as a governmental constraint on housing development and requests the City review the CEQA determination process in Berkeley's 6th Cycle Housing Element and include programs to mitigate or remove constraints as necessary.

Obligations Under Public Resources Code sections 21080.1 & 21080.2

HCD has been made aware of at least five development applications where the final ZAB determination was made more than 30 days after the relevant permit was determined to be complete. As the City is aware, under the Public Resources Code, a lead agency must make a determination under CEQA for projects exempt from environmental review within 30 days of a project application being deemed complete. These provisions are critical to meeting the Permit Streamlining Act requirement set in Government Code section 65950, subdivision (a) (5), and generally facilitate the processing of housing developments.

6th Cycle Housing Element

As Berkeley is updating its 6th Cycle Housing Element, the City must describe and analyze the permit process from application to approvals, including a discussion on timeframes for each step in the process, impediments, and how it addresses the

application of state law on application processing pursuant to Government Code section 65583, subdivision (a)(5). In addition, the element must also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and include program actions to remove or mitigate identified constraints pursuant to Government Code section 65583, subdivision (c)(3). Excessive CEQA review timeframes can delay project approval and pose a constraint to the development of housing and should be reviewed as part of the City's housing element update.

Conclusion

HCD understands that the City is currently reviewing its compliance with these provisions and is looking at strategies to transparently document the process to ensure timely approval of CEQA determinations and provide additional transparency. HCD supports these efforts and encourages the City to take meaningful steps to ensure that its processes comply with provisions of state housing law.

If you have questions or need additional information, please contact Kevin Hefner at [redacted]

Sincerely,

Shannan West
Housing Accountability Unit Chief

From: Kristen Brown, SVLG
To: Planning Commission
Subject: SVLG"s BAIR Newsletter: December 8th
Date: Thursday, December 8, 2022 11:00:52 AM

View this email in your browser

December 8th, 2022

TALK ABOUT TOWN

San Jose to Appoint Councilmembers: Following nearly six hours of public

comment, the San Jose City Council voted 7-to-4 this week to appoint two Councilmembers to fill the upcoming vacancies for Districts 8 and 10 rather than hold a special election or pick an interim appointment in advance of a special election. Those in favor or appointment noted the large price tag for a special election, while those opposed to it cited the importance of residents directly electing their representatives. In the end, Mayor Liccardo, Vice Mayor Jones and Councilmembers Foley and Mahan voted in opposition of appointment. The Council will meet once more this year, on December 13th, before taking furlough until their meeting on January 10th, 2023. Learn more here.

Menlo Park to Fill Council Vacancy Via Appointment: At their November 30th meeting, the Menlo Park City Council directed staff to begin the appointment process to fill the vacancy for Ray Mueller's District 5 City Council seat following his election to San Mateo County Board of Supervisors. Interested individuals can apply for appointment to the seat until December 20th at 5pm. Completed applications will be accepted through the online application portal or by dropping off at the city clerk's office at City Hall on Laurel Street.

Cities, Counties Begin Leadership Transitions: Several jurisdictions have already begun their reorganization and leadership transition processes, while others are slated to do so in the coming weeks. Information about these meetings is included below.

In Santa Clara County, the Board of Supervisors recently voted to appoint Supervisor Ellenberg as the Board President and Supervisor Otto Lee as the Vice President. Outgoing Board President Mike Wasserman was honored by Senator Dave Cortese for his many years of service to the community.

In Sunnyvale, the Council met on December 6th to discuss their appointment of Vice Mayor in 2023. Councilmember Russ Melton and Councilmember Omar Din both expressed interest in serving as the Vice Mayor, though the Council will not vote on the matter until in January. Mayor Larry Klein will remain in his seat through the end of his term in 2024.

The City of Cupertino will swear in their new Councilmembers and vote to choose their Mayor and Vice Mayor for the coming year on Friday, December 9th at 6pm. Learn more here.

Redwood City will be swearing in new Councilmembers and determining their Mayor and Vice Mayor for the remainder of the unexpired 2-year term on Monday, December 12th. Learn more here.

The City of Menlo Park will hold its reorganization meeting on Tuesday, December 13th at 6pm. During this time, the Council will select their Mayor and Vice Mayor for 2023. Learn more here.

In San Mateo, a council meeting held to determine the City's next Mayor turned chaotic when two new Councilmembers refused to vote, leading to a stalemate that lasted until 3 a.m. While it was anticipated that Councilmember Amourence Lee was set to be appointed to the position of Mayor, newly elected Councilmembers Diaz Nash and Robert Newsom blocked the nomination, insisting that the Council fill the fifth seat left vacant by Councilmember Diane Papan's election to State Assembly prior to selecting a Mayor. Ultimately, Council moved to continue the meeting to Wednesday, Dec. 7th, at which time no action was taken and the matter was once again continued to the Council's special meeting on December 12th. Learn more here.

HOUSING

Menlo Park Moves Forward with Willow Village: After discussions on the matter were continued from the November 30th meeting, the Menlo Park City Council met again on December 6th to resume considerations of the proposed Willow Village Master Plan, which is sponsored by SVLG member company Meta. After a presentation on proposed amendments to the project, and discussions amongst the Councilmembers, the Council voted to move forward with staff recommendations including certification of final EIR, approval of the below-market-rate housing agreement, and introduction of an ordinance to rezone the project site.

Affordable Housing Grand Openings in San Jose: Two affordable housing developments celebrated their grand opening in the past month: Iamesi Village on November 18th and Vela Apartments on November 30th. Iamesi Village in Downtown San Jose features 135 units with rent set to be affordable

to individuals earning 30-to-50% of the area median income, while Vela Apartments on Alum Rock Avenue will provide housing and supportive services to formerly homeless residents.

Palo Alto Approves Housing Element: The Palo Alto City Council voted unanimously in late-November to submit the City's updated Housing Element to the Department of Housing and Community development (HCD). The document lists more than 290 new potential housing sites and 26 new housing programs meant to assist the City in accommodating 6,086 new housing units in the next 8 years as required by the Regional Housing Needs Assessment (RHNA). The document will now undergo HCD's 90-day review process. Learn more here.

Mountain View Approves Affordable Housing: The Mountain View City Council unanimously approved a 100% affordable housing project on Montecito Avenue during their December 6th meeting. The project, located within a half mile of a major transit stop, will include a mix of studios and one-to-three bedroom units, adding a total of 84 affordable units to the City's housing stock. The units will serve low-income families making between 30% and 60% of the area median income. Learn more here.

ENERGY & ENVIRONMENT

CARB Approves Plan Bay Area 2050: The California Air Resources Board (CARB) has approved Plan Bay Area 2050, noting that if fully implemented it would meet the 19% per capita reduction in greenhouse gas emissions by 2035. The Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) are planning to kick-off additional updates to Plan Bay Area 2050 in mid-2023. An early preview of the long-range plan will be shared at the Joint MTC Planning Committee with the ABAG Administrative Committee on December 9th.

TRANSPORTATION

VTA to Pursue FTA Funds: The Santa Clara Valley Transportation Authority (VTA) has received approval to seek funding from the Federal Transit

Administration (FTA) for the second phase of the BART Silicon Valley Extension project. The VTA plans to apply for the FTA funding, which would cover up to $4 billion in project costs, in Summer 2023. Learn more here.

IN OTHER NEWS

Carmen Montano makes history by becoming first woman elected as Mayor of Milpitas

Palo Alto Selects Assistant City Manager

SVLG UPCOMING EVENTS AND DATES TO WATCH

Exclusive Events for SVLG Members

December 8:
SVLG Board and All Member Meeting & Reception
We'll be hosting an end-of-year all member reception at the Levi's stadium following our board meeting. More information to come.

Keep an eye out for our upcoming events newsletter for more details on our events.

For more information or to sponsor an event, please visit our website or contact events@svlg.org.

2460 North First Street
Suite 260
San Jose, CA 95131

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From:	Aram James
To:	Perron, Zachary; Shikada, Ed; Binder, Andrew; Jethroe Moore; Sean Allen; Julie Lythcott-Haims; Council, City; Planning Commission; Human Relations Commission; Gennady Sheyner; Jeff Rosen; Rebecca Eisenberg; [redacted]; Joe Simitian; Cindy Chavez; Kevin Jensen; Cecilia Taylor; Tony Dixon; Betsy Nash; citycouncil@mountainview.gov
Subject:	Boise hires former DOJ IG to probe retired captain for white supremacy
Date:	Wednesday, December 7, 2022 11:27:13 PM

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https://www.lawenforcementtoday.com/boise-hires-former-doj-ig-to-probe-retired-captain-for-white-supremacy/

Sent from my iPhone

From: TLEA Live Webinars
To: Planning Commission
Subject: Thursday at 11am PST - Bringing Ecology into Urban Environments with Native Plant Polycultures
Date: Wednesday, December 7, 2022 9:00:28 AM

Live on Thursday, December 8th at 11:00AM PST

Bringing Ecology into Urban Environments with Native Plant Polycultures

By David Hopman, ASLA, PLA

This seminar will show participants how to successfully develop dense intermingled native plant combinations suitable for urban and metropolitan areas. The principles covered for designing these polycultures of native plants are applicable to all areas of the United States by using plants that the participants are already familiar with. Principles presented include aesthetic principles such as unity and variety in the main plant matrix—think a polyculture groundcover. Accents and transparent “scatter plants” will also be explained. The important consideration of the evolution of the polycultures as they mature will be addressed with Ruderal, Increaser and Stress Tolerator (RIS) theory. Examples of installed polycultures designed by the presenter will be shown along with images showing the development of the intermingled combinations over a period of years. The presentation will “demystify”designing with native polycultures and demonstrate that they are practical way forward towards sustainable urban ecologies.

LACES 1, NALP 1, APLD 1, QWEL 1

Click Here to Register

Learning Objectives:

- Learn the advantages of using native plants in carefully controlled intermingled combinations called Native Polycultures.
- Learn techniques for designing successful polycultures using Matrix Plants, Accents, transparent emergent plants, and carefully controlled edges.
- Learn how ruderals, increasers, and stress tolerators help set the developmental trajectory of plant polycultures.

David Hopman

University of Texas at Arlington, Landscape Architecture Graduate Program Professor

Since accepting the position as a professor at the Graduate Program in Landscape Architecture at The University of Texas at Arlington in 2004, David Hopman, ASLA, PLA has energetically pursued a faculty role bridging practice and research. Professor Hopman is an advocate for using aesthetically qualified native polycultures of plants in planting design. His ideas on the topic can be found in 'The Field' posts for the planting design PPN on the ASLA website.

Professor Hopman is the author of an upcoming book on Creative Regional Design and Critical Regionalism for a New Age. The courses he teaches reflect his research interests in regionalism, plant materials and ecology, ecologically performative landscapes and landscape aesthetics. Hopman designed and implemented the first extensive green roof in the Dallas/Fort Worth area in 2008 above the Life Sciences Building at UT-Arlington. He was in charge of the Sustainable Sites Initiative (SITES) certification for The Green at College Park on the UT-Arlington Campus; one of the first three projects worldwide to receive certification in February of 2012. Landscape architecture practice experience as a registered landscape architect includes Kings Creek Landscaping, Huitt-Zollars, Inc., RTKL, Mesa Design Group, Inc., and a current independent practice. Recent projects include green roof design for Forest Park Medical Center (with David C. Baldwin, Inc.), The Plano Environmental Education Center landscape (with David Rietzsch and Associates), and consultation on the planting design for the Bush Presidential Library in Dallas (with Michael Van Valkenburgh and Associates). He has also designed and implemented a variety of native plant polycultures in the DFW area since 2014.

CEUs/PDHs

LACES 1, NALP 1, APLD 1, QWEL 1

From:	Palo Alto Forward
To:	Council, City; HeUpdate; Planning Commission; Lait, Jonathan
Cc:	[redacted]
Subject:	Palo Alto Forward - Comments on Draft Housing Element
Date:	Tuesday, December 6, 2022 11:02:09 PM
Attachments:	Palo Alto Forward - Comments on Draft Housing Element (12_6_2022).pdf

Dear Mayor Burt, Palo Alto City Council, and Palo Alto City Staff:

Thank you all for your hard work on the City's draft Housing Element. We have particularly appreciated City staff's responsiveness to our questions throughout the public comment period.

Please find attached Palo Alto Forward's comments and findings regarding the draft Housing Element. As we write in our letter, we understand that the Housing Element remains a work-in-progress, and we look forward to working constructively with the City moving forward.

For any questions, please feel free to reach out to us at this email address.

Warm regards,

Robert Chun
Secretary, Palo Alto Forward

PALO ALTO FORWARD

December 6th, 2022

Dear Mayor Burt, Palo Alto City Council, and Palo Alto City Staff:

CC: California Department of Housing and Community Development (HCD), Julie Lythcott-Haims, Vicki Veenker, and Ed Lauing

Palo Alto Forward is a non-profit organization focused on innovating and expanding housing choices and transportation mobility for a vibrant, welcoming, and sustainable Palo Alto. We are a broad coalition with a multi-generational membership that includes students and retirees, renters and homeowners, and residents new and old.

We have been engaged in the Housing Element process at every stage. Our board and membership have written numerous letters,[1] attended nearly all meetings of the Housing Element Working Group, and provided public comments throughout the process. We want to thank you all for your work on Palo Alto's 6th cycle Housing Element.

We believe that all parties understand that the current Housing Element is both a start and a work in progress. We commend City staff for getting this far given the breadth of challenges they have faced. We especially appreciate City staff for their responsiveness to our questions and prior input on sites in the site inventory.

On November 28th, the City Council approved the draft Housing Element with minor changes and asked staff to submit it to HCD after the public comment period ends. Based on review letters from HCD to neighboring cities, we expect that HCD will, among other things, ask for additional evidence regarding sites, request more specific programs to overcome constraints, and suggest ways to strengthen our approach to fair housing. We also understand that staff have commissioned consultant reports on site suitability and financial feasibility that may, when completed, result in changes to the identified sites and suggest additional programs.

With those understandings, we are writing to share our concerns regarding the current draft of the Housing Element. We are sharing these concerns with the City Council, City staff, HCD, as well as the three newly elected City Council members, as it is the next City Council which will revise the Housing Element and respond to HCD's review.

We believe that the current Housing Element approved by the City Council needs additional revisions to comply with Palo Alto's statutory obligation to:

[1] *See* Appendix A - Previous Letters to City

- Provide substantial evidence that existing uses on nonvacant parcels will be discontinued during the planning period, as is required by Government Code 65583.2(g)(2). The City has made virtually no effort to confirm that property owners intend to develop sites with housing.

- Identify and remove governmental constraints to housing, as is required by Government Code 65583(a)(5). The City's site inventory is zoned in ways that render infeasible the development of housing, and the City continues to retain policies that constrain housing development across Palo Alto.

- Affirmatively further fair housing, as is required by Government Code 65583(c)(10) and 8899.50. The City has located the majority of lower-income housing in manufacturing and industrial areas next to the 101 freeway, rather than near public transit, jobs, and schools near downtown. This decision is at utterly odds with the City's fair housing obligations, as well as its climate and sustainability goals.

- Ensure equitable public participation, as is required by Government Code 65583(c)(9). The City's principal mechanism for public participation, the Housing Element Working Group, featured disproportionately few renters or young people, and was almost entirely composed of homeowners.

- Develop objective and quantifiable programs and policies, as is required by Government Code 65583(c). Many of the programs proposed by the City commit to merely "study" or "consider" changes, rather than commit to real changes to which it can be held accountable over the next eight years.

The potential consequences of decertification by HCD, which are identified and discussed in the Housing Element, include:[2]

- **Suspension of Land Use Power:** The City may lose its ability to control land use for specific parcels of land, which a court may preserve for affordable housing or other uses necessary to remedy the City's failure to adopt a compliant Housing Element.[3]

- **Fines and Fees:** The City may be ordered to pay escalating fines with a minimum amount of $10,000 per month and a maximum amount of $100,000 per month.[4] If the City still fails to adopt a compliant Housing Element, those financial penalties can rise further by a factor of up to six.

- **Funding Disqualification:** The City may fall out of contention for many important state and federal funding programs that require compliance with Housing Element law, including SB 1 Planning Grants, the Permanent Local Housing Allocation (PLHA), the

[2] Housing Element Compliance (YIMBY Law).
[3] *See* Meija v. City of Mission Viejo (2006).
[4] Government Code 65581(l)

Affordable Housing and Sustainable Communities (AHSC) program, the CalHOME Program, various regional transportation funding programs, and more.[5] The City would also forgo the opportunity to be designated a prohousing jurisdiction with preference on a number of competitive funding applications.

- **Court Receivership:** The City may be forced to adopt policies to bring its Housing Element into compliance.[6] In extreme circumstances, the court may appoint an agent with all powers necessary to bring the City's Housing Element into compliance.[7]

- **Moratorium on Permits:** The City may lose the ability to issue all permits until it adopts a Housing Element that is certified as compliant by HCD.[8] Sonoma, Sacramento, and Mendocino Counties have been subject to such moratoriums in the past.

- **Builder's Remedy:** Under the Housing Accountability Act, the City would be forced to approve any housing development project that has 20% of units set aside for lower-income residents or 100% of units set aside for middle-income residents, even if the project does not comply with applicable zoning.[9]

None of the very detailed comments in this document are meant to disparage the tremendous amount of work put in by City staff under challenging circumstances. Still, if the City does not eventually submit a compliant Housing Element, it is at risk of losing the very local control that it has fought so hard to preserve. Palo Alto Forward stands ready to assist City staff and the new City Council to achieve compliance and avoid these consequences.

Our detailed findings and comments are set forth below.

Sincerely,

Board of Directors, Palo Alto Forward
Anne Paulson, Volunteer
Michael Quinn, Volunteer
Ian Faucher, Volunteer
Katherine Causey, Volunteer
Liz Gardner, Volunteer
Liz Ratner, Volunteer

We would like to thank our many dedicated volunteers who contributed to the research, writing, and editing of this letter. Any remaining errors are our own. For questions or comments, please email the Board of Directors at info@paloaltoforward.com.

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[5] Housing Element Compliance Incentives (ABAG)
[6] *See* Sacramento Housing Alliance v. City of Folsom (2011).
[7] Government Code 65585(l)(3)(B)
[8] Government Code 65755(a)
[9] Government Code 65589.5(d)

Table of Contents

Section 1: Nonvacant Sites

The City's draft Housing Element relies on nonvacant sites to accommodate 50% or more of its lower-income housing allocation.[10] Under California law, this fact triggers a statutory presumption that "the nonvacant site's existing use is presumed to impede additional residential development."[11] The City can only designate such lots as appropriate for lower-income housing if it makes "findings based on *substantial evidence* that the use will likely be discontinued during the planning process."[12] Moreover, HCD provides clear guidance on how cities must meet the "substantial evidence" requirement. Examples of "substantial evidence" include:[13]

- The lease for the existing use expires early within the planning period.
- The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses.
- There is a development agreement that exists to develop the site within the planning period.
- The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
- The property owner provides a letter stating its intention to develop the property with residences during the planning period.

