

Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?

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2022-2023 San Mateo County Grand Jury

“You can always count on Americans to do the right thing – after they’ve tried everything else.” Winston Churchill

“Every man must decide whether he will walk in the light of creative altruism or in the darkness of destructive selfishness.” Martin Luther King, Jr.

ISSUE

Are some San Mateo County communities misusing Accessory Dwelling Units (ADUs) to avoid the construction of multifamily low-income housing over the next eight years?

SUMMARY

Anointed the “epicenter of America’s housing dysfunction” by Harvard Business Review this year, the San Francisco Bay Area has faced an acute housing shortage at all levels for decades, especially for those who have the least.

And it is no longer news that many of the workers that San Mateo County communities depend upon daily – first responders, teachers, nurses, city employees, gardeners, and housekeepers, to name just a few – cannot afford a decent place to live and raise their families close to their jobs.

To address the issue, the State Legislature in 1969 passed the Housing Element Law, which says all California cities, towns, and counties, every eight years, must plan for the housing needs of all their residents regardless of income, which effectively requires development of affordable housing. Many changes and additions have been made to the law over the years, most recently eliminating zoning restrictions governing ADUs – small homes or apartments that share a single-family lot of a larger primary residence – and allowing communities to count them as affordable housing in their Regional Housing Needs Allocation (RHNA) plans.

At issue:

- Although their intentions have been good, the State has neglected to include any form of regulation to ensure low-income tenants ultimately use these ADUs as planned.
- Because owners often rent their ADUs to family and friends, they can exacerbate patterns of segregation and exclusion.¹
- And perhaps most importantly – counting ADUs as affordable housing will likely result in cities issuing permits for fewer deed-restricted low-, very low-, and moderate-income apartments and homes.

Without accountability through oversight and regulations, low-, very low-, and moderate-income housing now planned in some San Mateo County jurisdictions may end up existing solely on paper and never in operation.

¹ Association of Bay Area Governments, “Final Regional Housing Needs Allocation (RHNA) Plan, San Francisco Bay Area, 2023-2031”, accessed May 27, 2023, https://abag.ca.gov/sites/default/files/documents/2021-12/Final_RHNA_Allocation_Report_2023-2031-approved_0.pdf

This problem is most acute in Atherton, Hillsborough, Portola Valley, and Woodside, where some residents are up in arms over the State-mandated housing requirements, and the city governments, trying to appease them, are proposing counting on ADUs to meet as much as 80 percent of their affordable housing targets.

Assembly Bill 72 (2017) gives the California Department of Housing and Community Development (HCD) enforcement capability on local government's land use, planning, and zoning requirements. In the current RHNA-6 (2023-2031) planning cycle, HCD demands that San Mateo County jurisdictions monitor and verify ADU affordability every two years. However, HCD has not specified how to prove the ADUs are rented to very low-, low- or moderate-income households, leaving it to the communities to find a solution.

So far, jurisdictions have yet to do so, even though local independent agencies such as HIP Housing have systems and services in place, which they use to verify affordability of deed-restricted affordable housing, and that could be adapted Countywide to monitor and verify ADUs' affordability and occupancy in a manner that adheres to fair housing guidelines.

California needs to build 2.5 million homes by 2030 to meet current housing demands, according to the HCD. But the State averages only about 125,000 new homes annually – a shortfall by nearly two-thirds.

ADUs can, indeed, provide affordable housing. And to many citizens of affluent communities, they are an appealing alternative to multi-family, deed-restricted affordable housing projects. However, just because the law makes it possible to count ADUs as affordable housing, it does not exempt cities and towns from credibly planning for badly needed affordable housing.

BACKGROUND

One of the State's long-standing priorities has been to increase the availability of affordable housing for all economic segments.

HCD – the California Department of Housing and Community Development – focuses on making this happen by working with local jurisdictions to create rental and homeownership opportunities for all Californians, including individuals and families who are experiencing homelessness.

Beginning in 1969, the State mandated that all California cities, towns, and counties must plan for the housing needs of all Californians, regardless of income. They meet this mandate by developing and updating a Housing Element, part of a local jurisdiction's General Plan, which shows where they will allow new housing and describes the policies and strategies necessary to support building new housing.

The process of updating the Housing Element involves HCD working with various Councils of Governments (COG) to develop a RHNA plan that includes the Regional Housing Needs Determination (RHND), which assigns the number of housing units that each county and city are expected to facilitate being built in the subsequent eight years to accommodate projected growth.

In the case of the Bay Area, this Council of Governments is the Association of Bay Area Governments (ABAG), which represents all nine Bay Area counties, including San Mateo County and its 20 cities and towns. Components that ABAG considers in determining each Bay Area county's and city's allocation of housing units include population, employment potential, proximity to transportation centers, open space,

inclusivity, and diversification, all of which are becoming increasingly important to the State, according to ABAG reports.

Multiple bills in both houses of the State Legislature have been proposed over the years to change the process and increase the amount of State control over housing development. Particularly significant changes occurred during the 2017 legislative session when senators and assembly members proposed approximately 150 housing bills. That year the Governor ultimately signed a package of 15 bills related to funding for housing, streamlining development approvals, and increasing accountability for meeting the requirements of the Housing Element Law. These included bills that significantly changed the RHNA process, requiring additional outreach and reporting, modifying how to calculate the RHND to reflect unmet housing needs better, increasing the number of topics to be considered in the allocation methodology, and giving HCD, on behalf of the State, the ability to sue individual counties or cities for not meeting requirements.

Updating the Housing Element every eight years is an iterative process involving HCD, the regional COGs, the State Department of Finance (DOF), and local jurisdictions. (See Appendix D.) But the ultimate authority for approval of the RHNA, the RHND, and the associated Housing Elements resides with HCD.

The current approved RHNA plan developed by ABAG is known as RHNA-6, which spans 2023 to 2031.

HCD requires each jurisdiction to submit its completed Housing Element for review and approval by a specific date. For RHNA-6, the due date for San Mateo County and its cities was January 31, 2023. Before the due date, the jurisdictions were able to send their draft Housing Elements to HCD for preliminary review and comments and make necessary modifications that HCD highlights. Any jurisdiction which fails to meet the deadline for submission of their completed Housing Element is subject to a potential “builders remedy” action that forces a city to allow building projects regardless of whether they meet most of the local zoning restrictions.

Once Housing Elements are approved, HCD monitors the progress of approved RHNA plans by requiring each jurisdiction to report its building permit activities annually. If progress is below expectations, the jurisdiction must develop alternative strategies for review and approval by HCD.

During the RHNA-5 (2015-2023) progress reviews submissions, cities began including ADUs as part of the overall housing inventory in their annual reports because State legislation (Government Code section 65852.150) that became effective in January 2017 stated that ADUs are a valuable form of housing in California, which also “provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.”

Numerous Senate and Assembly bills were enacted in 2018 and 2020, requiring local jurisdictions to streamline and allow for ease of ADU production to increase housing for all income categories. With these encouragements, ADUs being deemed a viable housing option, and facing stringent RHNA-6 requirements of approximately three times more housing units than in the RHNA-5 cycle, a few affluent San Mateo cities have proposed using ADUs to satisfy most of their plans to meet the required number of housing units in the various income categories.

“ADUs are not a panacea, but they’re a good tool in the toolbox,” said a planning consultant working for a San Mateo County city. “Most land on The Peninsula is single-family homes. ADUs are opening land that was not open before. But higher density housing near transit is better.”

Added a city manager: “I think they (ADUs) are a piece of the solution, but not all of it. I think ADUs are an important way to provide opportunities for other things – where people want multigenerational living on-site, for caretakers, or other folks – they can reside in an ADU even if they’re not paying rent.”

DISCUSSION

While HCD-approved RHNA Housing Elements do not require the cities and counties to build affordable housing, the jurisdictions must adjust zoning ordinances, issue permits to allow construction of affordable housing, and initiate programs that incentivize such construction.

However, as shown in Chart 1 below, significant portions of San Mateo County's affordable housing in RHNA-5 (2015-2023) plans did not materialize – most likely due to a lack of permit applications.

With RHNA-5's significantly lower targets, the less-than-expected performance during the RHNA-5 cycle foreshadows the enormous challenge the County's cities and towns now face in meeting the RHNA-6 goals for the next eight years, which are approximately three times larger, as shown in Chart 2 below.

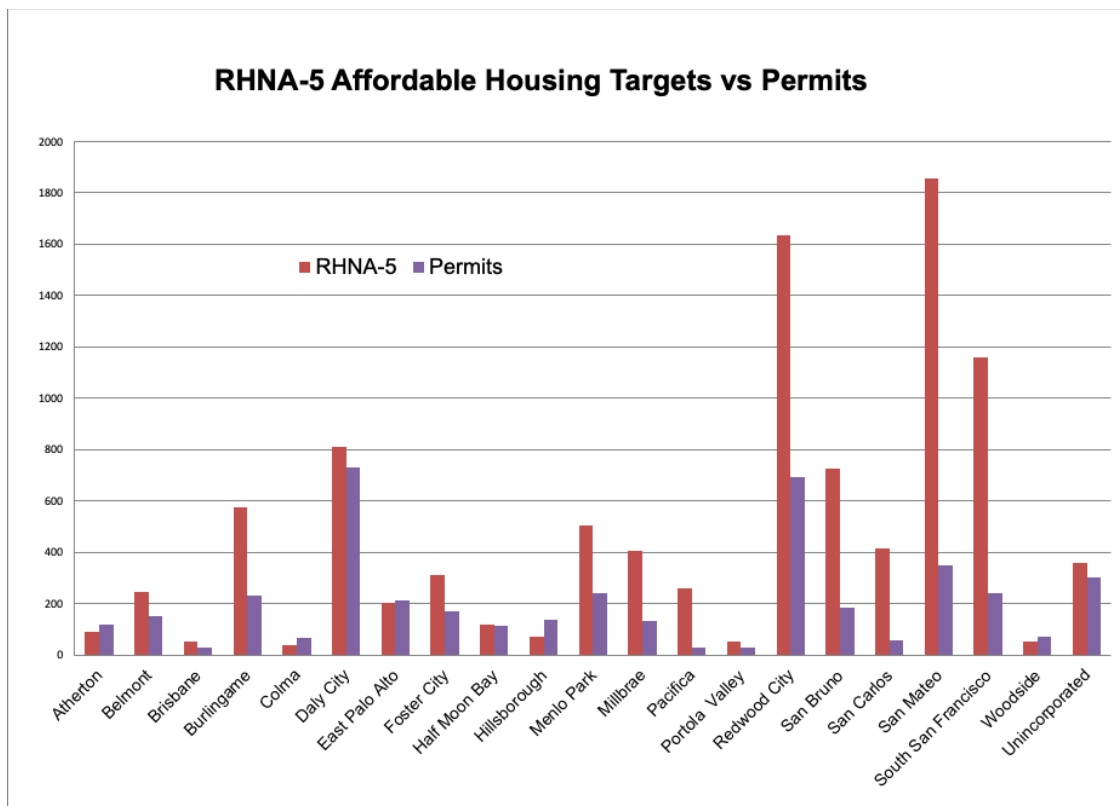


Chart 1: RHNA-5 Affordable Housing Required vs. Permitted

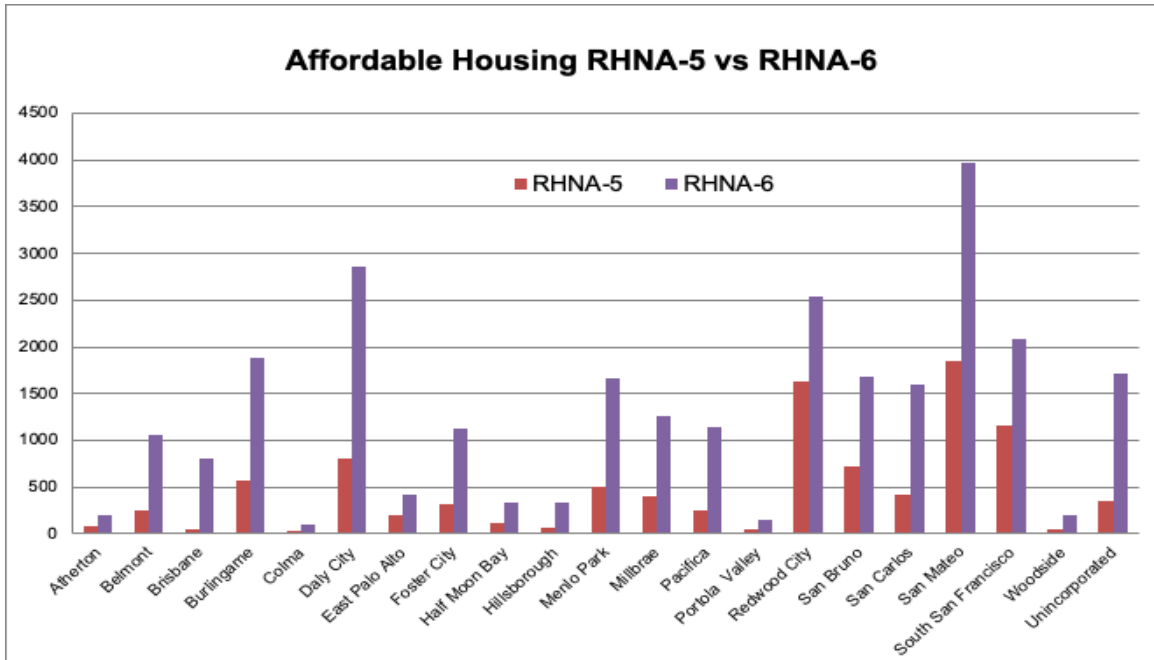


Chart 2: RHNA-5 Affordable Housing Allocations vs RHNA-6

Besides increasing affordable housing targets by nearly 300 percent, the State has made other significant changes in the ADU laws to address the current housing crunch.

Law	Year	Impact
AB671	2019	Through Housing Elements, HCD to promote ADUs for affordable rent
AB670	2019	Any local covenants and restrictions on new housing are void
AB587	2019	Deed-restricted sale of ADU is allowed separately from the main house
AB 68	2019	Removes local restrictions on minimum size, requirement of owner occupancy, parking requirements for garage conversion, and any impact fee.
AB 3182	2020	Permitting process within 60 days
SB9	2021	Facilitates lot split and allows more than 1 ADU per property
AB 345	2021	Allows owners to sell ADUs separately
AB 2221	2023	Pre-specific time permit frame for approval of ADU applications
SB 897	2023	Increases the ADU height limit to 18' and allows retro permitting of previous unauthorized ADUs.

The net effect of these changes was to minimize municipal-level regulations on ADUs – such as parking requirements, property line setbacks, height limits, or the number of ADUs on one property – and make

ADUs an acceptable means to meet affordable housing obligations. Given these changes, namely high mandatory targets for affordable housing, enthusiastic support by the State of ADUs as affordable housing, and requiring zero land use rezoning for ADUs, nearly all San Mateo County cities and towns include ADUs in their RHNA-6 Housing Elements.

The issue, however, is that for every ADU included in a Housing Element – regardless of whether the ADU is built and rented to very low-, low-, or moderate-income tenants – one verifiable, deed-restricted affordable housing unit will not be built in that jurisdiction by a developer.

So, How Did We Get Here?

California cities and counties can now use ADUs to help satisfy their RHNA requirements. But calculating how many ADUs to put into a Housing Element and how to distribute them into each income category, differ from other housing options.

ABAG instructs San Mateo County jurisdictions that the standard method is first to estimate the number of ADUs that homeowners will build in a planning period, which is 2023 through 2031 for RHNA-6.

In its technical memo “Using ADUs to Satisfy RHNA,” ABAG advises members that the estimate should be based on the average number of ADU building permits issued each year, multiplied by eight, because there are eight years in a housing element cycle.

“Most cities base their determination of annual ADU permits by averaging the building permits approved each year since 2019 when State law made it easier to construct the units,” the technical memo explains:

“There is a small amount of flexibility in the calculations,” the memo continues. “If numbers were low in 2019 but were high in 2020, 2021, and 2022, a jurisdiction could potentially use 2020-2022 as the baseline. This rationale would be bolstered if there was a logical explanation for the change, e.g., the jurisdiction further loosened regulations in 2020. Projecting a higher number of ADUs than what has been demonstrated through permit approvals in recent years may be possible, but more challenging. A slightly larger number may be warranted if a robust, funded, and clear plan to increase production has been put in place. However, you are strongly encouraged to coordinate with HCD before deviating from the standard methodology.”

