



## TOWN OF PORTOLA VALLEY STAFF REPORT

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**TO:** Mayor and Town Council

**FROM:** Laura C. Russell, Planning & Building Director  
Adrienne Smith, Senior Planner

**DATE:** May 10, 2023

**RE:** Adoption of Resolution Adopting the Proposed Housing Element and Conforming General Plan Amendments

### **RECOMMENDATION**

Staff recommends that Town Council receive a presentation from staff, ask questions, receive public comment, and adopt a resolution adopting the Portola Valley Housing Element and Conforming General Plan Amendments.

### **BACKGROUND**

For a refresher on the Town's Regional Housing Needs Allocation (RHNA), required Housing Element Components and changes incorporated into the Housing Element, view the March 15, 2023 Town Council meeting [staff report](#).

At its March 29, 2023 [meeting](#), the Town Council adopted the Housing and Safety Elements Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) via resolution. Council also continued its discussion of Members Hasko and Taylor's proposed Preliminary Post-Adoption Implementation Plan (see Attachment 7). The plan covers eight topic areas intended to support and enhance the Town's ability to accommodate the additional housing units planned for in the Housing Element. The Post-Housing Element Adoption Plan will be completed within thirty days of Housing Element adoption. Housing Element adoption was brought to a vote, but did not pass due to several council member concerns, particularly about the Glen Oaks housing site. Council member Hasko requested time to research the site and personally speak with the landowner and lessee to determine the potential for workforce housing and the feasibility of other potential substitute sites.

Also at the March 29, 2023 meeting, staff presented a preliminary, high level cost estimate associated with full implementation of Housing Element programs. The cost estimate includes the Housing Element programs, budgeting approach, whether the expense is direct (staff), or a consultant cost and the estimated level of staff time required. The cost estimate has been slightly updated since the meeting (see Attachment 8).

### **Self-Certification of Housing Element**

To avoid application of the Builder's Remedy, many cities have been "self-certifying" their housing elements. Under this process, the Council adopts a resolution certifying that its Housing Element complies with all aspects of Housing Element law. To provide maximum protection for the Town, the staff have prepared the self-certification findings (Attachment 5 Exhibit C). However, use of this "self-certification" process before submitting the final Housing Element to the Department of Housing and Community Development (HCD) has not been legally tested and is only being included as a potential legal argument to use in the event the Town receives a Builder's Remedy application before HCD certifies the Housing Element.

## **DISCUSSION**

### **New Amendments to Housing Element**

To capture the proposed changes requested by the Planning Commission and Town Council since publication of Housing Element Draft #3, staff prepared an errata to Draft #3 that was included in the March 29, 2023 meeting packet. The errata has been further updated to reflect changes requested by Council at its March 29 meeting. The errata (Attachment 4) captures the changes; a new draft of the Housing Element has not been produced. Below is a summary of the latest changes in the order they are included in the errata:

- Change to interior side setback for Ladera Church property to be 0 feet with agreement of property owner(s)
- For Opt-In Housing Diversification Program, increase number of Planning Commission meetings from one to two.
- Program implementation timelines related to Dorothy Ford Park and Open Space extended to two full years from adoption of Housing Element to accommodate the "sunrise".
- Opt-In Housing Diversification Program technical change to reduce the cap of 12 units for each SB9 unit the Town issues a building permit for.
- Authorize the Planning and Building Director to adjust the timelines to extent them and encourage successful implementation.
- State law changes per AB2338 for Housing Elements submitted after March 31, 2023
  - AB2339 requires a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones must include sufficient capacity to accommodate the need for emergency shelter (based on 200 square feet per person), including

at least one year-round shelter. Adequate sites can include conversions of existing buildings.

- Based on HCD guidance, the program plans for emergency shelter for ten individuals. The program includes changes to allow emergency shelters by right within the new Multi-Family zones, the new Mixed-Use zone, and at the Town's religious institutions. The program also includes updating the definitions of emergency shelters to be consistent with state law and establish objective standards for emergency shelters

Once Town Council has adopted the Housing Element, staff will incorporate all errata content into the Housing Element Draft #3 as well as address all reported typos/clerical errors and produce a clean final version to be sent to HCD.

