



NAACP
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RE: Petaluma Draft Housing Element

Dear City Staff:

Thank you for the opportunity to review the City of Petaluma's 2023-2031 Draft Housing Element (Draft). We are a group of organizations who have come together to improve the 6th Cycle Housing Elements of the cities and County of Sonoma. Our organizations represent a broad coalition of Sonoma County social service, legal aid, tenants' rights, affordable housing, fair housing, community economic development, and social justice organizations working alongside or on behalf of thousands of Sonoma County residents, especially low-income, Latino, Black, Indigenous, and People of Color (BIPOC), and other classes of residents protected under fair housing law who are disproportionately impacted by the current housing crisis. We offer our comments and urge their incorporation into the final housing element plan, to move Petaluma toward significant progress to achieve housing justice and meet our current and future housing needs. We stand as partners committed to this goal.

We commend staff for putting together one of the more comprehensive Drafts that we have seen and appreciate all the work that has been undertaken thus far. It appears that broad public outreach efforts have been made, but it is important that the public input on the Draft be incorporated into the final version, including how it was used in the development of the final Draft.¹

These comments are intended to assist the City of Petaluma (the City) in meeting the statutory requirements of state housing element law and accomplish the City's housing goals for this planning period. Below we have highlighted areas that require additional revisions or analysis

¹ See Government Code section 65583(c)(9)

prior to submitting the draft housing Element (Draft) to the Department of Housing and Community Development, which are explained in greater detail in this letter.

- Additional information about non-vacant sites included in the adequate sites inventory;
- Provide evidence of ADU affordability in Petaluma, add an ADU affordability monitoring program and define what actions will be taken if production and affordability are not meeting projections;
- Remove credits for developments that have not yet been approved or entitled;
- Provide certainty about programmatic actions and the process to achieve those actions;
- Provide additional analysis about the at-risk properties potential to convert to market rate rents;
- Adoption of a rental registry program to allow the City to collect data required to enact and monitor meaningful policies designed to prevent tenant displacement and substandard housing.

Housing Needs Assessment

1. Employee Housing Act

The Draft includes an analysis of the special housing needs listed in the Housing Element statute, including the housing needs of farm workers but the Draft should include an analysis of whether the City's zoning code complies with the Employee Housing Act, including whether the City recognizes employee housing as an agricultural use and treated as other agricultural activities. See Gov. Code section 17021.6. The intent of the Employee Housing Act is to remove barriers to employee housing and any cities or counties that have agricultural zoning designations must assess their compliance with the Act.

2. Homeless Housing Needs

The Draft describes several efforts the City is embarking on to address the needs of unhoused people in Petaluma, including the Steamer Landing Injunction, the Draft should elaborate on how the injunction is a City effort to address the needs of unhoused people in Petaluma, especially as compared to the other examples of working with organizations, and potentially providing financial support, to provide shelter and transitional housing programs.

Also, the Draft discusses permitting transitional and supportive housing as a permitted use in residential zones but does not evaluate if supportive housing is permitted in all zones that permit multi-family **and** mixed use as required by Government Code section 65583(c)(3). If the zoning code must be amended to comply with this requirement that should be included in the Housing Element's program of actions.

3. Analysis of At-Risk Affordable Housing

The Draft analysis of the risk of losing currently subsidized housing in this planning period is incomplete. The risk of owners converting to market rate rents is not only whether HUD will renew existing Section 8 contracts, which is likely, but is also whether owners are willing to continue to renew these contracts. (p. A-32). The City needs to evaluate the private owners' willingness to maintain these contracts to determine how many units are at risk of converting to

market rate within this planning period. The more advanced notice of possible conversion the better in order to ensure compliance with state housing preservation laws and actually preserve these units for as long as possible.

Constraints

1. Emergency Shelters in the Industrial Zone

The City allows emergency shelters without discretionary review on sites designated for industrial uses. The Draft should evaluate if only allowing shelters by right in a zone where no other residential uses are permitted is a constraint on the development of shelters and whether the City should identify a zone that is appropriate for residential uses where shelters could be permitted by right. The City should also evaluate whether the sites in the industrial zone allow access to transportation and other necessary services for people who are unhoused before determining that this zone is not a governmental constraint. (See [HCD's SB 2 memo.](#))

2. Fees as compared to other jurisdictions

Development fees can act as a constraint on development, especially the development of affordable housing, and must be evaluated as part of developing the housing element. The Draft should not only identify what fees are required and the timing of the payments but compare those fees and the permitted timing of the payments to other neighboring jurisdictions. For instance, if a neighboring jurisdiction waives certain fees for the affordable housing developments or allows the payment of those fees to be deferred until occupancy, then Petaluma's fee structure is likely a constraint on the development of affordable housing because it would be more feasible to construct affordable housing elsewhere.