Once cities complete their estimate, they must distribute those units into each income category.

To help its members, ABAG analyzed ADU affordability. Using data from a 2020 statewide survey of homeowners who had constructed ADUs in 2018 or 2019, ABAG concluded that the assumptions in the chart below are generally applicable in most jurisdictions. Many Bay Area jurisdictions chose to use these numbers instead of conducting their own affordability analysis.

Percent	Income Category
30%	Very Low Income
30%	Low Income
30%	Moderate Income
10%	Above Moderate

“UC Berkeley Turner Center did a statewide survey of ADU affordability, and they worked with ABAG to adjust it for the Bay Area specifically,” said a San Mateo County planner. “So those (numbers) are based on surveys and data analysis of actual ADUs that have been produced, and the rents that are being offered to tenants. We are just accepting their analysis as is.”

San Mateo County jurisdictions have almost unanimously adopted ABAG’s 30-30-30-10 formula.

However, a 2021 report and recommendations for RHNA-6 prepared by ABAG’s Housing Technical Assistance Team, titled “DRAFT Affordability of Accessory Dwelling Units,” says that although ADUs are often affordable, jurisdictions should be cautious about relying on them too heavily because of fair housing concerns:

“Many ADUs are affordable to lower and moderate-income households because they are rented to family and friends of the homeowners,” the report states. “If minorities are underrepresented among homeowners, the families and potentially friends of the homeowners will be primarily white. Therefore, relying too heavily on ADUs could inadvertently exacerbate patterns of segregation and exclusion.”

The report also acknowledges that ADUs often do not serve large families, another critical fair housing concern.

And while ADUs accomplish an essential fair housing goal by adding new homes in parts of the municipality that are more likely to be areas of opportunity, the report recommends that jurisdictions with fair housing concerns “may want to use more conservative assumptions based on open market rentals, excluding units made available to family and friends,” as summarized below:

Percent	Income Category
5%	Very Low Income
30%	Low Income
50%	Moderate Income
15%	Above Moderate

So far, 16 San Mateo County cities have chosen the 30-30-30-10 formula, implying there are no fair housing concerns in their jurisdictions.

Only two cities – San Carlos and San Mateo – use ABAG’s more conservative formula of 5-30-50-15 in their plans. One city – Belmont – used its own judgment.² And one – Colma – does not use ADUs in their plans at all to meet State requirements.

But in all cases, these statistical estimates may not reflect the actual usage of constructed ADUs. Determining that would require actual verification by each local jurisdiction.

² City of Belmont, “General Housing Element Draft 2023-2031”, p. 25, accessed May 27, 2023, <https://www.belmont.gov/home/showpublisheddocument/21721/637968613354630000>

**ADUs planned in RHNA-6
(May 11, 2023)**

City	Very Low	Low	Moderate	Above Moderate	Total ADUs	Total RHNA-6 Requirement
Atherton	56	56	56	112	280	348
Belmont	0	0	80	0	80	1785
Brisbane	12	12	12	4	40	1588
Burlingame	50	50	50	17	167	3257
Colma	-	-	-	-	0	202
Daly City	151	151	151	50	503	4838
East Palo Alto	35	34	34	12	115	829
Foster City	7	7	7	3	24	1896
Hillsborough	84	84	84	28	280	554
Menlo Park	26	25	26	8	85	2946
Millbrae	34	34	33	11	112	2199
Pacifica	56	56	56	19	187	1892
Portola Valley	28	28	28	8	92	253
Redwood City	152	152	152	50	506	4588
San Bruno	72	72	72	24	240	3165
San Carlos	10	61	102	30	203	2735
San Mateo	22	132	220	66	440	7015
South San Francisco	113	113	113	38	377	3956
Unincorporated San Mateo	107	107	107	36	357	2833
Woodside	36	36	36	12	120	328

(This table includes all San Mateo County jurisdictions that have submitted Housing Element plans to HCD for review. As of June 1, 2023, Half Moon Bay and Daly City have not submitted RHNA-6 plans for HCD review.)

Accordingly, if HCD approves cities and towns' current Housing Elements, San Mateo County may end up with many affordable housing units that exist only on paper because they are counted as affordable units by the State but never made available or occupied by people who need affordable housing:

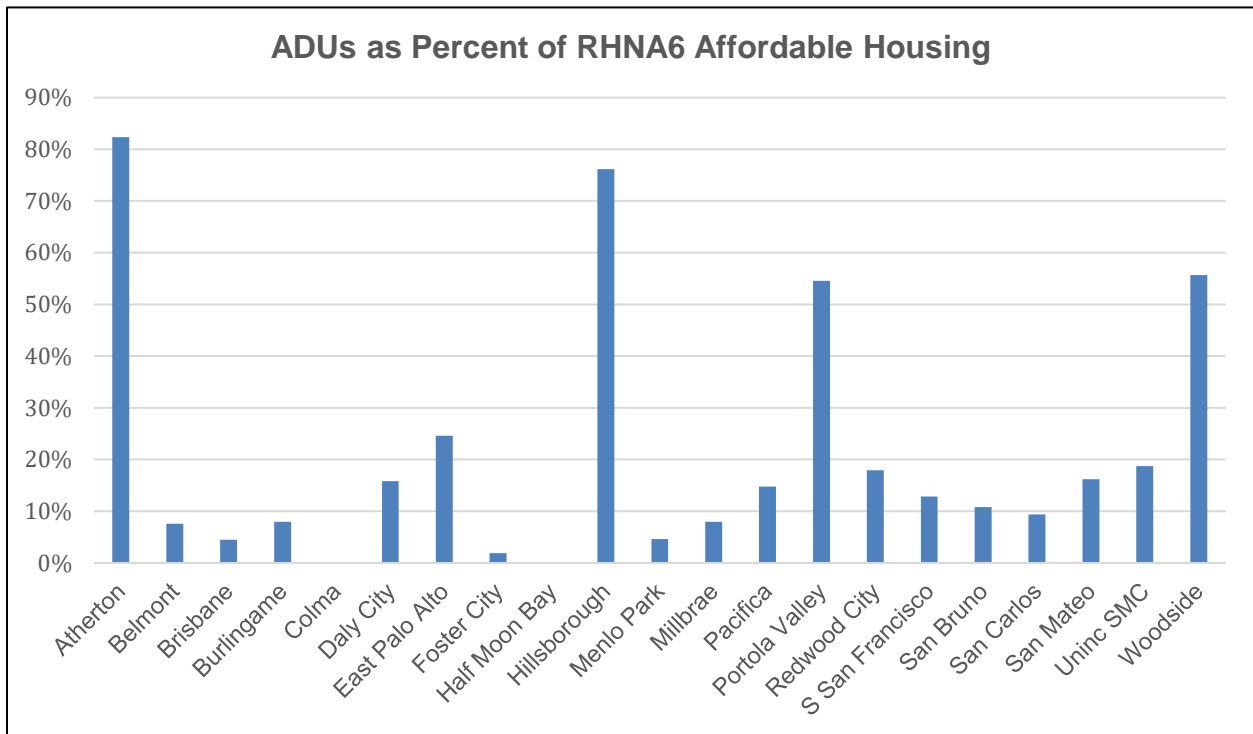
“BMR (below market rate) unit displacement is a legitimate issue,” said a city planning consultant. “RHNA looks at (the number of) units, not the number of people being housed. For the State, they’re all counted the same – an ADU or three-bedroom apartment, five vs. one or two people. In the eyes of the State, they’re all the same.”

Finally, the cities and towns relying primarily on ADUs to meet their RHNA-6 housing targets do not meet the overall objectives required by HCD and RHNA of:

- Increasing the housing supply and mix of housing types, tenure, and affordability
- Promoting infill development and socioeconomic equity, protecting environmental and agricultural resources, and encouraging efficient development patterns
- Promoting an improved intraregional relationship between jobs and housing
- Balancing disproportionate household income distributions
- Affirmatively furthering fair housing

Housing and Community Development Pushes Back

Four San Mateo County municipalities – Atherton, Hillsborough, Portola Valley, and Woodside – rely heavily on ADUs to meet low-income housing requirements in their RHNA-6 Housing Elements.



May 17, 2023

While HCD does not single out those four cities for their heavy reliance on ADUs to meet their affordable housing needs, throughout the process of submission and review of draft RHNA-6 plans, HCD consistently instructed San Mateo County cities and towns that they must monitor and verify ADU production and affordability at least every two years but has not specified an acceptable process for verifying the affordability level of ADUs as planned.

Should San Mateo County and its cities seek outside help on this issue, there are a handful of independent non-profit agencies and for-profit real estate management companies operating today in the Bay Area that have established systems and processes for monitoring and verifying rented occupied housing for continued affordability and adherence to fair housing guidelines while maintaining tenant and owner privacy – which was an issue continually raised by City Managers and other officials during Grand Jury interviews.

ADU Affordability Monitoring Emphasized in HCD Review Letters to Jurisdictions

Atherton (4-4-23)

Program 3.812 (New Construction of Affordable Accessory Dwelling Units): While the element was revised to include timing of each action, it is unclear how affordability will be established. The program should be revised to clarify actions to establish and track affordability.

East Palo Alto (4-25-23)

Accessory Dwelling Units (ADU): As noted in the prior review, the element should include a program that commits to frequent monitoring (every other year) for production and affordability, and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) as needed.

Foster City (4-24-23)

Program H-D-4-h (ADU Monitoring): While the program commits to evaluating alternative actions by the end of 2026, it must commit to specific alternative actions and monitor production and affordability of ADUs more than once in the planning period (e.g., every two years).

Hillsborough (1-10-23)

This analysis should specifically address whether the ADU strategy to accommodate lower-income households contributes to continued exclusion and disparities in access to opportunity and how the strategy promotes housing choice for a variety of households including lower-income households, and large families.

To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors, and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year), and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) if ADU production assumptions are not being achieved.

Millbrae (1-24-23)

Accessory Dwelling Units (ADU): To support assumptions for ADUs in the planning period, programs should commit to additional incentives and strategies, frequent monitoring (every other year) of production and affordability and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed.

Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers within a specified time period (e.g., within six months).

Redwood City (7-8-22)

Programs must be expanded to include incentives to promote the creation and affordability of Accessory Dwelling Units (ADUs).

Examples include exploring and pursuing funding, modifying development standards and reducing fees beyond State law, increasing awareness, pre-approved plans and homeowner/applicant assistance tools. In addition, given the city's assumptions for ADUs, the element should include a program to monitor permitted ADUs and affordability every other year and take appropriate action such as adjusting assumptions or rezoning within a specified time period (e.g., 6 months).

San Bruno (3-29-23)

Accessory Dwelling Units (ADU): While the element revised the ADU assumptions, Program 4-P must be revised to commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed. The element must also address affordability assumptions for ADU projections.

San Mateo (3-27-23)

Accessory Dwelling Units (ADU): Program 1.4 must commit to also monitoring affordability of the ADU units that are permitted as well as provide additional incentives or identify additional sites if production and affordability assumptions are not met.

County of San Mateo (4-20-23)

Accessory Dwelling Units (ADU): Further, programs should commit to additional incentives and strategies, frequent monitoring for production and affordability (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed. The element must also address affordability assumptions for ADU projections, by clarifying what ABAG assumptions are utilized.

South San Francisco (3-30-23)

The element should include a commitment to reconcile trends with reported units within the Cities submitted annual progress report. Further, as Stated in the previous review, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) if number and affordability assumptions are not met.

Woodside (10-14-22)

Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers within a specified time period (e.g., within six months).

In their HCD approved housing plans, Brisbane and Redwood City aren't definitive about how they will monitor ADU affordability but imply they will use surveys to comply with HCD instructions.

Redwood City plans to collect ADU rental data during its permitting process. And Brisbane says, if available, it will participate in a regional forgivable ADU construction loan program in exchange for limiting rentals of the ADUs to extremely low-income households for 15 years. Brisbane said it is also exploring a possible city forgivable loan program if the regional program doesn't materialize.

"We can't force people to report to us or to be honest with us," said one jurisdiction's planner.

Another city's chief planner concluded that a deed restriction – any limitation on a property that affects the ability of the property owner to utilize the property as they wish, such as a requirement to verify a tenant's income and rent charged – "is the best way to (enforce) affordability." Alternatively, one city planning official suggested the formation of a Countywide nonprofit to income-qualify and match renters to available ADUs, thereby monitoring and enforcing affordability because the smaller towns and cities don't have the resources to perform that function on their own.

Finally, a fourth city planner offered an alternative view: "We're not a city hiding behind ADUs. ABAG gave us a formula. We plopped it in. If the State said you can't count ADUs at all, that would be fine."

A Long, Long Way to Go

The Superior Court of California requires all San Mateo County Civil Grand Jury investigation reports to be completed and published by June 30 annually.

And although the law required San Mateo County cities and towns to submit their housing plans by January 31, 2023, as of June 1, Daly City has yet to adopt and submit a draft plan to HCD for review and approval.

Meanwhile, plans from Foster City, Half Moon Bay, Millbrae and Pacifica are now under HCD review.

So far, HCD has reviewed and rejected plans from 14 jurisdictions: Atherton, Belmont, Burlingame, Colma, East Palo Alto, Hillsborough, Menlo Park, Portola Valley, San Bruno, San Carlos, San Mateo, South San Francisco, Woodside, and San Mateo County, which is responsible for unincorporated areas.

As of the publication of this report, only Redwood City and Brisbane had completed the process and received the green light from HCD to proceed.

One reason cited for the delay is most San Mateo County cities and towns don't have a large enough staff to manage the workload that RHNA planning represents, so they outsource. And many could not find timely help because the consultants were busy preparing RHNA-6 plans for Southern California cities, which were due before San Mateo County municipalities. That caused many communities here to fall behind and are now out of compliance with the timing of their Housing Element submissions.

These delays, coupled with citizen objections to multifamily housing in their communities, almost guarantee RHNA-6 disputes will end up in the courts and remain unresolved for many years to come and postpone the building of sorely needed affordable housing indefinitely.

FINDINGS

- F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.
- F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.
- F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.
- F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.
- F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.
- F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.
- F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

RECOMMENDATIONS

- R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.
- R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.
- R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.
- R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.
- R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.
- R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Civil Grand Jury requests responses from San Mateo County and all 20 cities' governing bodies for each and every Finding and Recommendation.

The governing bodies should be aware that their comments or responses must be conducted subject to the Brown Act's notice, agenda, and open meeting requirements.

RESPONSE REQUIREMENTS

California Penal Code Section 933.05 provides: For purposes of subdivision of Section 933, as to each Grand Jury finding, the responding person or entity shall report one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the disputed finding and shall include an explanation of the reasons.

For purposes of subdivision of Section 933, as to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has yet to be implemented but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall be at most six months from the Grand Jury report's publication date.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

METHODOLOGY

The San Mateo County Civil Grand Jury used numerous approaches to develop this report.

- **Preliminary Research**

The Grand Jury studied RHNA-5 historical information and RHNA-6 Housing Elements submitted to HCD by the cities and towns in San Mateo County as they became available.

Before conducting in-depth research, the Grand Jury studied ABAG's reports on RHNA-6 housing allocations, introducing numerous issues and a means to understand how jurisdictions establish housing allocations. Additionally, the Grand Jury reviewed a 2021 ABAG report on ADU affordability for RHNA-6 and RHNA-5 annual progress reports to understand history.

The Grand Jury also reviewed a report on ADUs titled “A Solution on the Ground: Assessing the Feasibility of Second Units in Unincorporated San Mateo County, Implementing the Backyard Revolution: Perspectives of California’s ADU Owners,” April 22, 2021, Karen Chapple, Dori Ganetsos, Emmanuel Lopez, UC Berkeley Center for Community Innovation.

An additional resource for Preliminary Research has been the press. Particularly following the January 31, 2023 deadline for RHNA-6 submissions, nearly 60 articles provided insights and analysis the Grand Jury could not find elsewhere.

For a complete list of sources, see the Bibliography below.

- **Survey**

After conducting its Preliminary Research, the Grand Jury sent an eight-question survey in October 2022 to the city managers of the 20 San Mateo County cities and towns and the San Mateo County planning and building department responsible for the County's unincorporated areas.

See Appendix A for survey results.

- **Interviews**

Much of the time spent by the Grand Jury on this investigation was in more than 30 interviews with 21 city managers and planning managers, five heads of nonprofit housing entities in San Mateo County, and executives at ABAG, HCD, and several other government bodies.

- **Continued Research**

Because RHNA-6 submissions and HCD replies are ongoing, the Grand Jury has continued to monitor the status of RHNA-6 submissions and HCD responses.