Each of HCD's examples of "substantial evidence" requires making rigorous, site-specific findings related to the intent of the current tenant, the intent of the property owner, or the physical disrepair of the building. In contrast, the City justifies the inclusion of nonvacant sites based on only general factors, such as improvement-to-land-value ratios, age of structures, and the strength of the real estate market. That approach directly conflicts with HCD guidance.

By using these high-level factors as "substantial evidence," the City has ignored HCD guidance that the use of general findings (such as the health of a local real estate market) are disfavored.[14] The City also failed to include any evidence relating to the owner's or tenant's intent to discontinue to present use, both of which are heavily emphasized in HCD guidance. As a result, the City's approach is far less rigorous than HCD requires. Only specific findings related to a site's existing use can rebut the statutory presumption that nonvacant sites are ineligible to fulfill more than 50% of the City's lower-income housing allocation. The City made no such findings for any nonvacant lots in its site inventory.

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[10] *See* Appendix D - Site Inventory
[11] HCD Site Inventory Guidebook at 26-28; Government Code Section 65583.2, subdivision (g)(2)
[12] Government Code Section 65583.2, subdivision (g)(2) (emphasis added)
[13] HCD Site Inventory Guidebook at 26-28
[14] *Id.* at 28 (Noting that "[w]hile the sites may be located in an area with common economic issues, individual owners may not wish to sell their property or redevelop their site with residential uses. In addition, each site's existing use, e.g., grocery store, retail shop, parking lot, and offices, may have lease agreements of different lengths of time or the owner may not wish to relocate or redevelop the site with a more intensive residential use. In this type of situation, use of the same findings for the multiple sites would not be appropriate.")

The City's entire outreach effort consisted of sending a form letter to site owners giving them the opportunity to *opt out* of inclusion in the site inventory. *See* Appendix B - Form Letter to Owners of Site Inventory Parcels. But the law, and HCD guidance, make clear that such an opt-out process is entirely insufficient to provide "substantial evidence" that a specific site will redevelop during the planning period. Only specific, affirmative findings -- such as a letter from a property owner "stating its intention to develop the property with residences during the planning period" -- can justify the inclusion of a nonvacant, low-income site in the site inventory. Nowhere has the state legislature or HCD suggested that the City's opt-out process can possibly substitute for this rigorous, site-specific evidentiary requirement.[15]

This is not just a flawed design; we uncovered evidence that the City's approach simply did not work. Michael Quinn, one of our volunteers, reached out separately to a small sample of owners of properties listed on the inventory. He held substantive phone conversations and email exchanges with six owners regarding their properties. Two owners could not remember receiving the City's letter. Most importantly: **all** of them thought their site was unlikely to redevelop as housing due to long-term leases, specialized installations, or continuing use by their own business. None of these sites would have been eligible for inclusion in the site inventory if the City had adequately consulted the owners.[16]

The City should collect the required substantial evidence outlined above if these sites are to remain in the inventory. If none of the above criteria apply to the site, the City should remove the site from the site inventory and replace it with a site that meets one of the above criteria outlined by HCD.

[15] The City's ability to send out a letter to all property owners and receive responses demonstrates that the City was capable of securing "substantial evidence," had they asked the right questions on their letter.
[16] For example, the owner of 3350 W. Bayshore Road informed our volunteer that the company has no record of any letter or inquiry regarding the site's inclusion in the Housing Element and that 3350 W Bayshore Rd. is a specialized life sciences and laboratory facility that is fully leased to life sciences companies.

Section 2: Site Inventory

An adequate site inventory is the foundation of a Housing Element that can meet Palo Alto's housing goals. Sites must be available and, with programs, feasible to attract housing proposals that meet our RHNA allocation. The comments below reflect ongoing evaluation of the sites proposed by the City. We appreciate the responsiveness of staff to our previous comments, but believe additional modifications to the site inventory are needed

a. Site Inventory Must Be Upzoned to Feasible Levels

All sites in the inventory should be upzoned to feasible levels to be eligible for inclusion in the site inventory. The City currently imposes zoning constraints (e.g., density, housing, FAR, parking) that make it difficult or impossible to build larger, denser housing such as apartment buildings. *See* Section 3A: Government Constraints. Virtually all of the site inventory cannot be developed under the proposed zoning standards.

Further, we believe that the City's reliance on medium density projects (e.g., 25-35 du/ac) is particularly problematic, given the fact that essentially no housing has been built in this range. Currently, the site inventory includes 150 sites that are zoned for the medium-density range of 25-35 du/ac,[17] comprising 1702 units in total. *See* Section 3B: Governmental Constraints.

Finally, the inventory simply does not have enough sites or units to account for probability of development. As we will demonstrate in Section 5: Affirmatively Furthering Fair Housing, Palo Alto is only proposing upzoning of 10,895 units.[18] Less than doubling RHNA cannot be adequate for a City that is on track to have just 5.3%[19] of its 5th cycle inventory sites redevelop. Surely upzoning to feasibility in a future draft should mean the City will not need to zone for all of the units those two numbers might naively imply, but the results of our

[17] 652 HOMER AV, 325 COLLEGE AV, 417 COLLEGE AV, 371 COLLEGE AV, 262 HAWTHORNE AV, 202 BRYANT ST, 426 WAVERLEY ST, EL CAM NO REAL, 3760 EL CAMINO REAL, 643 WEBSTER ST, 466 GRANT AV, 624 UNIVERSITY AV, 3457 EL CAMINO REAL, 106 R NCONADA AV, 114 RINCONADA AV, 318 UNIVERSITY AV, 328 UNIVERSITY AV, 515 WAVERLEY ST, 145 ADDISON AV, 2001 EL CAMINO REAL, 4125 EL CAMINO WY, 3864 EL CAMINO REAL, 320 LAMBERT AV, 1963 EL CAMINO REAL, 445 SHERMAN AV, PARK BL, 3997 FABIAN WAY, 444 COWPER ST, 550 WAVERLEY ST, 560 WAVERLEY ST, 430 CAMBR DGE AV, 160 HOMER AV, YALE ST, 3505 EL CAMINO REAL, 3545 EL CAM NO REAL, 70 ENCINA AV, 4113 EL CAMINO REAL, 805 EL CAMINO REAL, 2401 EL CAM NO REAL, 3508 EL CAMINO REAL, 100 ADDISON AV, 3780 EL CAMINO REAL, 955 ALMA ST, 630 COWPER ST, 555 UNIVERSITY AV, 3337 EL CAM NO REAL, 3839 EL CAMINO REAL, 3929 EL CAM NO REAL, 3939 EL CAMINO REAL, 63 ENCINA AV, 2000 EL CAMINO REAL, 425 PORTAGE AV, 4335 EL CAM NO REAL, 825 EL CAM NO REAL, 3487 EL CAMINO REAL, 4123 EL CAMINO REAL, 3903 EL CAM NO REAL, 4232 EL CAMINO REAL, 800 SAN ANTONIO RD, 435 TASSO ST, 300 LAMBERT AV, 705 SAN ANTONIO RD, 543 COWPER ST, 464 FOREST AV, 435 MIDDLEFIELD RD, 720 COWPER ST, 3516 EL CAMINO REAL, 305 LYTTON AV, LAMBERT AV, 3339 EL CAM NO REAL, 3897 EL CAMINO REAL, 760 SAN ANTONIO RD, 4238 EL CAMINO REAL, CAMBRIDGE AV, 561 VISTA AV, 4230 EL CAM NO REAL, 3200 ASH ST, 2805 EL CAMINO REAL, 708-710 SAN ANTONIO RD, 75 ENCINA AV, 230 EMERSON ST, 324 EMERSON ST, 345 HIGH ST, 828 BRYANT ST, 1885EL CAMINO REAL, 415 CAMBR DGE AV, 780 SAN ANTONIO RD, 4233 MIDDLEFIELD RD, 762 SAN ANTONIO RD, 841 EL CAMINO REAL, 2673 EL CAMINO REAL, 555 COLLEGE AV, 455 LAMBERT AV, 4201 MIDDLEF ELD RD, 330 LYTTON AV, 527 WAVERLEY ST, 27 ENCINA AV, 456 CAMBRIDGE AV, 411 LAMBERT AV, 1895 EL CAMINO REAL, 4131 EL CAMINO WY, 4117 EL CAMINO REAL, 3924 EL CAMINO REAL, 4345 EL CAM NO REAL, 530 LYTTON AV, 980 MIDDLEF ELD RD, 268 LAMBERT AV, 3825 EL CAMINO REAL, 4195 EL CAM NO REAL, 4225 MIDDLEFIELD RD, 320 SAN ANTONIO RD, 2310 EL CAM NO REAL, 2455 EL CAMINO REAL, 654 HIGH ST, 343 COWPER ST, 716-720 SAN ANTONIO RD, 4170 EL CAMINO REAL, 720 UNIVERSITY AV, 2200 EL CAMINO REAL, 4224 EL CAM NO REAL, LEGHORN ST, 550 HAM LTON AV, 577 COLLEGE AV, 808-814 SAN ANTONIO RD, 401 WAVERLEY ST, 460 LAMBERT AV, 3260 ASH ST, 3345 EL CAMINO REAL, 3944 EL CAMINO REAL, PARK BL, 3300 EL CAMINO REAL, 2400 EL CAM NO REAL, 3150 EL CAMINO REAL, 525 ALMA ST, 725 UNIVERSITY AV, 701 UNIVERSITY AV, 2181 PARK BL, 3398, 3400, 3490 EL CAM NO REAL, 4279 EL CAMINO REAL, 3901 EL CAMINO REAL, 721 EMERSON ST, 718 EMERSON ST, 839 EMERSON ST, 821 EMERSON ST, 929 HIGH ST, 960 HIGH ST, 1015 ALMA ST, 326 BRYANT ST, 640 RAMONA ST, 227 FOREST AV, 635 HIGH ST

[18] Excludes MFA Strategy due to lack of upzoning. Outside GM/ROLM and inventory, we take units counted. Within GM/ROLM zones, we take upzoned 90 du/acre w/ 80% realistic capacity adjustment. By manually selecting all GM/ROLM sites subject to broad upzoning, we apply this density and unit count to all upzoned sites, even ones not in the Housing Element inventory. Adding back in the "Multi Family Allowed" sites would increase this number by 285 units.

[19] Kapur, Damerdji, Elmendorf, Monkkonen - "What Gets Built on Sites…"

double-checking of the City's outreach efforts in Section 1: Nonvacant Sites argue that the City needs to go much further to close that gap.

b. Numerous Site-Specific Issues Need to Be Addressed

Our volunteers have conducted groundtruthing of the site inventory concentrating on sites identified as appropriate for "lower-income" (very low income + low income) units, and we have issued 15 reports as the result of our work. This work began in March after the site strategies had been approved by the Housing Element Working Group (HEWG), their corresponding sites identified, and reportedly vetted by HEWG members, and it continued to early November. We are adding a few more sites here. All reports were provided to the Housing Element Working Group and City staff with most also sent to City Council and the Planning and Transportation Committee.

Territory/topic	File	Date sent
Small residential	res-1-2-sites.pdf	3/01/2022
Whole Foods/SOFA	Ground Truthing Letter 1.pdf	3/19/2022
Duplicate sites	March13_email_duplicate_sites.pdf (printed from email)	3/14/2022
South El Camino Real	ECR_LosRobles_south.pdf	3/20/2022
South El Camino Real , supplement	ECR_LosRobles_south_supp.pdf	3/21/2022
Faith-based institutions	Groundtruthing Letter 2 – Churches.pdf	3/30/2022
South Middlefield	Groundtruth_South_Middlefield.pdf	4/20/2022
E. Meadow Cir. / Bayshore / Fabian	Groundtruthing Letter 3 - Meadow__Environs.pdf	5/24/2022
S. Palo Alto supplement	Groundtruth_South PA_extras.pdf	4/20/2022
California Ave / College Terrace I	CalAve_CollegeTerrace - lower income.pdf	5/13/2022
South Middlefield supplement	South_Middlefield_supp.pdf	5/13/2022
California Ave / College Terrace II	CalAve_CollegeTerrace - Part2.pdf	5/27/2022
North Middlefield	North_Middlefield.pdf	6/13/2022
Additional low-income sites	Grndtruthing Low Income Sites (10.16.22).pdf	10/16/2022
Cannery, Nest, Town & Country	Groundtruthing Letter 4 – Pickups.pdf	11/01/2022

Many of the problems we have identified have been corrected and suggestions adopted. These will generally not be repeated here. However, a fair number remain, and we add a few more. More details, including photographs, are available in the original reports.

i. Google sites

Among lower-income sites requiring substantial evidence of discontinuance of current use, we have identified several Google sites, as the company has active plans for its operation in Palo Alto (see E. Meadow Cir report, pp. 1–2 and South PA extras report, pp. 1–2). The City has removed four of these sites, but these remain.

- 1036 E. Meadow Circle, APN 12710094
- 1053 E. Meadow Circle, APN 12710081
- Nita Ave, APN 14709056
- 320 San Antonio, APN 14709069

The other East Meadow Circle sites are also dubious given Google's pattern of real estate acquisition in the area (see E. Meadow Cir report). The economic reality is that if Google wants

the highest-and-best use for the E. Meadow Cir to be a new Google campus, then sites there are less likely to find their ways into the hands of housing developers. These sites are not owned by Google, but housing at them is unlikely and they should only be allowed at a small fraction of full realistic capacity if included in the inventory at all. We spoke to one E Meadow Circle owner representative whose sites were not included in the inventory, but who reported multiple offers to buy his parcels over the years. This supports the conclusion that Google's intense interest is driving speculation.[20]

- 1060 E. Meadow Circle, APN 12710049
- 1066 E. Meadow Circle, APN 12710050
- 1050 E. Meadow Circle, APN 12710099
- 1068 E. Meadow Circle, APN 12710051

ii. Stranded parcels at multi-parcel sites

We have found several multi-parcel sites with a common problem: an individual parcel is disaggregated from the rest of the site, producing a resulting configuration that would be difficult to develop. To illustrate, we point you to two sites in the inventory.

- Maybell Ave, APN 13274045 (ECR Los Robles supplement, p. 1)

This parcel is owned by the auto dealership next door at 4180 El Camino Real (APN 13724045) and is used to store cars. The dealership is not in the site inventory. Converting this site to housing would leave the dealership with their showroom and sales office intact but limited room for the cars. We do not believe the owner would agree to build housing under these conditions.

- 2741 Middlefield, APN 12734095 (South Middlefield, pp. 5–6)

The parcel shown is the back office to the retail establishments at 2741 Middlefield. That retail parcel is not in the site inventory. There is an adjoining wall between the two parcels. We do not see how the landowner could have housing built on the rear parcel under these circumstances.

There is also a leasing issue discussed in the detailed report.

- Other cases

We also note the following, which mostly involve dedicated parking lots for an adjoining parcel. We do not think the identified housing will be built if doing so would put the main entity in violation of its parking obligations.

Address	APN	Main Address / APN	Main Entity	Reported
Yale St	137-01-078	2345 Yale St /APN 137-01-086	Dentists and a small business	Cal Ave II, p. 4
2137 El Camino Real	124-31-058	El Camino Real & College Ave	Spiritual/yoga center and school	Cal Ave II, p. 5

[20] December 1, 2022 phone conversation between Michael Quinn (PAF volunteer) and Jay Runge (Sangeness Industries).

		124-31-081, -082, and -055		
Nita Ave	147-09-056	100 Mayfield Ave, Mountain View	Office	South PA extras, pp. 1–2
3760 El Camino Real	137-11-079	3740 El Camino Real / 137-11-093	Restaurant	New
Lambert Ave	132-38-018 132-38-019	3295 El Camino Real / 132-38-019	Restaurant	New
527 Waverly Ave 515 Waverly Ave	120-15-080 120-15-081	400-408 University Ave / 120-15-066	Bank	New
El Camino Real	132-39-075	3375 EL CAMINO REAL / 132-39-088	Restaurant/bakery	New
El Camino Real	137-11-074	3850 El Camino Real / 137-11-074	Restaurant	New

iii. City-owned parking lots

This strategy covers six sites with a total of capacity of 212 units. We have previously reported a seventh site (CAMBRIDGE AV, APN 12432050), for which we expressed doubts about its economic feasibility for a predominantly lower-income site. (Cal Ave Rpt. #1, p. 2). That site is still in the inventory. As before, we suggest that this site be removed and its units distributed among the other six sites, which have been more thoroughly vetted by the HEWG.

iv. Faith-based institutions

We have previously shown the realistic capacity estimates at the faith-based institutions to be overly optimistic (Groundtruthing Letter 2). The six sites that remain in the inventory (the six largest ones) still show the same total capacities. We have also pointed out specific issues with three sites.

- 1140 Cowper St, APN 120-18-048: Non-contiguous area precludes qualification for the 0.5-acre minimum for identifying lower-income housing (Groundtruthing Letter 2, pp. 3–4).

- 2890 Middlefield Rd, APN 132-03-193: Full weekday use by school, including the front parking lot (South Middlefield Rd, p. 8).

- 3505 Middlefield Rd, APN 127-47-042: Recent playground expansion and offices (surrounded by parking) cast doubt on developable area. Parking lot nearly full every Sunday. (South Middlefield Rd, p. 8).

Our groundtruthing has also found two sites for faith-based institutions that are not included in the faith-based institution strategy:

- 561 Vista Av / 137-37-004 (South PA extras, p. 4) and 801 San Antonio Rd / 127-15-041 (new): The total units correspond to building out the entire site at its realistic capacity. Also, we do not believe these institutions will move as we understand they own their land. They will thus fall short of their realistic capacity.

v. Incorrect counts in baseline data

In several reports, we have identified small residential and mixed-use sites with incorrect count of existing units, which affects the validity of the site selection as well as the unit count. All of these have been resolved to our satisfaction except for the following sites.

- 4224 El Camino Real, APN 167-08-037, 20 units; ECR Los Roble rpt., p. 2

Baseline data missed two houses in the back of this lot. Neither the developable area nor total capacity calculations reflect this.

- 4045 Transport St , APN 147-01-070, 36 units; Groundtruthing Low Income sites, p. 1

This site, which is shown in the City parcel maps at 60.0' × 175.6', is 0.24 acres, not the 0.54 acres shown in Housing Element Appendix D and is thus no longer eligible for special treatment as a low-income site. We have double-checked this in the County's parcel open data set.[21] It should also be adjusted down to 17 units to reflect the lower acreage.

vi. Sites in the pipeline as non-residential uses

The site inventory includes a large number of potential commercial-to-residential conversions. However, some owners may instead choose to expand their commercial use, often without a zoning change required. The City has removed or modified several such projects in the pipeline, sometimes in response to our groundtruthing reports. However, the following non-residential sites remain in the inventory.

