



City of Palo Alto

City Council Staff Report

(ID # 12116)

Report Type: Action Items

Meeting Date: 5/10/2021

Summary Title: Housing Element Kick Off Meeting (PTC/CC)

Title: Joint City Council/Planning and Transportation Commission Meeting Followed by Council Action to Kick Off the Housing Element Update, and Provide City Council Endorsement of the City's Approach to Fulfill State Housing Element Certification Requirements and Approval

From: City Manager

Lead Department: Planning and Development Services

Recommendation:

Staff recommends that the City Council:

1. Conduct a joint meeting with the Planning and Transportation Commission (PTC) to receive a presentation and discuss the 2023-31 Housing Element Update.
2. Close the joint meeting and accept, or modify as appropriate, the overall project schedule and approach, as well as the roles and responsibilities of the Housing Element Working Group, Council Ad Hoc Committee and PTC, as detailed in this report.

Executive Summary:

The joint meeting serves two purposes. First, this meeting serves as the Housing Element Update “kick-off” meeting as the City launches an intensive 20-month work plan. It will provide the City Council and PTC information about the Housing Element. The City’s consultant, Rincon Consultants, will provide an overview of the Housing Element, with a focus on state requirements and will provide a project schedule.

Second the meeting serves as an opportunity for the community to learn about the Housing Element Update process. The meeting will help inform the community about Housing Element Update activities and how they can participate in the process. The City is kicking off a series of community engagement activities, including an interactive mapping tools and an online survey.

California State law requires each jurisdiction to update its Housing Element and have it certified by the State Housing and Community Development (HCD) department every eight years. The City's current Housing Element is for the 2015-23 period. By January 2023, the City must have a certified Housing Element.

Council is requested to hold the joint meeting and then formally endorse the proposed process of the 2023-31 Housing Element update, including the roles and responsibilities of all parties involved in preparing the update, the project approach, and general project schedule. Staff is interested in establishing basic expectations to guide the work effort and individuals participating.

Background:

Since 1969, the State has required all local jurisdictions to adequately plan to meet the housing needs of everyone in the community. Local jurisdictions meet this requirement by adopting housing elements as part of their "general plan" or in the City's case, the Palo Alto Comprehensive Plan. The Comprehensive Plan serves as the City's "blueprint" for how the City will grow and develop.

The Housing Element is one of the eight mandated elements¹ in the Comprehensive Plan and the only element that requires certification by the State. The Housing Element covers a period of eight years. The City's current Housing Element lasts through the year 2023.

California's housing-element law requires that local governments adopt plans and regulatory systems providing opportunities for housing development. A housing supportive regulatory environment helps the private housing market to address housing needs of Californians. As a result, housing policy in California rests largely on the effective implementation of local general plans and in particular, local housing elements.

Housing Element Content

There are several requirements that must be met in order for a Housing Element to be certified by the State; the main requirements are summarized below:

1. **Housing Needs**

Housing-element law requires local governments to adequately plan to meet their existing and projected housing needs, including their share of the regional housing needs allocation (RHNA).

¹ State law mandates inclusion of eight elements in general plans: land use, transportation, conservation, noise, open space, safety, housing, and most recently, environmental justice. Jurisdictions may elect to include additional elements.

2. Site Inventory and Analysis

Government Code Section 65583(a)(3) requires local governments to prepare an inventory of land suitable for residential development to accommodate its RHNA.

3. Constraints

The housing element must identify and analyze potential and actual governmental constraints to the maintenance, improvement, or development of housing for all income levels.

4. Program Requirements

The City must identify specific programs in its housing element that will allow it to implement the stated policies and achieve the stated goals and objectives. Programs must include specific action steps the City will take as part of this implementation.