The current structure described in the Draft, where there are no discounted fees or deferrals for affordable housing development but rather the City provides financial support to developers who then use those City provided funds to pay the City any development fees seems inefficient and likely limits the ability of affordable housing development in Petaluma. Adjusting the timing of fees or the waiver of fees for deeply targeted affordable housing can be very useful tools to removing this barrier to the development of affordable housing.

3. Growth Boundary as a constraint

The Draft states that the growth control boundary is not a constraint on development (p. B-2). As explained in the section on sites below, it is not clear that the City has adequate sites to accommodate its Regional Housing Need Allocation and therefore it is premature to assert that the City's growth control boundary is not a constraint on development.

Sites Inventory

The Draft relies heavily on credits for approved projects and the availability and suitability of non-vacant sites to accommodate the City's lower income RHNA, as well as robust affordable ADU development. Further information, and potentially program actions, are required to accomplish an adequate sites inventory.

1. RHNA Credits

Housing Element law allows a jurisdiction to reduce its RHNA for each income level by the number of units approved or entitled in the corresponding income level if the units were approved or entitled during the projection period. There must also be evidence of the rental or sale price of the units, or expected rental or sale price, in order to take credit for these units and reduce the number of sites needed to accommodate the RHNA.

The City has many affordable units that have been approved or are under construction but also includes multiple developments that are still in the early planning stages and have not been yet been entitled, such as a development entitled Creekwood TPM, that cannot be credited toward the current RHNA. Additionally, the Draft does not include any demonstration of the affordability of units that are entitled and have been subtracted from the RHNA, such as evidence of a regulatory agreement or guarantee of particular financing that ensures affordability levels. Evidence of affordability must be provided before reducing the RHNA due to the approval of these units.

2. Documenting the affordability of ADU's

The City has seen a recent increase in the number of ADU's permit applications and understandably wants to use this increase as a way to accommodate its RHNA. Two steps need to occur in order for the Draft's projections to translate into a RHNA credit: 1) the City needs to offer evidence of the affordability of these ADU's and 2) develop a way to monitor the affordability of future ADU's in order to reduce the City's lower income RHNA.

The City bases its ADU affordability assumptions on a formula created by ABAG that does not include enough explanation to be reliable. In addition, although most ABAG jurisdictions have high housing costs and high incomes they are not necessarily identical. It is unclear if the ABAG formula calculated units where no rent is charged, perhaps to a friend or family member, as a unit that is affordable to very low-income households if it were made available for rent to any possible tenant. Therefore, the City must survey its ADU housing stock to determine how many ADU's are rented at affordable rents before extrapolating how many of the future potential ADU's will be affordable to lower income households.²

Then, the City has to create a way to monitor the affordability of the ADU's that are built to ensure that these units are accommodating the RHNA in the fashion anticipated in the Draft. And lastly, the City needs to create a mechanism to accommodate the RHNA if ADU production lags behind what the City projects. The ADU program cannot just contemplate that if production is lagging that the City *may* need to supplement the adequate sites inventory, the City must commit to finding another way to accommodate the RHNA that it had assumed would be met with ADU construction. The City, of course, can decide whether that mechanism will be financial incentives to produce affordable ADU's, or to identify additional multi-family sites, or another alternative.

² Because the City limits the rental of ADU's to long term rentals some of the other factors that affect this survey in other jurisdictions do not apply here and increase the confidence that these units will be used as homes and not vacations.

3. Non-vacant sites

State law allows the RHNA to be accommodated on both vacant and non-vacant sites and both must be suitable and available for development within the planning period. The sites need appropriate zoning, available infrastructure, and be free of constraints that would limit development. This is more challenging when identifying non-vacant sites as part of the inventory and as such, the Draft needs further analysis to determine if the non-vacant, including the parking lot sites, are suitable and available for residential development.