This report reflects submissions received prior to the report's due date of June 30, 2023.

GLOSSARY

Accessory Dwelling Units (ADUs)

An accessory dwelling unit (ADU) is a legal and regulatory term for a secondary house or apartment that shares the building lot of a larger primary home. The unit is often used to provide additional income through rent or to house a family member. For example, an elderly parent could live in a small unit and avoid having to move to an assisted living facility. (Source: [Investopedia](#))

Affordable Housing: Very Low Income; Low Income; Moderate Income; Above Moderate Income

Affordable housing is generally defined as housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities. (Source: www.hud.gov)

Income Category Definitions	
Acutely Low	0 – 15% of area median income
Extremely Low	15% - 30% of area median income
Very Low	30%-50% of area median income
Lower ²	50%-80% of area median income
Moderate	80%-120% of area median income
Above Moderate	Above 120% of area median income

San Mateo County Annual Income Limits (2021)					
Income Category	Number of Persons Per Household (Maximum Income)				
	1	2	3	4	5
Extremely Low	\$38,400	\$43,850	\$49,350	\$54,800	\$59,200
Very Low	\$63,950	\$73,100	\$82,250	\$91,350	\$98,700
Low Income	\$102,450	\$117,100	\$131,750	\$146,350	\$158,100
Median Income	\$104,700	\$119,700	\$134,650	\$149,600	\$161,550
Moderate Income	\$125,650	\$143,600	\$161,550	\$179,500	\$193,850

Association of Bay Area Governments (ABAG)

The Association of Bay Area Governments (ABAG) is the Council of Governments (COG) for the nine-county Bay Area. One of California’s earliest COGs, ABAG was founded to protect regional assets from State control. ABAG continues to serve the Bay Area by providing a regional venue for collaboration and problem-solving. ABAG’s work program includes management over key regional assets, such as the San Francisco Estuary and the Bay Trail Project. It also offers a variety of cost-effective member services programs such as Pooled Liability Assurance Network (PLAN) Corporation (offering affordable liability, property insurance, claims management, risk management, and bond coverage to 30 municipalities) and financial services (offering tax-exempt capital financing for the acquisition, construction, and rehabilitation of affordable multifamily housing, health care facilities, schools, and other community facilities). ABAG POWER Natural Gas Pool conducts pooled purchasing of natural gas on behalf of 38 local governments and special districts. ABAG is also the COG that allocates the regional housing needs assessment (RHNA). (Source: [CALCOG](#))

Below Market Rate (BMR)

A BMR unit is a housing unit that is priced to be affordable to households that are of moderate income or below. These housing units are often built by local government, nonprofits, or as a requirement of the developer (Inclusionary Affordable Housing Ordinance). As a result, these homes have certain deed restrictions recorded on the property, ensuring the home remains affordable for future generations. (Source: [County of San Mateo](#))

California Department of Finance (DOF)

The California Department of Finance is a state cabinet-level agency within the government of California. The Department of Finance is responsible for preparing, explaining, and administering the state's annual financial plan, which the Governor of California is required under the California Constitution to present by January 10 of each year to the public. The Department of Finance's other duties include analyzing the budgets of proposed laws in the California State Legislature, creating, and monitoring current and future economic forecasts of the state, estimating population demographics and enrollment projections, and maintaining the state's accounting and financial reporting systems.

California Department of Housing and Community Development (HCD)

The California Department of Housing and Community Development (HCD) develops housing policy and building codes (i.e., the California Building Standards Code), regulates manufactured homes and mobile home parks, and administers housing finance, economic development, and community development programs. (Source: <https://www.hcd.ca.gov/about-hcd>)

Council of Governments (COG)

Councils of Governments (COGs) are voluntary associations representing member local governments, mainly cities, and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines. (Source: [WRCOG](#))

Deed Restrictions

A deed restriction is a term widely used in real estate to refer to any limitation on a property that limits the ability of the property owner to utilize the property as they wish. (Source: [CA Realty Training](#))

General Plan

State law requires every city and county in California to prepare a General Plan for its future growth and development. A General Plan covers land use, transportation, housing, open space, natural resources, and public services. Local General Plans have been mandatory in California since the 1950s. State law also requires the cities and counties to periodically update their General Plans in response to changing conditions. Each General Plan includes maps expressing the community's vision of how and where it will grow and change. The General Plan typically has a time horizon of about 20 years. Once a General Plan is adopted, it is used by the City Council, local commissions, and City Staff as they make day-to-day decisions about the community's future. (Source: [City of San Rafael](#))

Housing Element

Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing plans as part of their General Plan (also required by the State). General Plans serve as the local government's blueprint for how the city or county will grow and develop and include eight elements: land use, transportation, conservation, noise, open space, safety, environmental justice, and housing. California's Housing Element Law acknowledges that, for the private market to address Californians' housing needs and demand, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain) housing development. As a result, housing policy in California rests mainly on the effective implementation of local General Plans and, in particular, local Housing Elements. (Source: [California Department of Housing and Community Development](#))

Jurisdiction (city, town, or county)

- 1: the power, right, or authority to interpret and apply the law; a matter that falls within the court's jurisdiction
- 2: a: the authority of a sovereign power to govern or legislate
b: the power or right to exercise authority: CONTROL
- 3: the limits or territory within which authority may be exercised (Source: [Merriam-Webster](#))

Regional Housing Needs Allocation (RHNA)

Every eight years, ABAG develops the Regional Housing Needs Allocation (RHNA) plan approved by HCD and used to assign each city and county in the Bay Area their fair share of new housing units to build. These housing units are intended to accommodate existing needs and projected growth in the region. The RHNA process is critical because it requires all cities and counties to plan for the region's housing needs, regardless of income, to prepare for future growth and ease the California's acute housing crisis. (Source: [ABAG](#))

Regional Housing Needs Determination (RHND)

The California Department of Housing and Community Development (HCD) identifies the total number of homes each region in California must plan to meet the housing needs of people at all income levels. They base the number on population projections produced by the California Department of Finance and adjustments incorporating the region's current housing needs. The jurisdictions separate the total number of housing units from HCD into four income categories that cover everything from housing for very low-income households to market-rate housing. ABAG is responsible for developing a methodology to allocate a portion of this housing need to every local government in the Bay Area. (Source: [ABAG](#))

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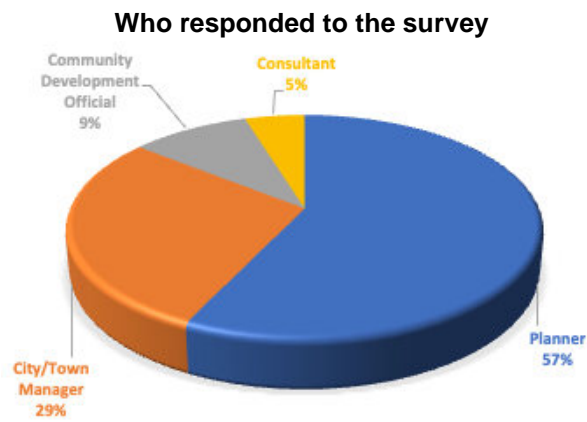
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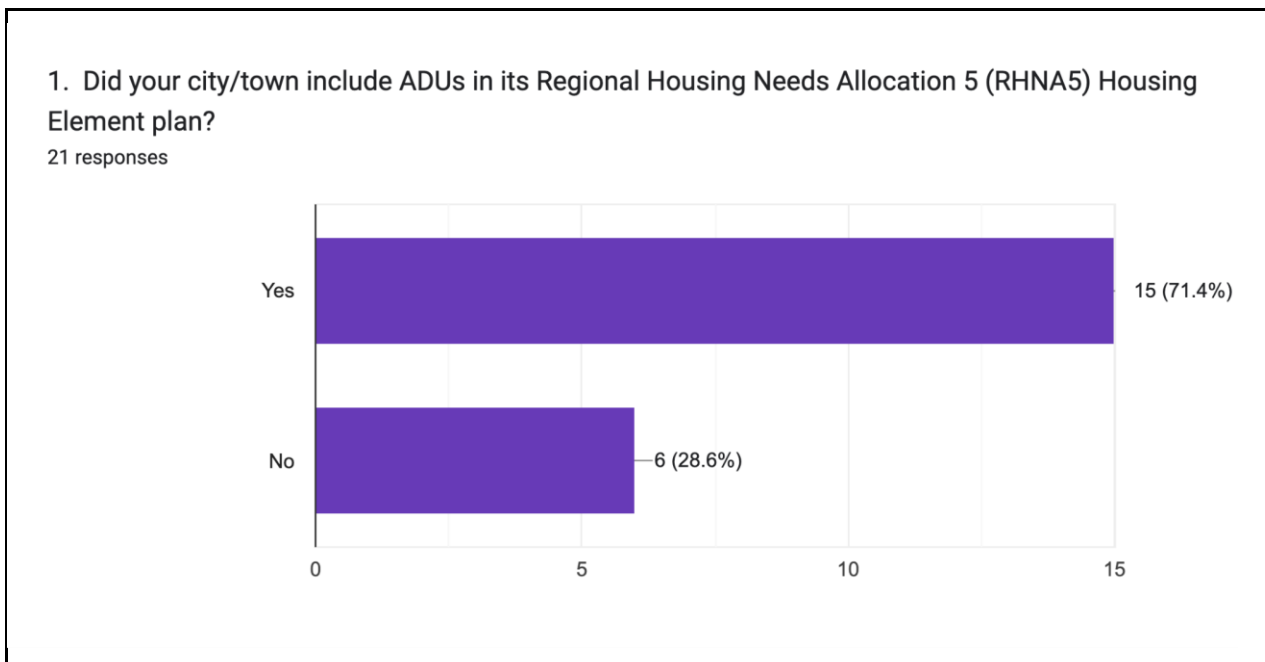
APPENDICES

- **A: Survey Results**
- **B: Timeline of Important Legislative Events**
- **C: ADUs: An American Tradition**
- **D: Housing Elements Are an Iterative Process**

**APPENDIX A
Survey Results**

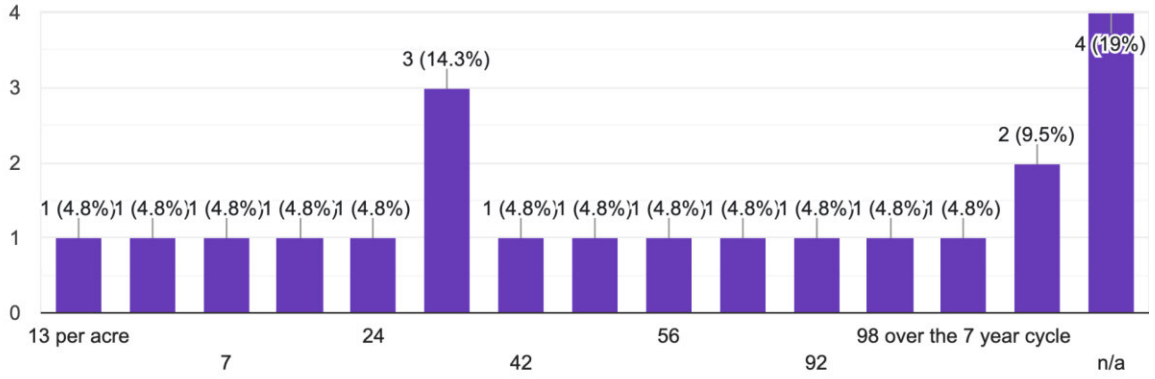


Survey responses



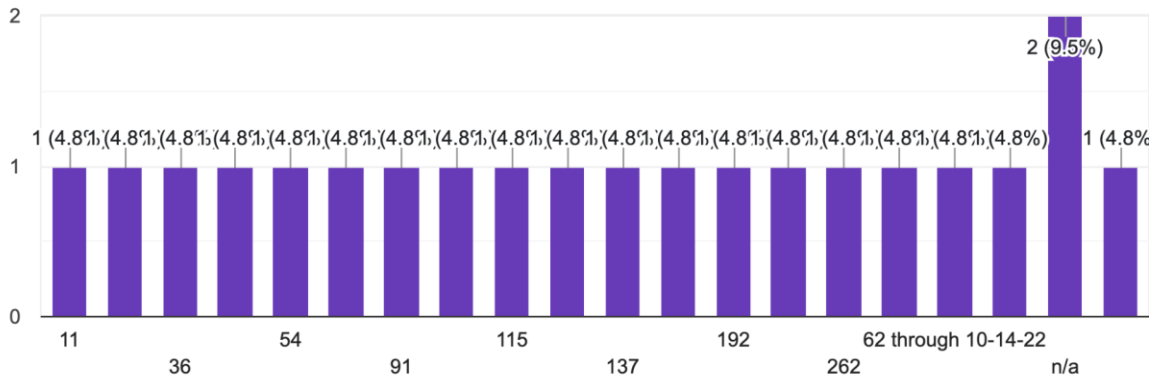
1A. If response was yes (indicate n/a if no): a. How many were planned?

21 responses



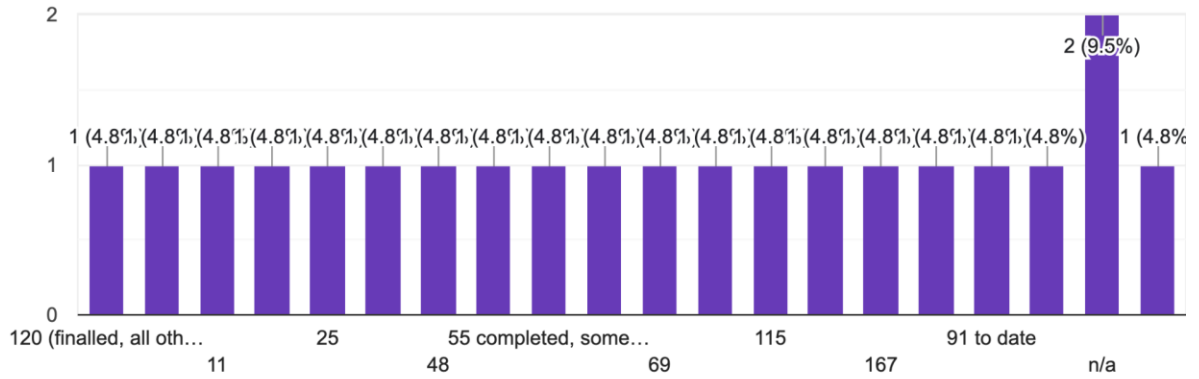
b. How many were permitted?

21 responses



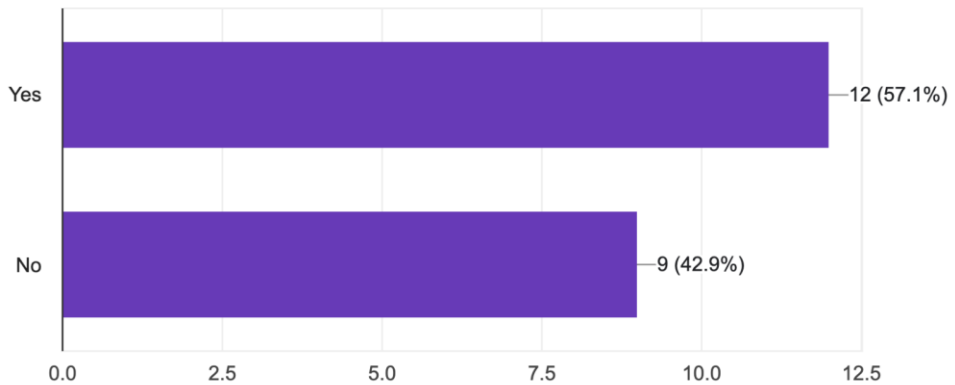
c. How many were built and completed?

21 responses



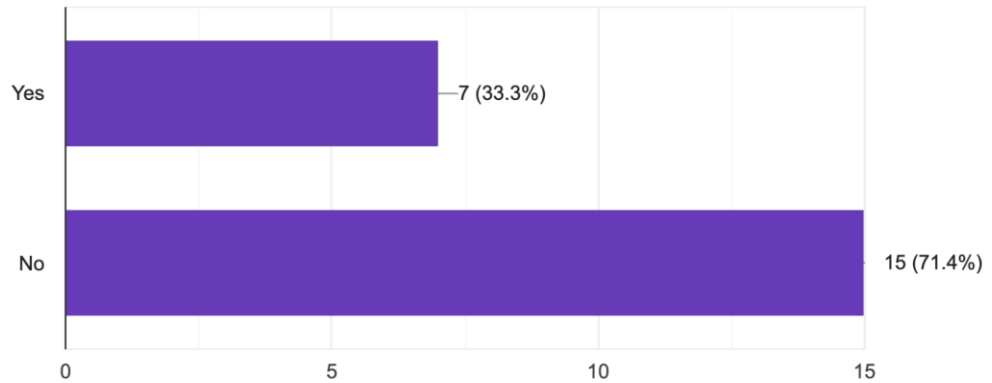
2. Were any of your city/town's RHNA5 ADUs designated to provide low, very low, and moderate income housing?

