



CITY OF CUPERTINO

AGENDA

CUPERTINO CEP - STRATEGIC ADVISORY COMMITTEE

This will be a teleconference meeting with no physical location

Wednesday, March 30, 2022

11:00 AM

Special Meeting - Community Engagement Plan (CEP) - Strategic Advisory Committee

TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION TO HELP STOP THE SPREAD OF COVID-19

In accordance with Government Code 54953(e), this will be a teleconference meeting without a physical location to help stop the spread of COVID-19.

Members of the public wishing comment on an item on the agenda may do so in the following ways:

1) E-mail comments by 5:00 p.m. on Tuesday, March 29 to the Committee at planning@cupertino.org. These e-mail comments will be received by the Committee members before the meeting and posted to the City's website after the meeting.

2) E-mail comments during the times for public comment during the meeting to the Committee at planning@cupertino.org. The staff liaison will read the emails into the record, and display any attachments on the screen, for up to 3 minutes (subject to the Chair's discretion to shorten time for public comments). Members of the public that wish to share a document must email planning@cupertino.org prior to speaking.

3) Teleconferencing Instructions

Members of the public may observe the teleconference meeting or provide oral public comments as follows:

Oral public comments will be accepted during the teleconference meeting. Comments may be made during "oral communications" for matters not on the agenda, and during the public comment period for each agenda item.

To address the Committee, click on the link below to register in advance and access the meeting:

Online

Please click the link below to join the webinar:

https://cityofcupertino.zoom.us/webinar/register/WN_O3MeyCUZQeemlKFr1r8R2A

Phone

Dial: (669) 900 6833 and enter Webinar ID: 998 7262 4304 (Type *9 to raise hand to speak)

Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 998 7262 4304

SIP: 99872624304@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter "Cupertino Resident" or similar designation.
3. When the Chair calls for the item on which you wish to speak, click on "raise hand." Speakers will be notified shortly before they are called to speak.
4. When called, please limit your remarks to the time allotted and the specific agenda topic.

NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO COMMUNITY ENGAGEMENT PLAN - STRATEGIC ADVISORY COMMITTEE

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino Community Engagement Plan - Strategic Advisory Committee is hereby called for Wednesday, March 30, 2022 commencing at 11:00 a.m. In accordance with Government Code 54953(e), this will be a teleconference meeting without a physical location to help stop the spread of

COVID-19. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting."

SPECIAL MEETING

ROLL CALL

APPROVAL OF MINUTES

POSTPONEMENTS

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the Committee on any matter within the jurisdiction of the Committee and not on the agenda. Speakers are limited to three (3) minutes. In most cases, State law will prohibit the Commission from making any decisions with respect to a matter not on the agenda.

PUBLIC HEARINGS

OLD BUSINESS

NEW BUSINESS

1. **Subject:** Report from staff and EMC Planning Group regarding the proposed community engagement and Affirmatively Furthering Fair Housing (AFFH) plans for the Housing Element update process.
Recommended Action: Receive report and provide guidance on plans for community engagement and an engagement plan for ensuring compliance with State Affirmatively Furthering Fair Housing (AFFH) requirements.
[Staff Report](#)
[A - Memo Attachment A: Affirmatively Furthering Fair Housing \(AFFH\) Policy Tips Memo](#)
[B - Memo Attachment B: Programs to Rezone Memo](#)
[C - West Valley Community Services Cupertino Housing Element Proposal](#)

STAFF AND COMMITTEE REPORTS

FUTURE AGENDA SETTING

ADJOURNMENT

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

Any writings or documents provided to a majority of the members after publication of the agenda will be made available for public inspection. Please contact the City Clerk's Office in City Hall located at 10300 Torre Avenue, Cupertino, California 95014, during normal business hours.

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code section 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agenda item. These written communications are accessible to the public through the City's website and kept in packet archives. Do not include any personal or private information in written communications to the City that you do not wish to make public, as written communications are considered public records and will be made publicly available on the City website.

Members of the public are entitled to address the members concerning any item that is described in the notice or agenda for this meeting, before or during consideration of that item. If you wish to address the members on any other item not on the agenda, you may do so during the public comment.



CITY OF CUPERTINO

Agenda Item

22-10666

Agenda Date: 3/30/2022
Agenda #: 1.