### **Conforming General Plan Changes**

The elements of a general plan must be consistent with one another. The draft resolution therefore also includes minor general plan amendments to be consistent with the new housing element amendments.

### **Preliminary Post-Adoption Implementation Plan**

At its March 22, 2023 [meeting](#), the Town Council unanimously approved a motion to adopt the topics of Council Members Hasko and Taylor's Preliminary Post Housing Element Adoption Plan topics #3 and #4 were incorporated into the MMRP as additional policy measures via an addendum and the remaining topics will be further developed by Council Members Hasko and Taylor within 30 days of Housing Element adoption by Town Council (see Attachment 7).

### **Integration of Fire District Recommendations**

Admittedly there has been confusion over the final fire district recommendations. Staff and attorneys for the Fire District and Town have met and agree that the fire department comments fall into several buckets: (1) measures that are within the purview of the Fire Code (i.e. Fire code and implementation of new minimum fire safe regulations); (2) items that have already been implemented (i.e. home hardening ordinance and Chapter 7A); (3) items that are in process (i.e. evacuation plan) and (4) new items that belong in the upcoming Safety Element. To memorialize the Town's and WFPD's joint commitment to pursue the 7 additional fire prevention measures proposed by WFPD, the attorneys for the respective agencies negotiated resolution language (Recital 8) which was adopted by the Town Council on March 29. In addition, the Council clarified its intent to adopt the new Safety Element by October 1, 2023 with measures at least as protective as the 2010 Safety Element and agreed to adopt the Moritz Map and/or successor map as the basis for evaluating fire risk associated with specific sites in Town. This latter language was also suggested by the Fire District's CEQA attorney.

### **Additional Updates and Information**

This section serves to provide additional information as requested by Town Council and other general Housing Element-related updates to assist Council in its decision-making.

### SB 9 Units

Council asked staff to further explore the potential for SB9 units to be included in the Housing Element Sites Inventory. Staff spoke with one of its housing element consultants 21 Elements who advised that generally, the HCD has approved two types of methodologies for inclusion of any type of units on the sites inventory: Recent trends and analysis of individual sites. For the Town, this means the possibility of successful inclusion of SB9 units rests on establishing a proven track records of unit production based on approved building permits, or its ability to meet an onerous sites analysis. To date, the Town has received only two SB9 applications and neither have resulted in issued building permits. Additionally, the Town's SB9 ordinance is not particularly permissive. As for the analysis, the Town would first have to identify a list of SB9 housing sites and then account for existing uses, site characteristics, zoning, access to infrastructure, etc., all to demonstrate feasibility, or, the likelihood of the development of actual SB9 units during the eight-year housing element cycle. This is the lengthy, resource-intensive process that the Ad Hoc Housing Element Committee went through previously when conducting the sites selection process.

Staff also heard from several jurisdictions on their approach to including SB9 units on site inventories and determined that to date, none of those jurisdiction has received approval from HCD. Redwood City made an attempt but were advised by HCD they could not include units without providing specific sites and decided to remove the units. The cities of San Mateo and San Carlos have both included SB9 units and awaiting HCD comment letters.

In sum, the Town lacks an SB9 unit track record, the site analysis is challenging and time-intensive and the HCD response to the inclusion of SB9 units in other jurisdictions is either negative or unknown. Given these obstacles, staff recommend against including SB9 units in the inventory and instead use any future units as an offset to the unit count in the Opt-In Housing Diversification Program.

### Jurisdictional Update on Housing Element Status

Redwood City is the only jurisdiction in San Mateo County with an adopted Housing Element that has been approved by HCD. Menlo Park is close to having approval. All other jurisdictions are at varying stages of the housing element update process. See the [Let's Talk Housing](#) county site for the detailed status of each jurisdiction.

