



City of Sunnyvale

Agenda Item

23-1094

Agenda Date: 11/27/2023

REPORT TO PLANNING COMMISSION

SUBJECT

Forward Recommendation to City Council to Adopt a Resolution to Amend the General Plan by Adopting the 2023-2031 Housing Element and Adopt a Negative Declaration for the 2023-2031 Housing Element

BACKGROUND

The Housing Element is part of Sunnyvale's General Plan and identifies the policies, programs, and sites to meet the housing needs of the City's current and future residents. Housing elements are written and adopted by local governments however, housing elements are the only portion of a city's General Plan that must be certified by the State (Department of Housing and Community Development - HCD). HCD reviews and certifies that each jurisdiction's Housing Element meets all the requirements of State law (Government Code Sections 65580-65589.8). Under current state laws, housing elements are updated every eight years to coincide with an eight-year planning period.

Since August 2021, staff and the City's consultant team, Ascent Environmental, have worked to update the City's Housing Element for the Sixth Cycle 2023-2031 planning period. This process has included extensive community engagement, multiple revisions, and meetings with HCD staff. The community engagement process involved meetings with residents, housing advocacy groups, residential developers and an online survey, with several outreach events offering Spanish and Mandarin translation. A list of community engagement events is shown below in Table 1. In addition to the direct work on the Housing Element, the document also incorporates several of the City's long-term planning initiatives such as the Moffett Park Specific Plan (MPSP), El Camino Real Specific Plan (ECRSP), and Lawrence Station Area Plan (LSAP), which have dramatically expanded housing capacity across the City.

Table 1: Community Engagement and Public Hearings

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Event	Date
Countywide Planning Collaborative Community Meeting	Aug 30, 2021
Joint Study Session to Planning Commission and HHSC	Dec 13, 2021
City Council Study Session	Jan 25, 2022
Online Community Survey (English/Spanish/Mandarin)	Jan 30 - Mar 4, 2022
Focus Group: Housing for Special Needs	Feb 1, 2022
Focus Group: Developer Insights into Meeting the RHNA	Feb 2, 2022
Community Workshop #1 (English/Spanish)	Feb 3, 2022
Presentation to Age-Friendly Advisory Committee	Feb 8, 2022
Community Workshop #2 (English/Mandarin)	Feb 9, 2022
City Council Study Session on Draft Housing Element	May 3, 2022
Community Workshop #3 (English/Spanish/Mandarin)	May 11, 2022
Planning Commission Public Hearing: Draft Housing Element	May 23, 2022
HHSC Hearing: Draft Housing Element	May 25, 2022
City Council Hearing: Draft Housing Element	Jun 21, 2022
Stakeholder Meeting: Livable Sunnyvale	Feb 6, 2023
Stakeholder Meeting: Silicon Valley at Home	Feb 7, 2023
City Council Study Session	Mar 14, 2023
City Council Study Session	Sep 26, 2023
Planning Commission Hearing: Final Draft Adoption	Nov 27, 2023
HHSC Hearing: Final Draft Adoption	Nov 29, 2023
City Council Hearing: Final Draft Adoption	Dec 12, 2023

Based on feedback from the community, City Council, and HCD comments, the City staff has prepared four public drafts of the Housing Element. A full overview of the City’s Housing Element revision process is shown below in Table 2. The City is now in the final adoption stage of the Housing Element update process and is expecting to receive conditional certification from HCD for the Second Revised HCD Draft Housing Element, with Errata (see Attachment 2, Resolution Exhibit A). Although the Errata can be found as an Exhibit in the Resolution, this report also includes a free-standing copy of the Errata in Attachment 4.