5. Affirmatively Furthering Fair Housing

As of January 1, 2019, all housing elements must include a program that promotes and affirmatively furthers fair housing opportunities throughout the community. Under state law, affirmatively furthering fair housing means “taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”

Regional Housing Needs Allocation

The Association of Bay Area Governments (ABAG) Executive Board approved the Regional Housing Needs Allocation (RHNA) methodology and “Final” RHNA Sub-Regional Shares in February 2021. The City has actively commented on ABAG’s RHNA methodology. For more information about RHNA and ABAG’s methodology, please see the January 11, 2021 CMR: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/current-year/2021/id-11866.pdf>.

ABAG has formally submitted its RHNA methodology and Bay Area housing allocation for review by the state Housing and Community Development department (HCD). Once endorsed by HCD, jurisdictions will have up to 45 days to appeal their allocation, or the allocation of another jurisdiction’s numbers, to ABAG where it is anticipated to be acted upon by the Executive Board or a yet to be determined appeals board. A report has been prepared for May 18, 2021 that provides the Council a separate opportunity to comment on any potential RHNA appeal and provide staff guidance.

Recent Staff Progress

Staff is engaged in a variety of efforts to initiate this Housing Element update. Some of the major milestones and activities are provided in Table 1 but there is a significant amount of other support work taking place in the background.

TABLE 1: Housing Element Completed Tasks

Task	Date
Issuance of Housing Element Consultant Request for Proposal	November 30, 2020
Establishment of Housing Element Working Group	February 1, 2021
Selection of Working Group Members	April 5, 2021
Selection of Housing Element Consultant	April 12, 2021
First Working Group Meeting	May 6, 2021
Kick-Off Meeting with CC/PTC	May 10, 2021
Preparation for Community Meeting	May 15, 2021

Advisory Body Roles

The Working Group, Ad Hoc Committee, along with the Planning and Transportation Commission, as advisory bodies to the City Council, all have a role in the preparation and review of the Housing Element Update before final review by the Council. Given that the Housing Element must be certified by January 2023, and with three separate advisory bodies providing input in the update process to the City Council, clear roles and responsibilities are needed for each body in order to efficiently develop the Housing Element update in a timely fashion.

In addition, the PTC and Council will need to formally review the Housing Element as part of the update process. Because of the new State requirements, this update will be much more complex than the previous update. Therefore, providing the PTC and Council sufficient opportunities to review the Housing Element is key in the process. More information is provided later in this report regarding respective roles and responsibilities.

Discussion:

As mentioned, a jurisdiction must demonstrate how it will accommodate its RHNA in the Housing Element. A jurisdiction can do so by identifying sites that can accommodate the housing units allocated to the jurisdiction. These sites are called “Housing Opportunity Sites.” For Palo Alto, the draft allocation is anticipated to be 6,086 housing units; the City’s Housing Element Update must identify sites to accommodate these homes.

For the current Housing Element, the City was able to meet its RHNA requirement by identifying 176 sites, utilizing the following methods:

1. Underutilized sites

The City is essentially built out with very few vacant sites available. The City relied heavily on underutilized sites to meet its current RHNA requirement. Approximately 94% (165 of 176 total sites) of the City's Housing Opportunity Sites from the current Housing Element are on underutilized sites.

2. Previous Element sites

Jurisdictions were able to use or transfer their "unused" sites from the previous housing element to the current element. Many jurisdictions were able to meet their RHNA through the reuse of previous Element sites. 100% of the current Housing Element sites were also identified in the 2007-14 Housing Element.

3. Use of smaller sites

A large number of Housing Opportunity Sites in the current Housing Element are less than half an acre. Approximately 51% (89 of 176 total sites) of the sites are smaller than 0.5 acres with a large percentage of those sites smaller than a third of an acre.

In addition to identifying suitable sites, the City was required to include a number of policies and programs that required implementation following state certification. The City reports annually its efforts to implement the Housing Element and other Comprehensive Plan policies, most recently on February 24, 2021: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2021/ptc-2.24-comp-plan.pdf>.