Subject: Report from staff and EMC Planning Group regarding the proposed community engagement and Affirmatively Furthering Fair Housing (AFFH) plans for the Housing Element update process.

Receive report and provide guidance on plans for community engagement and an engagement plan for ensuring compliance with State Affirmatively Furthering Fair Housing (AFFH) requirements.



To: Strategic Advisory Committee
From: Ande Flower, EMC Planning Group
Date: March 30, 2022
Re: Initial meeting for Strategic Advisory Committee

SUMMARY

This memorandum initiates discussion topics for the Council-appointed Strategic Advisory Committee to address Affirmatively Furthering Fair Housing (AFFH) requirements and strategies through the 6th Cycle Housing Element update process.

ACTION REQUEST

Consider requests specific to each of the topics presented within the Discussion section of this memo.

BACKGROUND

The AFFH law mandates outreach that includes “all economic segments of the community.” ([HCD AFFH Guidance](#), p. 10.) HCD Guidance and a review of comments on Housing Elements recently submitted by other jurisdictions in the state counsels in favor of efforts to include a wide range of community members and representative groups, including:

- Nonprofit and community-based organizations
- Housing providers
- Lower income and special needs community members and households, including organizations representative these communities and households
- Churches and community groups serving ethnic or linguistic minorities
- Local and regional advocates and service providers, such as homeless services agencies

HCD GUIDANCE FOR HIGHEST RESOURCE AREAS SUCH AS CUPERTINO

HCD recently released guidance focused specifically on how to address AFFH for “Highest Resource Areas” such as the City of Cupertino, all of which is designated as Highest Resource by the Tax Credit Allocation Committee/HCD opportunity map. As a Highest Resource Area, it is essential that Cupertino look beyond its own boundaries to better analyze regional housing needs. HCD’s Housing Policy Manager Paul McDougal explains within this January 27, 2022 webinar (see link, below) that:

- Solutions for AFFH regarding sites and policies cannot be quantified as part of a prescribed formula,
- Nor can cities follow a SCAG-certified city's approach because the policy solutions, milestones and metrics must be connected to a comprehensive analysis of housing needs for each jurisdiction and the region in which it is located.

Instead, staff is continuing to learn through HCD's iterative process of providing guidance materials for meeting AFFH requirements. As discussed within the panel for this linked webinar, HCD has not had much experience reviewing jurisdictions for AFFH compliance that are comprehensively within the Highest Resource category, as assessed by the California Fair Housing Task Force. Following is a link to the HCD webinar: <https://mtcdrive.app.box.com/s/0cwlyb6ins8ly2p9pogze1cgzuhrv940>

DISCUSSION

The Strategic Advisory Committee is invited to consider the following topics and to provide responses to the participation requests. Generally, meeting dialogue and communications will be focused on overall strategy considerations and not focused on details covered by staff's project management. The exceptions are specific participation requests, as listed below each topic.

ROLES & EXPECTATIONS

Staff and consultants will provide materials for each meeting's discussion topics, along with links to more detailed information for Committee members and the public to find materials that offer a deeper understanding of the new laws associated with this housing element update process. Curated information is essential to have a shared comprehension of each step in this update process. Attached are two recent ABAG memos, for rezoning and analysis of HCD comments in Southern California jurisdictions, related to AFFH requirements.

Request to the Committee: Would the Committee wish to have a rotation of authoritative guests join the meeting? For instance, we could invite an HCD representative, ABAG Collaborative representative, or a planner from a Southern California jurisdiction that has recently submitted an adopted Housing Element update to HCD?

ALLIES & PARTNERS

The State has funded ABAG to provide essential technical support through the development of draft housing element updates via County Collaboratives. The community planning firm Baird and Driskell was selected to lead the Santa Clara County Collaborative to connect Bay Area jurisdictions with research, data, and general guidance for this update process. It was through the Santa Clara County Collaborative's Equity Advisory Group that EMC Planning Group began meeting with Cupertino-based West Valley Community Services (WVCS). Because WVCS is the regional (the western portion of Santa Clara County, including Cupertino) hub for services provided to the groups that need to be engaged for AB 686, WVCS is uniquely qualified to connect with vulnerable populations in an authentic and supportive way.

Request to the Committee: Are there individuals, groups, or representatives that the Committee would like to ensure are considered for inclusion within the focus groups?