Location	Use	Project link
2799/2801 Middlefield (12734052)	Daycare	https://aca-prod.accela.com/paloalto/Cap/CapDetail.aspx?Module=Planning&TabName=Planning&capID1=21PLN&capID2=00000&capID3=00345
3300 EL CAMINO REAL (14220046)	Offices[22]	https://www.cityofpaloalto.org/News-Articles/Planning-and-Development-Services/3300-El-Camino-Real

[21] https://data.sccgov.org/Government/Land-Polygon/24sy-ym6n

[22] https://sfyimby.com/2022/08/plans-for-new-offices-at-3300-el-camino-real-palo-alto-santa-clara-county.html

The Stanford owned site at 3300 El Camino is notable because it was proposed as residential, but no formal application was submitted.[23] Despite being one of just three sites that received particular upzoning attention in the Programs section, the City's efforts were inadequate to keep the project residential. This supports our arguments in Section 2 that the upzoning proposed in the programs section is generally inadequate.

vii. Additional sites with expressed development interest (staff-suggested sites)

According to the Housing Element, this strategy comprises 19 sites with a total capacity of 657 units. Using Figure 3-11, we have been able to verify 18 sites in Housing Element Appendix D for a total of 647 units. The one missing site is a pipeline site, 3001-3017 El Camino Real, which appears at 129 units in Figure 3-2. We also note that this number constitutes a substantial increase from the six sites and 183 units we had seen before in our groundtruthing (inventory published April 26, 2022).

We challenge the inclusion of the following sites.

- 875 Alma St , APN 12028045

The development interest here was expressed in 2008–09 as part of a larger affordable housing project featuring senior housing. That project was scaled back in the face of strong community opposition. Given that history, it would be easier to support inclusion of this site in the inventory if there were a sign of renewed interest. We do not believe that to be the case. It is also a thriving business with no urgent need to redevelop.

- 760 San Antonio Rd, APN 14705091

This business had its lease renewed in 2021 (Additional low-income sites, p. 1; note the business is an electronics equipment distributor).

- 3398, 3400, 3490 El Camino Real, APN 13708072 (APN corrected)

This PHZ site at Creekside Inn was roundly disapproved of by the City Council at its PHZ hearing on October 17, 2022. The unit estimate is now reduced from 346 units to 116. It now lacks the requisite density to work as either a partially or fully affordable project (see analysis in Section 3A) or as a market rate mid-density project (see analysis in Section 3B)

- 550 Hamilton Ave, APN 12004005

The development interest here harkens back to 2016, but did not result in a housing project. We question whether interest can be regenerated quickly enough to complete the project within the eight-year cycle, particularly if the City's investigation discovers any outstanding leases.

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[23] https://www.paloaltoonline.com/news/2021/01/15/prime-for-housing-new-apartment-plan-targets-moderate-earners

- 3997 Fabian Way, APN 12737003

This site had a PHZ pre-screening on February 8, 2021, where City Council did not give it a favorable reception. The owner has since sought to lease out the properties (Groundtruthing Letter 3, pp. 6–8). We thus think the associated lots should be removed from the inventory.

Address	APN	Total capacity
849 E CHARLESTON RD	12737001	14
E CHARLESTON RD	12737002	14
FABIAN WY	12737005	26
FABIAN WY	12737007	29
3997 FABIAN WAY	12737003	8

- 3300 El Camino Real, APN 14220046

This PHZ site had a prescreening on June 22, 2020, which did not lead to an application to build housing. Rather, the developer has filed an application to enhance the commercial use at this site. We have thus listed this site under “Sites in the pipeline as non-residential uses.”

- 3150 El Camino Real, APN 14220054

The applicant filed a request for a PHZ pre-screening on July 27, 2021. There has been no progress in the 17 months since then except for two canceled pre-screenings, and the site continues to operate as a restaurant. This site needs more evidence that the developer is really interested.

- 340 Portage Av (1 Acre Site &Da), APN 13238071

This is the main “former Fry’s site” or “Cannery site” that constitutes the hub of the North Ventura Coordinated Area Plan (NVCAP). It is listed with a capacity of 175 units. We encourage the City to keep this figure in line with the public record, which is currently a development agreement for 75 units and a stated policy, without a defined plan (our major concern right now), for a one-acre affordable housing site. There is also a second site at the northern end of this parcel, listed in Table 3-2 as a 91-unit pipeline site at 200 Portage Ave. The public record shows that this plan is currently suspended[24], and we believe it should not be included as a pipeline site.

[24] ARB staff report 10/20/22, p. 3, “tolling agreement”.

Our groundtruthing reports (CalAve lower income, p. 6) also show three lots in the parking lot between the Cannery and Olive Ave. They are not in the public record and have problems with lot shape, lot location, and possible double-counting. We maintain this challenge.

- 3040 PARK BL, APN 132-32-036
- PARK BL, APN 132-32-042
- PARK BL, APN 132-32-043

viii. Sites with recent investments

When businesses invest capital in their sites, it sends a signal that the current use is unlikely to cease.

- 843 El Camino Real - Additional low-income sites - 14 very low income
    - Permits pulled for new trellis and signage in 2022.

- 3901 & 3903 El Camino - Groundtruthing Letter 4 - 36 very low income + 16 market
    - As noted earlier, this site underwent 7 months of major renovations 7 years ago. We think it might reasonably be excluded even under the City's methodology.

ix. Sites currently for lease

Sites currently being for lease indicate an intent by the owner to continue using the site without redevelopment. These low-income inventory sites were noted in previous letters as being for lease and are still on the inventory.

- 3903 El Camino Real - Additional low-income sites - 11 very low income

x. Sites with recently-signed leases

When a site has a recently-signed commercial lease its use is unlikely to discontinue during the planning period.

- 760 San Antonio Rd - Additional low-income sites - 14 very low income
    - Lease apparently signed in 2021 based on Loopnet data.

xi. Double-counting sites across the 5th and 6th cycles

The City is including numerous pipeline projects in the site inventory. However, these sites were already submitted to HCD for the 5th cycle RHNA (see link), and cannot be double-counted for the purposes of the 6th cycle RHNA. These sites include 788 San Antonio, 486 Hamilton, 3225 El Camino, 3265 El Camino, 2755 El Camino, 3001 El Camino, 4115 El Camino, 3705 El Camino, and 565 Hamilton. We raised this feedback to the City via email on September 3rd, 2021.

xii. Other challenges

These are all stable businesses with a use that is particularly unlikely to cease, as well as some other significant reason to believe the site is not likely to become housing or is otherwise unsuitable for inclusion in the Inventory.

- Bank of America downtown branch, 530 Lytton Av, APN 120-03-070

This includes not only a bank but a two-story office building to be replaced by only 21 units at a realistic capacity of 32 du/ac.

- Safeway, 2811 Middlefield Rd, APN 127-34-098 (South Middlefield, p. 3)

This is the main grocery store serving central Palo Alto.

c. ADU Projections Do Not Account for Recently Imposed Constraints

The City relies on ABAG's technical guidance for estimating ADU production based on averaging production from 2019-2021.[25] But this guidance does not contemplate the possibility that a city might enact new policies that make ADU production more difficult in 2022 and that invalidate its baseline production figures. This is precisely what Palo Alto has done to such an exceptional degree that HCD should consider if they should be allowed to use this method unmodified.

First, the steep fees described in the Fees and Other Costs section also apply to ADU development. Perhaps even more so. As HCD recognizes,[26] one of the merits of ADUs as a housing production strategy is the low costs. This "lower denominator" means the fees will be an outsized percentage of costs for ADUs relative to other modes of housing production. Palo Alto increased impact fees effective in 2022[27], so these fees are not reflected in 2019-2021 baseline production.[28]

Second, the new constraint described in the Tree Ordinance section[29] also applies to ADUs. It bears repeating that the City itself recognized that the ordinance may "*have the unintended effect of unduly restricting ADUs*."[30] The arborists costs, delays, possible appeals, and other problems noted in that section and in Appendix C - Tree Ordinance will all also impact ADUs. The smaller rewards associated with ADU production may not be worth pursuing in light of these added costs for homeowners interested in building one. Because this ordinance was only adopted in 2022, none of its many impacts are reflected in the City's baselines.

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[25] https://abag.ca.gov/sites/default/files/documents/2022-03/ADUs-Projections-Memo-final.pdf
[26] "ACCESSORY DWELLING UNIT HANDBOOK UPDATED JULY 2022" ("HCD 2022 ADU Handbook")(https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf), p. 4.
[27] Staff report for 4/20/2021 meeting, p. 8
[28] https://www.paloaltoonline.com/news/2021/04/15/palo-alto-hikes-development-impact-fees-for-first-time-in-20-years
[29] https://www.paloaltoonline.com/news/2022/06/01/new-palo-alto-law-would-triple-number-of-protected-trees
[30] https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220606/20220606pccsm-linked-amended-public-letters.pdf

Finally, Palo Alto has not remedied the defects in its existing ADU ordinance adopted in late 2020, which were detailed by the HCD several months ago.[31] Until Palo Alto corrects those defects, ADU production is likely to be constrained by such defects, which are only partially reflected in the baseline numbers.

In the context of these extensive policy changes, Palo Alto's number of ADUs countable toward RHNA should be substantially reduced until at least six months of ADU production can be demonstrated under the new rules to establish a new baseline.

d. Site Inventory Relies Too Heavily on ADUs for Lower-Income Units

Table 3-4 on p. 158 proposes a 30-30-30-10 distribution of income categories (Very Low, Low, Moderate, Above Moderate). The City cites ABAG's technical memo to justify this distribution. Indeed, this distribution can be found in that document.[32] However, it is not the proper distribution for Palo Alto to use. ABAG has guidance on these distributions in another source that more directly applies to cities with fair housing concerns, such as Palo Alto:[33]

> *"Although ADUs are often affordable, jurisdictions should be cautious about relying on them too heavily because of fair housing concerns. Many ADUs are affordable to lower and moderate income households because they are rented to family and friends of the homeowners.* ***If minorities are underrepresented among homeowners, the families and potentially friends of the homeowners will be primarily white. Therefore, relying too heavily on ADUs could inadvertently exacerbate patterns of segregation and exclusion****. Additionally, ADUs often do not serve large families, another important fair housing concern. Conversely, ADUs accomplish an important fair housing goal by adding new homes in parts of the city that are more likely to be areas of opportunity.*
>
> *Jurisdictions with fair housing concerns may want to use more conservative assumptions based on open market rentals, excluding units made available to family and friends, as summarized below:*
>
> *15% Above-Moderate Income*
> *50% Moderate*
> *30% LI*
> *5% ELI/VLI"*

Palo Alto is a jurisdiction with fair housing concerns based on the evidence and findings in Housing Element Appendix C. Furthermore, our members tell us that ADU production is

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[31] *See* review letter dated December 23, 2021 (https://www.hcd.ca.gov/policy-research/docs/ordinance-review-letters/PaloAltoFirstADUOrdinance122321.pdf).

[32] https://abag.ca.gov/sites/default/files/documents/2022-03/ADUs-Projections-Memo-final.pdf

[33] http://21elements.com/documents-mainmenu-3/second-units/1315-draft-adu-affordability-report-sep-8-2021/file

simply very expensive in Palo Alto, making it difficult for them to pencil out at affordable levels. There is reasonable concern this will get worse with the new policies outlined above. This is particularly true because of the additional “Housing Impact Fee - Residential” Palo Alto intends to levy on larger ADUs. Homeowners having to pay $15,000-$20,000 or more to rent an ADU will be more likely to charge rents consistent with Moderate and Above-Moderate income levels.

Palo Alto should thus be using the more conservative distribution for ADU projections.

Section 3: Governmental Constraints

The City is under a statutory obligation to impose development standards that do not excessively constrain or render infeasible the production of housing. When developing its site inventory, the City is required to assess the "realistic development capacity" of each of the sites in the inventory.[34] As part of this analysis, HCD requires cities to consider past "development and/or redevelopment trends" and "housing market conditions."[35] Additionally, the City has an additional requirement to identify and remove "potential and actual governmental constraints" upon the development of housing, including: "land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development."[36]

The City's Housing Element falls short of meeting these statutory obligations. First, the City's site inventory has unrealistic development standards, even after the City's proposed rezoning. Second, the City has failed to adequately address governmental constraints such as its entitlement and permitting times, fees, and other policies. Much of this section is new feedback to the City, as we were only able to review the City's constraints analysis after the City released the draft Housing Element on November 7th.[37]

a. City's Zoning Constrains Larger, Denser Housing (e.g., Apartment Buildings)

The City's site inventory has unrealistic development standards for large, high-density housing developments such as apartment buildings, even after the City's proposed rezoning. To briefly recap, the City has developed a RHNA site inventory with nine distinct strategies, most of which involve some type of upzoning:

- **Strategy 1: Multifamily Allowed** -- This strategy contributes to RHNA by identifying sites that can accommodate more housing under existing zoning.
- **Strategy 2: General Upzoning** -- This strategy contributes to RHNA by upzoning specific sites where multi-family development is currently allowed.
- **Strategy 3: Caltrain** -- This strategy contributes to RHNA by upzoning specific sites within ½ mile of the three Palo Alto Caltrain stations.
- **Strategy 4: Bus** -- This strategy contributes to RHNA by upzoning specific sites within ½ mile of frequent bus routes.
- **Strategy 5: City-Owned Parking Lots** -- This strategy contributes to RHNA by considering the development of several specific City-owned parking lots.
- **Strategy 6: Faith-Based Institutions** -- This strategy contributes to RHNA by upzoning vacant or underutilized space at specific faith-based institutions.

[34] Government Code section 65583.2(c)(2).
[35] HCD Guidebook at 25.
[36] Government Code section 65583(a)(5).
[37] Additional feedback in other sections is also motivated by our findings while analyzing constraints.

- **Strategy 7: GM and ROLM Zones** -- This strategy contributes to RHNA by upzoning an entire area of Palo Alto. It would upzone residential housing standards in the City's manufacturing and research areas.
- **Strategy 8: Stanford Sites** -- This strategy contributes to RHNA by upzoning three specific sites owned by Stanford University.
- **Strategy 9: Staff-Selected Sites** -- This strategy contributes to RHNA by identifying additional sites where there is existing developer interest.

These nine strategies are the core of the Housing Element, contributing 5,667 units to the RHNA goal, or 93% of the 6,086 units required. The remainder is met by pipeline sites and accessory dwelling units. Our analysis confirms that these nine strategies impose standards that excessively constrain the development of housing. This analysis is based on a review of actual housing proposals and development trends in Palo Alto, as the City is required to do by HCD.[38]

The first step of our analysis was to understand the new development standards proposed by each of the nine strategies. **Table 1** details each strategy and its proposed upzoning. For example, "Strategy 2: Upzoning" will increase the density of its sites to 30-40 du/acre, but make no changes to their maximum height, maximum FAR, or minimum parking requirement.

The second step of our analysis was to compare these development standards to those of actual housing proposals to confirm whether those development standards are likely to be financially feasible for developers. In Palo Alto, the best source of actual housing proposals is the City's Planned Home Zone (PHZ) process. Through the PHZ process, developers are invited to "request changes from the base zoning regulations" in exchange for providing 20% of units as deed-restricted affordable housing. The PHZ proposals are thus excellent indicators of what development standards are necessary to enable production of housing. **Table 2** details PHZ projects and their FAR, height, density, parking, and affordability characteristics.

The conclusion of this analysis is clear: **PHZ projects have consistently required more density, height, and floor-area-ratios, as well as lower minimum parking requirements, than the City is proposing in any of these nine strategies**. The City itself observes that PHZ projects "Projects submitted under this [PHZ] program tend to request higher residential density, in the 85-115 dwelling units per acre range, and a much higher FAR than allowed by the base zoning standards."[39] The City also notes that "Most applications have proposed heights that slightly exceeded (55-67 feet) the City's maximum allowed height of 50 feet." If anything, the City is understating the point, as Table 1 and Table 2 demonstrate below.

[38] HCD Guidebook at 25.
[39] Palo Alto Draft Housing Element at 174

Table 1: City's Proposed Zoning Changes to Ensure Adequate RHNA Site Inventory[40]

Firm commitment by City to change development standard
No firm commitment by City to change development standard

Program	Strategy	Units	Density	Height	FAR	Parking
1.1 Adequate Sites	Strategy 1: Multi-Family Allowed	285	Retain at 40-50 du/ac	**Retain at present levels:** Typically 30' to 40' in residential areas; 35' to 50' in commercial areas	**Retain at present levels:** Typically 0.5 to 0.6 in commercial areas and 0.5 to 1.0 in residential areas	**Retain at present levels:** Typically 1 space per 1-bedroom and 2 spaces per 2-bedroom
	Strategy 2: Upzoning	1,017	Increase to 30-40 du/ac			
	Strategy 3: CalTrain	486	Increase to 40-50 du/ac			
	Strategy 4: Bus	179	Increase to 40 du/ac			
	Strategy 5: City Parking	212	Consider increasing to 50 du/ac			
	Strategy 6: Faith-based	121	Increase to 30 du/ac			
	Strategy 7: GM & ROLM	2,141	Increase to 90 du/ac			
	Strategy 9: Staff sites	457[41]	Retain at 30-40 du/ac			
1.5 Stanford	Strategy 8: 1100 Welch Road	425	Increase to ~99 du/ac (425 units / 4.3 ac)			
	Strategy 8: 3128 El Camino Real	144	Increase to ~120 du/ac (144 units / 1.2 ac)			
	Strategy 9: 3300 El Camino Real	200	Increase to ~66 du/ac in addition to commercial (200 units / 3.0 ac)			

[40] Development standards for commercial zones (e.g., CD, CS, CN, and CC) can be found at Municipal Code Chapter 18.16.060; development standards for multi-family residential districts (e.g., RM-20, RM-30, RM-40) can be found at Municipal Code 18.13.040.
[41] We include 3300 El Camino Real separately in Program 1.5 (Stanford), where it is discussed and rezoned.

Table 2: Actual Projects Proposed through PHZ Process[42]

Address	660 Univ. Ave	955 Alma St.	2951 El Camino Real	3997 Fabian Way	3150 El Camino Real	3400 El Camino Real	70 Encina Ave	800 San Antonio Road	Average	Base Zoning in City's Housing Element (from Table 1)
FAR	2.3	2.7	2.5	2.8	3.0	2.5	2.4	3.0	2.7	Typically residential FAR of 0.5 to 0.6 in commercial areas; 0.5 to 1.0 in residential areas
Res. FAR	*1.9*	*2.1*	*2.4*	*2.8*	*2.9*	*2.5*	*2.4*	*3.0*	***2.5***	
Com. FAR	*0.4*	*0.6*	*0.1*	*0.0*	*0.1*	*0.0*	*0.0*	*0.0*	*0.2*	
Height	45'	50'	54'	67'	55'	61'	55'	60'	**56'**	Typically 30' to 40' in residential areas; 35' to 50' in commercial areas
Density	142 units per acre	150 units per acre	103 units per acre	135 units per acre	123 units per acre	106 units per acre	72 units per acre	86 units per acre	**115 units per acre**	Typically 30-50 units per acre; almost always <90 units per acre
Parking	0.9 spaces per unit[43]	0.7 spaces per unit[44]	1.2 space per unit[45]	1.3 spaces per unit	1.3 spaces per unit[46]	1.3 spaces per unit	1.4 spaces per unit	1.9 spaces per unit	**1.25 spaces per unit**	Typically 1 space per 1-bedroom and 2 spaces per 2-bedroom

[42] We exclude the project 2241 Wellesley St. for the sake of comparability, as it is the only PHZ project proposed in an R-1 neighborhood.
[43] Excludes commercial parking. The project did not detail exactly how many spaces would be allocated between the residential and office use. To isolate residential parking, we have assumed that the project provides 1 commercial parking space per 250 square feet, or 37 commercial spaces. The total parking is 103 spaces, so this leaves 66 spaces for residents, or 0.94 spaces per residential unit.
[44] Excludes commercial parking
[45] Excludes commercial parking
[46] Excludes commercial parking

Below, we detail the implications of this analysis for four key development standards.