Recent Housing Element Legislation

The aforementioned approaches used for the current Housing Element are referenced because the State has recently passed legislation that add more restrictive requirements on each of these approaches. Thus, site selection will be more difficult, as the City determines which sites to include on the inventory of housing sites for the upcoming Housing Element. Below is a summary of the new requirements.

AB 1397 (2017)

AB 1397 significantly changes eligibility requirements for Housing Opportunity Sites, making the update process more complex. Sites in the inventory must now be both "suitable" and "available." Non-vacant sites must have a "realistic and demonstrated potential for redevelopment." To demonstrate availability, if a local government uses non-vacant sites to accommodate most of its lower income housing need², as it is in the City's case, existing uses are presumed impediments. The exception to this is when the City can make substantial findings that the use is likely to be discontinued during the planning period, and thereby show

² An explanation about "lower income housing need". As part of RHNA, the City must provide housing for the lower income population. The State requires a minimum density on a site to consider it appropriate to accommodate lower income housing. For the City, the State has determined that 20 units per acre be the minimum density for lower income housing.

that the site is available. Therefore, the City must show how the site will become available during the planning period (i.e. expiration of lease, existing redevelopment plans, redevelopment trends, etc.).

For illustrative purposes, a vacant site would be an undeveloped and unimproved parcel. A non-vacant site has improvements, for example a parking lot or an older existing building. Unless the City has substantial evidence suggesting that the existing use is a realistic candidate for redevelopment during the Housing Element Update period, the City cannot utilize that parcel as a Housing Opportunity site since it is not available for development.

Sites smaller than half-acre or larger than 10 acres are not considered suitable for lower income housing unless the jurisdiction provides examples of “realistic capacity.” The City must demonstrate sites of equivalent size that were successfully developed during the prior planning period for an equivalent number of lower income housing units or other supporting evidence. Staff is currently compiling that supporting evidence of higher density projects developed on sites less than half-acre.

Lastly, AB 1397 tightened the conditions for re-using sites that had been listed as a Housing Opportunity site in the previous housing elements. Sites identified in prior housing elements may only be included in a new element to accommodate the lower income RHNA if they are 1) zoned for a minimum density of 20 dwelling units per acre; and 2) rezoned to allow by-right development of projects with at least 20% units affordable to lower income households.

SB 166 (2017)

SB 166 adds a “no net loss” provision for Housing Opportunity site inventories. If an approved project on a Housing Opportunity site has fewer units than what was identified in the City’s prior cycle housing element, the jurisdiction must be able to shift those “unmet need” to the remaining sites in the housing element. If the jurisdiction is not able to show that existing sites have adequate capacity for these units, it is required to identify and rezone additional sites to fully accommodate the unmet need within 180 days. So generally, jurisdictions plan for a certain number of units over its RHNA to create a “surplus” of units for this type of scenario. In the current Housing Element, a surplus of approximately 200 more units over its RHNA was added to the inventory (roughly 10%).

For example, if a site included in the City’s current 2015-23 Housing Element and identified as capable of accommodating 100 units was developed with only 75 units, the City would need to reallocate 25 units to a different site or show that it has a “surplus” to mitigate the deficit of 25 units.

AB 686 (2018)

AB 686 adds an affirmatively furthering fair housing (AFFH) requirement for housing elements that includes:

- A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity.

- An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.
- An identification of the jurisdiction’s fair housing priorities and goals and identifying the metrics and milestones for determining what fair housing results will be achieved.
- Strategies and actions to implement those priorities and goals, which may include enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity. These include preservation of existing affordable housing and protecting existing residents from displacement.

AB 725 (2020)

AB 725 seeks to develop “missing middle housing.” Missing middle housing considers both the form of the housing and cost of renting and/or owning the housing. The form reflects moderate density and scale, aimed at middle income households. AB 725 requires that cities designate sites to meet at least 25% of a jurisdiction's share of the regional housing need for *moderate*-income housing, and at least 25% of a jurisdiction's share of the regional housing need for *above moderate*-income housing. For these sites, zoning that allows at least four units of housing, but not more than 100 units per acre of housing, is required.