APPROACH & TIMELINE

It is estimated that a housing sites inventory list will be recommended to Council by the Planning Commission by that time. This would also coincide with a launching of the environmental review (EIR for CEQA) process. Policies may be discussed through summer with a draft Housing Element prepared by early fall. With this schedule, the EIR could be complete by February with a 90-day HCD Draft Housing Element review completed by December, 2022. This approach has many variables. Housing laws have continued to evolve. It is now recommended that we anticipate two cycles of review by HCD prior to anticipated certification (one at 90-days and one at 60-days), with a mandatory 30-day public review occurring prior to the initial HCD review. With little deadline flexibility, we recommend strongly that rezoning sites concurrently with the adoption of the Housing Element is essential to avoid any potential State-imposed penalties.

Request to the Committee: Are there additional topics that you would like staff to consider with next steps for this update process? If the Committee provides a list during the meeting, staff will take all ideas into consideration and provide a detailed timeline at the next meeting.

ATTACHMENTS:

Attachment A: Affirmatively Furthering Fair Housing (AFFH) Policy Tips Memo
Attachment B: Programs to Rezone Memo



Technical Assistance
for Local Planning
HOUSING

Affirmatively Furthering Fair Housing (AFFH) Policy Tips Memo Learning from Southern California & Sacramento: Early Experiences in Complying with AB686

This memo outlines findings from a review of eleven draft or final Southern California and Sacramento region Housing Elements to better understand how jurisdictions are integrating new state Affirmatively Furthering Fair Housing (AFFH) requirements. The goal of this review is to highlight common challenges and the feedback jurisdictions received from the Department of Housing and Community Development (HCD), to aid Bay Area jurisdictions in complying with these rules.

Bay Area jurisdictions are fortunate to learn from the experience of other regions that were required to submit their Housing Elements earlier in this sixth cycle of RHNA. This extra time, however, comes with more experience and oversight from HCD reviewers. It is therefore important to consider the findings and recommendations below to expedite their review processes and to meet the intended outcomes of AB686 to “overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity” for protected classes.

Methodology

Eleven Housing Elements – recommended by HCD or planning consultants – were reviewed, along with HCD’s response letters to the jurisdictions. Housing Elements were examined for their consistency with the format and content laid out according to HCD’s AFFH guidance, with acknowledgement that many of the reviewed Housing Elements were drafted before statewide guidance was released. The review was conducted not to observe how well jurisdictions followed HCD guidance, but rather to understand what worked and what needed improvement from the first several rounds of submissions in complying with State law. The following Housing Elements were reviewed:

Chula Vista	Culver City	Escondido	Long Beach
Los Angeles (City)	Los Angeles (County)	Rancho Cucamonga	Sacramento
San Diego (City)	San Juan Capistrano	West Hollywood	

Findings

Based on the review of these Housing Elements and HCD response letters, below are six observations and five recommendations for Bay Area jurisdictions to consider during Housing Element drafts. The five recommendations are:

1. Include place-based strategies, naming specific neighborhoods or geographies and articulating why certain strategies are best suited to tackle geographically-specific problems.
2. Ensure that strategies will address the disparate outcomes and segregation patterns of impacted racial and ethnic groups identified in the Assessment of Fair Housing portion of the Housing Element.

3. Include actions that are specific and time bound with commitments, metrics and milestones. Avoid policies with vague words like “explore” that are unaccompanied by more detailed, concrete actions.
4. Use HCD’s five fair housing categories for goals, policies and actions: (i) Outreach Capacity and Enforcement; (ii) Segregation/Integration Patterns; (iii) Racially and/or Ethnically Concentrated Areas of Poverty; (iv) Disparities in Access to Opportunity; and (v) Disproportionate Housing Need for Low-income Households and Protected Classes.
5. Follow HCD’s AFFH guidance closely, making sure to include each section and subsection in the outlined order.

