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Title: Update on the Draft Housing Element 2023-2031. The Historical Advisory Board will receive an update on the status on the Draft Housing Element and Draft Zoning Amendments to address State Fair Housing Law and to accommodate the Regional Housing Needs Allocation for the 2023-2031 planning period

Attachments: 1. [Exhibit 1 Letters from Department of Housing and Community Development \(HCD\)](#), 2. [Exhibit 2 Santa Monica Article and ABAG Memo on Builder's Remedy](#)

Text

Update on the Draft Housing Element 2023-2031. The Historical Advisory Board will receive an update on the status on the Draft Housing Element and Draft Zoning Amendments to address State Fair Housing Law and to accommodate the Regional Housing Needs Allocation for the 2023-2031 planning period

To: Chair Sanchez and
Members of the Historical Advisory Board

From: Andrew Thomas, Planning, Building and Transportation Director

EXECUTIVE SUMMARY

The City of Alameda (City) has completed a draft update to the Housing Element of the General Plan and a comprehensive set of zoning amendments to affirmatively further fair housing and accommodate the 5,353-unit Regional Housing Needs Allocation (RHNA) for the 2023-2031 Housing Element cycle. Both documents are available for public review at www.alameda2040.org <<http://www.alameda2040.org>> and www.alamedaca.gov <<http://www.alamedaca.gov>>.

On August 25, 2022, the State of California Department of Housing and Community Development (HCD) found that the draft Housing Element is in substantial compliance with State Housing Law. The HCD letter is attached as Exhibit 1.

On September 26, 2022 and October 10, 2022, the Planning Board unanimously approved resolutions recommending that the City Council approve the Housing Element update, Land Use Diagram amendments, and associated Alameda Municipal Code (AMC) amendments.

Failure to have a compliant Housing Element by January 31, 2023 would immediately open the door for developers to build in Alameda without local zoning discretion under the "Builder's Remedy." Staff is now recommending that the City Council approve the Housing Element update, Land Use Diagram amendments, and associated Alameda Municipal Code (AMC) amendments.

BACKGROUND

State Housing Element Law (Article 10.6 of the Government Code) requires that the City update its General Plan Housing Element every eight (8) years. The 2023-2031 Draft Housing Element was prepared with the benefit of community, boards and commissions, and City Council input and discussion at over 25 public workshops over the course of two years. The Planning Board held approximately seventeen (17) public workshops, and the City Council, the Commission on Persons with Disabilities, the Transportation Commission, and the Historical Advisory Board (HAB) all held one or more workshops. Guidance was also provided by HCD throughout the process. This is the fourth time this matter is coming before the HAB.

On May 25, 2022, the City submitted the draft Housing Element to HCD for its review. In July, HCD contacted the City with a number of questions and concerns about the draft Housing Element. In response, the City revised the draft Housing Element to include additional information and analysis. On August 12, 2022, the City published the changes and requested public comment on those changes. The City received three comment letters during the public review period, and based upon those comments, staff made additional minor changes to the Housing Element and zoning amendments.

On August 25, 2022, HCD notified the City of Alameda that the revised draft Housing Element and associated zoning amendments, if approved by the City Council, would ensure that the City remained in substantial compliance with State Housing Law.

On September 26, 2022 and October 10, 2022, the Planning Board held its final two public hearings and approved resolutions recommending that the City Council approve the Housing Element update, Land Use Element diagram amendments and associated zoning text and map amendments.

The deadline is January 31, 2023 to have a Housing Element compliant with state law.

DISCUSSION

The objective of the Housing Element updates and accompanying zoning amendments is to ensure that the Housing Element and Zoning Ordinance comply with State Law. Failure to comply with State Housing Element Law subjects the City to the risk of:

