



TOWN OF PORTOLA VALLEY

STAFF REPORT

TO: Mayor and Town Council

FROM: Laura Russell, Planning & Building Director
Cara Silver, Town Attorney

DATE: December 14, 2022

RE: Housing Element Update and Discussion

RECOMMENDATION

Staff recommends that the Town Council receive a report, take public comment, and provide any feedback on the Housing Element Update, schedule and associated actions.

MEETING PURPOSE

The Town Council last reviewed the Housing Element on [July 13, 2022](#). This staff report provides a summary of Housing Element update activities that have occurred since then, followed by a summary of legal issues that have emerged since previous Town Council review to ensure the Town Council and members of the public have easy access to the latest information.

BACKGROUND

The Housing Element is part of Portola Valley's General Plan and identifies policies and programs to meet the housing needs of the Town's current and future residents. State law (Government Code Sections 65580-65589.8) requires that every city/town and county in California adopt a Housing Element approximately every eight years. Portola Valley's current Housing Element covers the planning period from 2014-2022 and was adopted in 2015. The new Housing Element will cover 2023-2031 and is called the 6th Cycle. In addition, the State Department of Housing and Community Development (HCD) reviews and certifies that each jurisdiction's Housing Element meets all the requirements of the law.

Every jurisdiction in California receives a target number of homes to plan for. This is called the Regional Housing Needs Allocation or RHNA (pronounced 'ree-nuh'). Cities/towns do not need to build the housing, but do need to put in place the proper zoning and address constraints so the private sector can build the housing. The RHNA is broken down by income category. Portola Valley's income specific RHNA is:

Income Level	Number of Units
Very Low Income (<50% of Area Median Income)	73
Low Income (80% of Area Median Income)	42
Moderate Income (80-120% of Area Median Income)	39
Above Moderate Income (>120% of Area Median Income)	99
Total	253

Consistent with statutory requirements, the Housing Element must be adopted by the Town and certified by HCD by January 2023. After that, there is a 120-day period for the Town to work with HCD on certification; however, it should not be thought of as a “grace period” or extra time for the Town. Rather, it is an opportunity to resolve any final issues with HCD.

Ad Hoc Housing Element Committee and Community Engagement

The Ad Hoc Housing Element Committee (AHHEC) was formed to provide recommendations to the Town Council on the Housing Element Update, explore options to minimize the impacts of additional housing units, maximize public participation, and communicate information on the Committee’s progress and recommendations to residents. AHHEC members included representatives from the Town Council; Planning Commission; Race and Equity Committee; Architectural and Site Control Commission; and community members.

The AHHEC met 15 times since August 2021 to advance its charge to develop a Housing Element that complies with State law and will be certified, while maintaining Town values. Agendas, staff reports, zoom recordings, and presentation materials are available on the [Committee's webpage](#). The AHHEC meetings were extremely well attended with typical attendance about 40-50 and the key meetings about housing sites having over 150 attendees.

As the Town Council is aware, the Town does not currently have any zoning districts that allow multifamily housing. Historically, the Town has met its RHNA obligations primarily through ADUs and a few Affiliated Housing units. Given the increase in the RHNA allocation with Cycle 6 and the changes to State law, the AHHEC needed to consider different options for meeting the Town’s RHNA. The Committee decided on a patchwork approach that includes multiple strategies to develop housing. The AHHEC considered safety first, through hazard constraint mapping, then expressed a preference that new housing be distributed throughout the community to the extent feasible.

In June 2022, the Town released the Public Review Draft Housing Element. It was made available online at www.portolavalley.net/housingelement, distributed to the community through the Town’s website, eNotification (over 450 members), PV Forum, social media, and direct email to the Town’s committee members, businesses, and institutions. Town committees were invited to discuss the Housing Element. Public comments were received from June 8th to July 13th and forwarded to the Town Council for review.

Draft Housing Element

After Town Council review on July 13th and final revisions at the direction of a Council Subcommittee, the [Initial HCD Draft Housing Element](#) was sent to the State for review. After completion of the 90-day review period, the Town received the official [HCD Comment Letter](#) on November 9th. The Ad Hoc Housing Element Committee met on November 10th to discuss how to implement the comments.

DISCUSSION

On [March 23, 2022](#), Town Council received a staff report on the status of the Housing Element Update process, consequences of non-certification, the work plan, and timing. At that time, the Town Council directed staff to complete the Housing Element, zoning code amendments, environmental analysis, conforming General Plan amendments and associated work prior to January 31, 2023. There was acknowledgement that it would be very challenging to meet that timeline but that every effort should be made. In response to that direction, the staff/consultant team have been developing technical work and bringing it through a public review process with the Planning Commission.