Observation 1: Few and Vague Place-Based Strategies are Included in the Housing Elements

Statewide AFFH requirements seek to address inequitable access to opportunity for protected classes, which plays out geographically at the neighborhood level. HCD recommends, therefore, that successful AFFH policy frameworks should include place-based responses and activities oriented around specific locations. Several Southern California jurisdictions successfully outline policies intended to tackle specific neighborhood housing and resource inequities, for example:

- *Los Angeles County describes community development work in specific low-income areas including the East San Gabriel Valley area and the Florence-Firestone Transit District.*¹
- *San Juan Capistrano describes specific community development plans including Los Rios Park Improvements and a neighborhood-specific senior mobility program.*²

However, few other jurisdictions include this level of place-based specificity in their policy frameworks. Many rely on policies and programs that are not place-based at all. Others employ strategies that are place-based in theory but fail to articulate which neighborhoods these activities target and how they will tackle geographically-specific issues.

Recommendation: To tackle place-based inequity, jurisdictions should aim to articulate place-based responses, naming specific neighborhoods or geographies and articulating why certain strategies are best suited to tackle geographically-specific problems.

Observation 2: Few Housing Elements Articulate the Connection Between Policy Goals and Racial Segregation or Disproportionate Housing Need for Protected Classes

One of the central goals of statewide AFFH requirements is replacing segregated housing patterns with truly integrated living patterns. HCD requires jurisdictions to design AFFH-responsive policies and actions that are “significant and meaningful enough to overcome identified patterns” of segregation and other housing inequities, specifically those identified in the jurisdictions’ Assessment of Fair Housing.

However, the reviewed Housing Elements largely fail to connect policies and actions directly to the issues producing residential segregation and to the issues affecting racialized groups. This observation is perhaps related to the tension between AFFH goals and antidiscrimination laws, which prohibit

¹ [Los Angeles County Housing Element](#), pages 19, 25.

² [San Juan Capistrano Housing Element](#), page 213.

jurisdictions from targeting protected classes (like racial groups) for programmatic support. Only one Housing Element reviewed successfully identifies a housing access issue which disproportionately impacts communities of color and articulates specifically how a proposed response policy – though not racially targeted – will work to address this pattern.

- *Long Beach:*
 - *AFFH goal: “Pursue homeownership opportunities with an emphasis on providing affordable options for lower and moderate income households, with a particular focus on Black households.”³*
 - *Policy and program description: “Homeownership remains a city goal, as it allows lower income households to build wealth through equity and eventually move towards financial independence. This has become an even greater priority since the City’s Framework for Reconciliation in 2020 through which Black residents and communities of color underscored the criticality of homeownership as a pathway to wealth that has been and remains less accessible to people of color. In response, new funds have been allocated for a down payment assistance program.”⁴*

Other jurisdictions reference an intention to target policy work “in communities of color” or “in disadvantaged communities.” But the policies, strategies and actions corresponding to these goals fail to concretely address issues faced by these communities.

- *One city in Los Angeles County aims to “Protect communities, especially communities of color, from predatory lending, land acquisition, speculative real estate transactions, and any other practices that undermine intergenerational wealth accumulation and housing stability.” However, the only corresponding supporting actions concern mobile home parks writ-large: “Support legislation that expands local authority over conversion of mobile home parks to ownership structures.”*

Still others avoid mentioning race altogether or identifying policies to address the findings of the fair housing assessments. Several jurisdictions propose policy interventions aimed at dismantling socioeconomic neighborhood segregation or expanding housing access for low-income households but fail to expressly connect these policies and actions to goals of *racial* desegregation and *racialized* housing disparity.

Recommendation: Jurisdictions should identify housing issues that disproportionately impact communities of color and racialized households (e.g., housing cost burden, lack of homeownership opportunities, etc.) and should incorporate policy responses that — while not racially targeted — address these issues. Jurisdictions should articulate the connection between these policies and AFFH goals related to racial desegregation and other racialized housing inequities. In particular, jurisdictions must connect the issues facing members of protected classes as identified in their Assessment of Fair Housing to their proposed list of policies and programs. Jurisdictions may in addition indicate an intention to practice affirmative outreach – the targeted advertising of policies and programs in impacted communities.

Observation 3: Many Policies and Actions Are Insufficiently Specific

Statewide AFFH guidance requires jurisdictions to outline concrete policies and actions in response to local fair housing issues. Specifically, HCD requires time bound actions with “specific commitments [from local actors], metrics, and milestones.” Several jurisdictions outline policies that meet this requirement, for instance:

- *Los Angeles County: By 2023, complete equity audit of all land use plans and zoning code. Amend land use plans and zoning code to address findings of the equity audit and to ensure consistency with racial justice initiatives. By October 2029, achieve a 10% increase in multifamily housing approvals in high or highest*

³ [City of Long Beach Housing Element](#), page 69.