Table 2: Sixth Cycle Housing Element Update Overview

Event	Date
Public Review Draft Housing Element Released	May 6, 2022
Revised Public Review Draft Submitted to HCD	July 8, 2022
HCD Comment Letter #1	Oct 6, 2022
Revised HCD Draft Submitted to HCD	May 24, 2023
Errata to Revised HCD Draft Submitted to HCD	July 10, 2023
HCD Comment Letter #2	July 21, 2023
Second Revised HCD Draft Submitted to HCD	Oct 12, 2023
CEQA Initial Study/Negative Declaration Review	Oct 20, 2023 – Nov 20, 2023
Errata to Second Revised HCD Draft published for public review	November 17, 2023
Errata to Second Revised HCD Draft Submitted to HCD	Expected November 27, 2023

Like most jurisdictions in Santa Clara County, the City has surpassed the January 31, 2023 deadline to have a substantially compliant, adopted housing element. The most severe consequences for exceeding this deadline include ineligibility for some State housing and transportation funding programs and the “builder’s remedy”, which limits the City’s ability to deny residential projects that meet certain affordability restrictions. For these reasons, it is critical for the City to complete this final step of housing element adoption.

Planning Commission is scheduled to consider this item on November 27, 2023. The Housing and Human Services Commission (HHSC) is scheduled to consider this item on November 29, 2023. Following recommendations by HHSC and Planning Commission, this Draft Housing Element will be submitted to Council for adoption on December 12, 2023.

EXISTING POLICY

Council Policy 7.3.1 Legislative Management - Goals and Policies

Goal 7.3A: Assess community conditions and make appropriate changes to long-range, mid-range and short-range plans.

ENVIRONMENTAL REVIEW

An Initial Study/Negative Declaration (IS/ND) was prepared for the project by Ascent Environmental in accordance with the California Environmental Quality Act (CEQA). The IS/ND (Attachment 3) found that the project would not result in any unmitigated significant environmental impacts that have not been addressed in the following Environmental Impact Reports (EIR) as provided under State CEQA Guidelines Section 15063(c)(3)(D):

- Land Use and Transportation Element Update EIR (2017)
- Downtown Specific Plan EIR (2003)
- Downtown Specific Plan Amendments and Specific Development Project EIR (2020)
- Lawrence Station Area Plan Update Subsequent EIR (2021)
- El Camino Real Specific Plan EIR (2022)
- Moffett Park Specific Plan EIR (2023)

The IS/ND was circulated for public review from October 20, 2023 to November 20, 2023. As of

November 17, 2023, no comments were received. The Negative Declaration will be presented for Planning Commission recommendation (November 27, 2023) and Council adoption on December 12, 2023.

DISCUSSION

Housing Element Overview

The Housing Element is the City’s plan to meet the housing needs of everyone in the community. The document is wide-ranging and includes an assessment of housing needs, assessment of fair housing, sites inventory, constraints analysis, energy conservation analysis, and policies and programs. One of the most important components of any housing element is the Regional Housing Needs assessment (RHNA). The RHNA is the target number of housing units that the City must plan for during the Sixth Cycle 2023-2031 planning period. As shown in Table 3 below, the City’s total RHNA for the 2023-2031 cycle is 11,966 units and further divided into income categories based on the area median income (AMI) and classified as Very Low, Low, Moderate, and Above Moderate Income. Although the City does not need to actually build these housing units, the City’s Housing Element must provide the framework for the units to be built by putting in place the proper zoning, policies, and programs as well as addressing any constraints to the production of housing.

Table 3: 2023-2031 RHNA

Income Level	2023-2031 RHNA
Very Low Income (<50% AMI)	2,968
Low Income (51-80% AMI)	1,709
Moderate Income (81-120% AMI)	2,032
Above Moderate Income (>120% AMI)	5,257
Total	11,966

Another important Housing Element component is the assessment of fair housing, which is a new requirement of the Sixth Cycle planning period. As part of the assessment of fair housing, the City must ensure that the City’s Sites Inventory distributes the RHNA fairly across all regions of Sunnyvale. This concept is known as “affirmatively furthering fair housing” (AFFH) and is intended to provide access to housing in areas that are considered higher resource according to maps developed by HCD and the State Tax Credit Allocation Committee. These opportunity maps identify areas with characteristics that support positive economic, educational, and health outcomes for low-income families. Although much of the City is considered to be moderate or high resource, most areas south of El Camino Real are categorized as highest resource. Many comments from the public and HCD have centered around how the City’s Housing Element addresses AFFH and plans for housing equitably distributed throughout the City. With each revision, the City has included additional and revised policies that address these comments and that seek to expand a variety of housing types throughout Sunnyvale.