Density

- **Analysis:** PHZ projects have required high densities, with an average density of 115 du/acre. Yet not a single parcel in the draft Housing Element is zoned for anything close to that density. Many parcels remain zoned at a 30-50 du/ac, far below what the City knows is required to build housing in Palo Alto.[47]

- **Recommendation:** Eliminate density limits and rely on other planning tools, such as maximum FAR and height, to limit the physical dimensions of a building. This change would enable a greater diversity of homes and households without significantly changing the physical character of a neighborhood.[48] At a minimum, however, the City should bring any density limits in line with observed data on feasible residential development in Palo Alto (e.g., raising to 115+ units per acre).

Height

- **Analysis:** We find that the majority of PHZ projects have required heights above 50 feet, with an average height of 56 feet. Yet the draft Housing Element rezones virtually no sites above 50 feet, and many sites are zoned substantially lower, such as 35 feet.[49] This is a serious constraint that functionally limits buildings in the City to four or fewer stories. The City's insistence on a 50 foot height limit is particularly odd given that many beloved Palo Alto properties are substantially taller than 50 feet (e.g., the Hotel President in downtown Palo Alto, which reaches 90 feet).[50]
    - Moreover, a height limit of 50 feet is likely a physical constraint (not merely a market constraint) at the City-proposed densities for many smaller sites, as it is often simply impossible to fit that many units under 50 feet.

- **Recommendation:** Generally increase height limits to 60 feet outside of downtown and up to 80 feet in specific downtown and transit rich areas. This would allow buildings in Palo Alto to take advantage of 5 to 7 stories, rather than merely 4 stories, and would encourage the type of transit-oriented development necessary to meet our climate goals. A base 60 foot height limit would also bring us in sync with the building code for Type V (wood-framed) construction, which is one of the most popular and affordable forms of

[47] For example, the City Council's signature project in the last five years -- Wilton Court, a 58 unit, 100% affordable development -- was only possible because the Council permitted it to be built at 127 du/acre.
[48] Eliminating density limits would also minimize waste. Despite the state's housing crisis, many Californians live in housing that is simply too large for their needs. There are nearly 2.7 million spare bedrooms in the state, or 20 uninhabited bedrooms for every homeless individual. Sightline Institute.
[49] The only exception is for extremely low-income housing that is eligible for the Affordable Housing Incentive Program, which we discuss in our review of Program 3.3.
[50] Historic Resources Board Staff Report (5/14/2020)

construction available today and which safely allows heights up to 60 feet.[51]

Parking

- **Analysis:** The majority of PHZ projects required substantial parking concessions. Currently, Palo Alto requires 1 space per 1-bedroom unit and 2 spaces per 2-bedroom unit, but the average PHZ project penciled out at a lower 1.25 parking spaces per unit. This is an important data point given the extraordinary cost of parking construction in Palo Alto, which can cost more than $80,000 per space[52]. These costs are often unnecessary, and the City itself has acknowledged that many required parking spaces sit vacant and unused.[53]

- **Recommendation:** Reduce parking minimums to 0.75 spaces per unit or below, which the City already allows for Affordable Housing Incentive Program-eligible projects, and stop prescribing below grade parking and side street or alley access. Those latter requirements often make it impossible to accommodate on-site parking at many of our downtown sites. We also urge Palo Alto to provide additional flexibility to accommodate parking off site or via other mechanisms, which could unlock much needed housing.

Floor-Area-Ratios (FAR)

- **Analysis:** PHZ projects have required much higher floor-area-ratios (FARs), with an average floor-area-ratio of 2.7. Currently, Palo Alto limits FARs in most areas to 0.5 to 1.0, with a handful of areas zones for up to 2.0. Yet the draft Housing Element leaves FARs untouched across the City, despite the City's own acknowledgement that PHZ proposals universally required a "much higher FAR" to pencil out.
    - Moreover, current FAR is physically incompatible with the densities the City is contemplating, as it is often simply impossible to fit that many units on a site with such a restrictive FAR.[54]

- **Recommendation:** Increase maximum FARs to above 2.5 or higher, in line with the PHZ data and market trends. This would also address the concern that, in some cases, the City provides hotels with substantially more flexibility on FAR than it currently does with residential housing.[55]

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[51] The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California (March 2020), Terner Center for Housing Innovation ("Type I projects, which are typically over 5-7 stories and constructed with steel and concrete, cost an average of $65 more per square foot than other types of construction, like Type V over I (i.e., wood frame floors over a concrete platform").
[52] GreenTrip Parking Database - 801 Alma
[53] *See* Multifamily Residential Parking Requirements, City of Palo Alto, 5/30/2018, pg. 10 (noting that "for market rate units…the surveyed parking demand rate suggests that 0.75 spaces per studio and 1.5 spaces per 2-bedroom unit would be appropriate to meet demand.")
[54] On 4/7/22 (22:50) Scott O'Neil gave comment to the Working Group that they had to be sure zoning was not creating physical constraints and is encouraging development.
[55] *See* e.g., CC Zoning at 18.16.060 (granting hotels a FAR of 2.0 but limiting residential FAR to 0.4).

The same conclusions emerge from an analysis of actual approved projects in Palo Alto. For example, the Alta Locale development at 2755 El Camino Real was approved in 2018 at a density of ~130 du/ac.[56] And the development at 788 San Antonio was approved in 2020 at a density of ~102 du/ac.[57] Neither of these projects, which constitute some of the only recent market-rate development in the City, would be permissible under any of the base zoning of the draft Housing Element. The fact that even *approved* residential projects exceed the base zoning confirms that developers are not overreaching in their PHZ proposals.

It is telling that the only sites that the City has zoned above 50 feet and 100 du/acre are those owned by Stanford University. The University was given two seats on the Housing Element Working Group, and the City directly consulted with Stanford about what development standards were necessary for the University to build housing on land that it already owns in Palo Alto. As a direct result of that collaboration, Stanford-owned sites have more realistic development standards than any other site in the inventory. But Stanford is not unique among developers and almost certainly faces the same development costs as others in the market. If anything, its costs are likely lower than other developers, as the University already owns the land on which it is building. It is indefensible to provide Stanford-owned sites with concessions on density and height but withhold those same concessions from every other site in the City. The development standards currently reserved for Stanford should be available to all.[58]

The proposed site inventory buffer of 871 units is not sufficient to cover any potential shortfall from excessively constraining development standards. As a preliminary matter, this buffer is quite small: about 14%, or 871 units against a total RHNA goal of 6,086. Other cities, like Emeryville, are planning with a larger 50% buffer.[59] The City's 14% buffer is also exceptionally small given that Palo Alto is currently on track to meet less than *half* of its 5th cycle RHNA goals, and virtually none of its goals for lower and moderate-income housing.[60] Based on past data, even a 50% buffer would be inadequate given the City's dismal performance in the 5th cycle. It is clear that the City's proposed 14% buffer cannot make up for a site inventory that is not adequately zoned to accommodate financially feasible housing.

The bottom line is this: the zoning changes under the nine strategies of the draft Housing Element are at odds with data from actual housing projects in Palo Alto. Not a single one of the studied PHZ proposals would come close to meeting the City's proposed development standards. And given that fact, it is hard to imagine more than 6,000 units of housing being feasible under these development standards. We strongly urge the City to remedy these issues prior to submitting this Housing Element.

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[56] 2755 El Camino Real Multi-Family Residential Project
[57] Housing Incentive Program Expansion and 788 San Antonio Road Mixed-Use Project
[58] This point was made by Scott O'Neil in public comment to the Housing Element Working Group on 11/18/2021. Link. (time:07m:30s) Also to Planning & Transportation on 02/09/2022 "feasibility arguments that were being found persuasive in particular cases were simply not applied to the rest of the inventory"
[59] Emeryville Draft Housing Element (August 2022)
[60] Housing Element Implementation and APR Dashboard ("Housing Needs" tab)

b. City's Zoning Constrains Medium-Density Housing (e.g., 25-35 du/ac)

In the previous section, we demonstrated that Palo Alto imposes development standards that make it impossible to build larger, dense residential projects such as apartment buildings. When reviewing City production history for market-rate mid-range units, we also discovered constraints at this scale. To illustrate, we consider data from recent market-rate projects with HCD APR data, supplemented with site-specific research. This data is included in Table 3 below and reveals patterns of development that challenge the lower densities claimed for many sites in the City's inventory.

Table 3: Low-to-Moderate Density Residential Market-Rate Projects Approved in Palo Alto and Reported to HCD

Includes all 5+ unit dense multifamily market rate projects in HCD APR records.

	Lower density				**Higher density**
Name	**3225 El Camino Real**	**2515 El Camino Real**	**3877 El Camino Real**	**No projects between 25 and 35 du/ac**	**565 Hamilton**
Density	11 du/ac	14 du/ac	23 du/ac		37 du/ac
Type	Mixed-use w/ large condos.	Mixed-use w/ large condos.	Mixed-use Townhomes +Condos		Mixed-use Studios
Res. FAR	0.6 [61]	0.5	0.6 [62]		1.0[63]
Height	55' [64]	40'	38'		40'
Details	8 units +8,574 retail +1,826 office[65]	13 units +1022 retail +9835 office[66]	17 units +4027 retail[67]		19 units +7,450 office[68]

It concerns us that Palo Alto has no recent track record of producing housing at densities in the range 24-36 du/acre. Below 24 du/acre, townhome construction appears viable, as evidenced by 3877 El Camino Real and other recent projects incorporating townhomes. Heavily commercial projects (e.g., 3225 and 2515 El Camino Real) also work, at the expense of squeezing residential down to low densities. But the inventory isn't claiming as much development in these lower ranges below 24 du/acre[69] where it's easier to demonstrate feasibility with these projects.

[61] 3225 El Camino Real Mixed-Use Project - Mitigated Negative Declaration
[62] Architectural Review Board (5/18/2017)
[63] Architectural Review Board (5/3/2018)
[64] The additional 5' are only to accommodate mechanical features, per PAMC 18.40.090.
[65] Planning & Transportation Commission Staff Report (4/25/2018)
[66] 2515 - 2585 ECR Site and Design Review (2/10/16)
[67] Planning & Transportation Commission Staff Report (8/29/2018)
[68] Architectural Review Board Regular Meeting Agenda (7/18/19)
[69] There are 686 units below 24 du/acre, vs 1702 in the 25-35 du/acre range.

Meanwhile, our smallest project outside the above range is a high-density studio project with significant square footage of office space at 565 Hamilton. We think this is an excellent project for inferring what a minimal viable mixed-use condo might look like.

In parts of this range, constraints appear physical:

- RM-30 is mixed use with 30 du/acre and FAR of .6. Even with no commercial, units are restricted to around 700 square feet. Other zones also have restrictive FAR standards, prohibiting developers from using the full density if they are building for-sale units, which would normally be more than 1000 sq ft. This is not zoning for a variety of housing.[70]
- The 3225 and 2515 El Camino projects were clearly restricted from achieving higher densities by low residential FAR.[71]

We found these patterns looking at HCD APR data. We've verified they also hold for current pipeline projects. Palo Alto has parcels already zoned in this range and there's simply no evidence we can find that they are developed at the claimed density. Adding some margins to the boundaries we've established by looking at 565 Hamilton and 3877 El Camino Real to be conservative, we conclude that Palo Alto cannot produce market-rate housing in a range of 25-35 du/acre.

c. City Fails to Adequately Address Other Governmental Constraints

The draft Housing Element also does not adequately address many other constraints on housing development in Palo Alto. The Housing Element fails to acknowledge several major constraints, and fails to show any meaningful action towards reforming other constraints, such as permitting and entitlement timelines. We detail our findings below.

i. Permitting Timelines

The City has not adequately acknowledged and mitigated its lengthy permitting times, which are a governmental constraint on housing. The City suggests that "[a]pplication processing timeframes in Palo Alto typically range from [90 to 180 days] for projects falling under the City's Streamlined Housing Development Review process to [365 days] or more for projects requiring rezoning or tentative maps." As a preliminary matter, some of these times may be worse than reported in the Housing Element. According to HCD data, permitting times for Palo Alto average 271 days and entitlement times average 300 days.[72] But whatever the precise entitlement and permit times are, they are indisputably long.[73]

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[70] On 4/7/22 (22:50) Scott O'Neil gave comment to the Working Group that they had to be sure zoning was not creating physical constraints and is encouraging development.

[71] Anne Paulson at The El Camino Institute provided much invaluable assistance and analysis in this section.

[72] Housing Element Implementation and APR Dashboard ("Construction" tab)

[73] Permitting procedures and timelines in Palo Alto affect and constrain ADU production as well. For example, in later review cycles, Palo Alto plan checkers have sometimes introduced new plan check comments not made in earlier review cycles, thus delaying or blocking ADU building permit applications. In addition, Palo Alto has recently required information relating to its new Tree Ordinance to be provided

The City defends its times by noting that they are "comparable to other jurisdictions in the Bay." And it is true that there are other jurisdictions in the Bay Area with exceptionally long permitting timelines. But that hardly absolves the City of its responsibility to *improve* permitting times. It is useful to consider other jurisdictions. For example, our neighboring community of Redwood City has a permit timeline of 69 days, which is a full 202 days faster than Palo Alto. The comparison is even more striking because Redwood City and Palo Alto exist in the same development market along the 101 freeway and El Camino Real. And impressively, Redwood City handles far more projects than Palo Alto; it has historically permitted 3.92 projects per 10k residents,[74] which is nearly three times that of Palo Alto, which has historically permitted only 1.35 projects per 10k residents[75]. By any measure, Palo Alto is far slower to permit entitled projects that it could be, based on peer comparisons alone.

The City should adopt a program with a quantified objective to reduce permitting timelines by at least 120 days.

ii. Entitlement Timelines

The City has not adequately acknowledged and mitigated its lengthy entitlement times, which are a governmental constraint on housing. According to HCD data, Palo Alto is the fifth slowest jurisdiction in California to issue entitlements; only San Francisco, Oceanside, South San Francisco, and Santa Maria are worse. This is particularly concerning because Palo Alto processes 44%[76] more requests for entitlements than permits. This suggests that Palo Alto's baseline zoning is inadequate for feasible development (which is hardly inevitable, as cities like Oakland process 33% more permits than entitlement requests).[77]

And because HCD's entitlement times and project counts do not include pre-applications, HCD data is understating the length of the entitlement process. As the City notes: "The applicant submits a prescreen application for a rezone proposal and the City Council generally hears the prescreen request within two months. If the Council response is favorable, then the formal application for a rezone process can begin."[78] Adding the City's claimed two month pre-application delay to the City's official HCD entitlement time is sufficient to give Palo Alto the second-worst entitlement time in the state, behind only San Francisco. Additionally, Palo Alto's pre-screening process allows projects to be killed (via negative feedback during pre-screening) without any formal application appearing in HCD data.

However, to fully appreciate the impact of prescreens on timelines, we must also consider the time applicants take to incorporate feedback. To that end, we consider timelines for

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during an initial "pre-application" submittal process, thus withholding from certain ADU applicants the benefits of the mandatory ADU permitting timelines established by the Government Code.

[74] US Census Bureau data on Redwood City

[75] US Census Bureau data on Palo Alto

[76] 13 entitlements, 9 permitting requests

[77] 172 entitlements, 230 permitting requests

[78] Palo Alto Draft Housing Element at 262

recent market-rate projects with APR data, supplemented with site-specific research. This data is included in Table 4 below.

Table 4: Actual Projects Approved in Palo Alto and Reported to HCD
Includes all 5+ unit multifamily market rate projects in HCD APR records, including timelines.

Name	2755 El Camino Real	788 San Antonio Rd.	565 Hamilton	3225 El Camino Real	3877 El Camino Real	2515 El Camino Real	Avg.
Type	Principally Residential		Mixed Use				
Details	57 units	102 units +1,800 retail	19 units +7,450 office[79]	8 units +8,574 retail +1,826 office[80]	17 units +4027 retail[81]	13 units +1022 retail +9835 office[82]	
Earliest Record	Aug 2015 Study Sn.[83]	Oct 2018 Prescreen[84]	May 2018 Study Sn[85]	Feb 2015 ARB[86]	Dec 2013 ARB prelim[87]	Nov 2014 ARB[88]	
Approval	June 2018	Feb 2021	Aug 2019	May 2016	Sep 2017	May 2016	
Time to Approval	**2 yr, 10 mo**	**2 yr, 4 mo**	**1 yr, 3 mo**	**1 yr, 3 mo**	**3 yr, 9 mo**	**1 yr, 6 mo**	**2 yr, 2mo**
Permit	Feb 2020	N/A[89]	Sep 2020	Feb 2020	Sep 2019	July 2019	
Total Time to Permit	**4 yr, 6 mo**	**> 3 yr, 2 mo.[90]**	**2 yr, 4 mo**	**5 years**	**5 yr, 10 mo**	**4 yr, 7 mo**	**4 yr, 5 mo[91]**

The state of approval processes in Palo Alto is so dire that it was recently a subject of a Santa Clara County Civil Grand Jury, which was empaneled to assess why cities such as Palo Alto have been performing so poorly on the production of affordable housing. Among other findings, the Civil Grand Jury made the following observations:

> *The City of Palo Alto's multiplicity of planning policies and documents creates lengthy processes and can lead to frustration for all parties, including neighborhoods as well as developers.*
>
> *…*

[79] Architectural Review Board Regular Meeting Agenda (7/18/19)
[80] Planning & Transportation Commission Staff Report (4/25/2018)
[81] Planning & Transportation Commission Staff Report (8/29/2018)
[82] 2515 - 2585 ECR Site and Design Review (2/10/16)
[83] Application Narrative Surplus VTA Parking Lot Study Session Seeking PC Zone or CC (2) Zone District Designation (8/21/2015)
[84] Staff Presentation (11/16/20) (p.4)
[85] Architectural Review Board ARB Staff Report (5/3/2018)
[86] Architectural Review Board ARB Staff Report (2/19/2015)
[87] Architectural Review Board ARB Staff Report (12/19/13)
[88] Architectural Review Board ARB Staff Report (10/20/2014)
[89] No information as of 2021 APR reporting window.
[90] Latest APR was March 2022.
[91] Excludes 788 San Antonio due to incomplete data.