### Consequences of Not Adopting Housing Element

As discussed many times, the State has a combination of incentives and penalties for not adopting the housing element in a timely manner. These penalties range from loss of local control over housing projects (i.e. "by right" approval), to imposition of minimum density requirements, to civil lawsuits and monetary penalties up to \$600,000/month. The penalties ramp up with increased delay. It is also possible the State may enact new penalties if cities continue to drag their feet in adopting their housing elements. Finally, the builder's remedy is available during the window of time the Town does not have an approved Housing Element. Builder's remedy projects do not need to comply with existing zoning regulations, but do need to comply with CEQA. Staff anticipates the types of builder's remedy applications that could be filed in Portola Valley to include multiple dwelling units in R-1 and R-E zones, rather than large multi-family buildings on the corridors.

**ENVIRONMENTAL REVIEW**

To establish the appropriate level of environmental review for the project Town Staff and CEQA consultants prepared an “Initial Study” to determine if project may have a significant adverse effect. Since the initial study showed either no adverse environmental effects, or that potential environmental effects could be mitigated, a Mitigated Negative Declaration (MND) was determined to be appropriate. The IS/MND provides a programmatic review that includes broad policies but does not examine all potential site-specific impacts of individual projects because they are not known yet.

The IS/MND is not intended to serve as a recommendation of either approval or denial of the project. It provides the primary source of environmental information for the Town to consider and identify ways any potentially significant environmental impacts can be avoided or significantly reduced. All impacts identified in the IS/MND are “no impact,” “less than significant,” or “less than significant with mitigation”. These conclusions in large part are based on the existing general plan and zoning policies that guide development away from hazardous areas and regulate building construction to be subservient to the natural environment. The purpose of preparing this document is to provide decision makers with environmental information to serve as the foundation for their policy decisions. CEQA is just one input that informs the ultimate decision.

On March 29, with the unanimous recommendation of the Planning Commission, the Council adopted a Resolution adopting the IS/MND and the Mitigation and Monitoring Report (MMRP). The resolution does not provide blanket exemptions from CEQA for future housing projects. Instead, any new housing project submitted after the Housing Element is adopted will be subject to its own project level CEQA review.<sup>1</sup>

**PUBLIC COMMENTS**

The 43 public Comments received since the March 29, 2023 Council meeting are included as Attachment 10. One letter is from Silicon Valley Law Group representing PublicSafety4PVNow, Inc., a Delaware corporation. This letter asserts that the IS/MND did not use the 2008 Moritz map, that on January 18, 2022, the Fire Marshal indicated to the Ad Hoc Housing Element Committee that the Moritz map was the most accurate depiction of the Town’s wildfire hazard, etc. The letter requests the Town to “immediately rescind” the IS/MND or alternatively to enter into confidential settlement discussions to “hopefully avoid[] all need for any litigation challenging the Town’s approval of the IS/MND.”

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<sup>1</sup> Because the Town did not timely submit the Housing Element to the State, certain projects on the housing element inventory containing 20% below market rate housing units must be approved by right with no CEQA review.

**NEXT STEPS**

Staff will incorporate the collective changes in the errata as directed by Town Council into the Housing Element and submit an updated version to HCD. Comments from HCD are expected 60 days from the Town's resubmittal.

Within approximately 30 days of Housing Element adoption Council Members Hasko and Taylor will present a completed Post-Adoption Plan to Town Council for review and adoption. Once the Plan has been finalized, staff will begin working on a master schedule of all Housing Element implementation measures including all programs included in the Element.

**ATTACHMENTS**

1. Draft Resolution Adopting the Housing Element and Conforming General Plan Amendments
  - Exhibit A - HCD Letter
  - Exhibit B - Table Responding to HCD Comments
  - Exhibit C - Housing Element Self-Certification
2. [Housing Element Draft #3 \(without Appendices\)](#)
3. [Conforming General Plan Amendments](#)
4. Housing Element Draft #3 Errata
5. Town Council Resolution 2922-2023 Adoption of IS/MND and MMRP
6. Planning Commission Resolution 2012-2 Recommending Adoption of Housing Element and Conforming General Plan Amendments
7. [Council Members Hasko and Taylor's Preliminary Post-Adoption Plan](#)
8. Housing Element Program Implementation Cost Estimate
9. Table of Meetings and Documents Related to the Housing Element Update
10. Public Comments received since March 29, 2023 meeting