- Loss of Land Use Control and the "Builder's Remedy." Pursuant to State Government Code, (e.g., Gov. Code, §§ 65589(d)(5)(B), 65750 *et seq*; *Camp v. Mendocino* (1981) 123 Cal.App.3d 334), failure to adopt the Housing Element means the City has an invalid General Plan and zoning code and therefore does not have the authority to make land use decisions. Once this occurs, housing developers have the "remedy" to bypass the City's regulatory processes to build housing. Under the "Builder's Remedy", the General Plan designation and zoning for a site becomes irrelevant and non-binding because they are invalid. As described in a recent Santa Monica Daily Press article, developers in Santa Monica have bypassed the City's regulatory processes to "force 3,968 undeniable units into the city's pipeline" which includes a 15-story tower, because the Santa Monica City Council failed to adopt a conforming Housing Element. Under a Builder's Remedy, applications for housing may ignore the City's General Plan, Zoning, height limits, design review requirements or other regulations that ensure the livability and quality of life in Alameda. The threat of the Builder's Remedy to local communities prompted the Association of Bay Area Governments to issue a technical advisory to all Bay Area cities (Exhibit 2).
- Loss of State funding for open space, transportation, and affordable housing. The City of Alameda depends on State funds for a variety of projects such as Jean Sweeney Park improvements, Depave Park improvements, habitat restoration projects, Safe Routes to School improvements, neighborhood traffic calming projects, traffic signal improvements, Park Street and Webster Street improvements, and affordable housing grants. As soon as the City of Alameda fall out of compliance with State Housing Law, the City of Alameda is disqualified from receiving these grants.
- Fines. State mandated fines, which escalate in size, until the City adopts a conforming Housing Element (Gov. Code, §§ 65589.5(k)(1)(B) and 65589.5(l)) should be expected if the City Council fails to adopt a Housing Element in compliance with State Law. Per State Law, the fines begin at

\$10,000 per month and increase to \$600,000 per month, until the City Council adopts a compliant Housing Element.

- **Lawsuits.** A lawsuit was filed against the City in 2011 for failure to adopt a Housing Element in compliance with State Law. The consequences and costs of that lawsuit were avoided when the City Council adopted the 2012 Housing Element. The City Council should expect a similar lawsuit in 2023 if the City Council fails to adopt a Housing Element in compliance with State Law.

To avoid the consequences of non-compliance described above, the City Council must adopt a Housing Element and zoning ordinance amendments that:

- Accommodate the City's Regional Housing Needs Allocation (RHNA) by ensuring that the General Plan Housing Element and zoning ordinance enable construction of 5,353 housing units over the next 8-year Housing Element cycle; and
- Affirmatively further fair housing by removing regulatory barriers that serve to segregate the community or impose barriers to access to certain types of housing. (Gov. Code, § 65583(c)(5).)

A Balanced Compromise Plan to Accommodate the RHNA. The Housing Element and zoning amendments reviewed and endorsed by HCD achieve a balance between the requirements of State Law to accommodate the RHNA and affirmatively further fair housing and the goals of the Alameda community as articulated at the Housing Element public workshops.

- **NAS Alameda Priority Development Area - 39%.** In response to community desires to maximize the use of Alameda Point and the former Naval lands to accommodate the RHNA, approximately 39% of the RHNA is accommodated in the City's NAS Alameda Priority Development Area (PDA). This includes 24% of the units at Alameda Point and 15% at other surplus federal lands in the PDA such as the Alameda Housing Authority's North Housing Project, the Habitat for Humanity project, and Carmel's project adjacent to Coast Guard housing on Singleton Avenue.
- **Northern Waterfront PDA - 24%.** Vacant and underutilized lands in the Northern Waterfront PDA accommodates approximately 24% of the RHNA on sites such as Encinal Terminals, Alameda Marina, the former Pennzoil Site, the Housing Authority site on Eagle Street at Tilden Avenue, and underutilized sites on Clement Avenue and Mariner Square Drive. To accommodate the RHNA, the Housing Element requires adding the MF, Multifamily Residential Combining District zoning designation to two northern waterfront sites (2363-2433 Mariner Square Loop & Drive and 2199 Clement Avenue) and changing the General Plan Land Use Diagram designation for the property on Mariner Square Drive from *Business and Employment to Mixed Use*.
- **Shopping Centers, Park Street and Webster Street Commercial Corridors - 27%.** Shopping center sites, such as the South Shore Center, Harbor Bay Landing Shopping Center, and Alameda Landing Shopping Center accommodate 19% of the RHNA, and the Park Street and Webster Street business districts accommodate approximately 8% of the RHNA. To accommodate the RHNA, the Housing Element requires adding the CMU, Community Mixed Use Combining District zoning designation to the Alameda Landing Shopping Center; the Harbor Bay Landing Shopping Center; the South Shore Shopping Center and adjacent shoreline properties; and the Marina Village Shopping Center. It also requires changing the zoning designation for the Webster Square site at Webster Street and Atlantic Avenue from M-1-PD, Intermediate Industrial (Manufacturing) Planned Development District to C-C, Community Commercial and changing the Land Use Diagram designation from *Medium Density Residential to Community Mixed Use*.
- **Residential Districts - 10%.** In response to community desires to minimize development within existing neighborhoods, only 10% of the RHNA (approximately 67 units per year) is accommodated through accessory dwelling units and backyard in-fill units in the R-1 through R-6 residential districts. These districts include over 16,000 parcels and over 2,500 acres of residentially zoned land.