21 responses



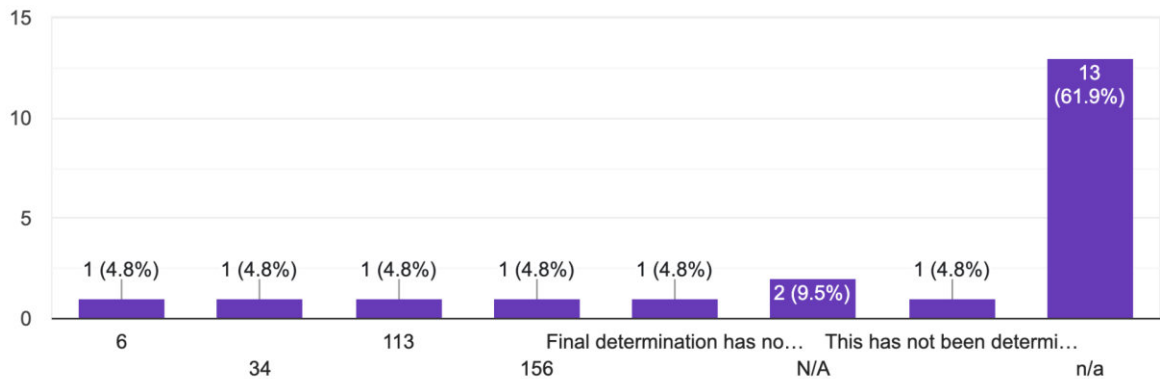
3. Is your city/town counting ADUs in RHNA6 Housing Element towards partial fulfillment of RHNA5 housing needs?

21 responses



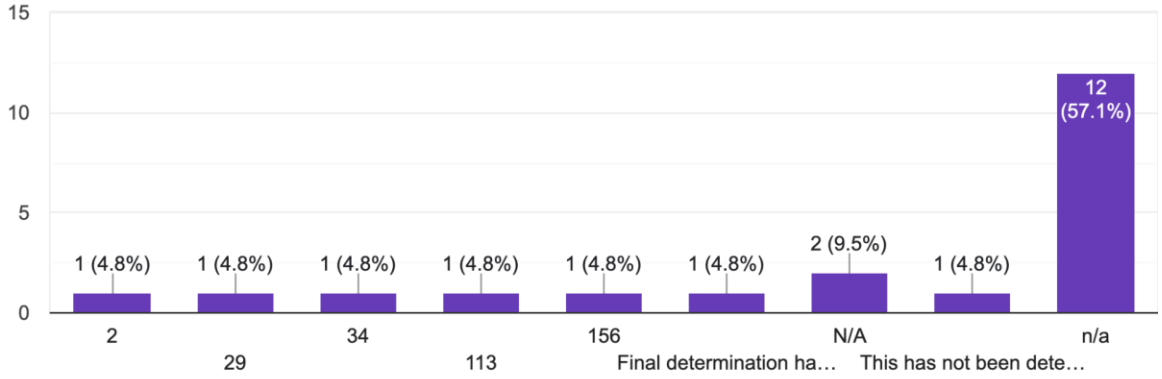
3A. If response was yes (indicate n/a if no): a. How many ADUs for very low-income housing?

21 responses



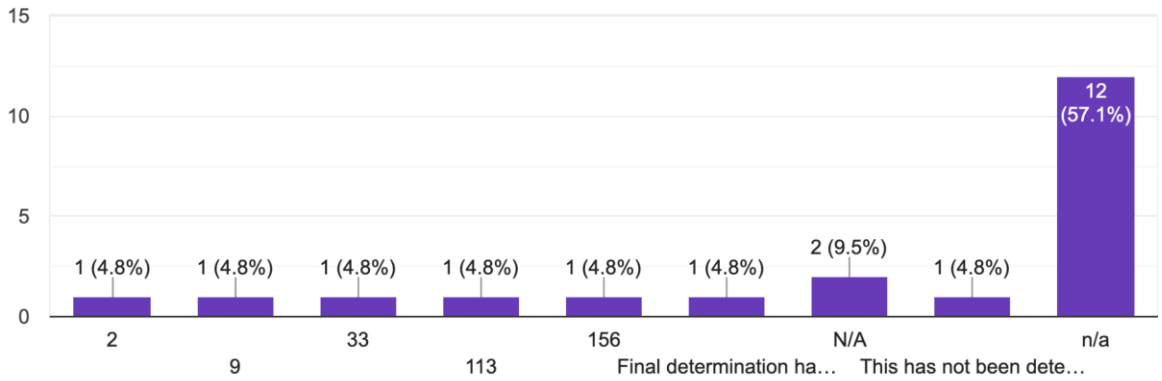
b. How many ADUs for low-income housing?

21 responses



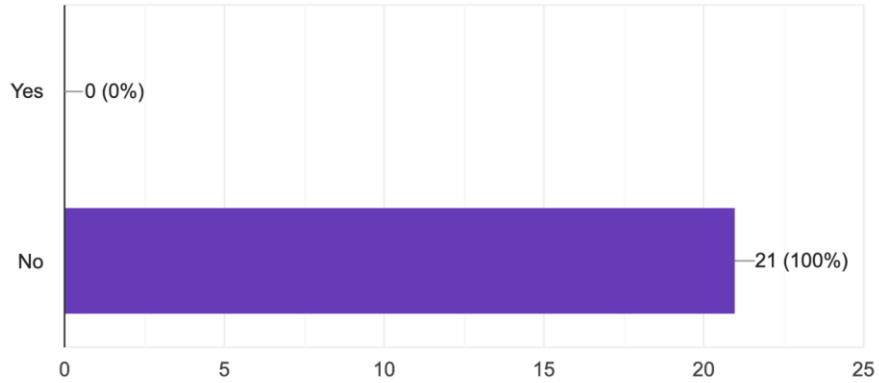
c. How many ADUs for moderate-income housing?

21 responses



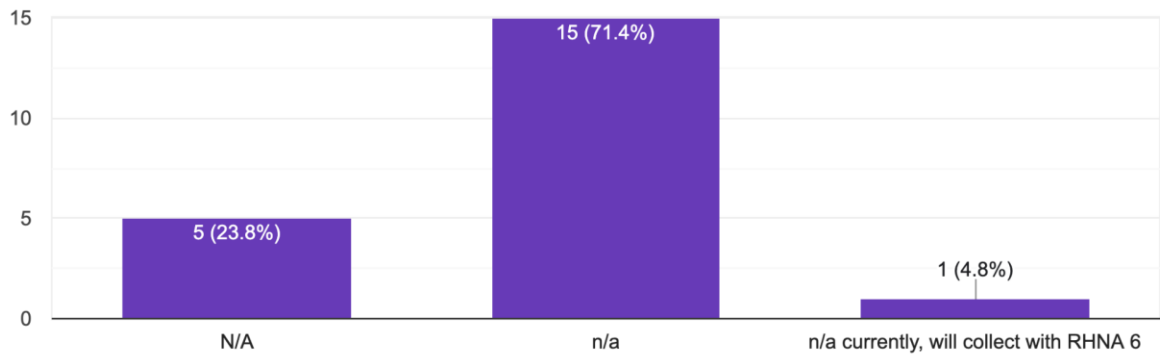
4. Does your city/town collect race and income data on who is renting or occupying ADUs in your city/town?

21 responses



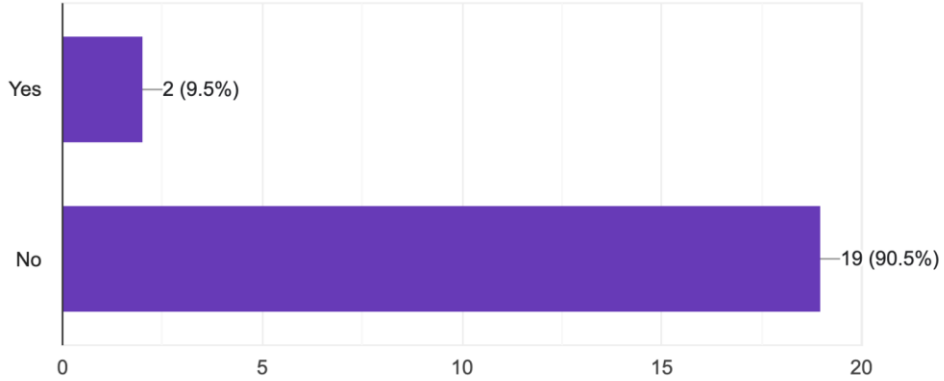
4A. If response was yes, when did you start collecting such data? (indicate n/a if no)

21 responses



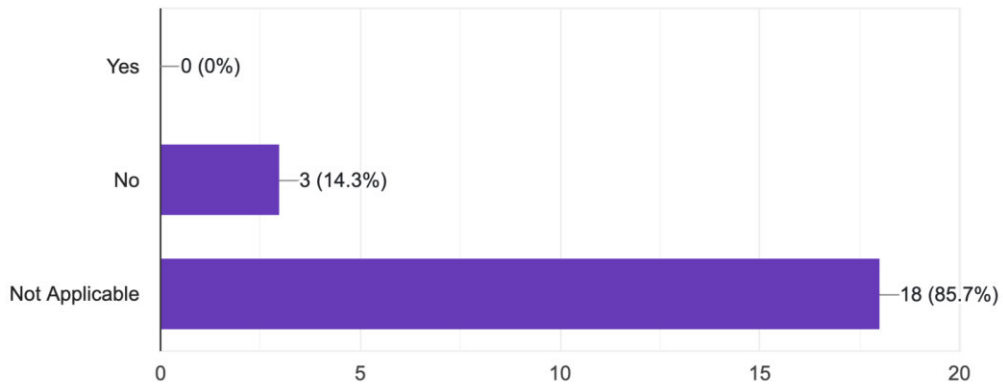
5. Does your city/town collect data on the range of the rents charged today for ADUs in your city/town?

21 responses



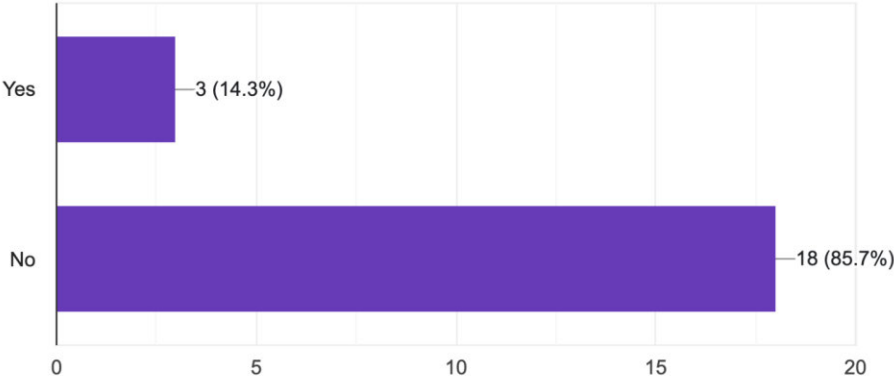
5A. If response was yes, does the data include details such as in-lieu services provided by the renter to the owner (i.e., landscaping, housekeeping, childcare services)?

21 responses



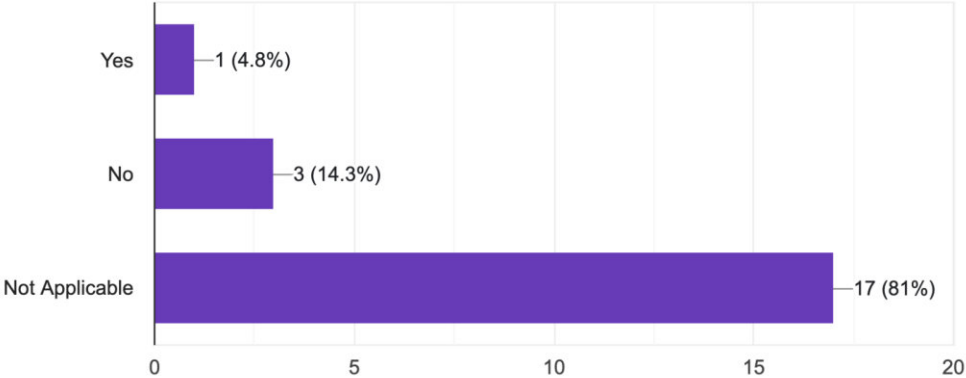
6. Are there any regulations or oversight systems in place in your city/town to monitor the status of very low-, low-, and moderate-income affordable ADUs?

21 responses



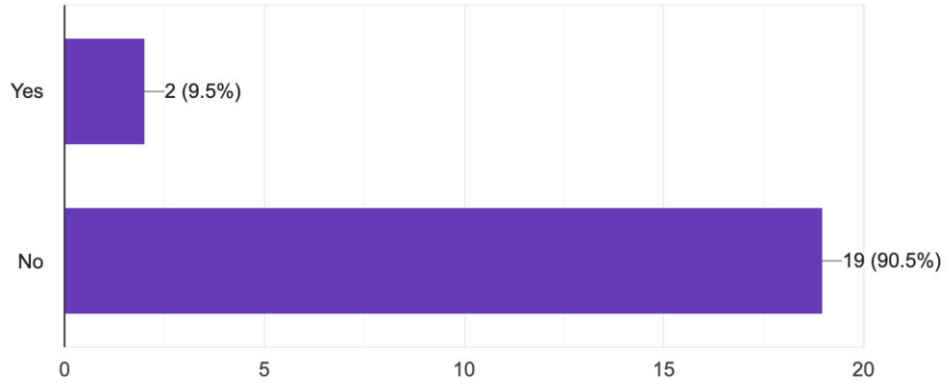
6A. If yes, does your city/town have regulations or oversight systems in place to monitor usage for ADUs over time, especially for ADUs in homes that are sold or remodeled or rebuilt?

21 responses



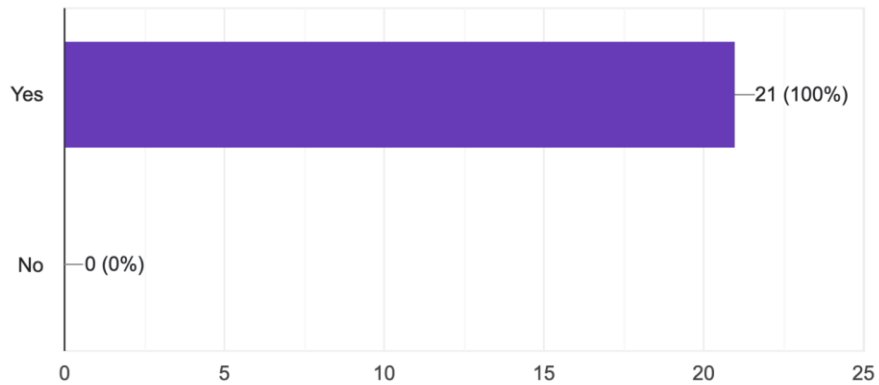
7. Does your city/town have long-term covenants for ADUs like those that regulate conventional low and very low-income housing units (e.g., tax-credits, voucher subsidized, or other)?

21 responses



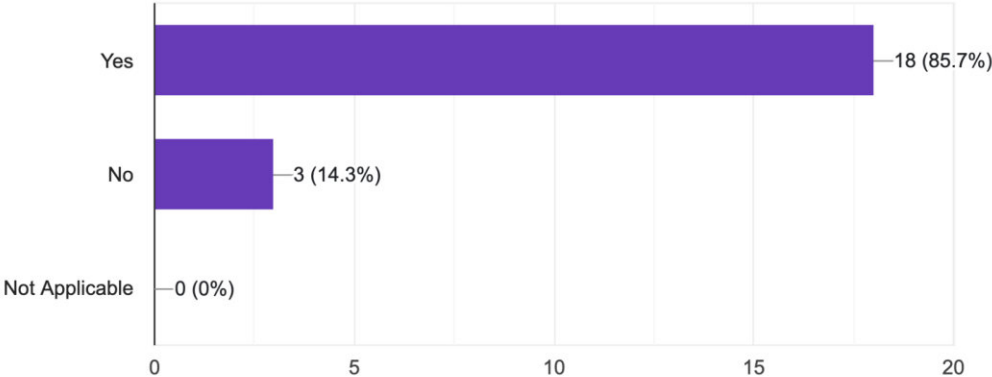
8. Does your city/town plan to include ADUs in its RHNA6 Housing Element submission?