SB 35 (2017)

The provisions of SB 35 are tied to a jurisdiction’s sufficient progress towards meeting the City’s RHNA requirement. While the law does not change the requirements for the Housing Element or Opportunity Sites, it does impact jurisdictions where housing development does not make sufficient progress. To encourage greater residential development, SB 35 provides a streamlined, ministerial planning process for those projects in jurisdictions that made insufficient progress towards their RHNA targets.

Currently, SB 35 only applies to projects in Palo Alto that include 50% or more affordable units. The application of SB 35 to the City is assessed every 4 years. While the City is on pace to meet its market rate housing targets for the next review period, the next cycle with the greater market rate RHNA numbers will be more challenging for the City to meet without significant changes to the City’s land use and housing policies. Without these changes, staff anticipates the City would be subject to SB 35’s lowest threshold group starting four into the next housing cycle or around the end of 2026.

Challenges for Site Selection

It is anticipated the City will need to plan for approximately 6,000 housing units in the Housing Element Update. Applying a 10 percent surplus provision to address the no net loss requirement of SB 166 suggests the City will need to plan for approximately 6,600 units. Many of the sites the City might reasonably look toward to satisfy sufficient housing sites were included in previous housing elements. To the extent applicable, to reuse these sites in the update, the City must be able to demonstrate the sites are:

- Suitable and available / demonstrated potential for redevelopment during the 2023-31 planning period;
- Residentially Zoned for more than 20 units per acre; and
- Allow by-right development of projects with at least 20% of the units affordable to lower income households.

Moreover, many parcels that the City is likely to identify as being suitable for future housing development will likely fall below half an acre or will be greater than 10 acres in size triggering AB 1397's additional requirement to provide evidence of equivalently sized sites being developed in the City. By way of comparison, the current Housing Element identified about 78% of the housing Opportunity sites as being below or above these thresholds that now require further analysis.

While AB 686's AFFH requirements may not directly affect site selection as much as the other requirements, the City must approach the site inventory with an AFFH lens. This will add more complexity to the work for the sixth cycle. Once again, the current cycle's site inventory illustrates the challenge the City will face in achieving compliance in the upcoming cycle. While Palo Alto is comprised mostly of areas of high opportunity, our site selection must ensure the selected sites do not lead to further segregation or greater disparity in fair housing opportunities.

Consequences of Non-Certification

The potential consequences for failing to adopt a compliant Housing Element are severe. Litigation may be brought by any interested party (Gov. Code 65587(b)) or the office of the Attorney General (Gov. Code 65585). If a court finds that the jurisdiction's Housing Element is inadequate, it must include one or more of the following remedies in its order:

- Suspension of the jurisdiction's authority to issue building permits or related permits while permits are outstanding for housing projects;
- Suspension of the jurisdiction's authority to grant zoning changes, variances, and map approvals;
- Mandated approval of residential housing projects (Gov. Code 65755).

In other words, until the jurisdiction adopts a compliant Housing Element, a court is empowered – and to some extent required – to halt all development activity in the jurisdiction other than permits for housing projects.

In addition, recent legislation expanded the authority of the Office of the Attorney General to enforce housing element law. In suits brought by the Office of the Attorney General, a court is required to impose fines on jurisdictions that consistently refuse to adopt a compliant Housing Element. The fines range from a minimum of \$10,000 per month, up to \$600,000 per month. If a jurisdiction has not adopted a compliant Housing Element within 18 months following a court order, the court may appoint a receiver to take all governmental actions necessary to bring the jurisdiction's Housing Element into compliance (Gov. Code 65585).