⁴ [City of Long Beach Housing Element](#), page 87.

*resource areas as determined by TCAC.*⁵

However, the policies and actions of many jurisdictions are not sufficiently specific – they are not time bound and they fail to include commitments from local officials or staff, metrics and milestones. Many rely heavily on vague words like “explore,” “study,” and “convene,” words HCD expressly discourages jurisdictions from using. Furthermore, there are many examples where a higher-level policy meets HCD’s specificity criteria, but corresponding actions remain non-specific and not time bound.

Recommendation: Jurisdictions should ensure that all policies and all corresponding actions are specific and time bound, and include commitments, metrics and milestones. Jurisdictions should avoid policies with vague words like “explore” that are unaccompanied by more detailed actions.

Observation 4: Many Policies have the Potential to Impact AFFH if Linked to Segregation Patterns and Informed by Geography

Many Housing Elements feature strong policy platforms with actions ranging from permit streamlining and inclusionary zoning, to first time home buyer assistance and tenant-based rental assistance.

However, as a result of the three preceding observations, many of these policies and actions are insufficiently focused on fair housing issues. Instead, the policy approach appears to rest on an unstated assumption that by tackling issues of supply and affordability more broadly, fair housing goals will also be achieved. Absent more specific language targeting place-based inequities and racial segregation, it is unclear whether or how these policies will advance AFFH goals. If jurisdictions effectively link, define, and target their otherwise strong policy platforms, however, these platforms have potential to impact AFFH. Examples of this include:

- *A city in Los Angeles County references the City's 2022 budget allocation of \$3 million for economic empowerment zones, including dedicated funding for community land trusts (CLTs), stating as an AFFH goal the provision of “technical assistance to community groups in establishing CLTs for community ownership of affordable housing.” Like many others, this goal could have a significant AFFH-related impact if linked to segregation patterns and geographically targeted.*

Recommendations: See Observations #1, #2, and #3

Observation 5: HCD is looking for Cities to Organize their Housing Elements according to the AFFH Guidance

HCD outlines a specific organizational system for addressing AFFH requirements in Housing Elements. State guidance lays out a template, requiring jurisdictions to:

1. Assess five discrete components of fair housing issues: (i) Outreach Capacity and Enforcement; (ii) Segregation/Integration Patterns; (iii) Racially and/or Ethnically Concentrated Areas of Poverty; (iv) Disparities in Access to Opportunity; and (v) Disproportionate Housing Need for Low-income Households and Protected Classes.
2. Identify the primary causes of these fair housing issues (or “contributing factors”) and list these causes *for each of the same five categories*.
3. Identify fair housing solutions (or goals, policies and actions) that connect conceptually to the preceding assessment and organize these policy solutions *again into the same five categories*.

Many jurisdictions effectively identified goals/policies/actions that responded to their fair housing assessments and contributing factors. However, most jurisdictions did not use HCD’s organizational system — using the five conceptual buckets only for the fair housing assessment and forgoing them in

⁵ [Los Angeles County Housing Element](#), pages 31-37.

later sections. These jurisdictions received letters from HCD in response to their draft submissions asking them to reorganize their Housing Elements.

Recommendation: Jurisdictions should use HCD’s five fair housing categories to organize multiple sections of AFFH analysis: fair housing assessment, contributing factors, and goals/policies/actions.

Observation 6: HCD is doing a Thorough Review

HCD is doing a thorough review of Housing Element drafts and connecting the dots between APRs, current goals/policies/actions, site analyses and fair housing assessments. It is clear from comment letters that HCD is reviewing Housing Element drafts in their entirety using an AFFH lens, rather than only examining AFFH sections, when providing comments on AFFH requirements. Many jurisdictions have received comments from HCD for failing to connect all of these pieces:

- *HCD comments to a city in Los Angeles County: “Goals, actions and metrics must be modified based on the outcomes of more complete [fair housing and site] analyses.”*
- *HCD told many jurisdictions that their goals/policy actions must be “significant and meaningful enough to overcome identified patterns” and that their actions should have “specific commitments, metrics and milestones.”*
- *HCD comment to another city in Los Angeles County: “Programs for anti-displacement and new housing in high opportunity areas do not appear adequate to address the fair housing issues described in the element.”*