21 responses



8A. If yes, will any of those ADUs be designated for very-low, low and moderate income, as defined by the U.S. Housing and Urban Development?

21 responses



APPENDIX B

Timeline of Important Legislative Events

1. 1970 — the Legislature directed HCD to develop guidelines for housing element preparation on one and five year cycles. SB 1489 (Moscone), emphasized housing need, passed in 1971, and ABX 1 of 1971 established more standards. The California Housing Finance Agency (CalHFA), which also assisted communities in providing affordable housing, was created in 1975. The legislation authorized HCD to review local housing elements for conformity to its guidelines.
2. 1976 — Fair-share was added to the guidelines by HCD. The COGs are now given the responsibility by HCD to distribute shares of low-income and moderate-income housing. The local housing element had to include these income requirements — whether or not communities wanted them. HCD also was given responsibility to review local housing elements. Statewide hearings in 1977 brought out a number of positions on housing elements and HCD requirements.
3. Mid 1980's — AB 2853 (Roos), provided for faster permit processing and higher densities, and allowed the housing element to meet State goals and be reviewed by HCD. COGs would continue to formulate the fair share for each community, but HCD had final approval of the numbers and each community was to revise its Housing Element every five years.
4. 1990s — Cities and counties looked at housing elements, if certified, as providing protection against lawsuits. In addition, this decade also created the concept of regional allocation “sharing burdens of lower- income households among geographic areas,” without mandated goals.
5. 1993 — The Senate Committee on Local Government held hearings on housing element progress and heard concerns that communities were not doing enough and that housing elements were despised by local governments. Bills changed the cycle timeframe, including AB 2172 (Hauser), SB 1703 (Costa) and SC 320 (Committee). Main topics for discussion by the Committee on Housing and Land Use hearings in 1995 were the housing allocations and the Department of Finance (DoF) projections. A common complaint was that the DoF projections were not complete enough for communities to develop appropriate allocations. The COGs projections also were criticized.
6. 1998 — AB 438 (Torlakson), allowing for the creation of sub-RHNA areas, looked at how housing units were counted. 2001 — SB 910 (Dunn) would have included imposing fines on jurisdictions not complying; and would have tied RHNA to transportation planning on a six year cycle. However, this bill did not pass. 2002 — SB 423 (Torlakson) created a jobs and housing balance incentive program, also known as Workforce Housing Incentive Program. In 2003, at HCD's request, a working group of stakeholders met to make recommendations, which included:
 - Develop more transparency in determining fair shares
 - Clarify land inventories of building sites
 - Ensure inventories were buildable
 - Increase HCD review consistency of local elements
 - Explore city self-certification
 - Devise better housing element enforcement that would penalize non-compliance.
7. 2004 — AB 2348 (Mullin) clarified the relationship between the land inventory and adequate sites requirement, provided guidance on the content of adequate land inventory, and provided greater development certainty. AB 2158 (Lowenthal) revised the process for determining allocation from just

DoF to include transportation planning numbers and created a review process.

8. 2005 — AB 1233 (Jones) assured that unmet need from previous RHNA cycles was added into the next cycle.
9. 2017 Housing Legislative Package
Approximately 150 housing bills were submitted in 2017. Fifteen relating to funding, streamlining and accountability, were signed by the governor. These bills significantly changed how RHNA is conducted, requiring additional outreach and reporting, increasing the number of factors included, and the ability of HCD to sue individual cities for not meeting requirements.

SB 2 (Atkins) Building Homes and Jobs Act is projected to generate hundreds of millions of dollars annually for affordable housing, supportive housing, emergency shelters, transitional housing, and other housing needs via a \$75 to \$225 recording fee on specified real estate documents.

SB 3 (Beall) Veterans and Affordable Housing Bond Act of 2018 places a \$4 billion general obligation bond on the November 2018 ballot to fund affordable housing programs and the veterans homeownership program (CalVet).

SB 35 (Wiener) streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category.

SB 35 city approval of a qualifying housing development on a qualifying site is a ministerial act, without need for CEQA review or public hearings.

AB 73 (Chiu) streamlines the housing approval process by allowing jurisdictions to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the ordinance.

SB 167 (Skinner), AB 678 (Bocanegra), and AB 1515 (Daly) are three measures that were amended late in the 2017 legislative session to incorporate changes to the Housing Accountability Act (HAA). The HAA significantly limits the ability of a jurisdiction to deny an affordable or market-rate housing project that is consistent with existing planning and zoning requirements.

AB 1505 (Bloom) allows a jurisdiction to adopt an ordinance that requires a housing development to include a certain percentage of rental units affordable to and occupied by households with extremely low, very low, low or moderate income.

AB 879 (Grayson) expands upon existing law that requires, by April 1 of each year, general law cities and charter cities to send an annual report to their respective city councils, the State Office of Planning and Research (OPR) and HCD that includes information related to implementation of the General Plan.

AB 1397 (Low) makes numerous changes to how a jurisdiction establishes its housing element site inventory.

AB 72 (Santiago) provides HCD broad new authority to find a jurisdiction's housing element out of substantial compliance if it determines that REGIONAL the jurisdiction fails to act in compliance with

its housing element and allows HCD to refer violations of law to the attorney general.

10. 2018 — SB 828 (Wiener) changed the way HCD determines each region's RHND, adding a number of new factors for consideration and accounting for "unmet need" in the existing housing stock by applying "adjustment factors" to a region's total projected households, not just the incremental housing growth.
11. 2018 — AB 1771 (Bloom) and AB 686 (Santiago) strengthened the mandate for regions and local governments to combat discrimination, overcome historic patterns of segregation, and create equal access to opportunity through housing planning and decision-making, in other words, to "affirmatively further fair housing." AB 1771 (Bloom) added to RHNA an enhanced focus on racial equity with an explicit mandate that COGs' housing distribution plans affirmatively further fair housing and required COGs to survey jurisdictions on their fair housing activities, to identify regional barriers to furthering fair housing, and to recommend strategies or actions to overcome those barriers. AB 686 (Santiago) created a mandate that local jurisdictions plan and administer housing and community development programs and activities in a manner that affirmatively further fair housing.
12. 2019 — AB 1486 (Ting) strengthened the Surplus Lands Act (SLA), which requires that local agencies provide right of first refusal to affordable housing developers when disposing of surplus land by expanding the scope of land subject to the right of first refusal requirement, updating the mechanics of the surplus land disposal process, extending HCD's enforcement mandate to include the SLA and establishing financial penalties for violation of the act.

AB 1487 (Chiu), authorized ABAG and MTC to place on the ballot regional housing measures to help fund affordable housing and established 3 REGIONAL HOUSING NEEDS ALLOCATION the Bay Area Regional Housing Authority. The 2019-20 State Budget also included significant new resources to support housing planning, including \$250 million for local governments and COGs for planning activities. The Bay Area is receiving approximately \$50 million in combined funds, split between ABAG and local jurisdictions.

SB 330 (Skinner) made further revisions to the HAA, establishing new criteria for housing approvals at the local level, including prohibiting a local agency from subjecting a project to new ordinances, rules or fees after an application is submitted and limiting the number of hearings on a project to five. The bill also prohibits a local agency from lowering the allowed residential density below that level in effect on January 1, 2018 in high rent, low-vacancy areas, as defined. The bill's provisions sunset in five years.

AB-881, "Accessory dwelling units," and AB-68, "Land use: accessory dwelling units": Makes many of the current restrictions that cities place on ADUs obsolete. It also provides for a streamlined process for approvals.

These bills require permits for ADUs added to single-family and multifamily homes to be approved or denied faster. Current law permits these decisions to take 120 days, but this new law requires decisions within 60 days. These approvals or denials must be issued ministerially, so that way, there are fewer potential issues to encounter. Cities and counties may establish minimum and maximum ADU size requirements, but the maximum size cannot be less than 850 square feet for a one-bedroom ADU or 1,000 square feet for more than one bedroom.

Most importantly, these bills prohibit any lot coverage, minimum lot size, etc. requirements that municipalities have. Cities have enacted these laws to have the effect of making it impossible to build an ADU. Cities cannot require the correction of nonconforming zoning conditions as part of the approval process.

SB-13 Accessory dwelling units are similar to AB-881 and AB-68 with a couple of significant differences. Before this bill, local agencies could require that the person applying for the ADU occupy either the primary residence or the proposed new structure. This bill exempts from these requirements all proposed ADUs until Jan. 1, 2025. Additionally, this bill removes the impact fee for ADUs smaller than 750 square feet. Even for ADUs larger than that, the impact fees assessed must correlate with the square footage of the primary residence.

SB-13 makes building ADUs cheaper and also removes an essential regulation. Now, landlords who rent their properties out can apply for an ADU for their rental properties.

AB-670, "Common interest developments: accessory dwelling units," makes it easier for people within HOA complexes to construct ADUs. Specifically, it prevents banning or unreasonably restricting on single-family lots on the construction of these units. Presently, many HOAs have CCRs ("conditions, covenants and restrictions") that prevent people from building ADUs. HOAs may worry about the uniformity of the properties if one has an ADU on it, or they might be concerned that they don't know who is and who isn't renting from an ADU. Regardless, HOAs now need to have a way for people to construct ADUs if they so choose.

HOAs will likely challenge this bill, at least to some degree, in court, but for now, if you live in an HOA complex with single-family homes, you can construct an ADU.

AB-671, "Accessory dwelling units: incentives," requires that general plans incentivize homeowners in some way to construct these ADUs and make them available for low-to-moderate-income households to rent. While it doesn't specify what these incentives will be, it does require local agencies to think about financial incentives and construct a plan.

APPENDIX C

ADUs: An American Tradition

Accessory dwelling units have been around for centuries, going by dozens of names over time, such as in-law apartment, guest house, granny flat, and carriage house.

The American Association of Retired Persons (AARP) traces the tradition of ADUs in the U.S. to early settlers who built small homes to live in while constructing their larger, primary house nearby. When farming was a source of survival for most of the nation's households, families commonly built additional homes on their property to live in during planting or harvesting seasons. Wealthy people with large lots frequently built secondary homes and other independent structures for household staff and guests.

Until the 20th century, there were few or no zoning rules restricting people with land from building as many homes as they wished on their land.

According to AARP a historic precedent for the modern ADU is the carriage house, or coach house, intended for horse-drawn carriages, and often large enough to include living quarters for workers.

Many years later, in response to housing shortages and economic needs, carriage houses were converted into rental homes. Garages have a similar history, and over time, many have been converted – often illegally – into small living spaces.

During World War II, for example, the Bay Area experienced a defense boom that created a high demand for workforce housing, resulting in many illegally constructed second units. By 1960, San Francisco counted between 20,000 to 30,000 secondary units, of which 90 percent were built illegally, according to the San Francisco Planning and Urban Research Association.

With the rise of suburban single-family home developments in the 1950s and 1960s ADUs practically stopped being built legally because zoning codes typically allowed only one home per lot.

Since then, some cities have grandfathered in pre-existing ADUs if the residences remained consistently occupied. But even today, many communities still don't allow new ADUs.

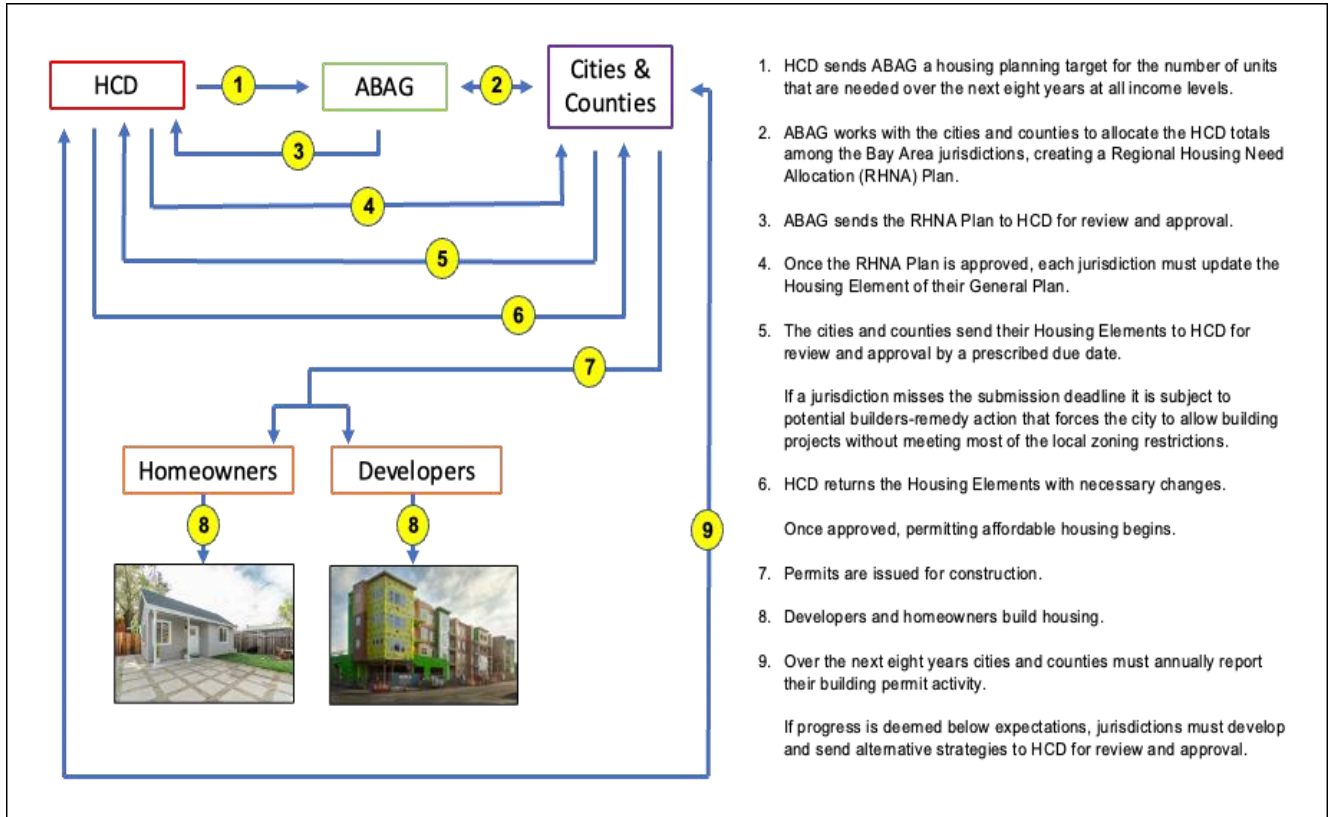
ADUs became popular again in the 1980s as cities looked for new sources of smaller and more affordable housing. And most recently, there's been increasing interest at the state and local levels in legalizing and encouraging the construction of ADUs, driven by the high cost of housing.

What is an ADU?

- An ADU is a small residence that shares a single-family lot with a larger, primary dwelling.
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. An ADU can be located within, attached to or detached from the main residence.
- An ADU can be converted from an existing structure (such as a garage) or built anew.
- ADUs can be found in cities, in suburbs and in rural areas, yet are often invisible from view because they're positioned behind or are indistinct from the main house.
- Because ADUs are built on single-family lots as a secondary dwelling, they typically cannot be partitioned off to be sold separately.
- An ADU can provide rental income to homeowners and an affordable way for renters to live in single-family neighborhoods.
- An ADU can enable family members to live on the same property while having their own living spaces — or provide housing for a hired caregiver.
- Unlike tiny houses, ADUs are compact but not teeny, so they're a more practical option for individuals, couples and families seeking small, affordable housing.
- For homeowners looking to downsize, an ADU can be a more appealing option than moving into an apartment or, if older, an age-restricted community.
- ADUs can help older residents remain in their community and age in place.

Source: AARP, 2019

APPENDIX D Housing Elements Are an Iterative Process





Wednesday, July 26, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of Belmont to the San Mateo County Civil Grand Jury Report
"Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Honorable Judge Fineman:

The City of Belmont appreciates the opportunity to review and provide comments on the above referenced Grand Jury Report filed on June 12, 2023. The City of Belmont's response to both the findings and recommendations are outlined below.

Response to Grand Jury Findings:

Finding 1: Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The City of Belmont agrees with this finding.