Roles and Responsibilities

Understanding the scale and complexity of this project, it is important that all parties clearly comprehend their part as well as all recognizing the steps needed in the update process. Therefore, staff has outlined the follow areas for Council feedback and approval. These areas include:

1. The roles and responsibilities of each advisory body;
2. A project approach to allow for multiple opportunities for PTC and Council review; and
3. A project timeline to meet the January 2023 deadline.

There are three advisory bodies responsible for the review and development of the draft Housing Element during the update process. Each of the advisory bodies will have different roles and responsibilities. The advisory bodies are as follows:

1. Housing Element Working Group
2. Council Housing Element Ad Hoc Committee
3. Planning and Transportation Commission

Housing Element Working Group

The City Council established this Housing Element (Working Group) of community stakeholders to assist the City in the update. Adhering to Brown Act requirements and meeting on a monthly basis, their main responsibility is to make the initial selection of potential housing sites and prepare programs to help spur housing production on those sites. They will also work on other areas of the Housing Element such as reviewing the required Housing Constraints and Needs Analysis chapters. Their work product will be reviewed by the Ad Hoc Committee and the PTC. The Ad Hoc Committee will provide general direction to Working Group and input their draft proposals. The Working Group, based on the Ad Hoc committee input, will prepare formal recommendations to the PTC for their review. PTC will, in turn, make a formal recommendation to the City Council.

In addition to their work on the Housing Element document, they will also serve as community liaisons about the Housing Element update to the public.

Council Housing Element Ad Hoc Committee

The Housing Element Ad Hoc Committee (Ad Hoc Committee) is comprised of three Council members (DuBois, Filseth, Stone). Meeting every other month, they will discuss the Working Group's work products and provide input. The Working Group will respond to this feedback and refine their work product and direction accordingly. The Ad Hoc Committee does not prepare a formal recommendation to the PTC or Council. The Ad Hoc Committee is intended to provide guidance that reflects the City Council's policy interests given statutory requirements and constraints, and support efforts to ensure the Housing Element meets requirements to enable its certification from HCD.

Planning and Transportation Commission

Based on the proposed schedule, the PTC will consider site selection and housing programs of the Housing Element as they are developed. Therefore, the PTC will review the Working Group's formal recommendation, which incorporates feedback from Ad Hoc Committee, and prepare their own recommendation to the Council.

City Council

The City Council is the ultimate authority for approving the Housing Element Update. The Working Group recommends to PTC that in turn recommends to the City Council. The Council will take up this item formally three times and may make changes to the PTC recommendations. Information reports will be prepared from time to time as needed to provide relevant updates. In the event staff receives conflicting information or needs policy guidance on one or more specific issues, staff will schedule a meeting before the City Council as appropriate.

Project Schedule

The City's Housing Element must be certified by January 2023. As mentioned, efforts are already underway to establish the basic elements for the update process. These include selection of the consultant, formation of the Housing Element Working Group, and launching of the website.

An initial significant action of the Update process will be the selection of housing sites. After completion of the sites selection, the Working Group and staff will focus on the preparation of housing policies and programs.

To accommodate the City's RHNA target, it is anticipated significant amendments to the zoning code and possibly the Comprehensive Plan will be required. Rezoning sites can be a lengthy process that begins with the selection of the sites, followed by associated environmental review, and reviews by the PTC and City Council. The research, coordination, and actions will require intensive staff and community efforts, including public hearings. Site selection will be the first major task of the update process to allow for sufficient time to perform environmental review and any rezoning of sites prior to submittal of the Housing Element for HCD certification.