The City's methodology to determine if non-vacant sites are feasible for development *shall* include whether the City's past experience converting existing uses to higher density development, what the current market demand is for the existing use, and an analysis of any existing leases or contracts would perpetuate the existing uses. See Government Code section 65583.2(g)(1). Although the Draft identifies several criteria to determine the likelihood of residential development on these sites non-vacant sites, it does not include the factors included in section 65583.2(g)(1), nor does it demonstrate that similar sites have been previously redeveloped for multi-family purposes, or that existing contracts or leases do not interfere with converting a portion of parking lots into multi-family housing. Additional analysis which includes the required factors must be added to the Draft in order to allow the City to rely on these non-vacant sites to accommodate the lower income RHNA.

4. Capacity

The Draft includes an assumption that about 70 percent of a site will develop at the maximum permitted density (p. C-9). What is unclear is whether most properties propose to develop at the maximum density. Because of various development standards no lots will develop on 100 percent of the site, there will always be a reduction to accommodate setbacks and then it is necessary to determine the average density of most proposed sites within a zoning designation in order to calculate a realistic capacity.

If sites have a minimum density, the City could calculate the capacity according to the minimum density and accommodating development standards for a realistic capacity. Here, the Draft uses the maximum density without justification. The Draft should be revised to demonstrate that most projects proposed on sites that allow multi-family develop using the maximum density permitted.³

5. Mix of Housing Types

Lastly, the General Plan principles included in the Draft highlight the goal of having a balanced mix of housing types and uses (p. C-6). The Draft also states that 75 percent of the housing in Petaluma is single family homes. The only way to create a real balance in the City is to rezone sites that allow low density residential uses to allow high density uses. There is a surplus of development for above moderate-income housing and the only way to achieve the General Plan's goal is to promote the underrepresented housing types in the City over the production of more single-family homes.

³ This calculation is especially important when multi-family sites might also allow low density development which further undermines using the maximum density as part of the capacity calculation.

Affirmatively Furthering Fair Housing (AFFH)

The Draft contains a comprehensive assessment of fair housing as required by the new requirements included in Government Code section 65583(c)(10), but a few revisions are necessarily to comply with the law. First, the City needs to include its own historical limits on development as a contributing factor to segregation, as growth controls effect the availability of and increase the cost of housing. The City should also look at its efforts to zone adequate sites for multi-family housing in the past which also limits opportunities for affordable housing.

The Draft should also clearly articulate the City's fair housing priorities and determine which are the highest priority and then clearly connect the program identified in the Table -1 (p. 36) to the City's priorities. The Table is very helpful in highlighting the goals for each program to achieve. One additional missing piece of the AFFH analysis and goals, is within Policy 6.6. It identifies the City's goal to have City boards and commissions include members serving targeted populations, which appears to be directly related to the goal of furthering fair housing by ensuring representation by all residents. This policy does not have any program action to accomplish this goal and the Draft should be revised to include methods to recruit and train the public on opportunities to serve on City boards and commissions.

Fair housing outreach and enforcement is an element of AFFH, which includes the ability to address compliance with fair housing laws, such as investigating complaints, obtaining remedies, and engaging in fair housing testing.⁴ Yet a study from 2012 revealed that fair housing testing in the County was insufficient in measuring housing discrimination. Housing discrimination in rental housing, per the study cited in Appendix E, was prevalent in Sonoma County back in 2010. Yet there are no programs identified to adequately assess the level of housing discrimination in Petaluma. Agencies that began providing testing services throughout Sonoma County, such as Fair Housing Advocates of Northern California,⁵ are not contracted with by the City. The contract with PPSC does not provide for such testing. Community outreach necessarily relies on willing good faith participants and does not root out discrimination where it exists.

A suggestion would be to make Fair Housing Enforcement and Outreach Capacity a goal with high priority. Potential ways to further facilitate that goal:

- Increase in fair housing discrimination cases by contracting with fair housing testing organizations;
- Expand testing of discriminatory practices against persons with disabilities to expand the base of knowledge surrounding specific types of housing discrimination against the mentally and physically disabled;
- Expand existing fair housing workshops to specifically address the disabled and their particular housing needs and rights.