Finding 2: San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The City of Belmont disagrees with this finding. If the finding indicated that "San Mateo County and most of its municipalities include ADUs to meet their affordable housing commitments in their RHNA-6 plans," then the City of Belmont would agree with the finding. Belmont is required to plan for a housing allocation of 1,785 units. The City of Belmont's anticipated (to be adopted) Housing Element plans for 2,472 units. The portion of the City's housing allocation that consists of ADUs is 80. If circumstances result in no ADUs being built in the planning period, the City could still meet its required housing allocation.

Finding 3: Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: Not applicable: Belmont is not named in this finding and therefore has no comment.

Finding 4: HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: The City of Belmont partially agrees with this finding. Belmont does not expect HCD to specify how to verify the income levels of ADU occupants. Additionally, HCD is only asking for verification at the initial time of occupancy. Belmont is planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

Finding 5: Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The City of Belmont agrees with this finding. San Mateo County jurisdictions met in June 2023 to discuss potential strategies for monitoring ADU affordability levels. Belmont is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

Finding 6: Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: The City of Belmont disagrees with this finding. As noted previously, Belmont included 80 ADUs as part of a total 2,472 unit plan that fulfills the required 1,785 unit allocation. Theoretically, the City of Belmont can still fully meet its RHNA obligations for every affordability category without a low-income ADU being provided. In addition, and as stated above, Belmont is planning to support a regional approach to monitoring ADU affordability.

Finding 7: ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: The City of Belmont agrees with this Finding. For a cost, ADU affordability and occupancy could be monitored. The question facing jurisdictions that do not have a high proportion of ADUs in their housing allocations is how much of the limited public funds available should go toward monitoring of a small number of units, or toward efforts that can have a greater impact for more lower-income households. As a resource for the level of effort needed, HIP is one potential partner agency.

Response to Recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. While Belmont shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process of multiple years of public input and revisions. Belmont will be forwarding a final submission to HCD in September 2023. It is not feasible for Belmont to make a major change to our housing policy this late in the process. However, Belmont is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. Belmont is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. Belmont will have this monitoring program in place for future Housing Element cycles.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: Part of the recommendation has yet to be implemented but will be implemented in the future. However, part of the recommendation is not warranted. Belmont agrees that it is important to have high quality information about who is living in ADUs. Belmont will participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in

January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: This recommendation has yet to be implemented but will be implemented in the future. Belmont agrees with the goal of adopting an affordable ADU program. Belmont is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the city, have been researching best practices. The draft work plan for the nonprofit calls for program offerings to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: The recommendation requires further analysis. Belmont is committed to furthering affordable housing. Since ADUs are a relatively small portion of Belmont’s allocation, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law. Belmont will continue to work with the 21 Elements group regarding potential monitoring programs. However, the City will focus its efforts on working with HCD to receive certification of its Housing Element, including how to monitor and incentivize all housing types, including but not limited to ADUs, in a manner and timeline that satisfies HCD.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. While Belmont agrees with the importance of an accurate distribution formula, given

the relative small size of our city, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. Belmont is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

The ABAG assumptions are based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing; the data was aggregated to reduce the margin of errors. The margin of error would be too large if only a dozen or couple of dozen households are surveyed. There is also no evidence in the data to suggest significant variation from city to city. The recommendations for an affordability distribution of 30/30/30/10 (very low, low, moderate, above-moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

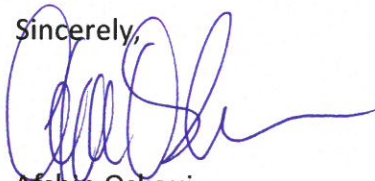
Moreover, since ADUs are a relatively small portion of the Belmont's allocation, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: The recommendation requires further analysis. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement a range of policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3. Belmont will also work with HCD to ensure compliance with housing laws and will continue to work with 21 Elements on potential collaborative efforts to address housing issues such as those raised by the Grand Jury report.

This response was approved by the Belmont City Council at a public meeting on July 25, 2023.

Sincerely,



Afshin Oskoui
City Manager



CITY OF BRISBANE
50 Park Place
Brisbane, California 94005-1310
(415) 508-2100

September 8, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianaca Fasuescu
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?

Dear Honorable Nancy L. Fineman and members of the Grand Jury,

This letter is in response to the 2022-2023 Grand Jury report of June 12, 2023 which contained findings and recommendations pertaining to the City of Brisbane. Listed below are the Jury's findings and recommendations followed by the City of Brisbane's responses, as reviewed and approved by the Brisbane City at a public meeting on September 7, 2023.

The San Mateo County 2022-2023 Grand Jury makes the following findings (F1 through F7) to the City Councils of the cities of San Mateo County:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

RESPONSE: *The City of Brisbane agrees with this finding.*

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

RESPONSE: *The City of Brisbane partially agrees with this finding. While the City of Brisbane counts ADUs to meet affordable housing commitments under RHNA, it is one of many strategies. Specifically, the City of Brisbane has a total affordable housing RHNA of 803 units and ADUs make up only 36 of these, or less than five percent of our total. Additionally, the City of Brisbane's*



adopted and certified 2023-2031 Housing Element contains the following programs, that will be implemented within the next eight years, to meet our affordable housing commitments:

- *Develop an affordable housing policy to promote the distribution of affordable housing equitably across the City (program 1.B.1);*
- *Require an affordable housing plan as part of the approval for development at the Baylands (program 2.A.2);*
- *Grant priority water and sewer service to housing with units affordable to lower-income households (program 2.B.6);*
- *Amend the Density Bonus Ordinance to allow for both greater bonuses and bonuses for small projects that would not otherwise qualify under State law (program 2.C.1);*
- *Evaluate methods to subsidize the cost of affordable and/or special needs housing development (program 2.D.1);*
- *Adopt and implement an Affordable Housing Strategic Plan (AHSP) that includes the following components (program 2.E.1):*
 - I. Identifies programmatic funding goals, objectives, and priorities;*
 - II. Evaluates and prioritizes new ongoing revenue streams for affordable housing development;*
 - III. Evaluates preferences for current Brisbane residents in new special needs and affordable housing; and*
 - IV. Engages community stakeholders, including landowners, affordable housing developers, and lower-income households within Brisbane and San Mateo County to identify opportunities for affordable housing development.*
- *Update the Inclusionary Housing Ordinance to consider in-lieu fee alternatives for for-sale developments that may provide additional affordable housing revenue to the City (program 2.E.4);*
- *Amend the Zoning Ordinance to require a higher minimum (20 percent) of new units in certain zoning districts be affordable to lower income households (program 2.E.4);*
- *Adopt an ordinance establishing and imposing a nexus fee applicable to new commercial development to fund affordable housing development (program 2.E.5);*
- *Study vacant and/or underutilized City-owned parcels for use as affordable and/or special needs housing sites (program 2.E.6);*
- *Develop relationships with nonprofit housing development corporations to maximize affordable housing opportunities within Brisbane (Program 2.F.2);*



- Evaluate the potential for the City to acquire vacant sites and underdeveloped properties within the City to land-bank for future affordable housing projects (program 2.F.3);
- Establish how City funding sources will be used to subsidize development costs in residential and mixed-use projects to encourage inclusion of more affordable housing units than required by the City's Inclusionary Housing Ordinance (program 2.F.4);
- Implement affordable housing preservation and management policies identified within the AHSP (program 3.A.1).
- Amend the Zoning Ordinance to require one-to-one replacement of deed-restricted affordable housing units converted to market-rates (program 3.A.5);
- Amend the Inclusionary Housing Ordinance to extend the required timeframe of affordability covenants on new affordable housing development (program 4.A.11); and
- Implement preservation policies identified in the AHSP (program 4.B.2).

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

RESPONSE: *Not applicable. The City of Brisbane is not named in this finding and therefore has no comment.*

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

RESPONSE: *The City of Brisbane partially agrees with this finding. The City of Brisbane did not receive comments from HCD requiring the City to specify how to verify the income levels of ADU occupants prior to their certification of our 2023-2031 Housing Element. However, program 3.A.3 of the City of Brisbane's adopted and certified Housing Element stipulates the City will annually survey rental rates for permitted ADUs to ensure their affordability to lower-income households are at the ratios assumed within the Housing Element. It further states that if survey results show that ADUs are being rented at levels that are not affordable to low-income households at the ratios assumed, the City will provide targeted outreach to homeowners regarding tenant placement assistance provided by HIP Housing (program 4.A.9). Finally, the City of Brisbane is in support of a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.*



F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

RESPONSE: *The City of Brisbane agrees with this finding. As certified by HCD, program 3.A.3 of the City of Brisbane’s adopted Housing Element specifies how the City of Brisbane will monitor and verify ADU production annually.*

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

RESPONSE: *The City of Brisbane agrees with this finding. As stated above, the City of Brisbane is committed to annually surveying rental rates for permitted ADUs to ensure their affordability to lower-income households are at the ratios assumed in our adopted and certified 2023-2031 Housing Element and the City of Brisbane supports a regional approach to monitoring ADU affordability.*

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

RESPONSE: *The City of Brisbane agrees with this finding. HIP is one potential partner agency and the City of Brisbane’s adopted and certified 2023-2031 Housing Element contains a number of programs that leverage assistance and resources offered by HIP Housing.*

The San Mateo County 2022-2023 Grand Jury made a number of recommendations to the City Councils of the cities of San Mateo County. The Grand Jury requested responses from the City of Brisbane regarding R1, R2, R3, R4, R5, and R6.

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU’s will be used.

RESPONSE: *The recommendation will not be implemented because it is not warranted. While the City of Brisbane shares the Civil Grand Jury’s goal to increase ADU affordability monitoring, the City of Brisbane has an adopted and certified 2023-2031 Housing Element that was developed*



through a rigorous process of multiple years of public input and revisions and ADUs account for less than five percent of our required affordable units. It is not reasonable to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals when, over the last five years, 67% of survey respondents to the City's annual rental rate survey have indicated their ADU is rented at a rate that is considered affordable, based on the income limits established by the U.S. Department of Housing and Urban Development (HUD) for San Mateo County, suggesting ADUs are rented at affordable levels within the City of Brisbane. Furthermore, the City's certified Housing Element already articulates how the City will monitor and verify ADU production or affordability, including what action to take should the affordability ratios differ from that assumed within the Housing Element, and contains a number of strategies to meet our affordable housing needs under RHNA.

The City of Brisbane is committed to complying with State housing law and supporting the development of an effective regional ADU monitoring program that will be operated by 21 Elements or ABAG. The City of Brisbane also supports the development of a new ADU nonprofit with programs to incentivize the production of affordable ADUs in San Mateo County. The City expects to have this monitoring program in place for future Housing Element cycles.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

RESPONSE: *The recommendation has been implemented for the City of Brisbane. The city has been, and will continue per Housing Element program 3.A.3, to annually survey rental rates (and occupancy) for permitted ADUs within the City to ensure their affordability to lower-income households are at the ratios assumed in our adopted and certified 2023-2031 Housing Element. The City of Brisbane has also committed to act accordingly should the ratios differ from those assumed.*

The City of Brisbane agrees that it is important to have high quality information about who is living in ADUs so the City will also participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. However, due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU within the county.



R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

RESPONSE: *This recommendation has yet to be implemented but will be implemented in the future. The City of Brisbane agrees with the goal of adopting an affordable ADU program. The City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the City, has been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy, if possible. Additionally, programs 2.D.1, 2.D.2, 2.E.2 and 2.E.3 of the City's adopted and certified 2023-2031 Housing Element, planned to be implemented between Fall 2023 and January 2025, aim to reduce construction costs and identify private and public funding sources specifically for the construction of affordable ADUs.*

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

RESPONSE: *This recommendation has yet to be implemented but will be implemented in the future. As part of the ABAG or 21 Elements ADU monitoring program (also referenced in response to R2), the City of Brisbane will track the intended use of ADUs during the permitting process. The monitoring is projected to launch in January 2025. Additionally, the City of Brisbane supports the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in exchange for affordability requirements, such as deed restrictions, in San Mateo County.*

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

RESPONSE: *The recommendation will not be implemented because it is not warranted or is not reasonable. While the City of Brisbane agrees with the importance of an accurate affordability distribution formula, given the relatively small size of Brisbane, a more meaningful distribution*



formula can be attained by collecting data on ADUs constructed across multiple jurisdictions. The City of Brisbane's adopted and certified 2023-2031 Housing Element specifies a ratio of affordability to lower-income ADU households utilizing the UC Berkeley study which surveyed thousands of homeowners statewide with repeat mailing and data that was aggregated to reduce the margins of errors. Furthermore, the recommendations of the UC Berkeley study (30 very low/30 low/30 moderate/10 above moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed, and there is no evidence in the data to suggest significant variation from city to city.

Additionally, the City of Brisbane is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels within San Mateo County.

R6. *San Mateo County and each City should consider working together to address Recommendations 2 and 3.*

RESPONSE: *This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs within the county and San Mateo County jurisdictions are already working together to address recommendations R2 and R3. The City of Brisbane is one of many San Mateo County jurisdictions planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements and supports the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County.*

On behalf of the City of Brisbane, I would like to thank the members of the Grand Jury for their efforts.

Sincerely,

Madison Davis
Mayor



MICHAEL BROWNRIGG, MAYOR
DONNA COLSON, VICE MAYOR
EMILY BEACH
RICARDO ORTIZ
PETER STEVENSON

The City of Burlingame

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August 21, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: City of Burlingame's Response to Civil Grand Jury Report Entitled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman:

After reviewing the Grand Jury Report entitled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" the following are the City of Burlingame's responses to the Grand Jury's findings.

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

The City agrees with this finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

The City partially agrees with the finding. If the finding read "San Mateo County and most of its municipalities include ADUs to meet their affordable housing commitments in their RHNA-6 plans," then the City of Burlingame would agree with the finding. While Burlingame counts ADUs to meet affordable housing commitments in RHNA, it is one of many strategies. Specifically, Burlingame has a total lower income housing RHNA of 1,889 units, and ADUs make up only 150 (8%) of these.

Additionally, Burlingame has or is developing programs such as:

- An updated General Plan that greatly increased residential density, which allows for housing that is naturally more affordable
- Use of housing trust funds to support 100% affordable housing developments
- Streamlined permitting processes for affordable housing

The Honorable Nancy L. Fineman
August 21, 2023
Page 2

- Zoning requirements that facilitate a certain percentage of new units be rented affordably
- Commercial linkage fees to fund new affordable housing

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Not applicable: Burlingame is not named in this finding and therefore has no comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

The City partially agrees with the finding. We do not expect HCD to specify how to verify the income levels of ADU occupants. Burlingame is planning on supporting a regional ADU monitoring effort through the Association of Bay Area Governments (ABAG) or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

The City agrees with this finding. San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. Burlingame is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

The City partially agrees with this finding. As noted previously, the City of Burlingame includes 150 ADUs in its Housing Element towards fulfillment of the required 1,889 allocation of lower income units. Theoretically, the City of Burlingame can still fully meet its RHNA obligations for every affordability category without a low-income ADU being provided if multifamily developments provide more affordable units than projected. With the exception of ADUs, below market units in Burlingame are subject to annual monitoring through the City's housing management vendor. However, as stated above, Burlingame is planning to support a regional approach to monitoring ADU affordability.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

The City agrees with this finding. HIP is one potential partner agency.

The following are the City of Burlingame's responses to the Grand Jury's recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

□ Register online with the City of Burlingame to receive regular City updates at www.burlingame.org/enews. □

The Honorable Nancy L. Fineman
August 21, 2023
Page 2

The recommendation will not be implemented because it is not warranted or is not reasonable. While Burlingame shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise the City's Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process of multiple years of public input and revisions. Burlingame has already submitted its second draft to HCD; and the draft follows HCD guidance on designating the affordability of ADUs. However, Burlingame is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program that will be operated by 21 Elements or ABAG. Burlingame is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The City will have this monitoring program in place for future Housing Element cycles.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Part of the recommendation has yet to be implemented but will be implemented in the future. However, part of the recommendation is not warranted. Burlingame agrees that it is important to have high quality information about who is living in ADUs. The City will participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

This recommendation has yet to be implemented but will be implemented in the future. Burlingame agrees with the goal of adopting an affordable ADU program. The City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions, and 21 Elements, working on behalf of the City, has been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to R2, Burlingame will track the intended use of ADUs. The City already offers streamlined permitting for ADUs and ADU low permit fees, so it is not clear what incentives would be effective beyond offering direct financial support, which can be considered. However, deed restrictions are likely to be a deterrent to ADU production, given owners' reluctance to place encumbrances on their properties.