> *The length of time it takes developers to get their plans approved is significantly higher in the City of Palo Alto compared to the City of Mountain View. This discourages developers from proposing residential development in Palo Alto.*[92]

The Civil Grand Jury was correct that the byzantine structure of City approval processes is itself a constraint. For example, the City's description of its approval processes by project type, located in Table 4-10, is virtually unintelligible to those unfamiliar with City processes:[93]

> *If the application is for a Planned Community rezoning, then the ARB will conduct a hearing after the Planning and Transportation Commission hearing, and prior to a second Planning and Transportation Commission meeting, followed by the Council hearing and action. Since this is a rezone request, a prescreen by the Council is required prior to the rezone request, which may also affect the processing timeframe. For all other rezoning projects, the Planning and Transportation Commission reviews the project twice, before and after the ARB recommendation, and prior to the City Council action. This adds considerably to the processing timeline. (p. 263.)*

This many hearings create an aggregate constraint worse than the sum of its parts because opponents can demand concessions at each stage, until the cumulative effects kill a project. Furthermore, informal surveys with developers show that the long and costly process keeps them from coming to Palo Alto. One recent public document confirming these frustrations is an April 2022 letter from Summerhill Homes raising HAA concerns about Palo Alto's handling of its townhome project:

> *SummerHill has worked hard and in good faith to design a high-quality residential community that meets the City's standards, formally revising and resubmitting the project plans five times to address the City's comments.*[94]

For all of these reasons, we have supported the Civil Grand Jury's recommendation that the City develop clearer area plans to eliminate Council prescreens, and combine reviews by the Architectural Review Board and Planning and Transportation Commission into a single consolidated review. The Civil Grand Jury recommended taking action by June 30 2022. Unfortunately, the City Council largely dismissed the Civil Grand Jury's concerns,[95] and the draft Housing Element embraces not a single one of the Jury's recommendations. The Housing Element's only commitment on timelines is to limit projects to two meetings before the Architectural Review Board.

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[92] Affordable Housing: A Tale of Two Cities (2021 Civil Grand Jury of Santa Clara County)
[93] Palo Alto Draft Housing Element at 263
[94] https://www.cityofpaloalto.org/files/assets/public/planning-amp-development-services/new-development-projects/2850-w-bayshore/attorney-letter-regarding-directors-decision.pdf
[95] "Palo Alto defies grand jury recommendations for more 'area plans' to boost affordable housing," Palo Alto Weekly, March 3rd 2022

The City must recognize its complex and lengthy approval processes as constraints to housing, and adopt quantified program objectives to start including pre-screen/pre-application time in APR data, and to reduce entitlement timelines to under one year. We urge the City to look to the Civil Grand Jury's recommendations in developing these commitments.

iii. Excessive CEQA Review

The City has not acknowledged that its policies and practices with regard to environmental review are a government constraint on housing. The City requires CEQA review beyond what should be required, and what is required for other cities. For example, an Environmental Impact Report (EIR) is being prepared for 660 University Avenue. This is a 70 unit project on an infill parcel that is surrounded by urban development with no history of excessive soil contamination or other potentially significant environmental issues. This can add a year of delay for preparation of the necessary documents and required review times.

In Palo Alto, for simple CEQA exemptions, a contract with a subconsultant must be implemented: excessive and often unnecessary technical reports prepared followed by several months of document preparation time for the exemption. Antiquated General Plan and zoning designations further complicate the CEQA issue by presenting impediments to use of categorical and ministerial exemptions created solely for the purpose of streamlining the permit process. One such impediment is that many projects must be consistent with land use designations to qualify for exemptions from CEQA. Even simple exemptions can take up to six months to prepare (including obtaining bids from environmental subconsultants to do the work and completing requisite contracts), review, and finalize.

Unless an applicant has a savvy land use attorney involved (e.g., SummerHill Home's 2850 West Bayshore development), projects are subjected to long CEQA processing times and unnecessary review. This is a constraint on housing development in Palo Alto.

To address this constraint for categorical and ministerial exemptions, the City should:

- As described in Section 3A and Section 3B of this document, immediately update the General Plan to designate and rezone properties to allow densities at or higher than the assumed Housing Element development potential for the site.
- The various CEQA processes (exemption, Negative Declaration [ND] or EIR) and timelines should be specifically outlined in the Housing Element given the depth and breadth of state regulations and policies supporting housing development.
- Begin outlining the necessary CEQA process in the 30-day completeness letter for a project.
- Commit to a 30-day timeline for completion of ministerial or categorical CEQA exemptions with a specific Housing Element-specified policy.
- Hire a staff member to process ministerial CEQA applications or create a list of approved environmental consultants and allow applicants to contract directly with a consultant when utilizing categorical and ministerial exemptions. This would save time and costs associated with contract administration.

- For more complicated projects requiring a ND or EIR, a consultant should be chosen by the City from the approved list and identified in the 30-day letter so CEQA processing can begin immediately.

iv. City's Opposition to Mixed-Use Cross-Subsidization

The City has not acknowledged that its opposition to mixed-use cross-subsidization is a government constraint on affordable housing. As context, the City Council has sought to limit the amount of new commercial development in the City. However, the City's caps on commercial development can have the unintended consequence of simultaneously constraining residential affordable housing development. That is because mixed-use development (i.e., both residential and commercial) has been one of the most successful strategies used by our peer cities to meet the affordable component of their RHNA obligations. For example, Redwood City's downtown precise plan has successfully leveraged extensive mixed-use development to exceed its 5th cycle RHNA,[96] and in part for that reason, it has substantially outperformed Palo Alto in the production of lower-income housing.[97]

However, Palo Alto's City Council has chosen to reject mixed-use development, on the theory that any new commercial development could worsen the City's overall ratio of jobs to housing. As the City states in its response to the Santa Clara County Civil Grand Jury Affordable Housing[98] report:

> *Palo Alto believes the economics of affordable housing in the Peninsula preclude most practical use of mixed-use development as an affordable housing tool, once "net-of-demand" housing is considered. (p.5)*

The City is entitled to reject Redwood City's mixed-use strategy and disfavor new housing that is associated with new commercial development. But it must recognize that its preference is a constraint on affordable housing development in Palo Alto. The existence of that constraint emphasizes the need for the City to demonstrate that affordable housing can pencil out without any cross-subsidization from commercial development. The City can replace the economic value of mixed-use commercial development with new subsidy programs for housing, or with far bolder changes to zoning (e.g., height, density, FAR, and parking) that ensure that residential housing is independently financially feasible. But the City must acknowledge its present stance as a constraint and ensure that its programs adequately address it.

v. Tree Protection Ordinance

The City has not acknowledged that its newly revised Tree Ordinance is a government constraint on housing. Palo Alto's original Tree Ordinance had a relatively limited impact on housing. But the City quantitatively and qualitatively transformed its prior tree policies on July

[96] Redwood City a Bay Area model in housing production, SF Chronicle, J.K. Dineen (May 2021)
[97] Housing Element Implementation and APR Dashboard ("Housing Needs" tab, "Progress" section)
[98] City of Palo Alto Response to the Civil Grand Jury Report

21, 2022,[99] an action which we advised could jeopardize Housing Element certification.[100] The quantitative expansion tripled the number of protected trees to an estimated 600,000,[101] or roughly nine trees per Palo Alto resident (excluding trees in open space areas).[102]

For multifamily housing, removing a protected tree that is not dead, dying, or a nuisance could require proving to Urban Forestry that:[103]

> "Retention of the tree would result in reduction of the otherwise-permissible buildable area of the lot by more than twenty-five percent, and … retaining the tree would increase project cost by more than twice the reproduction cost of the tree or ten percent of the given project valuation, whichever is greater."[104]

To help visualize the sheer number of trees in Palo Alto, virtually all species of which now are protected, consider this photo from the City's Urban Forestry department:

[99] "Tree Ordinance Update" webpage. Even after the July 21, 2022 effective date, the new tree ordinance did not apply to a certain "pipeline projects. *See* section 13 of the new tree ordinance.
[100] Palo Alto Forward Letter - 6/18/22
[101] Proposed Palo Alto law would triple number of 'protected' trees, Palo Alto Weekly (6/1/22)
[102] U.S. Census - Palo Alto; City Council Staff Report (6/6/22)
[103] See Appendix C for a detailed treatment of removal rules
[104] PAMC 8.10.050(d)(1)

The impact of these expanded protections will only grow over time. Any tree that reaches 15" in diameter will become a new protected tree, unless it is an invasive species or one of eight water-intensive ones.[105] And the City's new objective standards will continuously tighten this constraint. These standards will require new tree plantings in the amount of 1 tree per 30 ft of facade in landscape screens, and 1 tree per 40 feet of facade in setbacks.[106]

In addition to the quantitative impacts, the City has qualitatively changed the procedures associated with complying with Tree Ordinance. These requirements will affect even housing projects that do not require the removal of a projected tree. For example, the expanded Tree Ordinance:

- Requires all permit applications changing an existing building footprint to include a statement by a City-approved arborist.[107]
- Implicitly gives owners of adjacent properties leverage over the permitting process by requiring access to trees on those properties.
- Creates new notice requirements and expands appeals for removals.

For more detailed analysis of these new requirements and their potential impact on new housing, see Appendix C - Tree Ordinance Discussion.

We support protecting the urban canopy, and we believe that we can meet our housing goals while protecting natural resources. For example, if the City desires to protect this many trees while simultaneously meeting our RHNA goals, it can do so by more aggressively increasing the height and FAR limits for residential development, especially near downtown and transit-rich areas. But the Tree Ordinance as it stands is clearly a constraint on housing, and it must be analyzed and mitigated prior to submission to HCD.

vi. City's Strong Preference for R-1 Single Family Zoning

The City acknowledges that its preference for single-family zoning is a governmental constraint on housing. We agree. Many vocal community members and some council members support policies that prevent development of multi-family housing. But the City does not adequately mitigate the constraint. As the draft Housing Element notes, "the majority of residentially zoned land in Palo Alto is planned and zoned for low residential use," and "the single-family site development regulations are a constraint to the development of housing, particularly affordable housing that often occurs at higher densities."[108] Unfortunately, the City's proposed solutions are irrelevant to this identified constraint:

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[105] https://www.cityofpaloalto.org/Departments/Public-Works/Public-Services/Palo-Altos-Urban-Forest/Tree-Ordinance-Update-2022/Tree-Ordinance-Information

[106] ARB Recommendation on Objective Design Standards (3/18/21)

[107] PAMC 8.10.040(b). The provisions show that the new ordinance's objectives extend far beyond land use.

[108] Palo Alto Draft Housing Element at 235.

> "To combat this constraint, Program 6.1 Housing for Persons with Disabilities proposes amending the Zoning Code to create incentives that encourage development of various types of housing units, including units for persons with disabilities including seniors. In addition, Program 5.1 Preservation of at Risk Housing supports a Zoning Code that permits innovative housing types and flexible development standards while maintaining the character of the neighborhood."

While these programs address worthwhile goals, it is not clear to us how "updating the City's affordable housing guidelines to establish preferences for populations with special needs" does anything to address the constraint that single family zoning imposes on housing development. Similarly, it is unclear to us how notifying owners and tenants about the "termination of [] affordability restrictions" does anything to combat that constraint. Due to the exceptionally high cost of low-density housing in Palo Alto,[109] the only conceivable way to mitigate this identified constraint is to increase density in single-family neighborhoods. The City should make this commitment before submitting the draft Housing Element to HCD.

vii. Fees and Exactions

The City has not adequately acknowledged and mitigated its fees and exactions, which are a governmental constraint on housing. The City correctly notes that its fees are exceptionally high:

> *The Annual Report on City Services 2019-2020 conducted by the City of San Jose identifies Palo Alto as one of the highest impact/capacity fee charging cities for both single-family and multiple-family home construction. (p.274)*

For example, these impact fees dominate the total costs given in the examples on page 275, at 78% and 67% of total fees, respectively. The City justifies its fees in part by suggesting that they are proportional to the square footage of a building.

> *A development fee was adopted for parks, community centers, and libraries based on the number of employees or residents generated by each residential or commercial project using square feet or number of units. [¶] The fees for parks, community centers and libraries add approximately $64,503 to the price of a single-family dwelling unit less than 3,000 square feet in size and approximately $47,707 to the price of a multifamily dwelling smaller or equal to 900 square feet. (p. 273)*

The phrases "using square feet" and "a single-family dwelling unit less than 3,000 square feet," for example, suggest that the City's Park Impact Fee and other "Development Impact Fees - Residential" for single-family housing vary based upon the square footage of the home being built. But the City's own Table 4-14 (p. 269) suggests that this is not the case[110]:

[109] https://www.mercurynews.com/2022/11/10/single-family-home-sells-in-palo-alto-for-3-5-million/

[110] To be sure, the reference to "3,000 square feet" may have been a typographical error, but that phrase appears to occur only once in the Palo Alto Draft Housing Element. The belief that the City does charge such fees on a strict "per unit" basis is strengthened by the "Fiscal Year 2022 Adopted Municipal Fee

TABLE 4-14 PALO ALTO IMPACT AND IN-LIEU FEES		
	Single Family	**Multi-Family**
Development Impact Fees - Residential		
Community Center Impact Fee *Note: ADUs under 750 sq ft exempt.*	$4,438.00 per unit	3,283.00 per unit.
General Government Facilities Note: ADUs under 750 sq ft exempt.	$1,481.00 per unit	$1,184.00 per unit
Housing Impact Fee - Residential	$22.69 per sq. ft. apartments (rentals)	
Library Impact Fee	$2,645.00 per unit	$1,956.00 per unit
Park Impact Fee *Note: ADUs under 750 sq ft exempt.*	$57,420.00 per unit	$42,468.00 per unit
Public Safety Facilities *Note: ADUs under 750 sq ft exempt.*	$1,175.00 per unit	$940.00 per unit

Rather than charging fees proportional to the size of a home, the City has adopted a "per unit" approach to fees that acts as an implicit, regressive tax.[111] The City asserts: "The purpose of such fees is to minimize the impact of that new development on the City's public services and public facilities to the greatest extent practicable" (p. 267). Such "per unit" pricing of fees for community centers, general government facilities, libraries, parks, and public safety facilities might make sense if one were to assume that as many people are likely to live in a 1,200 square foot house as in a 6,000 square foot house. But such an assumption is doubtful. Even if it were true, one cannot ignore the effects of such a "per unit" approach. The fees noted above for single-family houses — totalling over $67,000 — act as implicit and regressive tax that subsidizes larger, more expensive homes and penalizes smaller, more affordable homes.

Furthermore, a comparison with Redwood City shows that the magnitude of some of these impact fees is astoundingly high. Palo Alto's $57,420.00 per unit Park Impact Fee (p. 269) is more than four times as great as Redwood City's $14,224.09 per unit Parks Impact Fee.[112] It is also noteworthy that, even for the largest single-family homes, the absolute amount of Palo Alto's Park Impact Fee more than tripled (from about $18,570 to $57,420), while Redwood City's Parks Impact Fee seems to have only increased by about 12% between roughly 2016 and 2022 (from $12,733.38 to $14,224.09).[113]

Schedule" whose "PLANNING AND DEVELOPMENT SERVICES" table (p. 70) appears to show the same fees assessed on a "per unit" basis.

[111] While "ADUs under 750 sq ft" are repeatedly noted as being exempt, this is a matter of state law.

[112] "Development Impact Fees" as of 2/18/22.

[113] *See* https://www.redwoodcity.org/home/showpublisheddocument/24502/637776003710600000, https://www.redwoodcity.org/home/showpublisheddocument/5953/636084088997770000, and https://www.paloaltoonline.com/news/2021/04/15/palo-alto-hikes-development-impact-fees-for-first-time-in-20-years#:~:text=While%20park%20fees%20represent%20by,respectively%2C%20under%20the%20new%20schedule. While it is true that Palo Alto's impact fees had not been increased for some time prior to 2022, the period between 2000-2022 was generally one of very low increases in the CPI.

These points are largely missing from the Housing Element's analysis of the City's fee structure. The City should expand its analysis and add new programs to lower these fees before submitting the draft Housing Element to HCD.

viii. Historic Registry

The City has not acknowledged that its historic registry is a government constraint on housing. The City has long maintained its own inventory of historic places which is often more expansive than the National Register of Historic Places.[114] This policy can significantly constrain the development of housing, since it triggers special application procedures and possible moratoria on the demolition of any historically significant building. PAMC 16.49.70.

The City has recently attempted to encourage historic designations of properties to "skirt" state laws, including SB 9.[115] For example, the City's Historic Resources Board Workplan seeks to expand the inventory by among other things, reviewing and recommending "applications for Inventory category upgrades and support nominations to the City's local inventory."[116] At a retreat of the Historic Resources Board, it was noted that there are approximately 2,500-2,700 Eichler houses in Palo Alto, and there was apparently at least some discussion "about having Eichlers as an historic district…."[117] Such designations may be significant in terms of constraining housing production in Palo Alto, given the existing protections against the demolition of historically significant buildings.

The City should consider whether the City Council's or the Historic Resources Board's consideration of further actions aimed at increasing the number of structures on the City's local inventory will act as a further constraint on housing production. This should occur prior to submission to HCD.

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[114] https://www.cityofpaloalto.org/files/assets/public/planning-amp-development-services/historic-preservation/historic-inventory/city-historic-inventory-list.pdf

[115] *See* "Palo Alto looks to expand historic registry to prevent redevelopment." and "Palo Alto council could use historic preservation to skirt SB9 lot-splitting law" (https://www.mercurynews.com/2022/03/19/palo-alto-council-could-use-historic-preservation-to-skirt-sb9-lot-splitting-law/).

[116] https://www.cityofpaloalto.org/files/assets/public/city-clerk/boards-and-commissions/historic-resources-board/fy22-bcc-workplan-hrb.pdf

[117] "HISTORIC RESOURCES BOARD MEETING MINUTES: January 27, 2022" (https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/architectural-review-board/2022/hrb-03.10.2022-minutes-january-27-2022.pdf), pgs 5-6, 6-7/14.

Section 4: Non-Governmental Constraints

The City has failed to adequately assess and mitigate non-governmental constraints to housing as it is required to do under Government Code 65583(a)(6).

Community Opposition to Housing

Palo Alto has had a well-documented history of community opposition becoming a constraint on housing development. This track record is so exceptional as to have garnered recognition in national news media such as the New York Times.[118] Some notable (but hardly exhaustive) examples of projects killed by community opposition include:

- **Killed by referenda:**
  - 2003: 800 High St - Killed with Measure C[119][120]
  - 2013: 567-595 Maybell - Killed with Measure D[121]
- **Killed by lawsuits or legal threats:**
  - 1987-1991: 660 University - Settlement prevented projects through 2023.[122]
- **Ended after opposition in public comment:**
  - 2021: 2239-2241 Wellesley St.[123] [124]
  - 2022: Matadero Creek[125]
  - Ongoing: North Ventura Coordinated Area Plan (NVCAP) delays, impacting up to 2,130 units.[126][127][128]

To illustrate how community opposition can impact housing development, consider the example of the North Ventura Coordinated Area Plan (NVCAP). The opportunity to build new housing in this 60-acre area adjacent to major transit and commercial corridors may be lost for generations due to community pushback. After a robust alternatives development process, consultants, City staff, and the Planning and Transportation Commission concluded that a development plan labeled “Alternative 3B” was the most, and possibly the only, financially

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[118] https://www.youtube.com/watch?v=hNDgcjVGHIw
[119] https://www.sccgov.org/elections/results/nov2003/ElectionResult.htm
[120] https://www.paloaltoonline.com/weekly/morgue/2003/2003_10_15.trail15.html
[121] https://ballotpedia.org/City_of_Palo_Alto_Rezoning_of_Maybell_Avenue,_Measure_D_(November_2013)
[122] https://padailypost.com/2019/04/19/six-story-building-proposed-for-university-circle-traffic-problems-will-get-scrutiny/
[123] https://www.paloaltoonline.com/news/2021/05/18/council-rebuffs-apartment-plan-in-college-terrace
[124] https://paloaltoonline.com/news/2021/02/12/housing-plan-stirs-opposition-in-palo-altos-college-terrace
[125] https://www.paloaltoonline.com/news/2022/10/17/council-pans-housing-proposal-at-creekside-inn-site
[126] https://www.paloaltoonline.com/print/story/2022/10/28/residents-activists-irked-by-evolving-ventura-plan
[127] https://www.paloaltoonline.com/news/2021/06/15/facing-division-over-ventura-plan-palo-alto-delays-action
[128] Council Communications, Oct 24 2024, p. 74

feasible alternative to redevelop the area.[129] That option would have created 1,490-2,130 housing units. However, after significant public opposition, the City Council chose not to endorse any of the available alternatives.[130] This example demonstrates how public opposition can often constrain Palo Alto's development plans, even beyond the constraints imposed by the City's own policies.