Revised Public Review Draft and HCD Comment Letter #1

In August 2021, the City began the housing element update process with community engagement events, extensive data gathering, and a comprehensive review of the City’s housing policies. Over the course of nearly a year, this information was combined with feedback from City Council to create the Public Review Draft Housing Element, which was published on May 6, 2022. Based on additional comments received by the public and feedback from City Council, the City made minor revisions and

submitted the Revised Public Review Draft to HCD on July 8, 2022.

Following a 90-day review, the City received HCD's comment letter on the Revised Public Review Draft on October 6, 2022. Many of HCD's comments only required minor clarifications. For example, HCD noted that programs should include earlier implementation timelines and more explicit objectives and outcomes. The City responded by revising many programs in order to provide specific commitments to housing outcomes and adjusted timelines to ensure programs are completed earlier in the planning period. HCD's most significant comments were related to AFFH, realistic capacity assumptions of sites, suitability of nonvacant sites, constraints on residential development, and the consideration of public comments. The most significant HCD comments and the City's responses are summarized in Table 4 below.

To address HCD's most significant comments, the City completed major revisions to the HCD Review Draft. This revision process required data gathering and extensive analysis of housing production and the City's existing permitting processes. In addition to new analysis, the City also held two stakeholder meetings with the local housing advocacy groups, Livable Sunnyvale and Silicon Valley at Home (also called SV@Home) in February 2023. Both of these groups were very engaged throughout the housing element update process and provided comment letters on the HCD Review Draft highlighting concerns about AFFH. The City discussed proposed solutions to their concerns about AFFH, specifically by reducing reliance on MPSP for a majority of lower-income sites and increasing lower-income sites in higher resource areas. The City then held a third Council Study Session on March 14, 2023, to obtain feedback on housing programs related to three critical topics, including lower-income housing sites in southern higher-resource areas, missing middle housing, and the Park Dedication Requirement. Council feedback on these topics was incorporated into the Revised HCD Draft and helped address AFFH concerns from housing advocates. The City sent the Revised HCD Draft to HCD on May 24, 2023, for their 60-day review.

Table 4: HCD Comment Letter #1 Summary

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HCD Comment	City Response
<p>Discuss AFFH impacts of Sites Inventory, especially the reliance on MPSP for a majority of lower-income sites.</p>	<ul style="list-style-type: none"> • Reduced lower-income assumptions for MPSP from 60% to 50% of units. • Expanded analysis of Sites Inventory in relation to AFFH factors. • Clarified MPSP adoption timeline and discussed how MPSP will increase opportunity in areas currently mapped* as lower resource.
<p>Add programs to respond to contributing factors to fair housing. Include specific commitments, timing, and metrics to address fair housing issues.</p>	<ul style="list-style-type: none"> • Modified Program H3 to increase Village Center density to at least 30 units/acre and consider new sites in southern Sunnyvale. Increased program objective from 100 to 750 lower-income units in high resource areas. • Added Program H21 to adopt regulations that facilitate missing middle housing.
<p>Support realistic capacity assumptions for MPSP, ECRSP, and Downtown Specific Plan.</p>	<ul style="list-style-type: none"> • Added minimum density requirements for MPSP residential zones. • Provided information on development trends and recent/proposed projects in Downtown Specific Plan and ECRSP.
<p>Include analysis demonstrating the potential for redevelopment of nonvacant sites.</p>	<ul style="list-style-type: none"> • Provided factors increasing likelihood for redevelopment (e.g., development interest, structure age and condition, occupancy status, etc.) for all nonvacant sites. In addition, information was provided on the history of redevelopment of non-residential sites.
<p>Provide complete analysis of constraints on development and modify programs accordingly.</p>	<ul style="list-style-type: none"> • Added summary of identified constraints analysis and all programs and objectives that will address them. • Modified Program H18 to reduce open space requirements in R-4 and R-5 zoning districts.
<p>Analyze required fees including the park dedication in-lieu fee applied to lot splits. Consider and address public comments related to park dedication in-lieu fees for SB 9 lot splits.</p>	<ul style="list-style-type: none"> • Provided analysis of residential projects that have met park dedication requirements and uses of in-lieu fees. • Added Program H19 to reduce park dedication in-lieu fees for Dual Urban Opportunity (i.e. SB 9) lot splits.