The Honorable Nancy L. Fineman
August 21, 2023
Page 2

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

The recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of Burlingame, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. Burlingame is supporting the creation of an ADU monitoring program through 21 Elements or ABAG that will collect data that can be used to revise the distribution formula based on actual observed income levels.

ABAG provides guidance on an ADU affordability distribution formula based on a study prepared in 2021 by the Turner Center for Housing Innovation at the University of California at Berkeley. The study surveyed thousands of homeowners statewide with repeat mailings, and the data was aggregated to reduce the margin of error. There was no evidence in the data to suggest significant variation from city to city. The study's recommended affordability breakdown that a Bay Area jurisdiction can use for ADUs, which is noted as being conservative, is 30% very low, 30% low, 30% moderate, and 10% above moderate. The recommendations of 30/30/30/10 had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3.

The Burlingame City Council approved this response letter at its public meeting on August 21, 2023.

Sincerely,



Michael Brownrigg
Mayor

c: Kevin Gardiner, Community Development Director



CITY OF DALY CITY

333-90TH STREET

DALY CITY, CA 94015-1895

August 16, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice - 400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of Daly City to the San Mateo County Civil Grand Jury Report
"Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman,

Thank you for the opportunity to respond to the Grand Jury report entitled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" The City of Daly City's response to the findings and recommendations of the report are listed below.

Response to Findings:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: Agree.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: Disagree. The City of Daly City includes ADUs to meet its affordable housing commitment, but it does not rely on it. As indicated in the City's Housing Element submitted to HCD, of the 4,838 units in the City's RHNA, the City is projecting only 503 ADUs. The City projects that only about 30% of the City's Low and Very Low Income Units will be met with ADUs. Additionally, the City has the following programs to help meet our affordable housing goals: rezoning to allow for increased density, use of housing trust funds to support affordable housing developments, an inclusionary housing ordinance requiring below market rate units in market rate developments, and streamlined permitting processes for affordable housing.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: No comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: Disagree. The City of Daly City has not received such instruction. For clarity, HCD requires *all* California jurisdictions report on *all* housing production.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: Agree. The City of Daly City recently submitted its Housing Element to HCD and is awaiting HCD comments. The City of Daly City committed to provide reasonable ADU monitoring and reporting to HCD's satisfaction.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: Disagree. The RHNA-6 obligation is to plan for housing at different affordability levels; it is not an obligation to ensure that the units are actually built since market forces, outside of the jurisdiction's control, influence housing production. The jurisdiction has the obligation to remove governmental constraints to facilitate housing production.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: Agree. For a cost, ADU affordability and occupancy could be monitored. The question facing jurisdictions that do not have a high proportion of ADUs in their housing allocations is how much of the limited public funds available should go toward monitoring of a small number of units, or toward efforts that can have a greater impact for more lower-income households.

Response to Recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Daly City is committed to improving housing affordability and housing conditions in the City and meeting State law. HCD allows a jurisdiction to include pipeline projects, ADUs and the site inventory in its housing allocation. The City of Daly City includes all potential housing types in the Housing Element. The City of Daly City will monitor ADUs to HCD's satisfaction.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: The recommendation requires further analysis. The City of Daly City will work with HCD to receive certification of the Housing Element, including responding to HCD's comment about monitoring all types of housing production, including ADUs. The City has concerns that a verification system of how ADUs are used may act as a constraint and deter prospective homeowners from actually building ADUs.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: The recommendation requires further analysis. The City of Daly City will work with HCD to receive certification of the Housing Element, including how to monitor and incentivize all types of housing production, including ADUs, to the extent necessary as determined by HCD, on a timeline that satisfies HCD.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: The recommendation requires further analysis. The City of Daly City is committed to furthering affordable housing. Since ADUs are a relatively small portion of the City's allocation, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law. The City of Daly City will work with HCD to receive certification of the Housing Element, including how to monitor and incentivize all housing types, including but not limited to ADUs, in a manner and timeline that satisfies HCD.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Daly City will work with HCD to ensure compliance with housing laws. If HCD accepts the ABAG affordability assumptions for ADUs, then the City of Daly City will utilize those assumptions. The ABAG assumptions are based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing and the data was aggregate to reduce the margin of errors. The margin of error would be too large if we are only surveying a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations for an affordability distribution of 30/30/30/10 (very low/low/moderate/above-moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

Since ADUs are a relatively small portion of the City's allocation, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

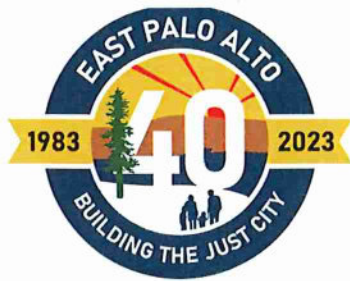
Response: The recommendation requires further analysis. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement a range of policies and programs in the county, including housing issues. The City of Daly City will work with HCD to ensure compliance with housing laws and is open to working with 21 Elements on potential collaborative efforts to address housing issues such as those raised by the Grand Jury report. Since ADUs are a relatively small portion of the City's allocation, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

This response was approved by the Daly City City Council at a public meeting on August 14, 2023.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raymond A. Buenaventura".

Raymond A. Buenaventura
Mayor



CITY OF EAST PALO ALTO

Office of the City Manager

2415 University Avenue
East Palo Alto, CA 94303

Phone: (650) 853- 3118
Fax: (650) 853-3136

Web: www.cityofepa.org
Email: cmoffice@cityofepa.org

Honorable Nancy L. Fineman
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Dear Honorable Nancy L. Fineman,

The Council of the City of East Palo Alto voted at its public meeting on September 5, 2023, to authorize the attached response to the San Mateo County Civil Grand Jury Report, "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication" released on June 12, 2023. The attached letter is the City's response to the Report. Also attached is a signed copy of the Resolution authorizing the City Manager to submit a response letter to you. If there are any questions, please do not hesitate to contact my office or Alvin Jen, Associate Planner, at ajen@cityofepa.org or (650) 853-3128.

Sincerely,

A handwritten signature in cursive script that reads "Melvin E. Gaines".

Melvin E. Gaines, City Manager



CITY OF EAST PALO ALTO

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Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 8th Floor
Redwood City, CA 94063-1655

RE: Grand Jury Report: "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman:

The City Council of the City of East Palo Alto voted at its public meeting on September 5, 2023, to authorize this response to the San Mateo County Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication" released on June 12, 2023. The City's response to the findings and recommendations of the report are listed below.

Finding #1 Due to the recent changes in California ADU-replated laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The City of East Palo Alto agrees with this finding.

Finding #2 San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The City of East Palo Alto partially agrees with this finding. At the outset, the City of East Palo Alto notes its response should not be construed as a criticism about the over-reliance of other cities in the County on Accessory Dwelling Units (ADUs) to meet their Regional Housing Needs Allocation (RHNA). Furthermore, reliance within the County on this strategy may vary considerably. For East Palo Alto's part, the use of ADUs in this way is not substantial and certainly does not rise to the level of prevarication, especially given the City's pro-housing and housing affordability track record, in addition to its commitment to do its part in helping solve the region's affordability crisis for its own residents and that of the County. While the City of East Palo Alto

counts ADUs toward meeting its RHNA numbers, this approach is permitted by law, modestly used, and is simply one among many strategies. Specifically, the City has a total extremely low-, very low-, low-, and moderate-income RHNA of 419 units, and planned ADUs make up only 25 percent of these.

Additionally, the City of East Palo Alto has or plans to develop the following programs to boost the region's affordable housing:

- Revising our zoning codes to allow for increased density, which allows for housing that is naturally more affordable.
- Use of housing trust funds to build or finance more affordable housing.
- Streamlined permitting processes for affordable housing.
- Strengthening inclusionary zoning requirements that require a certain percentage of new units to be rented affordably.
- Commercial impact fees used to build or finance affordable housing projects.
- Incentives and zoning changes to encourage the production of ADUs.

Finding #3 Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: The City of East Palo Alto lacks information to agree or disagree with this finding and on that basis disagrees with it. The City of East Palo Alto is not named in this finding and as such has no comment but because California Penal Code Section 933 does not provide for such nuance, the City of East Palo Alto must respond with disagreement.

Finding #4 California Department of Housing and Community Development (HCD) has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low-, or moderate-income households are occupying the ADUs as planned.

Response: The City of East Palo Alto partially agrees with this finding. HCD has indeed asked jurisdictions to verify future ADU production and affordability every two years; however, HCD is only asking for verification at the initial time of occupancy. The City of East Palo Alto is planning to support a regional ADU monitoring effort through Association of Bay Area Governments (ABAG) or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County. The City of East Palo Alto may also explore other means of monitoring and verification, subject to staffing levels and costs.

Finding #5 Other than Brisbane and Redwood City, San Mateo County, and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The City of East Palo Alto partially agrees with this finding. San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. The City of East Palo Alto is planning to support a regional ADU monitoring

effort through ABAG or 21 Elements. The City of East Palo Alto also has already committed to exploring a local program for frequent monitoring of ADU construction and affordability. Additionally, the City of East Palo Alto has ADU policies and programs in the 2023-2031 6th Cycle Housing Element that commit to reporting on ADU production as part of our annual Housing Element progress reports. This report will provide the number of building permits permitted for ADUs. The City of East Palo Alto, however, does not have any policies or programs to track ADU affordability.

Finding #6 Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for very low-, low-, and moderate-income housing units.

Response: The City of East Palo Alto generally agrees with this finding. The key purpose of the Report is that HCD's 30-30-30-10 formula, used by most jurisdictions in the County, does not mirror a jurisdiction's actual allocation to categories from very low-, low-, and moderate-income levels. As stated above, the City of East Palo Alto is planning to support a regional approach to monitoring ADU affordability in addition to making local changes within the City.

Finding #7 ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: The City of East Palo Alto agrees with this finding. HIP Housing is one potential partner agency. The City is committed to addressing this issue with the resources it requires, which will depend on the magnitude of the problem within its jurisdictional bounds.

Response to Recommendations in the Grand Jury Report

Recommendation #1 San Mateo County and each city should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADUs will be used.

Response: The recommendation will not be implemented because it may not be necessary or reasonable. While the City of East Palo Alto shares the Civil Grand Jury's goal to increase ADU affordability monitoring, this recommendation is not a one-size fits all approach. While the Report's data does merit studying the issues raised therein further, it does not contain data specific to the City of East Palo Alto indicating that the City's use of ADUs in fact exacerbates patterns of segregation and exclusion within our community. For example, the Report notes that exacerbation of those issues could happen if "minorities are underrepresented among homeowners". As a primarily minority community, it would seem prudent to explore this level of underrepresentation first and then calibrate a response accordingly.

At this late stage, it may not be prudent or feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The City of East Palo Alto's Housing Element

was developed through a rigorous process of multiple years of public input and revisions. Furthermore, the City is close to obtaining a compliance letter from HCD. As such, it is simply neither wise nor feasible for us to make a major change to our housing policy this late in the process. Nevertheless, the City of East Palo Alto is committed to following the State's Housing Law and supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. As noted earlier, the City of East Palo Alto has already committed to exploring a local program for frequent monitoring of ADU construction. Finally, the City is also supporting the development of a new ADU non-profit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The City will aim to have this monitoring program in place for future Housing Element cycles.

Recommendation #2 By February 1, 2024, San Mateo County and each city should develop, adopt, and implement a verification system capable of monitoring and verifying how new developed ADUs are being used.

Response: Part of the recommendation has yet to be implemented but will be in the future. However, part of the recommendation is not warranted. The City of East Palo Alto agrees that it is important to have high quality occupancy data for ADUs. As noted earlier, the City plans to participate in the 21 Elements or ABAG ADU monitoring system, in addition to exploring its own. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. The City's primary concern is the dearth of resources to fund and implement ADU verification and monitoring activities. The City has long struggled to provide and maintain the level of service the community deserves with its limited resources. Whatever local monitoring solution the City chooses to pursue must be sustainable. The City will need to maintain funds and personnel to oversee and implement any such program. Leaving aside potential homeowner privacy concerns, the City is mindful of the costs of engaging with thousands of homeowners every year and whether that poses a practical barrier to having an ongoing verification system that checks the income of every resident of every ADU in the City.

Recommendation #3 By February 1, 2024, San Mateo County and each city should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: This recommendation has yet to be implemented but will be in the future. The City of East Palo Alto agrees with the goal of adopting an affordable ADU program. The City has already welcomed legislative changes that liberalize the approval process for ADUs and taken liberal interpretations, where appropriate. However, the City of East Palo Alto would note that this liberalization moves ADU approval closer to a by-right land use, which leaves less room for cities and counties to exact or incentivize (using land use incentives), for example, affordability restrictions.

Additionally, the City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions, which is being coordinated through 21 Elements. 21 Elements has been working on behalf of the City and researching best practices to encourage the development of

ADUs. The draft work plan for the non-profit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

Recommendation #4 By February 1, 2024, San Mateo County and each city should track the intended use of ADUs – rented or non-rented – during the permitted process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to Recommendation #2 (R2), the City of East Palo Alto will track the intended use of ADUs. The City will explore developing an incentive program that offers incentives in exchange for affordability requirements such as deed restrictions. However, as noted in R3 above, the State legislative changes may provide a greater benefit than the City's resource challenged ability to offer land use incentives to encourage deed restrictions. Furthermore, a more effective means may lie elsewhere; offering a tax incentive to homeowners who rent their ADUs at deep affordability levels. The City would support such a legislative effort at the State level.

Recommendation #5 By April 1, 2024, San Mateo County and each city should develop and adopt a new ADUs affordability distribution formula specific to each jurisdiction to the extent that are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA Housing Elements.

Response: This recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of the City of East Palo Alto, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The City is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

The City of East Palo Alto does not believe the current data suggests amending the current formula of 30-30-30-10. The UC Berkeley study upon which the Report's findings were based, surveyed thousands of homeowners statewide with repeat mailing. The data was aggregated to reduce the margin of errors. If the City were to follow this recommendation, it is not clear we could achieve the same margin of error. It would be likely too large given the likely smaller numbers of households to be surveyed. The City is aware of no data that suggests significant variation from city to city. It is the City of East Palo Alto's understanding that the 30-30-30-10 formula was crafted to have significant cushion built in to ensure cities did not inadvertently underproduce the amount of housing needed.

Recommendation #6 San Mateo County and each city should consider working together to address Recommendations 2 and 3.

Response: This recommendation has been implemented. San Mateo County jurisdictions have and will continue to work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address Recommendations 2 and 3.

The City of East Palo Alto plans to participate in the shared ADU nonprofit and other regional endeavors to address these issues as appropriate.

This response was approved by the City of East Palo Alto City Council at a public meeting on September 5, 2023.

Sincerely,



Melvin E. Gaines
City Manager
City of East Palo Alto

RESOLUTION NO. 79-2023

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO

AUTHORIZING THE CITY OF EAST PALO ALTO CITY MANAGER TO SUBMIT A RESPONSE LETTER TO THE HONORABLE NANCY L. FINEMAN, JUDGE FOR SAN MATEO COUNTY SUPERIOR COURT, RELATING TO THE SAN MATEO COUNTY CIVIL GRAND JURY REPORT TITLED "ACCESSORY DWELLING UNITS: AFFORDABLE HOUSING'S PANACEA OR PREVARICATION?" DATED JUNE 12, 2023

WHEREAS, a city's responsibility related to Grand Jury reports is governed by California Penal Code Section 933 et seq. In relevant part, a legislative body's response is due within 90 days from release of the report. Failure to timely respond may lead to further investigation on the subject matter of the report; and

WHEREAS, on June 12, 2023, the San Mateo County Superior Court Executive Officer Mr. Neal Taniguchi sent a letter to the City Manager of East Palo Alto providing a copy of the San Mateo County Civil Grand Jury Report titled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" and requesting the City's response to the report by September 11, 2023; and

WHEREAS, at the September 5, 2023, City Council meeting, the City Council considered the San Mateo Grand Jury Report and authorized the City Manager to transmit the City's response to the Grand Jury; and

WHEREAS, City staff recommends updating the City's response to the Grand Jury report to reflect Council direction, as necessary.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Accepts the staff report on the San Mateo County Civil Grand Jury report entitled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"; and
2. Authorizes the City Manager to submit on behalf of the City a response letter, attached hereto as Exhibit A, and incorporated herein by this reference, to the San Mateo County Civil Grand Jury's report.