The City must recognize community opposition as a constraint to housing development in Palo Alto and explain in the Housing Element how it will overcome this constraint. One way the City could address this constraint is by removing rounds of discretionary review and reducing the number of veto points in the process. The Santa Clara County Grand Jury Report also includes findings around City electeds building community support for affordable housing through direct public leadership.[131] We encourage City officials to do more to educate the community about what it takes for affordable housing to be feasible in our community.

Strength of Market for New Office Development

The City acknowledges that the strength of the market for new office development is a constraint on housing, but does not adequately mitigate the constraint. The Housing Element notes that developers are financially incentivized to build new office space, explaining that:[132]

> "Due to lower construction costs per square foot for office space compared to housing developments, as well as the high lease rates for office spaces, developers are choosing to build office over residential in zones that allow both. This is considered a constraint to the development of housing."

We agree, but note that the Housing Element does not go far enough to advantage residential development over new office space. The only program that addresses this constraint is Program 6.3(b), which reduces commercial FAR in strategic locations.[133] But the program does not provide any specifics as to the extent of these reductions or their location. Nor does the Housing Element provide any analysis to prove that these reductions alone will be sufficient to put the economics of residential development on par with office space development. Indeed, it is possible the City's proposed mitigation will **hinder** residential mixed-use development by reducing profitability below feasibility. Relaxing residential development standards, in contrast, is guaranteed to make housing more feasible.

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[129] https://www.cityofpaloalto.org/files/assets/public/planning-amp-development-services/north-ventura-cap/nvcap-alternatives-cc-06-14-21_final.pdf
[130] https://www.paloaltoonline.com/news/2021/06/15/facing-division-over-ventura-plan-palo-alto-delays-action

[131] https://www.scscourt.org/court_divisions/civil/cgj/2021/Affordable%20Housing%20Final%20Report.pdf
[132] Palo Alto Draft Housing Element at 221
[133] Palo Alto Draft Housing Element at 323

This acknowledged constraint should be adequately addressed in the Housing Element by increasing residential height and FAR to at least 140% of commercial in all mixed-use zones.

Section 5: Affirmatively Furthering Fair Housing

Community Engagement and Outreach

We believe that Palo Alto failed to conduct adequate outreach under HCD's guidance on Affirmatively Furthering Fair Housing (AFFH). The City's principal vehicle for community engagement was the Housing Element Working Group, a citizen body comprising 15 members and 2 alternates. As formed, the Working Group body disproportionately excluded the renters and underrepresented applicants who applied to serve on the Working Group. Some facts about those who were chosen:

- The Working Group was ~13%[134] renters, in a city with ~44% renters[135].
    - The applicant pool was more than half renters.
- Six seats went to neighborhood associations, generally representing single-family homeowner interests. This bloc was just two votes shy of a majority.
    - Add a stridently anti-housing HOA President: one vote shy of majority.
    - Add a long-serving Planning Commissioner: a majority.
    - None of these 8 members were alternates.
- The Council selected: 0/3 pro-housing former City Council candidates, 0/2 young adults, 0/1 senior service providers, 0/1 housing economists, 0/1 tenant organizers.

Reviewing Housing Element Appendix B: Public Outreach reveals few signs of the sort of targeted ongoing stakeholder outreach that is required for a city to meet its AFFH obligations.[136] This is not because City staff did not try. As we explain in Appendix D of this letter, staff did an outstanding job of recruiting an extraordinarily qualified slate of about 80 applicants. In spite of this, the Council Ad Hoc Committee formed to do initial processing of applications largely chose to stack the slate with experienced, known-anti-housing voices drawn from HOAs and neighborhood associations.

Even to the inadequate extent they sought inclusion, the Ad Hoc typically passed over candidates with policy-relevant expertise or experience in public service, getting it instead from newcomers with neither. The resulting process functioned as designed: the slow-growth voices were firmly in the driver's seat, while less-experienced newcomers were often frustrated by being unable to influence the process toward the goals that motivated them to apply[137].

The City's flagship AFFH outreach effort violated state law because it deliberately bent to exclude voices the City had a legal duty to bring into the process. HCD should require that Palo

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[134] 18% including alternates, but only until the renting alternate dropped.
[135] https://www.point2homes.com/US/Average-Rent/CA/Santa-Clara-County/Palo-Alto.html
[136] On 02/09/2022, Kelsey Banes pointed out to Planning & Transportation that targeted outreach was not occurring even after Council seated the working group, as constituted.
[137] Some examples: the member in affordable housing was concerned that single-family ownership options for people in her income bracket are unavailable in Palo Alto. Another wanted to reverse racial segregation. Neither could identify or propose policies the body might pursue to achieve these goals, and the body's exploration of them ended with their respective comments on those matters.

Alto redo its stakeholder outreach in a manner that does comply with AFFH outreach requirements.

Proposed Rezoning Does Not Further Racial and Economic Integration

As we've seen, Palo Alto's planned rezoning is largely to infeasible levels for actual development. *See* Section 3: Governmental Constraints. The only place the City seems serious about housing production is the GM/ROLM areas, where it comes closest to committing to zoning consistent with past exclusively-residential development.

However, it is impossible to address racial, ethnic, and economic segregation using this strategy. Palo Alto may change the City's **aggregate** racial, ethnic, and economic demographics of residents with this approach, but to whatever extent it does so, it will also create a segregated pocket in the newly-opened residential area. The City simply cannot integrate its current neighborhoods by adding new ones.

This is especially true given the location of this rezoning: the sites are disproportionately in the southeast corner of the City bordering Mountain View and the Bayshore Freeway, with major surface corridors segregating them from pre-existing communities. Fabian, Charleston, and San Antonio Road are all 4-lane roadways, which partition much of this area from every school,[138] library and park in Palo Alto or even Mountain View. San Antonio and Charleston is at a major freeway onramp, focusing intense vehicle traffic to this nexus. It's an island.[139]

The RHNA allocation to Palo Alto from ABAG included an above-average number of units for low-and-moderate income residents because Palo Alto is considered as both a high opportunity area and a high job proximity area. What is a High Opportunity Area? Here is the explanation from an ABAG Methodology Committee packet.

> "The Opportunity Map stems from HCD's policy goals to avoid further segregation and concentration of poverty and to encourage access to opportunity through affordable housing programs. The map uses publicly available data sources to identify areas in the state whose characteristics have been shown by research to support positive economic, educational, and health outcomes for low-income families and their children. The Access to High Opportunity Areas factor directly addresses the RHNA objective to affirmatively further fair housing by increasing access to opportunity and replacing segregated living patterns."[140]

What is a High Job Proximity Area? Here is the explanation from the ABAG packet:

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[138] https://www.mercurynews.com/2022/08/26/palo-alto-focusing-future-housing-at-edge-of-town-near-highway-not-caltrain-corridor/

[139] The area is also a transit desert, and some sites have toxic waste concerns.

[140] https://abag.ca.gov/sites/default/files/rhna_methodology_report_2023-2031_finalposting.pdf

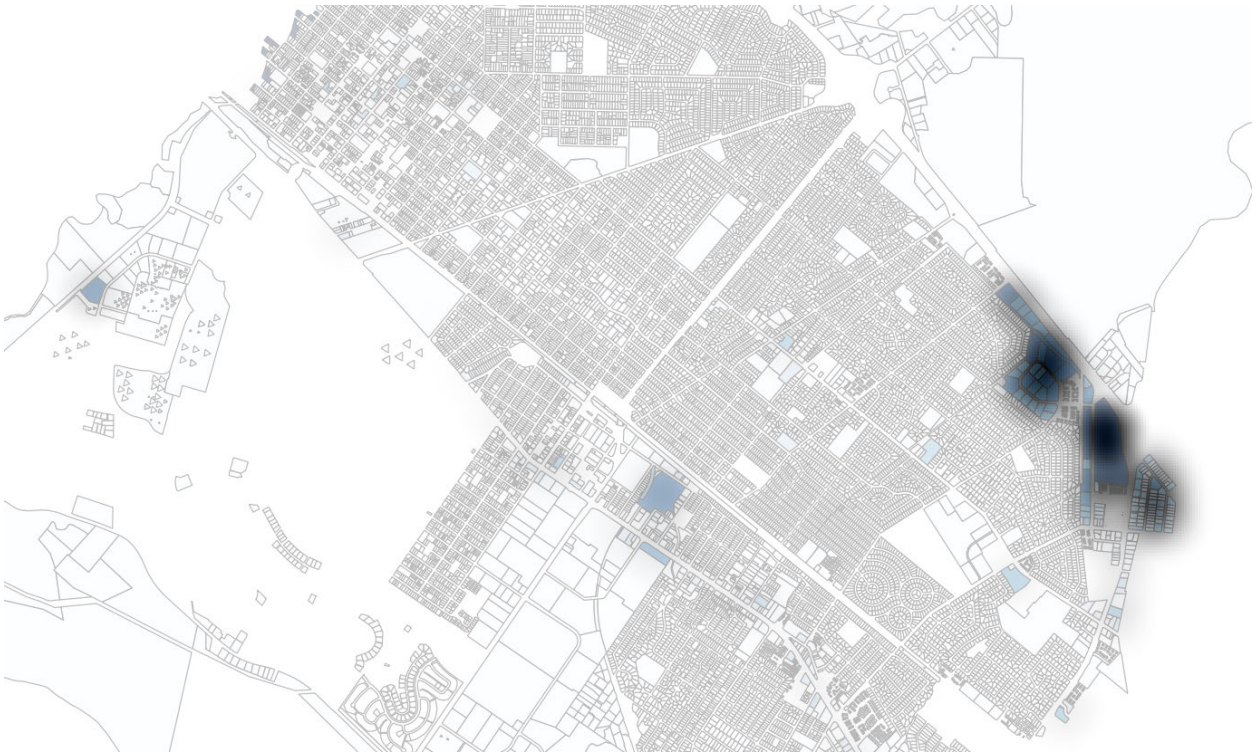
> “The two factors based on job proximity (Job Proximity – Auto and Job Proximity – Transit) consider the relationship between jobs and transportation. Job Proximity – Auto is based on jobs that can be accessed from a jurisdiction by a 30-minute auto commute, while Job Proximity – Transit is based on jobs that can be accessed from a jurisdiction within a 45-minute transit commute. These factors encourage more housing in jurisdictions with easier access to the region’s job centers. Additionally, these factors use a commute shed to measure job access rather than solely considering the jobs present within a jurisdiction’s boundaries. Using a commute shed intends to better capture the lived experience of accessing jobs irrespective of jurisdiction boundaries. Housing and job markets extend beyond jurisdiction boundaries—in most cities, a majority of workers work outside their jurisdiction of residence, and demand for housing in a particular jurisdiction is substantially influenced by its proximity and accessibility to jobs in another community."

Cities with good public transit access got an extra allocation of low-and-moderate income units from ABAG. Palo Alto has many neighborhoods with excellent access to CalTrain and express buses. Unfortunately the GM/ROLM neighborhood is not one of them. For these reasons, reliance on the GM/ROLM neighborhood for a high share of the City's low-and-moderate income goal undercuts the very reason Palo Alto was chosen as a great place to increase the number of residents and, unintentionally, weakens rather than strengthens the City's racial/ethnic and economic integration.

The inventory and RHNA understate how much of Palo Alto’s future development will come from this area under the Housing Element, because it is the only place in the City where Palo Alto is planning on a broad upzoning. Everywhere else is site-specific upzoning. This is of enormous significance for anticipating the patterns of future development in Palo Alto, because in the 5th Cycle the probability of development for inventory sites was 2.8%. Units permitted on inventory sites as a share of all permitted units was 5.3%.[141] These suggest the Opportunity Sites Maps in Section 3 of the Housing Element will not accurately predict future development trends.

For the purpose of evaluating AFFH concerns, we analyzed the city-wide impacts of upzoning as measured by newly-legalized units based on allowed density. From this analysis, we produced the heat map below to convey the relative impact of where newly legalized housing units are located throughout the City. As can readily be seen, almost all of the impact is on the eastern corner of the City.

[141] Kapur, Damerdji, Elmendorf, Christopher, 2021: “What Gets Built on Sites that Cities” Make..””.



Quantitative unit totals support the impression: of the 10,895 potential new units from upzoning we project[142], 8,104 units (74%) are in the clusters on the eastern side of the map where broad upzoning is performed. Such a distribution of newly legalized housing units would have a heightened risk of exacerbating segregation, and it should be analyzed as a factor contributing to segregation in Housing Element Appendix C: Fair Housing.

The area could also be at risk of becoming a Racially or Ethnically Concentrated Area of Poverty (R/ECAP). It is certainly the case that if the first residential project completed there is a 100% low-income affordable project, then it will become a R/ECAP, at least for a time.

We do support housing in this “fixer upper” of an area. However, to mitigate the segregation and R/ECAP concerns above, the City should:

1. Reduce its RHNA reliance on GM/ROLM upzoning somewhat, down to no more than 25% for all income levels[143].
2. Be required to upzone to economically feasible levels on all inventory sites.
3. Be required to consistently use uniform (non-site-specific) zoning around inventory sites even outside GM/ROLM areas.

[142] Excludes MFA Strategy due to lack of upzoning. Outside GM/ROLM and inventory, we take units counted. Within GM/ROLM zones we take upzoned 90 du/acre w/ 80% realistic capacity adjustment. By manually selecting all GM/ROLM sites subject to broad upzoning, we apply this density and unit count to all upzoned sites, even ones not in the Housing Element inventory.
[143] Currently it is about a third.

4. Commit to transit and environmental improvements in the GM/ROLM areas in a specific program.

ADU Fees and Fair Housing

The Housing Element only contemplates one modality for introducing new housing in R-1 zones in Palo Alto: ADU production. It is therefore of concern that Palo Alto increased fees on ADUs considerably in 2021.[144] As described earlier, the revised Tree Ordinance will also increase costs for ADU development by requiring retention of an arborist and preparation of reports, as well as by expanding the number of protected trees in the City.

These factors probably cannot change the production projections beyond what we call for in the ADU sections in the site inventory. However, this is still a fair housing concern which will tend to exacerbate patterns of racial and economic segregation in Palo Alto and should be recognized as such.

144 https://www.paloaltoonline.com/news/2021/04/15/palo-alto-hikes-development-impact-fees-for-first-time-in-20-years

Section 6: Programs and Policies

Specific programs are critical components of a Housing Element that will bring forth feasible housing proposals and ensure compliance to avoid loss of local control and other penalties. Based on our review of the existing programs and HCD's review letters to neighboring cities, we expect that HCD will ask for additional program specificity and additional programs. We also understand that staff have ongoing consultant work related to sites and programs that will almost certainly result in changes to programs. With that said, we are including our feedback on the specificity and commitments of the existing programs.

Under Government Code Section 65583(c), each program in the Housing Element must have "a timeline for implementation," identify "the agencies and officials responsible for the implementation," and identify "the means by which consistency will be achieved with other general plan elements." In addition to meeting statutory requirements, HCD's guidance indicates that effective programs should include:[145]

- description of the specific action steps to implement programs
- description of the local government's specific role in program implementation
- measurable outcomes (e.g., number of units created)
- demonstration of a firm commitment to implementation, and
- identification of specific funding sources.

HCD has increased its enforcement efforts with respect to cities' proposed programs.[146] As the Association of Bay Area Governments (ABAG) recently observed:

> "[M]any jurisdictions received comments asking for more specificity in their policies and programs section. Generally, a program to study an issue will receive a comment asking for more concrete actions. Vague language will likely be rejected, especially if a program is tied to a constraint."

To avoid a similar outcome in Palo Alto, we encourage the City to consider the revisions proposed below, as well as to consider whether other programs could benefit from additional specificity, commitments to action, and/or measurable targets.

Program 1.1: Adequate Sites Program

The City must commit to changing development constraints such as density, height, and floor area ratio to allow both physical and market feasibility for all sites in the inventory, consistent with market conditions as analyzed in Section 3A and Section 3B. Furthermore, this must be fully specified in Program 1.1, with exact numbers. The applicant must be able to know what they are permitted to build in base zoning, and they must be permitted to build buildings

[145] HCD *Building Blocks*, "Program Overview and Quantified Objectives"
[146] August 22, 2022 City Council Meeting Packet, p. 217

that will generate the capacity claimed in the site inventory, without relying on discretionary programs such as Housing Incentive Program (discussed in Program 3.4), which also precludes using the state's density bonus.

Program 1.4: City Owned Land

This is one of the most important strategies in the Housing Element. We know that providing free or low-cost land is a proven strategy to encourage housing production. For example, many local cities and Santa Clara County already have successful programs underway to develop 100% affordable housing on City- or County-owned lots.

At its meeting in September 2021, the Housing Element Working Group heard a presentation from Peter Baltay and David Hirsch, who are local architects and commissioners on the City's Architectural Review Board. They presented an extensive analysis demonstrating that the City had the capacity to add over 1,000 housing units by building on City-owned lots. In particular, the City had 29 parking lots in the University Avenue and the California Avenue Business Districts that could be developed into housing.[147] These lots range in size from 10,000 to 34,000 square feet.[148] The report also included a concept plan for building 83 units and 130 parking spaces at 375 Hamilton Avenue (Hamilton/Waverly Parking Lot), which is approximately 29k square feet. As a result of this report, the Housing Element Working Group and Planning & Transportation Committee supported having two parking lot projects that could lead to the creation of 168 housing units.[149]

Unfortunately, the commitment to this important program is too vague. In particular, Implementing Objective A does not provide specific, measurable outcomes beyond selecting a development partner, and only provides one completion deadline. The City should commit to a number of units it anticipates developing on City-owned parking lots, and provide a more detailed program timeline. Given the community's interest in larger housing units, it may also be worthwhile to add an incentive to have these units serve large families. The City should also remove the phrase "subject to available funding," as it has indicated that the program will be financed through the General Fund. Because the City has authority over its own finances, keeping a financing caveat risks HCD concluding that the City is not committed to the program.