*Moffett Park is shown on the maps as a low resource area because it is part of a very large census tract that includes the [Alyso](#) area of San Jose. There are no residential units in Moffett Park.

Revised HCD Draft and HCD Comment Letter #2

In June 2023, the City met with HCD review staff to discuss their preliminary comments on the Revised HCD Draft. As with the initial comment letter, many of HCD’s comments were minor and required only clarifying revisions, such as additional details on the City’s open space requirements

and more specific program language. To address these minor comments, the City issued an Errata sheet to the Revised HCD Draft on July 10, 2023.

On July 21, 2023, HCD sent their second comment letter in response to the Revised HCD Draft and Errata sheet. Since the Errata sheet resolved many of HCD’s concerns, this comment letter was much shorter than the previous one. The City met with HCD twice in August 2023 and clarified many of their minor comments, but significant concerns were once again focused on AFFH, realistic capacity, and development constraints. A fourth City Council Study Session was held on September 26, 2023 to update Council on staff’s response to HCD comments and highlight HCD’s unresolved concerns. Council feedback was incorporated into the Second Revised HCD Draft, which the City sent to HCD on October 12, 2023, for their review. HCD’s most significant comments and the City’s responses are summarized in Table 5 below.

Table 5: HCD Comment Letter #2 Summary

HCD Comment	City Response
Analyze land use controls and development standards to ensure that maximum densities are feasible in ECRSP and LSAP.	<ul style="list-style-type: none"> • Provided specific case study examples of recent projects noting how each project met land use requirements (e.g., setbacks, parking, open space, etc.) and met or exceeded maximum densities.
Support the validity of factors related to the potential of redevelopment of nonvacant sites.	<ul style="list-style-type: none"> • Added specific examples of recent and proposed projects throughout the City that have converted nonvacant sites into housing.
Analyze land use controls including parking requirements and open space requirements	<ul style="list-style-type: none"> • Modified Program H18 to reduce open space requirements in R-2 and R-3 zones.
Analyze Park Dedication Requirement’s impact on multifamily housing types.	<ul style="list-style-type: none"> • Modified Program H19 to reduce park dedication fees for multifamily housing by an average of 30 percent. Program H19 will also establish reduced park dedication in-lieu fees for missing middle housing (not to exceed \$60,000 per unit) and special needs housing such as senior and Single Room Occupancy developments (not to exceed \$35,000 per unit).

Second Revised HCD Draft and HCD Conditional Certification

The City met with HCD in November 2023 to discuss their preliminary comments on the Second Revised HCD Draft. Based on informal feedback from HCD, an Errata has been prepared to address the remaining concerns.

The Errata (see Attachment 4) pertains to a few sections in Chapters 2 and 6, summarized below:

1. Revision to Program H18 (Usable Open Space Requirements) to add annual monitoring and midcycle review.
2. Revision to Program H19 (Review Park Dedication Requirements) to add annual monitoring and midcycle review.
3. Revision to Program H21 (Missing Middle Housing) to ensure max densities can be achieved.
4. Revisions to the Constraints Chapter to acknowledge that parking requirements for studio units are a constraint and revisions to Program H23 to commit to reducing the requirement to no more than 1 space per unit.

With this draft, the City has also finalized the Sites Inventory as shown below in Table 6. The final Sites Inventory includes a substantial surplus of sites, especially in the lower income category. This surplus helps the City retain a buffer to comply with the State’s “no net loss” provisions by ensuring that lower-income sites are available in the event that fewer lower-income housing units are developed than assumed in the Sites Inventory.