Programs

The State requires a housing element to include a schedule of actions that will be implemented in a timely way to accomplish the benefits of the program within the planning period. Although it may be appropriate for some programs to have an on-going timeline, most programs should

⁴ [Affirmatively Furthering Fair Housing \(ca.gov\)](#)

⁵ See successes: [Fair Housing Advocates of Northern California - Press Releases & Statements \(fairhousingnorcal.org\)](#)

identify clear deadlines that reflect the urgency of the region’s housing crisis. Overall, the action items should be reviewed and revised to identify clear actions. Although we do not intend to review each program individually to point out the lack of a clearly identified action we can provide examples. The Draft includes many programs with goals that could really help promote and facilitate the City’s policy goals, if additional specificity is added to these programs. There are many programs that identify various policy choices that will be considered without a commitment to adopting or approving any of those particular policy choices during the planning period. Nor, do these programs identify how the policy choice will be made.

For example, Program 13 discusses possible funding sources the City will *consider* but does not commit to adopting any of these sources but only to pursue “appropriate options by 2025.” This language leaves open the possibility the City adopts no new source of funding for affordable housing. The Draft should be revised to remove “appropriate” and replace with a commitment to adopt one of the funding sources it is going to “consider.”

There are several other programs that all suffer the same defect, a commitment to consider a variety of actions, such as:

- Incentives for affordable ADU’s (Program 3);
- If the City’s projections are incorrect, establish minimum densities (Program 4);
- Reducing fees for affordable housing or deferring payment of the fees for affordable housing (Program 8);
- Creating incentives for affordable housing (and whether affordable housing developers will be consulted prior to advancing a recommended policy) (Program 14);
- Describing what type of annual assistance, the City will provide to various shelters and transitional housing programs (Program 23).

All of the Draft’s programs should be revised to include greater specificity about what actions will be taken.

There is also a dearth of information about the decisions that will be made to endorse one particular proposed policy over another, such as for Program 8 whether the City will create and consult a stakeholder group, including non-profit affordable housing developers, to consider the potential changes to development fees before presenting options to the City Council.

In addition to increased specificity and a description of how policy options will be evaluated, there are several suggestions to the Draft’s programs:

Program 7 - Zoning Code Amendments: should ensure that supportive housing is permitted by right where multi-family **and** mixed -use developments are permitted and that the City’s zoning code complies with the Employee Housing Act. The future reasonable accommodation policy must ensure the confidentiality of the requestor’s health related information, also be decided outside of a public hearing, and only allow legally permissible reasons for a denial: undue burden or a fundamental alteration of the program.

Program 9 – Converting parking lots: The timeline must be immediate since several sites in the site inventory are depending on the conversion of parking lots to residential uses. Please also note the passage of AB 2097, eliminating parking minimums in transit-rich areas.

Program 11 – Inclusionary Housing: We ask that onsite development be the default option for inclusionary homeownership units, and alternatives should be considered only when onsite isn't feasible and at the discretion of the City Council. Alternatives that retain onsite development should also take precedent over those that don't, such as changing the mixture of income levels required or donating a portion of the development land to a nonprofit. The type of dispersed affordable housing created by onsite inclusionary housing has been shown to produce a host of individual and social benefits, including equality of access to resources, a more cohesive community of diverse citizens, less stigma and pushback, and greater upward mobility and wealth building for residents. Studies show the poverty rate in the neighborhood where one grew up is a stronger indicator of mobility than their parent's education level or occupation, so a commitment to this type of affordable housing is also an investment in people's future success. We also ask all inclusionary ownership units be affordable in perpetuity. There is no benefit to short term affordability covenants on affordable homeownership units: the developer has the same cost, the city loses or must fight to keep an affordable unit, and the community will inevitably end up with a smaller housing stock than they would with permanent affordability. With affordability in perpetuity, the City can maximize its ROI per unit.

Further, inclusionary units need to blend into the development and be indistinguishable from the market rate units. To uphold this objective, units should be comparable in size, basic finish options, construction quality, and exterior design to adjacent market rate units. Units also should not be clustered in one section of the development, but rather should be scattered and integrated throughout. The process of selecting units should be consistent with a true "set aside" model, where a unit is not planned with the intention of being a BMR unit but rather BMR designation is decided on after planning.

Program 13 - Local Housing Trust Fund: The Draft needs additional information about how participating the Joint Powers Authority will provide additional funds for affordable housing.