HCD is reviewing Housing Elements to make sure that jurisdictions cover all the section/subsection requirements in a sensible order. Many jurisdictions received comments from HCD about missing specific elements of the AFFH guidance:

- *For example, several jurisdictions missed required components of the fair housing analysis like “Local Data and Knowledge” and “Other Relevant Factors.”*
- *Other jurisdictions effectively listed contributing factors but failed to prioritize these factors by salience.*

Recommendation: Jurisdictions should follow HCD’s guidance closely, making sure to include each section and subsection in the outlined order.



Programs To Rezone

Technical Memo

**Please note: This is a summary of the rules regarding programs to rezone. In some cases, details have been omitted for clarity. Please discuss with your City Attorney or County Counsel.*

Adequate Sites Program

If a jurisdiction's Housing Element does not identify enough existing, properly zoned sites to accommodate its RHNA, the Housing Element must have a program to rezone properties for housing to make up for the shortfall. This program can be an overlay zone on specific sites. *The following rules apply to the sites that need to be rezoned (i.e., the zoning is not in place on January 31, 2023).*

Program Requirements

Requirements that Apply to Sites Regardless of Income Level

- **Listed in sites inventory:** All sites that are proposed to be rezoned must be listed in the sites inventory.
- **Replacement requirements:** All sites, including those listed in the site inventory, must be subject to the lower income replacement housing requirements contained in density bonus law, even if they do not have any deed restricted housing.
- **Sufficient sites:** The jurisdiction must identify enough sites to rezone to cover any shortfall.
- **Rezoned in sufficient time:** The jurisdiction should also identify a timeline that matches state law (see below).

Requirements that Apply to Low and Very Low Income Sites

The rules regarding very low and low income sites are more complicated. If the rezoning occurs after January 31, 2023, the rezoning program(s) must include the following components:

- **By right approval:** The zoning must allow for by-right approvals if at least 20% of the units in a project are affordable to lower income households and the project does not need a subdivision. See below for definition of "by right."
- **Limits on small sites:** The site must be large enough for at least 16 units under the rezoning.
- **Minimum 20/30 units per acre:** The zoning must allow at least 20/30 units per acre, depending on the agency's default density, unless adequate justification can be provided to HCD to support a lower density as suitable for lower income housing. If you don't know your default density, [HCD provides guidance here](#).

- **Limits on mixed-use development:** There are limits on using mixed-use sites. Specifically, the jurisdiction must meet one of the two following conditions:
 1. At least half of the lower income units must be placed in zoning districts that are exclusively residential, or
 2. The rules must allow for 100% residential development and must require that the proposed development be at least 50% residential by floor area.

Definition of By Right

Applies to lower income sites if 20% of units are affordable to lower income households and no subdivision is required.

Jurisdictions may not require a conditional-use permit, a planned unit development permit, or any other discretionary permit. Any CEQA review must be done at the time of the rezoning approval. The housing project itself is not subject to CEQA.

Any subdivision of a site is subject to the Subdivision Map Act, CEQA, and all other local laws. Design review is acceptable as long as:

1. It does not trigger CEQA,
2. It is based on objective standards, and
3. It does not result in the project being rejected or the density reduced.

See the end of the memo for the statutory language regarding by right approvals.

Timing

The rezoning program should be implemented as early as possible. The timing of the rezoning depends on when whether the Housing Element is certified within 120 days of the Housing Element deadline. (The deadline is January 31, 2023, and 120 more days is May 31, 2023.)

1. If a Housing Element is certified by May 31, 2023, the rezoning must happen by May 31, 2026 (3+ years from the deadline).
2. If the Housing Element is *not* certified by May 31, 2023, the rezoning must be completed by January 31, 2024.
3. If rezoning is needed because the agency failed to complete all required rezoning in the fifth cycle, the “carryover” rezoning must be completed by January 31, 2024.

Please note: Of the 197 jurisdictions in the Southern California region, 2 were certified within 120 days of the deadline.

Under certain circumstances, if jurisdictions complete 75% of their rezoning on time, they may be eligible for an extension for the final 25%.