Current Status

Key elements of the Housing Element Update and associated work are as follows:

- **Review under the California Environmental Quality Act (CEQA)** – An [Initial Study / Mitigated Negative Declaration](#) (IS/MND) has been prepared. [Public comments](#) were received from October 28 to November 29, 2022. The Planning Commission held a public meeting on [November 16](#) to receive public comments. A Response to Comments document is being prepared and will be released to the public when complete.
- **Housing Element Update** – Staff and consultants are updating the Housing Element in response to HCD comments. The Planning Commission has reviewed the revised approach to the Voluntary Upzoning (Opt In) program and Section 7 Programs. Other amendments are well underway.
- **Conforming General Plan Amendments** - Each element of the General Plan (sometimes called chapters) must be consistent, so when one chapter is updated, it may trigger minor conforming amendments to other chapters, as is the case with the Housing Element update. Materials related to the conforming General Plan Amendments were released to the community with a cover memo in advance of the Planning Commission meetings to allow additional time for review and consideration.
- **Zoning Code amendments** to implement the policies in the General Plan including three new zoning districts with basic development standards: 1) a new multi-family district allowing up to four dwelling units per acre; 2) a new multi-family district allowing 20 dwelling units per acre; and 3) a mixed-use district allowing residential uses up to six dwelling units per acre. Additionally, the amendments would codify the Affiliated Housing Program and update the zoning map.

Relationship between Housing Element and Safety Element

State law now requires Housing Elements to be updated concurrently with Safety Elements. Logically it makes sense for the Safety Element to be prepared before the Housing Element, as many residents have urged. However, in Portola Valley the Safety Element is largely dependent on current fire mapping and, unfortunately, neither the State nor the Woodside Fire Protection District have completed their mapping. Accordingly, the major Housing Element sites were chosen based on (1) locations with low or moderate fire hazard and (2) adjacency to evacuation routes. When selecting these sites the following sources were consulted: the 2008 Moritz Vegetation map, the 2008 Cal Fire Fire Severity Zone Map, Zeke Lunder's 2022 analysis and WFPD's Flame Mapper preliminary model results. (See Attachment 1.)

Emerging Legal Issues

In the past few years, the State Legislature has passed a series of new laws requiring the Housing Element to incorporate additional information and analysis (e.g. no net loss, Affirmatively Furthering Fair Housing, requirements for special needs housing). While previous housing element cycles had few consequences for towns failing to adopt compliant housing elements, that is not the case anymore. Further, at one time there was no consequence if the units of the inventory did not actually get built. However, new laws now wrestle away local zoning control away from towns that do not see projects materialize. Finally, the State has created and funded a Housing Enforcement Unit which scrutinizes housing element compliance throughout the full cycle.¹ Finally, multiple State laws have been adopted recently in a continuing attempt by the Legislature to take away local zoning control in the area of housing development.

Consequences for Non-Compliant Housing Elements

As discussed above, state law requires jurisdictions to submit draft and adopted Housing Elements to HCD for review. Although HCD is required to make a determination regarding whether a Housing Element substantially complies with state law, in the event of a disagreement between a jurisdiction and HCD regarding substantial compliance, the issue is ultimately left to the courts to decide.

The potential consequences of a court determination of non-compliance 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). Essentially, until the jurisdiction adopts a compliant Housing Element, a court is empowered to

¹ A recent example of the Enforcement Unit's work is the California Attorney General's immediate reaction when the Town of Woodside characterized its entire Town as a wildlife corridor in order to avoid the application of SB 9. The Woodside Town Council promptly rescinded that action upon the Attorney General's actions.

halt all building permits (including remodels and additions) in the jurisdiction other than permits for new housing projects.

- If the lawsuit is brought by a housing advocate or developer, the town is also responsible for the plaintiff's attorney's fees.

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). In addition, the Town may not be eligible for State housing funds. The State has made a "compliant Housing Element" an eligibility requirement for State housing funds. There have also been discussions of having a compliant Housing Element as an eligibility requirement for State transportation funds.

And most recently, there has been statewide discussions about a "builder's remedy" in the Housing Accountability Act (HAA) and jurisdictions with non-compliant Housing Elements. In short, the builder's remedy refers to a provision of the Housing Accountability Act (HAA) that obligates a jurisdiction that does not have a compliant housing element to approve certain affordable housing projects even if the projects are inconsistent with local zoning or general plan regulations. A memo outlining builder's remedy is included in Attachment 2.

Finally, and perhaps most significantly, if the Town is late in submitting its Housing Element and does not complete the rezonings needed to accommodate the full RHNA allocation within one year of the Housing Element due date, the Town loses local control over the following:

- Sites needed to accommodate any unaccommodated **low or very low income** housing must be zoned with minimum density of 20 units/acre and development standards that permit at least 16 units per site at a density of at least 16 units. (§ 65583.2(h).)
- Sites accommodating **low or very low income** housing must provide for "by right" approval of projects with at least 20 percent of the units affordable to low or very low income.²

² "By right" approval means review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary review that would constitute a "project" under CEQA. to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" under CEQA. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5 (objective criteria). (§ 65583.2(i).)

NEXT STEPS

The tentative upcoming schedule is as follows:

- January 4, 2023 – Planning Commission public hearing on the Housing Element and all associated work. The Commission will make a formal recommendation to the Town Council
- January 11, 2023 – Town Council Public Hearing to consider the Housing Element and all associated work
- January 18, 2023 – Special Meeting if Needed – Continue discussion of Housing Element and all related work
- January 25, 2023 – Second reading of ordinance to adopt zoning code amendments
- Resubmittal to HCD

ATTACHMENTS

1. December 7, 2022 Memo regarding Housing Inventory Sites and Updated Fire Information
2. October 18, 2022 Memo from Town Attorney re Builder's Remedy

Additional information is available online at www.portolavalley.net/housingelement.