Program 15 - Workforce/ Missing middle housing: We support efforts to increase workforce and missing middle housing. These efforts should include homeownership for various income levels, since a house is usually a family's largest financial asset and wealth builder so expanding access will help to combat income inequality, which has been exacerbated by recent events.

Program 16 - CLT/land banking: Please ensure all comments submitted by the Housing Land Trust of Sonoma County are integrated into the Draft Housing Element.

Program 18 - Preservation of At-Risk Housing: Petaluma should make all efforts to retain community investment by preserving its existing affordable housing stock. Units should be monitored at least annually and when ownership units are at risk of expiring, owners should be stewarded through the process with the intention to preserve the unit. Eligible units should be converted at resale to a program that ensures affordability in perpetuity to a targeted income level, so that the unit is never at risk of expiration again and it can then serve endless generations of families. There should also be the creation of a fund that is prepared to save affordable units as they expire and that can act swiftly as these opportunities for preservation appear.

This program should establish a time frame for contacting owners about their plans about continuing to participate in the subsidized housing program that applies to their property, prioritizing the properties where expiration of the subsidies is most imminent. Also, the Draft should identify who will be lead on contacting tenants at these same properties to inform them of the correct process if the owners decide to convert the property to market rate rentals.

Program 28 - Fair Housing Outreach and Enforcement: The matrix under Program 28 does not make clear what the goal and what the relevant program is. It notes that one action is to assist “an average of 300 residents annually with tenant/landlord dispute resolution, and fair housing inquiries and investigations.” Landlord disputes are not fair housing issues, and should not be included in this estimate of 300 persons. The number of tenants who are assisted with fair housing inquiries and investigations should be identified in the chart for Program 28. Landlord/tenant mediation should not be included here as it is not an avenue for investigation and enforcement of fair housing complaints.

Program 29 - Tenant Protection Strategies: The Draft ambiguously states, “The City will explore a series of strategies that offer tenant protection. These may include...” several option from rent stabilization, just cause, right to purchase and right to return. The timeline for taking any of several actions is to begin community outreach to discuss various strategies of tenant protection in 2023, and adopt appropriate tenant protection strategies in 2024. This fails to take into account the recent passage of just cause tenant protections in the City, which can be included in the Draft but need not be undertaken in full yet again. The City is encouraged to commit to specific actions in a specific manner in order to meet State requirements, rather than exploratory actions.

Additional Programs for Consideration

1. Vacant Parcel Tax

While most jurisdictions in Sonoma County have in place some measure of limitations on vacation rentals, the larger issue remains: how can a destination like Sonoma County mitigate the impacts of underutilized properties, or properties used for short-term rentals? We propose the following:

- 1) Quantify the impact of second homes, vacation rentals, and vacant homes on the City’s housing stock;
- 2) Evaluate programs other similar cities have implemented to address this issue;
- 3) Make recommendations on policies to address second and vacant homes

We understand this is a complicated issue that will require considerable analysis, community engagement, and in part, a financial commitment by the City. Our hope is we can leverage the monies assessed by this policy vehicle to then help further our goals of creating more attainable workforce housing. A discussion on implementing a Real-Estate Transfer Tax would also be germane.

2. Rental Registry

The City should create a rental registry listing all properties available for rent in the city, especially affordable rentals. Online rental registries provide a convenient, safe, and secure system for property owners to register their rental properties with Petaluma. Additionally, rental housing providers can receive real-time important information about their property rights and responsibilities, and interact safely online with housing, police, and fire agencies. The rental registry also offers housing providers the means to update important emergency information such as property manager and owner contact information, access their government-issued notices and forms, report rental vacancy rates, and pay fees online.

A rental registry would give the City a better sense of its housing stock, empowering Petaluma to better manage code enforcement, implementation of energy efficiency programs, fire mitigation policies, tenant protections and displacement, track rent increases and the implementation of fair-housing and grant programs. Rental registries already exist in cities across the country, including Raleigh, Seattle, Minneapolis, eight cities in California, and at least 20 in Texas. The costs to Petaluma would be modest.

Conclusion

Again, we want to express our appreciation for the opportunity to provide input on this important process. The housing element update process is a big undertaking and we welcome the opportunity to be partners in the process and help the City meet its housing development and fair housing goals.

Sincerely,

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