



# CITY OF SAN MATEO

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## Agenda Report

Agenda Number: 2

Section Name: {{section.name}}

Account Number: 10-3133

File ID: {{item.tracking\_number}}

**TO:** City Council  
**FROM:** Drew Corbett, City Manager  
**PREPARED BY:** Community Development Department  
**MEETING DATE:** November 07, 2022  
**SUBJECT:**  
Draft 2023-2031 Housing Element Study Session

### RECOMMENDATION:

Provide staff direction on responses to the California Department of Housing and Community Development's comment letter on the City's Draft Housing Element.

### BACKGROUND:

Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of their community. California's local governments meet this requirement by adopting housing elements, which are updated every 5-8 years. Housing elements are one of several "chapters," or elements, of a city's General Plan, and are required by the State. Housing elements are the only element of a General Plan subject to State requirements for content and they must be certified by the California Department of Housing and Community Development (HCD). State funding programs for transportation, infrastructure, and housing often require or consider in decision making a local jurisdiction's compliance with housing element law. In addition, non-compliance with housing element requirements and targets could limit a local jurisdiction's ability to impose local zoning and land use controls over housing development.

For the upcoming eight-year housing element cycle (2023-2031), HCD has identified the nine-county Bay Area region's housing need to be 441,176 units, with this number broken down into four income categories, from very low-income households (which includes extremely low) to above moderate (market rate) housing. This Regional Housing Needs Determination (RHND) is based on population projections produced by the California Department of Finance (DOF), as well as adjustments that incorporate the region's existing housing need.

The City of San Mateo's Regional Housing Needs Allocation (RHNA) for this housing cycle is 7,015 new housing units distributed across the four income groups: very low, low, moderate and above moderate. The City's Draft Housing Element identifies how the City can accommodate its RHNA of 7,015 new homes over the next eight years, plus a buffer, and establishes goals, policies and programs to help address the City's current and future housing needs.

Preparation of the City's Housing Element initially started in January 2021, with a robust community engagement process consisting of community meetings, stakeholder meetings, pop-up events, and surveys. The Draft Housing Element was published from April 6, 2022 through May 6, 2022 for a 30-day Public Comment Period and was reviewed by the Planning Commission on April 26, 2022 and May 3, 2022. On May 23, 2022, the City Council reviewed the Draft Housing Element and provided staff direction. Staff revised the Draft based on Council's direction and on July 1, 2022, the Draft 2023-2031 Housing Element was submitted to HCD. HCD completed their first 90-day review and provided a comment letter on September 28, 2022, with feedback based on their review (Attachment 1).

## HCD Comment Matrix

HCD's comment letter requested additional background information and further analysis in several areas of the Housing Element, including the feasibility of future housing sites, fair housing policy, housing goals, policies and programs, and removing constraints to building housing. The Housing Element team prepared the attached HCD Comment Matrix, which outlines each of the comments by section (Attachment 2). Several of the specific HCD comments have the potential to change the nature of the goals, policies and programs, which have already been reviewed by Council and were prepared with Council feedback. Some of the specific comments include:

- Needs Analysis – Providing more detailed timelines and commitments on the Affirmatively Furthering Fair Housing (AFFH) Goals, Actions, Metrics and Milestones.
- Constraints – Creating a program to include outreach and mitigation measures for the impact of Measure Y on housing development throughout the planning period.
- Goals, Policies and Programs (GPP) – Providing more detailed timelines and commitments on actions for various GPPs.

More detailed information on HCD's specific comments and proposed staff responses by Housing Element section are available in the matrix.

## Builder's Remedy

There have been recent press reports regarding the "Builder's Remedy" that can be used to avoid local zoning requirements when a jurisdiction's housing element does not substantially comply with State law. These reports have stated that if a jurisdiction has a noncompliant housing element, the city or county must approve the housing development project, even if it does not comply with the General Plan and Zoning requirements. The "Builder's Remedy" arises from the Housing Accountability Act (HAA).

Housing elements are required to comply with current State housing element law for the sixth housing cycle (2023-2031) on the established due date, which is **January 31, 2023**, for the Bay Area region. If a sixth cycle element has not been locally adopted by this deadline, the housing element would likely be deemed out of compliance with State law by HCD. Up until recently, it was a widely held assumption that the 120-day grace period outlined in State law would apply to housing elements still being reviewed by HCD or being updated by local jurisdictions in response to HCD comments. However, HCD has recently taken the position that the grace period does not apply beyond the January 31, 2023 deadline, and any jurisdiction without an adopted sixth cycle housing element would be deemed out of compliance and subject to development applications utilizing the "Builder's Remedy" provision in the HAA.

However, it should be noted that HCD certification is not required for a housing element to be found substantially compliant with State law. State law provides that a local jurisdiction may adopt its own findings explaining why its housing element is substantially compliant with State law despite HCD's findings. Thus, a local jurisdiction can continue to work with HCD to achieve certification of its adopted housing element after the deadline without being deemed out of compliance. That said, the goal of staff is to continue to work closely with HCD throughout the review process in order to ensure that the adopted housing element legally complies with State law.

## Next Steps

Given the January 31, 2023 deadline to adopt a substantially compliant housing element, staff is proposing the next steps and anticipated timeline for approval and certification of the Housing Element as follows:

- November/December 2022 – Update the Draft Housing Element in response to HCD comments and resubmit for second review.
- January 2023 – Public hearings before the Planning Commission for a recommendation on the Housing Element and the City Council to adopt Housing Element.
- End of January 2023 – Submit the adopted Housing Element to HCD for certification.

Once the Draft Housing Element has been updated to address all HCD comments, public hearings before the Planning Commission and City Council will be scheduled for final review and adoption, which will be scheduled before the January 31, 2023 deadline. Following City Council adoption, it will be submitted to HCD for final certification.

#### **Council Direction**

As previously mentioned, HCD provided several comments that could result in significant changes to the goals, policies and programs that Council has previously reviewed and provided their feedback on. Staff is seeking Council direction on whether they have any objections in staff taking the necessary steps to strengthen the language in the draft Housing Element to address HCD's comments. Addressing HCD's comments will bring the City closer to submitting a substantially compliant housing element by the January 31, 2023 deadline.

#### **BUDGET IMPACT:**

There are no direct budgetary impacts to taking this action. The preparation of the Housing Element has been accounted for in the City's budget.

#### **ENVIRONMENTAL DETERMINATION:**

This study session is not a project subject to CEQA, because it can be seen with certainty that it will not cause a physical change in the environment. (Public Resources Code Section 21065.) Since the Housing Element does not require the City to process any land use or zoning designation amendments, it is currently anticipated that the Housing Element can be processed with an exemption under CEQA (California Code of Regulations Section 15061(b)(3)). Preparation of documentation to support this CEQA determination will be provided prior to consideration of the Housing Element by the Planning Commission and City Council for adoption early next year.

#### **NOTICE PROVIDED**

All meeting noticing requirements were met.

#### **ATTACHMENTS**

Att 1 - HCD Comment letter on Draft 2023-2031 Housing Element  
Att 2 - HCD Comment Matrix

#### **STAFF CONTACT**

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