Program 1.5: Stanford University Lands

As one of the largest landowners and employers in Palo Alto, Stanford University provides the opportunity to build housing close to jobs. Two representatives from Stanford University participated in the Housing Element Working Group and suggested three sites that are available to redevelop. Two of these sites were included in the site inventory. However, 27 University was not included in the final site inventory. We believe that there should be a program and timeline to redevelop this large 4.3 acre site, where Stanford suggested that between 180

[147] HEWG Meeting, Sept 2, 2021
[148] https://paloaltohousingelement.com/wp-content/uploads/2021/08/September-2_Memo_FINAL.pdf
[149] https://paloaltohousingelement.com/wp-content/uploads/2022/01/Jan-13-PPT_Final.pdf

and 530 units of multi-family housing could be developed. This parcel is next to the University Avenue Train Station and within walking distance of the University and shops and restaurants in Downtown Palo Alto. The Housing Element Working Group and the Planning & Transportation Commission were supportive of seeing housing units built at this site. Yet this program is nowhere to be found in the Housing Element.[150]

Objective D commits to discussing future development on Stanford-owned sites, especially those in Stanford Research Park. But these will require a long time horizon, since they will constitute new neighborhoods or "areas." For context, the City has a track record of taking five years to develop new area plans.[151] We urge the City to commit to start this process in 2023 and impose a 3-year deadline on the process.

Finally, given Palo Alto's record of robust community engagement and long negotiation cycles, we encourage the City to add an objective of meeting with Stanford University by Dec. 31, 2025 to discuss finding sites for additional housing sites for the 7th cycle RHNA process. This will give the City at least five years so that identified sites can easily be included in the 7th cycle. The City should also commit financial resources to this process.

Program 2.1: Affordable Housing Development

We ask the City to add a new objective of securing new funding sources for affordable housing. While we applaud the passage of Measure K (a business tax), which will help provide funds for 100% affordable housing projects, this funding will be insufficient to meet our housing goals. The City has spent $54 million on affordable housing projects in the past five years. Of these, the City contributed $20.5 million to 59 units of housing at Wilton Court ($340k subsidy per unit built). Projections from Measure K estimate that it will contribute $20 million over the next eight years which would support the development of 55 units of affordable housing. For comparison, the City has a RNHA goal of 2,452 affordable housing units. Given this gap, we believe that the City should strongly pursue other funding sources.

Objective C focuses on establishing relationships with housing developers rather than providing specific, measurable outcomes for residential development (i.e., impact on housing stock). The City should identify a specific number of units to be approved and built under this partnership strategy.

Program 3.1: Fee Waivers and Adjustments

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150 https://www.paloaltoonline.com/news/2021/11/24/housing-near-caltrain-stanfords-proposal-nets-mixed-reaction

151 As an example, consider the City's current work on North Ventura Coordinated Area Plan. The goals and objectives of the plan were approved by the City Council on March 5, 2018. After five years of meetings including: 17 working group meetings, 10 PTC or City Council meetings and numerous meetings with Sobrato Organization, the largest landowner in North Ventura, the plan is expected to be finished in 2023. See link.

Objective A proposes reducing processing fees by $20k for affordable housing applications. But the application processing fees are a small fraction of the total amount spent on permits and fees. Wilton Court Apartments, which just finished construction, paid a total of $535k in local permits and fees. This is approximately $9k per unit. We encourage the City to examine other permitting-related costs with the goal of reducing them further –and to zero in the case of affordable housing.

Objective B proposes conducting an economic feasibility study to evaluate development impact fees in October 2025. In 2021, development impact fees increased for the first time in twenty years from $5,557/unit to $47,707/unit -- that is over 750%.[152] These fees are some of the highest in Santa Clara County. Given this sharp increase in fees, we believe that these are a new constraint. We encourage the City to monitor the response to these higher impact fees and report findings to PTC and CC.

Program 3.2: Monitor Constraints to Housing

We agree that the City should always be monitoring constraints to housing production. However, this program does not indicate how the City's observations of such constraints will be shared with the City Council, PTC, and members of the public. At a minimum, the City should commit to publishing an annual report with observations of constraints and analysis of housing applications and concessions requested during the previous 12 months.

Programs 3.3 to 3.5: AH Development Incentives, HIP, and PTOD

While stressing that these programs cannot be used to remedy the inadequacies of the City's base zoning, we do applaud the City's interest in expanding the Affordable Housing Incentive Program,[153] the Housing Incentive Program (HIP),[154] and the Pedestrian and Transit Oriented Development (PTOD) program.[155] These changes are detailed below. Unfortunately, in many cases, the City's commitment is not a commitment at all: rather, in many cases, the City is merely *considering* or *studying* changes to the scope and design of these programs.[156]

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[152] https://www.paloaltoonline.com/news/2021/04/15/palo-alto-hikes-development-impact-fees-for-first-time-in-20-years

[153] Chapter 18.32 of the Palo Alto Municipal Code (promoting the development of 100% affordable, transit-oriented housing in certain commercial zones by providing unlimited density, increased FAR of 2.0, and reduced parking minimums of 0.75 per unit).

[154] Chapter 18.18.060(l) of the Palo Alto Municipal Code (authorizing the Planning Director to modify residential certain development standards in downtown Palo Alto).

[155] Chapter 18.34 of the Palo Alto Municipal Code (providing density of 40 du/ac and a FAR of 1.0 to certain developments within walking distance to the California Ave. Caltrain station).

[156] On 2/9/2022, PAF Board Member Steve Levy recommended to Planning and Transportation that the City commission a feasibility study.

Firm commitment by City to change development standard
No firm commitment by City to change development standard

Program	Overlay	Coverage	Density	Height	FAR	Parking
3.3 Affordable Housing Develop-ment Incentives	Affordable Housing Incentive Program	Expand overlay to most RHNA sites; also consider expanding to faith based sites	N/A; already unlimited density for affordable housing	No changes, except for extremely low income affordable housing, which will get 60 feet	Increase from 2.0 to 2.4 for affordable housing	Updated to comply w/ state density bonus
3.4 Housing Incentive Program	Housing Incentive Program	Expand overlay to GM/ROLM zones; consider expanding to other multi-family districts	Consider relaxing standards			
3.5 Ped. and Transit Oriented Dev.	PTOD	No changes	Consider relaxing standards			

For example, in Program 3.5, the City does not commit to a single change to the PTOD, which makes it impossible to evaluate as a contribution in the Housing Element. Similarly, Program 3.4 gestures at relaxing development standards under the Housing Incentive Program, but makes no firm commitments regarding any of those development standards. We understand that the City is waiting on consultant reports that may inform these commitments. If so, we look forward to reviewing these updated policies and programs before the City submits to HCD.

One change that should be made is increasing the height limit for the Affordable Housing Incentive Program, which is a significant constraint on affordable housing. This height limit often burdens 100% affordable projects with expensive architectural changes (e.g., undergrounding parking garages to fit the building under the height limit). That's why many affordable housing proposals in Palo Alto come in at above 50' in height. For example, the proposal by Santa Clara County to build affordable housing at 231 Grant Ave. will require a height of 55' to pencil out, and the proposal by Charities Housing to build housing at 3001-3017 El Camino Real will require 59' to pencil out. The cost of complying with a 50' height limit is significant. The only recent affordable housing to be built in Palo Alto is Wilton Court, which was required to meet a

50' height limit. But to ensure that Wilton Court was financially feasible within the City's development constraints, the City had to contribute more than $20 million to the project.[157]

The City recognizes this fact because the Housing Element now provides for a narrow height exemption for extremely low income housing projects. Such projects now have a maximum height of 60 feet. This change should be applauded, and more importantly, it should be extended to all projects. There is no meaningful difference in the cost to construct a project for extremely-low-income residents versus a project for merely low-income residents. Moreover, as we have explained elsewhere in this letter, a 60 foot height limit allows projects to take full advantage of Type V (wood-framed) construction, which is one of the most popular and affordable forms of construction available today and which safely allows heights up to 60 feet.[158] We urge the City to remove this constraint before submitting the Housing Element to HCD.

While we support the Affordable Housing Incentive Program, it is important to note that its relaxed development standards should not be allowed to count as "base zoning" for the purpose of meeting low-income RHNA. It requires 100% affordable projects to qualify, and Palo Alto does not have adequate affordable housing funding to produce subsidized units at scale sufficient to meet RHNA. Per HCD's Site Inventory Guidebook[159]:

> "If the overlay has conditions such as an affordability requirement, incentives should be sufficient and available to make development feasible and more profitable than the underlying zoning. … For example, a 100 percent affordability requirement may act as a constraint to using the overlay depending on the level of subsidy required per unit and the availability of funding to support the level of affordability or available incentives."

Another step in the right direction would be committing in Program 3.4 to expand the HIP to all zones (not just sites) currently represented in the Housing inventory. The program currently contemplates only studying the issue for GM/ROLM, and "multifamily" zones. Taking this broadly throughout all zones suitable for housing would be a step in the right direction. However, the City may find that once base zoning is updated to support feasibility, the HIP zoning parameters (e.g., height, FAR) are insufficient to attract interest to the program. Similarly, the City may find the requirement of waiving state density bonuses to qualify for HIP becomes a limit on attracting HIP applications. Finally**,** we stress that because HIP only grants waivers at the discretion of the Planning Directory,[160] it cannot be used to satisfy RHNA.[161] Per HCD Guidance, overlays used to meet RHNA for lower-income RHNA must demonstrate:

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[157] Gennady Sheyner, *Palo Alto boosts affordable-housing project with $10.5 million loan* (Jan 19 2020), Palo Alto Weekly

[158] The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California (March 2020), Terner Center for Housing Innovation ("Type I projects, which are typically over 5-7 stories and constructed with steel and concrete, cost an average of $65 more per square foot than other types of construction, like Type V over I (i.e., wood frame floors over a concrete platform").

[159] Site inventory guidebook, p. 15

[160] "The Director **may** waive the…", PAMC 18.16.060(k)(1)

[161] "local government may not ... require a ... locally imposed discretionary permit" 65583.2(h) and (i)

> "There is no additional discretionary action needed above what is required in the base zone (i.e., a conditional use permit or other review) for a developer to take advantage of overlay.
> … [and] …
> The developer can access State Density Bonus Law in addition to using the densities allowed in the overlay."[162]

Program 3.7: Expedited Project Review

Palo Alto's Streamlined Approval process uses objective standards to accelerate project applications. While this can be a promising approach to improving timelines and limiting delays, Palo Alto's implementation falls short. The most serious deficiency is that only zoning-compliant changes can comply with these standards. As we've seen in other sections, Palo Alto's baseline zoning is inadequate, so few projects will be able to take advantage of objective standards. Entitlement will still dominate project timelines.

The Housing Element commits to expanding applicability of expedited project review, but only to projects which qualify for the Housing Incentive Plan.[163] Qualifying for the Housing Incentive Plan is a discretionary process. When you need discretionary approval to qualify for using objective standards, you do not have objective standards.[164]

Furthermore, the objective standards process remains discretionary once it passes the Architectural Review Board. It's not clear if the Director can reject projects for nonobjective reasons, and it further seems that appeals to the City Council can result in the project being killed for any reason whatsoever. To fix the streamlined appeals process so that it is actually streamlined and objective, the City should:

- Expand expedited review to projects qualifying under base zoning, and update base zoning to feasible levels.
- Specify that when the Director takes action on a project to deny it, the decision must specify which objective standard was violated as basis for the denial.
- Specify a fixed number of days for an appeal to be filed so the applicant knows when an appeal is no longer possible.
- Require a reasonable fee to deter nuisance appeals.
- Require appeals of approvals to specify the objective standard violated.
- Require that the City Council hear the appeal in the next scheduled meeting, or meeting after that, if the next meeting is within the next week.
- Require that the Council can only consider what was brought up in the appeal (i.e., violations of objective standards).

[162] Site Inventory Guidebook, p. 15.
[163] Program 3.4(b)
[164] Exception: for 100% affordable projects, it is possible to use the objective standards.

We also have some concerns with the objective standards themselves. For example, the limitations on road space usable for vehicle ingress and egress as a percentage of road-adjacent length could be prohibitive for some projects, especially in the smaller lots in and around the downtowns.

Before submitting the draft Housing Element to HCD, Palo Alto should address these issues. At a minimum, the objective standards should be made truly objective, in recognition of the community opposition constraint (*see* Section 4: Non-Governmental Constraints) and the zoning needs to be updated to make the program salient.

Program 4.2: Housing and Neighborhood Preservation

Objective C's target of reaching five new houses annually through fair housing workshops is not consistent in magnitude with the City's ambitious fair housing goals.[165] The City should substantially increase its target. We also ask the City to clarify what it means to "reach" a household.

Program 5.2: Funding Partnerships

Objective A provides an option for the City to consider participating in the California Community Housing Agency (CalCHA) program, but does not commit the City to seeking funding from CalCHA. As discussed above, HCD requires that programs make commitments, along with specific timelines and numerical targets. The City should commit to applying for or participating in particular funding partnerships, on specified timelines.

Program 6.1: Housing for Persons with Special Needs

Objective A does not indicate what preferences the City will provide in its affordable housing guidelines for persons with special needs. The City should identify more specific updates to its affordable housing guidelines to comply with HCD's requirement to provide particular policy commitments.

Program 6.2: Multi-Family Housing and Large Households Units

Given the economics of developing multi-family housing in Palo Alto, it is more advantageous for developers to build housing targeting smaller households (studios and one-bedroom apartments). Both Alta Locale (completed in 2021) and Wilton Court (completed in 2022) have only one-bedroom and studio apartments. Unfortunately, Objectives A, B, and C do not identify specific actions which the City will take to remedy this trend. The City should commit to establishing particular incentives for larger units, rather than indicating that it will "explore" such incentives, and provide measurable objectives by which to measure success (e.g., a target number of new large-household units constructed). Incentives for such large housing units could include reduced parking, additional FAR, and reduced impact fees.

[165] August 22, 2022 City Council Meeting Packet, p. 237

Program 6.3: Mixed-Use Development

Objectives A and B do not specify the changes the City expects to make to commercial floor area allowances. Similarly, Objectives C and D require only that the City "examine" or "consider" amendments after review by the City Council. The City should commit to particular code amendments and policy changes. These changes to Objectives A through D are necessary to comply with HCD's requirement that "programs must have specific commitment (beyond considering) to housing outcomes, discrete timing (e.g., at least annually) and where appropriate numerical targets."[166] We also ask that, in order to achieve its stated goal of shifting "the economic benefit of redevelopment toward home building," the City increase residential floor area allowances in addition to any change it may make to commercial allowances.

Program 6.4: Homelessness Program

Objective A allows the City to only "consider" using City parking lots for the Safe Parking Program. We ask that the City commit to using City parking lots for the program.

Program 6.5: Alternative Housing

Objectives A and B neither specify any changes the City expects to make to local zoning regulations, nor connect its alternative housing policies to measurable outcomes (e.g., number of units built). The City should commit to particular policy changes to encourage house sharing, micro-unit housing, intergenerational housing, and other innovative housing models, and should connect each of these policies to measurable housing objectives. The City's current commitment to initiate conversations in 2024 and 2027 is unlikely to meet HCD standards.

Program 6.6: Fair Housing

This program is one of the most important topics in the entire Housing Element, since over 40% of our community rent their homes. Unfortunately, the City provides no specific information about its commitment to expanding tenant protections.

- **Relocation Assistance:** The relocation assistance threshold was already lowered to buildings with 10 or more units in January 2022 in response to a pending eviction.[167] If the City intends to further lower the relocation assistance threshold, it should commit to a specific change.

- **Eviction Reduction Program:** The City mentions that it plans to institute an "eviction reduction program." We applaud efforts to reduce evictions, but the City provides no details about the content of this new program. The City must share more information

[166] See above; July 8, 2022 HCD letter to the City of Redwood City

[167] Ordinance of the Council of the City of Palo Alto Amending Chapter 9.68 (Rental Housing Stabilization) of Title 9 (Public Peace, Morals, and Safety) of the Palo Alto Municipal Code to Extend Relocation Assistant Requirements

about the program, its design, and its goals before submitting to HCD.

- **Rental Survey Program:** We have strongly supported the rental registry, which has been a part of the municipal code for 20 years,[168] but has not been fully implemented during that time. The City should specify how it intends to fully enforce this policy.

- **Security Deposit Limit:** The City voted to move forward with a security deposit limit ordinance in November 2021, but it has still not yet been finalized by Council. The City should commit to implementing a security deposit limit by a specific date, as well as share the design of that security deposit limit.

- **Fair Chance Ordinance and Right to Counsel:** Both of these tools are exceptionally important to address tenant displacement issues. We applaud their inclusion in the Housing Element. However, they are notoriously difficult and expensive to set up. The City should share specific details about how it intends to structure these programs, including timelines and intended funding structures.

In addition to the policies above, we recommend that the City consider additional programs that can protect vulnerable communities. For example, we ask that the City consider adding a program modeled after East Palo Alto's rent stabilization program.[169] As a majority of complaints that the Palo Alto Renters' Association has seen in the last year are of tenants experiencing harassment, we also recommend the City consider adding a Anti-Tenant Harassment program modeled after Los Angeles's program.[170] For all of these programs, we encourage the City to continually study and evaluate their effectiveness.

Finally, we want to address the City's quantified objective in this section. The City states that it intends to educate 20 tenants and landlords a year. In other words, the City's goal amounts to educating 1-2 people per month. But there are more than 10,000 renter households and more than 20,000 renters in Palo Alto. Indeed, over the eight year planning cycle, the City is only committing to educating 160 renters and landlords about fair housing over the course of the next housing cycle. The City should commit to reaching, at a minimum, a majority of renter households in the first two years of the planning period.

[168] See Chapter 9.72.050 of the Palo Alto Municipal Code.
[169] https://www.ci.east-palo-alto.ca.us/rent-stabilization/page/rent-stabilization-program
[170] https://housing.lacity.org/residents/tenant-anti-harassment

Appendix A - Previous Letters to the City

Letter to City on Nonvacant Sites (2/22/22) - Chun
Letter to City on Nonvacant Sites (2/28/22) - Chun
Letter to City on Government Constraints (4/21/22) - Chun
Letter to City on Programs (10/13/22) - Faucher
Groundtruthing Letter 1 (3/19/22) - Chun/O'Neil
Groundtruthing Letter 2 (3/30/22) - O'Neil
Groundtruthing Letter 3 (3/30/22) - O'Neil
Groundtruthing Letter 4 (11/1/22) - O'Neil
Small Residential (03/01/22) - Nielsen
Duplicate Sites (03/13/22) - Nielsen
South El Camino Real (3/20/22) - Nielsen
South El Camino Real, Supplement (3/21/22) - Nielsen
South Middlefield (4/20/22) Nielsen
S. Palo Alto Supplement (4/20/22) - Nielsen
South Middlefield Supplement (5/13/22) - Nielsen
S. Palo Alto Supplement 2 (5/13/22) - Nielsen
California Ave / College Terrace II (5/27/22) - Nielsen
North Middlefield (6/13/22) - Nielsen
Additional low-income sites (10/23/22) - Ashton
Opposing Tree Ordinance (6/28/22) - PAF Board
Deny Palo Alto's Wasteful RHNA Appeal (8/31/2022) - PAF Board

Appendix B - Form Letter to Owners of Site Inventory Parcels

PLANNING & DEVELOPMENT SERVICES
CITY OF PALO ALTO
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
(650) 329-2441

July 13, 2022

RE: Planning for Future Housing in Palo Alto
Housing Inventory Site Address: [insert]

Dear Property Owner:

The City of Palo Alto is updating its Housing Element, a state-mandated document establishing the City's long-term housing plan. The new Housing Element covers the planning period from 2023-2031. This effort requires the City to identify suitable land for the future development of new homes to meet the State's forecasted growth, which is anticipated at over 6,000 units over the eight-year planning period.