Here are the major milestones for the Housing Element Update:

Time	Task
May 2021	- Working Group starts meeting - Community Meetings
July 2021	- PTC update to review site selection work by Working Group
January 2022	- Formal PTC review of Site Selection

March 2022	- Formal Council review of Site Selection
	- Formal PTC review of Housing Programs
May 2022	- Formal Council Review of Housing Programs
	- Public Review of Draft Housing Element
	- Submit Draft HE for HCD initial review
September 2022	- Formal PTC review of Housing Element
November 2022	- Council Adoption of Housing Element
January 2023	- HCD Certification

Typically, the PTC and the Council formally review the Housing Element when the draft Housing Element is ready for adoption. To provide the PTC, Council, and community multiple opportunities to review the Housing Element, staff proposes that both the PTC and the Council do a formal review of Housing Element at the following three stages:

- a. Approval of Site Selection
- b. Approval of the Housing Policies and Programs
- c. Formal adoption of the Housing Element draft

With this approach, both the PTC and the Council will have a minimum of three meetings to formally review the Housing Element. This is in addition to any Housing Element updates that staff may provide to the PTC and Council.

Public Participation Resources

Public participation is a key component to the Housing Element. The City will provide a number of public participation resources to continuously engage the public during the update process.

Website

The City has launched a new Housing Element update website, www.paloaltohousingelement.com. Some of the key features of the website include:

- Housing Element Information and FAQs
- A future online survey about site selection
- An interactive mapping tool to help assist and inform the community about site selection
- Information about other City-wide housing issues
- Additional Housing Element resources

Additional Community Meetings

The following meeting are planned:

- Community Kick Off Meeting – May15, 2021, 10 am -12 pm. This will be an interactive meeting where the community can learn and provide input about the Housing Element process.

The City's consultant and staff will also be engaged with the community in neighborhood meetings and other "pop-up" meetings. The pop-up materials will be prepared by the consultant. Aside from the stakeholders in the Working Group, staff will also reach out to City stakeholders to gain their input.

Summary of Key Issues:

As staff begins to escalate (launches) its Housing Element update activities, staff is requesting direction from the Council for the following items:

1. Approval of the roles and responsibilities of the Working Group, Council Ad Hoc Committee, and PTC as described in this report and previously summarized in the Housing Element Working Group selection report dated April 5, 2021 (<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/current-year/2021/id-12030.pdf>); and
2. Approval of the proposed schedule that includes separating the review of the of site selection and housing programs to facilitate early engagement and affirm project direction from appointed and elected officials.

Policy Implications:

The Housing Element is a mandated element and requires State certification. Council direction will inform the process on how the City will update its Housing Element and receive public input and participation.

The City Council is encouraged to provide any other direction it determines appropriate to guide this effort. On April 12, 2021, the City Council provided some initial direction for items to include in the Housing Element Update, including the following:

1. Review what affordable multi-family housing would be appropriate in large parcels occupied by faith institutions, depending on their context and current zoning;
2. Review zoning changes and incentives with the Stanford Research and greater Stanford Shopping Center area that would result in significant housing with supporting services;
3. Review whether any industrial zoned areas are appropriate for housing; and
4. Review not allowing high density housing east of Highway 101.

Given the high RHNA anticipated for the City, it will be necessary for staff and the community to remain open minded as to where future housing can reasonably be built over the next eight year housing cycle in order to achieve state certification. It is anticipated increased opportunities for housing production will initially focus to the extent reasonable on commercial, industrial, mixed-use, and multifamily zones. Single family and low density zoning

already allow for up to three housing units per lot. The Housing Element Workgroup and Council Ad Hoc would initially consider if there is a need to further changes in these districts.

Resource Impact:

The active preparation and participation of staff and consultants with the selected Working Group and designated Council Ad Hoc Committee meetings will require dedicated time on a monthly basis for approximately 18 months. Additional costs for the consultant’s time have been included in the Housing Element update project budget. At this time, funding from State Local Early Action Planning (LEAP), SB2 Planning grants, and the General Fund is available to pay for a significant portion of the Housing Element. Staff is also tracking other funding sources if expenses exceed budgeted estimates.

Environmental Review:

The current action requested does not represent a project under the California Environmental Quality Act (CEQA). The City anticipates that a Supplemental Environmental Impact Report to the Comprehensive Plan Final Environmental Impact Report (2017) will be the appropriate level of environmental review for the Housing Element update and associated tasks.