A Fair Housing Plan. Fair housing requirements require that the City affirmatively further fair housing by taking meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity. To affirmatively further fair housing, the draft Housing Element and zoning amendments include:

- **Form Based Regulations.** Emphasize and reinforce form-based regulations (e.g. height limits, lot coverage limits, etc.) and remove provisions that act to create barriers to access to housing for lower income and middle-income households or to individuals that may require daily assistance or a specific housing type.
- **Equal Regulation.** Apply the form-based requirements (e.g. height, lot coverage, and setback) equally to all housing types (e.g. single family, multifamily, supportive, assisted living, etc.) so that people who need these different housing types are treated equally. The new housing opportunities created by the form-based requirements are distributed across neighborhoods in Alameda.
- **Remove Barriers to Affordable Housing.** Remove regulations that prohibit the most affordable housing types, such as the prohibition of construction of multifamily housing (three or more units in a building) and the citywide density limitation on residential densities over 21 units per acre (three or more units on a 5,000 square foot lot). These prohibited housing types are the most affordable housing types. Prohibiting them creates a barrier to access to housing in Alameda for households with lower incomes.

CONCLUSION

With the benefit of over 25 public workshops and the participation of a wide spectrum of Alameda residents and interest groups, the City Council is in the position to approve the necessary General Plan and Zoning amendments to remain in compliance with State law and avoid the financial and land use consequences of being in violation of State Law and subject to fines, lawsuits and "Builder's Remedy" applications for housing that may ignore the City's General Plan, Zoning, height limits or other regulations that ensure the livability and quality of life in Alameda.

ALTERNATIVES

The City Council may consider a range of alternatives, including:

- Approving the amendments as recommended to ensure compliance with State Law.
- Approving the amendments with changes to further reduce constraints on housing development in Alameda. Changes to further reduce constraints will be considered favorably by HCD and will further ensure compliance with State Law.
- Approving the amendments with changes to increase constraints on housing development in Alameda. Changes to further increase constraints will be considered negatively by HCD, will jeopardize certification by HCD, and will place Alameda at risk to the financial consequences of non-compliance.

ENVIRONMENTAL REVIEW

This status update on the draft Housing Element and amendments to the AMC to implement the policies and goals of the draft Housing Element is not a project under Public Resources Code section 21065 and CEQA Guidelines section 15378. Final City Council adoption of the Housing Element and zoning code amendments will be subject to review under the California Environmental Quality Act. Staff has completed its analysis of the potential environmental impacts of Housing Element adoption and have determined that the General Plan EIR adequately anticipates and evaluates the impact of Housing Element adoption.

CLIMATE IMPACT

Accommodating the RHNA supports the region's Sustainable Communities Strategy to reduce greenhouse gas emissions. A decision by the City to not meet the RHNA would likely have a negative impact on the region's ability to reduce greenhouse gas emissions.

RECOMMENDATION

Accept this report on the Draft Housing Element and Draft Zoning Amendments to address State Fair Housing Law and to accommodate the Regional Housing Needs Allocation for the 2023-2031 planning period.

Respectfully submitted,

Allen Tai,
City Planner

Exhibits:

1. Letters from Department of Housing and Community Development (HCD)
2. Santa Monica Article and ABAG Memo on Builder's Remedy