Table 6: 2023-2031 Housing Capacity Summary

	Lower Income		Moderate Income	Above Moderate Income	Total
	Very Low Income	Low Income			
2023-2031 RHNA	2,968	1,709	2,032	5,257	11,966
	4,677				
Approved Projects	220	101	522	999	1,842
Lawrence Station Area Plan	1,096		227	379	1,702
Downtown Specific Plan	126		48	50	224
ECRSP	1,204		367	502	2,073
MPSP	4,418		0	5,208	9,626
Village Centers	0		797	0	797
Additional LUTE Sites	299		316	6	621
ADUs	14	82	136	41	273
Total Capacity	7,560		2,413	7,185	17,158
<i>Surplus</i>	<i>+2,883</i>		<i>+381</i>	<i>+1,928</i>	<i>+5,192</i>

The formal HCD letter of Conditional Certification is expected no later than December 11, 2023, prior to City Council consideration of the Housing Element on December 12, 2023.

FISCAL IMPACT

No fiscal impact is anticipated due to the recommended action; however, failure to approve a compliant housing element could negatively impact the City by causing it to be ineligible for certain State funding programs. Failure to adopt a compliant housing element has other severe consequences including:

- Four-year update penalty (Gov. Code Section 65588(4)(A))
- RHNA carries over to the next Housing Element cycle (essentially doubling next RHNA obligation) (Gov. Code Section 65584.09)
- General Plan could be found inadequate
- Vulnerable to lawsuits, fines, and attorneys’ fee awards
- “Builder’s Remedy” projects (Gov. Code 65589.5(d))

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- Cities can lose local control of land use decisions (AB 72)
- Court can suspend city's authority to issue building permits, zoning changes, variances, and subdivision maps

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. Email notifications were sent to interested parties, including housing advocacy organizations and neighborhood groups. The hearing date was included on the City's Housing Element Update webpage and published in the Sunnyvale Sun newspaper. The agenda and report are available at the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Recommend that the City Council make the findings and adopt the Resolution in Attachment 2 to:
 - a. Adopt the Negative Declaration in Attachment 3, and
 - b. Amend the General Plan by Adopting the 2023-2031 Housing Element as included as Exhibit A.
2. Recommend that the City Council make the findings and adopt the Resolution in Attachment 2, with modifications, to:
 - a. Adopt the Negative Declaration in Attachment 3, and
 - b. Amend the General Plan by Adopting the 2023-2031 Housing Element as shown included as Exhibit A.
3. Recommend that the City Council not Adopt a Resolution.

RECOMMENDATION

Alternative 1: Recommend that the City Council make the findings and adopt the Resolution in Attachment 2 to the report to a. Adopt the Negative Declaration in Attachment 3 to the report, and b. Amend the General Plan by Adopting the 2023-2031 Housing Element as included a Exhibit A

The 2023-2031 Housing Element update process has lasted over two years and included robust community engagement and multiple revisions to create a stronger, more impactful plan to meet the City's housing needs. The Sites Inventory dramatically increases housing supply and exceeds the City's RHNA in all income categories. Policies and programs will reduce constraints to the development of housing, including missing middle housing and accessory dwelling units. The City has also incorporated community feedback to affirmatively further fair housing by increasing density in higher resource areas of the City. With conditional approval from HCD expected by December 11, 2023, the City's Housing Element is now ready for adoption.

Prepared by: Ryan Dyson, Housing Specialist
Reviewed by: Ernie DeFrenchi, Affordable Housing Manager (Acting Housing Officer)
Reviewed by: Trudi Ryan, Director of Community Development
Reviewed by: Connie Verceles, Deputy City Manager

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Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Resolution (with 5 Exhibits)
 - Exhibit A: 2023-2031 Sunnyvale Housing Element, including Errata
 - Exhibit B: HCD Finding Letter, dated October 6, 2022
 - Exhibit C: HCD Finding Letter, dated July 21, 2023
 - Exhibit D: Response to HCD Findings, dated May 2023
 - Exhibit E: Response to HCD Findings, dated October 5, 2023
 - Exhibit F: HCD letter of conditional approval (reserved for Report to Council)
3. Initial Study/Negative Declaration
4. November 17, 2023 Errata to Second Revised Draft 2023-2031 Housing Element