Consequences of Not Rezoning on Time

If a local government fails to complete the rezoning by the deadline, HCD may decertify a housing element and may refer the jurisdiction to the Attorney General. Per the Housing Accountability Act, for housing development projects where at least 20% of the total units are affordable, in most cases a locality cannot reject a proposed development project on a site identified by the rezoning program.

Sample Language

HCD offers the following sample language that could be included in a Housing Element, with edits in red.

Sample Program 1:

*To accommodate the remaining lower-income RHNA of 89 units, the City of X will identify and rezone a minimum of 4.5 acres of vacant land to the R3 zoning district, allowing exclusively residential uses and a minimum of 20 units per acre to a maximum of 30 units per acre by ~~June 30~~ **January 31, 2024**. Rezoned sites will permit owner-occupied and rental multifamily uses by right pursuant to Government Code section 65583.2(i) for developments in which 20 percent or more of the units are affordable to lower income households **and do not require a subdivision** and will be selected from sites 20 through 30 in the parcel listing (Appendix A). As reflected in Appendix A, each site has the capacity to accommodate at least 16 units and will be available for development in the planning period where water, sewer, and dry utilities can be provided.*

Objective: Create opportunity for at least 89 units of multifamily housing for lower income households

Responsible Agency: Community Development Department

Timeline: Sites rezoned by June 30, 2024

Funding Source(s): General fund

Sample Program 2: Rezone Program on Mixed-use Sites

*To accommodate the remaining lower-income RHNA of 150 units, the City will identify and rezone 8 acres of sites within the MU-30 zoning district, allowing owner-occupied and rental multifamily residential uses “by-right”, at a minimum of 20 units per acre by ~~June 30, 2017~~ **January 31, 2024**. Sites will allow projects to be 100 percent residential by-right but shall require residential uses to occupy at least 50 percent of the total floor area of the mixed-use project. Rezoned sites will permit owner-occupied and rental multifamily uses by right pursuant to Government Code section 65583.2(i) for developments in which 20 percent or more of the units are affordable to lower income households **and do not require a subdivision** and will be selected from sites 15 through 30 in the parcel listing (Appendix A) and have the capacity for at least 16 units per site.*

Objective: Create opportunity for at least 150 units of rental housing for lower income households

Responsible Agency: Community Development Department

Timeline: Sites rezoned by June 30, 2024

Funding Source(s): General fund

Statutory Language Regarding By Right

For purposes of this section and Section 65583, the phrase “use by right” shall mean that the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject 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” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5

Overview

West Valley Community Services (WVCS) is a nonprofit organization fighting poverty by providing critical food, housing, and support services to the low income and homeless individuals and families in the West Valley communities of Cupertino, Los Gatos, Monte Sereno, Saratoga, and West San Jose. In just the past year, 3,168 individuals received critical help from the organization, with 1,207 of those individuals receiving assistance from the agency for the first time. WVCS distributed \$1,265,686 in emergency assistance to help 573 individuals avoid homelessness or move into permanent housing. Cupertino is the home community of 22% of the agency's clients, with 29% of last year's new clients residing in Cupertino. WVCS is physically based in Cupertino, and is the primary direct service provider in the community.

Because of West Valley's close interaction with the low-income, unhoused, racially diverse, and non-English-speaking members of our community, the agency is well-positioned to engage these individuals, who are most in need of housing and support, in the Housing Element process. These are also the populations whose involvement is necessary to meet Affirmatively Furthering Fair Housing (AFFH) requirements. WVCS has the experience and capacity to support our clients emotionally and logistically as they navigate sharing their lived experience, such as experiencing homelessness, navigating affordable housing, and living as low-income individuals. With more than 48 years of operating experience, WVCS has unique expertise that can be leveraged to help clients engage in the Housing Element process.

Kylie Clark, the Public Policy Coordinator at WVCS, would be the point-person and leader of the tasks and responsibilities outlined in this document. WVCS recently created the Public Policy Coordinator position to bring the agency into conversations, focusing on uplifting our clients to participate in areas that they don't traditionally have access to. The coordinator spends time in the community and with clients to bring people together and provide education. Kylie would use her expertise and connections with clients, community members, Community Based Organizations (CBOs) and nonprofits to engage the community at-large and help Cupertino meet AFFH requirements.