This notice is being sent to property owners of sites that have been identified as a potential Housing Element site for the 2023-2031 Housing Element cycle. Please note that multifamily residential development is generally already allowed on your property, and based on certain factors, the City identified your property as appropriate for future housing development.

Being included on the Housing Element sites list does not obligate you to redevelop your property and build new housing units. The existing use and development can remain and continue based on existing City code requirements. But to help spur housing production, the City is in the process of developing incentives (e.g. greater height, more density, adjusted parking standards) to make residential development more feasible and attractive on identified Housing Element sites.

If you do not wish to include your property in the Housing Element sites list, please send your response to heupdate@cityofpaloalto.org as early as possible but no later than Friday, August 19, 2022.

If you have any questions or would like to discuss further about your property, please contact me via email at tim.wong@cityofpaloalto.org. For more information about the City's Housing Element Update process, please visit the City's website at www.paloaltohousingelement.com.

Sincerely,

Tim Wong
Senior Planner

Appendix C - Tree Ordinance Detailed Discussion

Tree Ordinance Impact

The City is likely underestimating how the new tree ordinance will constrain housing production. The City's new tree ordinance provides, among other things:

- **Extremely Broad Fiscal Impact**: Every building or demolition permit application that alters building footprints must be "accompanied by a statement by a designated arborist…."[171] Since nearly all homeowners and developers building new housing must now hire an expert arborist simply to submit a permit application for a project of any size, all such permit applications are fiscally affected by the revised ordinance.

- **Project Scope Expands to Adjacent Properties**: The arborist's report must now address "trees located on adjacent property within thirty feet of the proposed building footprint," whether or not such trees have "canopies overhanging the project site."[172] In other words, even if the property on which a new home may be built does not contain any protected trees, an expert arborist must still gain access to and survey trees on adjacent parcels that are within 30 feet of the "proposed building footprint." Because side setbacks in Palo Alto are often 6-8 feet[173] (or less in the case of ADUs), this means that such reports will often require gaining access to and surveying trees on two neighboring properties and, in some circumstances, perhaps as many as five or more.[174]

- **Neighboring Property Owners Gain Leverage Over Project**: As a practical matter, arborists must often opine about trees on adjacent properties. Neighboring property owners may use this to impede, delay, or even deny permitting, or to seek to obtain other concessions from people seeking to build more housing.

- **Expanded Notice & Appeals:** The new ordinance also expands notice and appeal provisions greatly. "The [original] ordinance only allow[ed] for appeals by an applicant and [did] not include notification requirements."[175] In contrast, under the new ordinance, (a) people seeking to remove a protected tree must give written notice to "all owners and residents of property within 300 feet of the exterior boundary of the property containing

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[171] 2022 Tree Protection Staff Report (https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220606/20220606pccsm-linked-amended-public-letters.pdf), Attachment A, at p. 13, 128/173 in Council packet; see also PAMC 8.10.040(a).

[172] 2022 Tree Protection Staff Report, Attachment A, at pgs. 13-14, 128-29/173 in Council packet; see also PAMC 8.10.040(b).

[173] See, e.g., PAMC 18.12.040(a) Table 2.

[174] 2022 Tree Protection Staff Report, Attachment A, at p. 13, 128/173 in Council packet; see also PAMC 8.10.040(a). Five adjacent properties might be involved if, for example, one were building a home that extended towards the rear setback and equal-sized parcels in the neighborhood were arranged in a grid. (Consider, for example, a property whose front faces a street to the south. Such adjacent properties might include those to the east and west, due north, north-east, and north-west. Still greater numbers are possible if one supposes non-equal-sized properties or non-rectilinear neighborhood configurations.)

[175] 2022 Tree Protection Staff Report, at p. 2, 98/173 in Council packet. *See also* PAMC 8.10.140.

the protected tree, and to all principal urban forestry partner organizations," and (b) appeals (i) may also be brought by "any owner or resident of property within 600 feet of the exterior boundary of the property containing the protected tree" and (ii) appellants gain the procedural rights to both (A) "request a public hearing by the director of public works to review the urban forester's decision," and (B) "appeal the director of public works' determination to the City Council."

    - It is unclear from the new ordinance itself how long such sequential appeals may take, or whether multiple, sequential appeals by multiple appellants are countenanced by these new remedies.

Furthermore, the new tree ordinance imposes development penalties on homeowners who remove protected trees in non-development contexts that are dead or hazardous or that create a nuisance. Even when such removal is sanctioned by the City's urban forester, the homeowner may incur a 36-month development moratorium on the property.[176] In this regard, if a homeowner lawfully removes larger trees that may constitute fire hazards, the homeowner may be precluded from further developing housing on the property for years.

In addition, the City has adopted an explicit economic metric for assessing whether a protected tree may be removed in a development context: "financially feasible means an alternative that preserves the tree unless retaining the tree would increase project cost by more than twice the reproduction cost of the tree or ten percent of the given project valuation, whichever is greater."[177] These provisions, among others, suggest much of the animus behind the new tree ordinance. In evaluating the extent to which the new tree ordinance constrains housing production, one should also consider the practical implementation of such measures:

- It is unclear what type of showing must be made to prove that "there is no financially feasible design alternative." (For example, what counts as a "design alternative," and who is to decide what is feasible or infeasible from a design perspective?)

- It is unknown when such a determination would be made, or, once made, whether it is actually binding on the City. (For example, it is unlikely that the City would grant the non-existence of such a "financially feasible design alternative" until after several plan check cycles, when homeowners have already paid considerable sums to architects, engineers, arborists, and others, not to mention plan check fees.) Furthermore, as noted above, appeals of determinations by members of the City staff remain possible.

- It is difficult to establish how many property owners seeking to build additional housing would be willing to incur the transaction costs necessary to establish "the replacement value of the tree" or more precise estimates of "project valuation" in the hope that

[176] 2022 Tree Protection Staff Report, Attachment A, at p. 14, 129/173 in Council packet; see also PAMC 8.10.050(a)(2).
[177] 2022 Tree Protection Staff Report, Attachment A, at p. 15, 130/173 in Council packet; see also PAMC 8.10.050(b)(1).

members of City staff are willing to accept such data. However, the new ordinance grants substantial discretion to the City's urban forester with regard to several matters associated with tree replacement in PAMC 8.10.55.

Such practical considerations suggest that (a) only applicants with access to considerable capital will be in a position to contest initial determinations by members of City staff, and (b) applicants will incur substantially greater transaction costs in obtaining building permits under the new tree ordinance. It is important also to note that these marginally greater tree-ordinance-related transaction costs are *in addition* to the City's greater enhanced impact fees. *See* the discussion of "Fees and Exactions," above.

Tree Removal Conditions

Under the new Tree Ordinance, the precise limitations on removing trees in connection with new housing or other developments vary based upon whether a project occurs in R-1 or low-density zones, in association with a lot split, or in other situations "requiring planning approval under Title 18."[178]

The most stifling new arboreal regulations apply to removing a protected tree as part of a multifamily project requiring such Title 18 approval. In that case, (a) if the tree is dead, hazardous, or a nuisance, the removed tree's dripline area or an equivalent space on the site must not be developed, or (b) if the tree is vibrant and not a nuisance, an applicant must convince the City's urban forester that both:

(1) "[R]etention of the tree would result in reduction of the otherwise-permissible buildable area of the lot by more than twenty-five percent," and

(2) "[T]here is no financially feasible design alternative that would permit preservation of the tree, where financially feasible means an alternative that preserves the tree unless retaining the tree would increase project cost by more than twice the reproduction cost of the tree or ten percent of the given project valuation, whichever is greater."[179]

This two-part standard is a particularly insidious governmental constraint on new multifamily developments in Palo Alto. Under the PAMC, a tree's

"Dripline area" means the area defined by the projection to the ground of the outer edge of the canopy or a circle with a radius ten times the diameter of the trunk as measured four and one-half feet (fifty-four inches) above natural grade, whichever is greater.[180]

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[178] Compare sub-sections (b), (c), and (d) of PAMC 8.10.050(b)(1). For sub-sections (b) and (c), these are in addition to the general removal conditions, *e.g.*, that the tree is dead, hazardous, or a nuisance, detailed in PAMC 8.10.050(a)(1).
[179] PAMC 8.10.050(d).
[180] PAMC 8.10.020(i).

Consequently, one modestly sized tree, particularly near the center of a parcel may cut the heart out of the buildable area and greatly delay the permitting process for a multifamily project (especially given the appeal processes incorporated in the new Tree Ordinance discussed in Appendix C). Furthermore, on its face, this language does not appear to allow an applicant to aggregate the effects of multiple trees to reach the 25% threshold. Even if that threshold is reached, in most cases an applicant must still demonstrate to the satisfaction of the City's urban forester that all possible design alternatives would increase project costs by at least 10%. Developing multiple design alternatives increases "soft costs." More importantly, because multifamily project "hard costs" often include expensive parking and common space amenities, total project expenses include far more than just the costs of building habitable units. As a result, satisfying the strictures of the new tree ordinance may increase per unit costs in multifamily developments by much more than 10%, making at least some projects at the margin economically unviable. Finally, if such governmental constraints on multifamily housing production are accepted, there is nothing to prevent the City Council from increasing either the diameter of the protected area around a tree or the 25% cost threshold.

Conflicts with State ADU Law

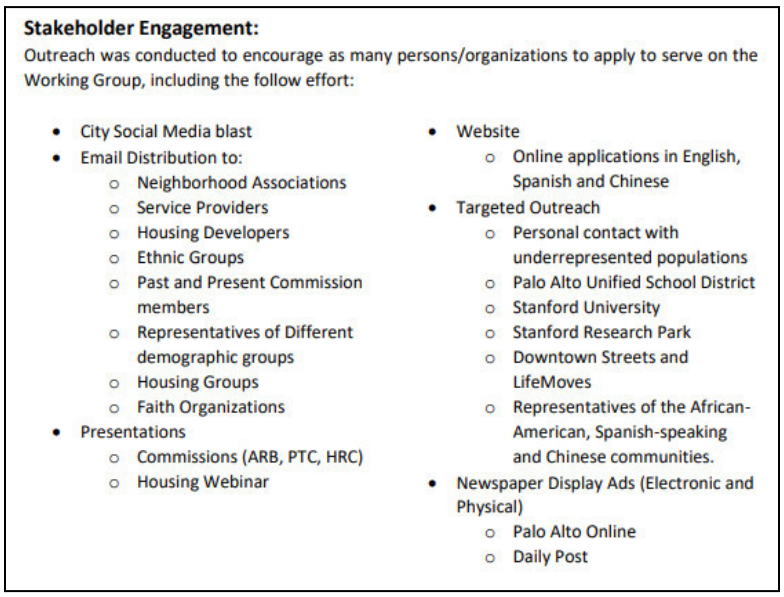
The following tree ordinance provisions are in tension with State ADU law. State law is designed to streamline and encourage ADU production, so these issues may constrain ADU production:

- **Illegal Basis for Denial or Delay:** The new tree ordinance is difficult to reconcile with the limitation on local agency action in state ADU law: *"No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision."*[181]
  - If there were no such tension, then the City could effectively ban construction of all or nearly all ADUs by increasing the size of its "tree protection zones," and making other changes.
- **Appeal Durations:** Appeal procedures are not compliant with the 60-day time limits[182].
- **City Has Indirect Discretion:** The City requires an arborist report for an ADU building permit application, but also controls which arborists can submit reports[183]. No objective ministerial review is possible because the City has control over which expert opinions are allowed.

[181] Gov. C. 65852.2(a)(5)
[182] Gov. C. 65852.2(a)(3)
[183] 2022 Tree Protection Staff Report (https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220606/20220606pccsm-linked-amended-public-letters.pdf), Attachment A, at p. 11, 126/173 in Council packet; see also PAMC 8.10.020(d).

Appendix D - Council Ad Hoc Activity

The City's public outreach centered on the "Housing Element Working Group," a citizen body comprising 15 individuals with 2 alternates that advised on the development of the Housing Element. In the packet presenting the applicants to the Council, staff included language mirroring AFFH outreach and stakeholder requirements.[184]



Stakeholder Engagement:

Outreach was conducted to encourage as many persons/organizations to apply to serve on the Working Group, including the follow effort:

- City Social Media blast
- Email Distribution to:
  - Neighborhood Associations
  - Service Providers
  - Housing Developers
  - Ethnic Groups
  - Past and Present Commission members
  - Representatives of Different demographic groups
  - Housing Groups
  - Faith Organizations
- Presentations
  - Commissions (ARB, PTC, HRC)
  - Housing Webinar
- Website
  - Online applications in English, Spanish and Chinese
- Targeted Outreach
  - Personal contact with underrepresented populations
  - Palo Alto Unified School District
  - Stanford University
  - Stanford Research Park
  - Downtown Streets and LifeMoves
  - Representatives of the African-American, Spanish-speaking and Chinese communities.
- Newspaper Display Ads (Electronic and Physical)
  - Palo Alto Online
  - Daily Post

The outreach was extraordinarily successful. The City received 81 applications to serve on the body. The staff report organized the applicant pool into tables to help the Council sort through this bounty of talent. It is notable which tables the Council favored:[185]

- Table 1: "Housing Developers and Academic Stakeholders": **1/4** were selected.
  - Plus one additional, as an alternate.
- Table 2: "Stakeholders Typically Underrepresented": **1/10** selected
  - Plus one additional, as an alternate.
- Table 3: "Stakeholders with 4 or more self-selected categories": **1/10** selected.
- Table 4: Everyone else. **12/57** selected.

About 71% of the body could not be categorized in Tables 1, 2 or 3, which align with necessary expertise (Table 1) and AFFH goals (Tables 2 and 3). Candidates were twice as likely to be selected if they were not on Tables 2 or 3 (21% accepted) than if they were (10%.)[186]

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184 https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2021/id-12030.pdf

185 https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2021/id-12030.pdf

186 23% and 15%, if we include alternates.

The three Councilmembers who put this slate together comprised an “Ad Hoc committee,” which was given direction by full Council on representation to seek.[187] The Ad Hoc produced a spreadsheet which illustrates how lopsided the body was toward neighborhood associations (6), how thinly it included staff-identified stakeholder groups (2), and hints at how systematically they processed the staff material.[188] (See spreadsheet tabs.) A Public Records Act request for all documents relating to the work of the Ad Hoc produced no response.[189] However, we have this screen capture from the council meeting:[190]

Representation sought by Council ("Propose") vs. Representation chosen ("Group 1.0")

	A	B	C	D	E
1					
2	**Category**	**Propose**	**Group 1.0**		
3	Affordable Housing Developer	1	1		
4	Affordable Housing resident	1	1		
5	Interest/Stakeholder groups	2	2		
6	Market-Rate Developer	1	2		
7	Neighborhood Associations	3	6	⇦	
8	Renter	2	3 *		
9	Special-Needs	3	1		
10	Stanford	2	1 *		
11	Unhoused or formerly unhoused	1	0 *	⇦	
12	Underrepresented populations	2	3		
13	Environmental	1	3		
14	Parent/PTA	1	6?		
15	PAUSD Rep	1	0		
16	Senior Org	1	0	⇦	
17					
18	Female	N/A	9		
19	Diverse	N/A	7		
20					
21	Violet text = Council Feb 1 changes from original				
22	* Alternates add 1 to category				

... | With Tallies | Smaller List | Group 1.0 | Vs Staff Guidance | Staff format

Neighborhood Associations over-represented at expense of unhoused, senior orgs, and other stakeholders; against direction given by full Council.

At least six tabs of sorting

[187] Council’s guidance was already excluding youths, and underrepresenting renters.
[188] We only saw one tab in the meeting, but the labels for three other tabs are visible, as well as a ‘...’ button indicating more unseen tabs.
[189] W003456-021922
[190] https://www.youtube.com/watch?v=q53LQ_g2d-k&t=20277s

Much of the City Council also felt excluded. In an article titled "*City Council clashes over appointments to new housing panel*"[191], Palo Alto Online reported:

> *With the council's recently empowered "residentialist" wing pitted against the rest of their colleagues, the elected leaders appointed the new Housing Element Working Group by a 4-3 vote*
> *...*
> *For those in dissent, the biggest problem was the appointment process. … Any substantive discussion of the group's roster was curtailed, however, when three council members — Mayor Tom Dubois and council members Eric Filseth and Greer Stone — presented a list of their preferred appointments that they had put together over the weekend. Council member Lydia Kou, who frequently aligns with DuBois, Filseth and Stone on the council's slow-growth wing, added her vote to their list, giving them the majority that they needed to advance it.*
> *…*
> *"You weren't given the mandate and yet you acted that way and it's coming to the council," Burt told DuBois, Filseth and Stone*[192]

What all this shows is an Ad Hoc that excluded youth representation, excluded senior representation, excluded renters, and skewed stakeholder representation to only Stanford and one homeless services provider (in alternate seats).[193] But moreover, it shows that this was done carefully and deliberately against the flow of guidance coming from City staff, while exceeding their mandate.

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191 https://www.paloaltoonline.com/news/2021/04/06/city-council-clashes-over-appointments-to-new-housing-panel

192 https://www.paloaltoonline.com/news/2021/04/06/city-council-clashes-over-appointments-to-new-housing-panel

193 Two members of the ad-hoc, Dubois and Filseth became active in local politics at least in part through organizing a successful referendum to kill an affordable housing project for seniors in 2013.

From: Roberta Ahlquist
To: Dave Price
Subject: 2 more Homeless women "disappeared" in downtown PA
Date: Tuesday, December 6, 2022 4:52:27 PM

Over the past month we have 'lost ' track of two homeless women, both of whom have been on the streets in downtown Palo Alto. Have they been taken in by good neighbors? Have they been arrested? One was on University Avenue, near the old ATT store, and the other was in a cubby area on Kipling off University Avenue. Now there is a fence and a " no trespassing" sign in the area. Kim has been missing for a long time from the underpass on Homer. Is there a homeless Shelter that we can direct these women to? Or do they just vanish, like Bunny, who died on the streets some five years ago. When will we develop a humane way to help these women?

Roberta Ahlquist

From:	Roberta Ahlquist
To:	Council, City; Human Relations Commission; Joe Simitian; Julie Lythcott-Haims; Planning Commission; Shikada, Ed
Subject:	Palo Alto for Whom?
Date:	Tuesday, December 6, 2022 4:42:18 PM

Palo Alto's population is nearly 1/2 renters..So, how do we support these 30,000-38,000 residents? Older seniors are a significant part of our city. The Palo Alto city budget now has a $40 million surplus. Halt office building! Support low-moderate income housing development. Bring back La Comida lunches to downtown, to five or six of the currently empty rooms at Avenidas. Then up to 500 seniors a week would not be in line to get a tray in the rain, then scurry home or eat alone on the streets.
Develop a rent stabilization and just cause eviction ordinance.NOW.
Start the free cross town shuttle NOW, not in the spring. It's going to rain again soon.
Make the Junior Museum Zoo FREE.
Those are a few ideas for starters.

Roberta Ahlquist
Avenidas Senior Housing Committee