PASSED AND ADOPTED this 5th day of September 2023, by the following vote:

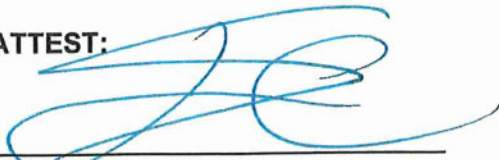
AYES: ABRICA, GAUTHIER, LOPEZ, ABRICA

NOES:

ABSENT: BARRAGAN

ABSTAIN:

ATTEST:


James Colin, City Clerk


Lisa Gauthier, Mayor

APPROVED AS TO FORM:


John Lê, City Attorney

EXHIBIT A



Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 8th Floor
Redwood City, CA 94063-1655

RE: Grand Jury Report: "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman:

The City Council of the City of East Palo Alto voted at its public meeting on September 5, 2023, to authorize this response to the San Mateo County Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication" released on June 12, 2023. The City's response to the findings and recommendations of the report are listed below.

Finding #1 Due to the recent changes in California ADU-replated laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The City of East Palo Alto agrees with this finding.

Finding #2 San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The City of East Palo Alto partially agrees with this finding. At the outset, the City of East Palo Alto notes its response should not be construed as a criticism about the over-reliance of other cities in the County on Accessory Dwelling Units (ADUs) to meet their Regional Housing Needs Allocation (RHNA). Furthermore, reliance within the County on this strategy may vary considerably. For East Palo Alto's part, the use of ADUs in this way is not substantial and certainly does not rise to the level of prevarication, especially given the City's pro-housing and housing affordability track record, in addition to its commitment to do its part in helping solve the region's affordability crisis for its own residents and that of the County. While the City of East Palo Alto counts ADUs toward meeting its RHNA numbers, this approach is permitted by law, modestly used, and is simply one among many strategies. Specifically, the City has a total extremely low-, very low-, low-, and moderate-income RHNA of 419 units, and planned ADUs make up only 25 percent of these.

Additionally, the City of East Palo Alto has or plans to develop the following programs to boost the region's affordable housing:

- Revising our zoning codes to allow for increased density, which allows for housing that is naturally more affordable.
- Use of housing trust funds to build or finance more affordable housing.

- Streamlined permitting processes for affordable housing.
- Strengthening inclusionary zoning requirements that require a certain percentage of new units to be rented affordably.
- Commercial impact fees used to build or finance affordable housing projects.
- Incentives and zoning changes to encourage the production of ADUs.

Finding #3 Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: The City of East Palo Alto lacks information to agree or disagree with this finding and on that basis disagrees with it. The City of East Palo Alto is not named in this finding and as such has no comment but because California Penal Code Section 933 does not provide for such nuance, the City of East Palo Alto must respond with disagreement.

Finding #4 California Department of Housing and Community Development (HCD) has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low-, or moderate-income households are occupying the ADUs as planned.

Response: The City of East Palo Alto partially agrees with this finding. HCD has indeed asked jurisdictions to verify future ADU production and affordability every two years; however, HCD is only asking for verification at the initial time of occupancy. The City of East Palo Alto is planning to support a regional ADU monitoring effort through Association of Bay Area Governments (ABAG) or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County. The City of East Palo Alto may also explore other means of monitoring and verification, subject to staffing levels and costs.

Finding #5 Other than Brisbane and Redwood City, San Mateo County, and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The City of East Palo Alto partially agrees with this finding. San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. The City of East Palo Alto is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. The City of East Palo Alto also has already committed to exploring a local program for frequent monitoring of ADU construction and affordability. Additionally, the City of East Palo Alto has ADU policies and programs in the 2023-2031 6th Cycle Housing Element that commit to reporting on ADU production as part of our annual Housing Element progress reports. This report will provide the number of building permits permitted for ADUs. The City of East Palo Alto, however, does not have any policies or programs to track ADU affordability.

Finding #6 Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for very low-, low-, and moderate-income housing units.

Response: The City of East Palo Alto generally agrees with this finding. The key purpose of the Report is that HCD's 30-30-30-10 formula, used by most jurisdictions in the County, does not mirror a jurisdiction's actual allocation to categories from very low-, low-, and moderate-income levels. As stated above, the City of East Palo Alto is planning to support a regional approach to monitoring ADU affordability in addition to making local changes within the City.

Finding #7 ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: The City of East Palo Alto agrees with this finding. HIP Housing is one potential partner agency. The City is committed to addressing this issue with the resources it requires, which will depend on the magnitude of the problem within its jurisdictional bounds.

Response to Recommendations in the Grand Jury Report

Recommendation #1 San Mateo County and each city should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADUs will be used.

Response: The recommendation will not be implemented because it may not be necessary or reasonable. While the City of East Palo Alto shares the Civil Grand Jury's goal to increase ADU affordability monitoring, this recommendation is not a one-size fits all approach. While the Report's data does merit studying the issues raised therein further, it does not contain data specific to the City of East Palo Alto indicating that the City's use of ADUs in fact exacerbates patterns of segregation and exclusion within our community. For example, the Report notes that exacerbation of those issues could happen if "minorities are underrepresented among homeowners". As a primarily minority community, it would seem prudent to explore this level of underrepresentation first and then calibrate a response accordingly.

At this late stage, it may not be prudent or feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The City of East Palo Alto's Housing Element was developed through a rigorous process of multiple years of public input and revisions. Furthermore, the City is close to obtaining a compliance letter from HCD. As such, it is simply neither wise nor feasible for us to make a major change to our housing policy this late in the process. Nevertheless, the City of East Palo Alto is committed to following the State's Housing Law and supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. As noted earlier, the City of East Palo Alto has already committed to exploring a local program for frequent monitoring of ADU construction. Finally, the City is also supporting the development of a new ADU non-profit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The City will aim to have this monitoring program in place for future Housing Element cycles.

Recommendation #2 By February 1, 2024, San Mateo County and each city should develop, adopt, and implement a verification system capable of monitoring and verifying how new developed ADUs are being used.

Response: Part of the recommendation has yet to be implemented but will be in the future. However, part of the recommendation is not warranted. The City of East Palo Alto agrees that it is important to have high quality occupancy data for ADUs. As noted earlier, the City plans to participate in the 21 Elements or ABAG ADU monitoring system, in addition to exploring its own. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. The City's primary concern is the dearth of resources to fund and implement ADU verification and monitoring activities. The City has long struggled to provide and maintain the level of service the community deserves with its limited resources. Whatever local monitoring solution the City chooses to pursue must be sustainable. The City will need to maintain funds and personnel to oversee and implement any such program. Leaving aside potential

homeowner privacy concerns, the City is mindful of the costs of engaging with thousands of homeowners every year and whether that poses a practical barrier to having an ongoing verification system that checks the income of every resident of every ADU in the City.

Recommendation #3 By February 1, 2024, San Mateo County and each city should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: This recommendation has yet to be implemented but will be in the future. The City of East Palo Alto agrees with the goal of adopting an affordable ADU program. The City has already welcomed legislative changes that liberalize the approval process for ADUs and taken liberal interpretations, where appropriate. However, the City of East Palo Alto would note that this liberalization moves ADU approval closer to a by-right land use, which leaves less room for cities and counties to exact or incentivize (using land use incentives), for example, affordability restrictions.

Additionally, the City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions, which is being coordinated through 21 Elements. 21 Elements has been working on behalf of the City and researching best practices to encourage the development of ADUs. The draft work plan for the non-profit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

Recommendation #4 By February 1, 2024, San Mateo County and each city should track the intended use of ADUs – rented or non-rented – during the permitted process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to Recommendation #2 (R2), the City of East Palo Alto will track the intended use of ADUs. The City will explore developing an incentive program that offers incentives in exchange for affordability requirements such as deed restrictions. However, as noted in R3 above, the State legislative changes may provide a greater benefit than the City's resource challenged ability to offer land use incentives to encourage deed restrictions. Furthermore, a more effective means may lie elsewhere; offering a tax incentive to homeowners who rent their ADUs at deep affordability levels. The City would support such a legislative effort at the State level.

Recommendation #5 By April 1, 2024, San Mateo County and each city should develop and adopt a new ADUs affordability distribution formula specific to each jurisdiction to the extent that are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA Housing Elements.

Response: This recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of the City of East Palo Alto, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The City is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

The City of East Palo Alto does not believe the current data suggests amending the current formula of 30-30-30-10. The UC Berkeley study upon which the Report's findings were based, surveyed thousands of homeowners statewide with repeat mailing. The data was aggregated to reduce the margin of errors. If the City were to follow this recommendation, it is not clear we could achieve the same margin of error. It would be likely too large given the likely smaller numbers of households to be surveyed. The City is aware of no data that suggests significant variation from city to city. It is the City of East Palo Alto's understanding that the 30-30-30-10 formula was crafted to have significant cushion built in to ensure cities did not inadvertently underproduce the amount of housing needed.

Recommendation #6 San Mateo County and each city should consider working together to address Recommendations 2 and 3.

Response: This recommendation has been implemented. San Mateo County jurisdictions have and will continue to work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address Recommendations 2 and 3.

The City of East Palo Alto plans to participate in the shared ADU nonprofit and other regional endeavors to address these issues as appropriate.

This response was approved by the City of East Palo Alto City Council at a public meeting on September 5, 2023.

Sincerely,

Melvin E. Gaines
City Manager
City of East Palo Alto



610 FOSTER CITY BOULEVARD
FOSTER CITY, CA 94404-2222

City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

August 8, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of Foster City to the San Mateo County Civil Grand Jury Report
“Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

Dear Judge Fineman,

Thank you for the opportunity to comment on the report titled, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”. Please find our response to the findings and recommendations of the report below.

Response to Findings:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The City of Foster City agrees with this finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The City of Foster City partially agrees with this finding. While the City of Foster City counts ADUs to meet affordable housing commitments in RHNA, it is one of many strategies. Specifically, the City of Foster City has a total lower income housing RHNA of 819 and ADUs make up only 14 of these.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: The City of Foster City is not named in this finding and therefore has no comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: The City of Foster City partially agrees with this finding. Every year, HCD requires jurisdictions to submit an Annual Progress Report (APR) that includes details regarding its



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City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

housing production and Foster City has been submitting APR annually to HCD. The City has included a program in its Housing Element, H-D-4-h: ADU Monitoring, *“The City shall track new ADUs (at single-family and multifamily sites) and collect information on the use and affordability of these units in each Annual Progress Report. Biannually through the projection period (beginning in 2025), if determined that at least 50% units are not meeting a lower-income housing need, the City shall adopt additional incentives to facilitate ADUs.”* Another program in the Housing Element that will help in monitoring and verifying ADU production is H-G-2-e, Rental Registry: *“Unless a requirement for a State rental registry is adopted, explore a rental registry that tracks information such as rents, utilities, accessibility for disabled persons, tenant occupancy dates, and landlord contact information in order to improve the information available to landlords, tenants, and decision makers.”* The Rental Registry would be for all rental units (including ADUs) to track occupancy, rents etc.

The City of Foster City is planning on supporting a regional ADU monitoring effort through the Association of Bay Area Governments (ABAG) or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The City of Foster City partially agrees with this finding. Regarding ADU production, every year as part of the process for preparing the APR for HCD, the staff gathers information on housing production, including ADUs. Regarding affordability, the City has included programs in its Housing Element, H-D-4-h: ADU Monitoring and H-G-2-e, Rental Registry (noted in F4). In addition, San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. The City of Foster City is planning to support a regional ADU monitoring effort through ABAG or 21 Elements.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for very-low-, low-, and moderate-income housing units.

Response: The City of Foster City does not agree with this finding. Foster City has only projected 24 ADUs in its sites inventory of 1,896 units which is very minimal and will be able to demonstrate meeting its RHNA-6 obligation for very-low-, low-, and moderate-income housing units through housing production reflected in the future APRs. Also, there is a buffer of 72 units in extremely low, 90 units in very low, and 15 units in moderate income categories included in the sites inventory of the Housing Element. Theoretically, Foster City can still fully meet its RHNA obligations for every affordability category without a low-income ADU being provided. However, the City of Foster City is planning to implement ADU monitoring and support a regional approach to monitoring ADU affordability.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.



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Response: The City of Foster City agrees with this finding. HIP is one potential partner agency. However, it shall be noted that Foster City do not have a high proportion of ADUs in their sites inventory for RHNA-6.

Response to Recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The City of Foster City's RHNA for cycle 6 is 1,896 units, and only 24 ADUs are projected in the sites inventory, including seven (7) ADUs projected in very-low-, low- and moderate-income categories and three (3) ADU in the above-moderate category. Also, there is a buffer of 72 units in extremely low, 90 units in very low, and 15 units in moderate income categories included in the sites inventory of the Housing Element.

The City of Foster City shares the Civil Grand Jury's goal to increase ADU affordability monitoring; however, given that the Housing Element does not rely on ADUs (only 2% of the overall number of affordable units and includes a 16% buffer) to meet affordable housing goals, removing ADUs in the Housing Element does not impact the overall affordable housing goals. Additionally, the Housing Element was developed through a rigorous process of multiple years of public input and revisions, and it is simply not reasonable to expect the City to make a major change to our housing policy this late in the process and delaying the certification process. However, the City of Foster City is committed to following state housing law. Foster City has included a program in its Housing Element, H-D-4-h: ADU Monitoring, *"The City shall track new ADUs (at single-family and multifamily sites) and collect information on the use and affordability of these units in each Annual Progress Report. Biannually through the projection period (beginning in 2025), if determined that at least 50% units are not meeting a lower-income housing need, the City shall adopt additional incentives to facilitate ADUs."* Foster City will support the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. In addition, the City has included numerous programs in its Housing Element for the planning period 2023-31 to support the production of ADUs, including an ADU/JADU financial incentive program, preapproved ADU/JADU designs and expedited review, and an amnesty program for existing unapproved ADUs. Thus, the recommendation will not be implemented because it is not warranted or reasonable as discussed above, Foster City has only projected 24 ADUs in its sites inventory of 1,896 units which is very minimal and will be able to demonstrate meeting its RHNA-6 obligation for very-low-, low-, and moderate-income housing units through housing production reflected in the future APRs. Also, there is a buffer of 72 units in extremely low, 90 units in very low, and 15 units in moderate income categories included in the sites inventory of the Housing Element. Theoretically, Foster City can still fully meet its RHNA obligations for every affordability category without a low-income ADU being provided.



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R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: Part of the recommendation has not yet been implemented but will be implemented in the future. The City of Foster City agrees that it is important to have information regarding the affordability of ADUs. As stated above in R1, Foster City has included a program in its Housing Element, H-D-4-h: ADU Monitoring. The City will participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. In addition, the City has another program in the Housing Element that will help in monitoring and verifying ADU production is H-G-2-e, Rental Registry: *“Unless a requirement for a State rental registry is adopted, explore a rental registry that tracks information such as rents, utilities, accessibility for disabled persons, tenant occupancy dates, and landlord contact information in order to improve the information available to landlords, tenants, and decision makers.”* The Rental Registry would be for all rental units (including ADUs) to track occupancy, rents etc. The timeline for exploring rental registry options is December 2024.

The recommendation regarding developing, adopting and implementing a verification system capable of verifying how newly developed ADUs are being used will not be implemented because it is not warranted or reasonable. There are a number of Housing Programs, Goals and Policies that the City has to implement over the course of the next 1-2 years. Timely implementation of these programs is important to achieve housing goals, RHNA targets and affordable housing. As noted above, the City will be participating in the ABAG or 21 Elements ADU monitoring system in addition to exploring a Rental Registry. To develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used by February 1, 2024 with limited staff resources is not feasible and will impact the implementation of other important Housing Element Goals, Policies and Programs that will be more impactful in meeting affordable housing in Foster City.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: This recommendation has yet to be implemented but will be implemented in the future. As discussed above, the City has included a program included in its Housing Element, H-D-4-b, ADU/JADU financial incentive program. Under this program, the City of Foster City will *“Provide or partner with another organization to provide a financial incentive program for single-family homeowners to construct an ADU/JADU that is restricted for lower-income households for 10-15 years, with an additional incentive amount for units subject to a preference for identified categories of special needs people who would benefit from coordinated onsite services, including but not limited to people with developmental disabilities.”* The timeframe for implementation of the program is December 2024.



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R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to R2, the City of Foster City will track the intended use of ADUs. Foster City has included a program in its Housing Element *to provide a financial incentive program for single-family homeowners to construct an ADU/JADU that is restricted for lower-income households for 10-15 years.* The timeframe for implementation of the program is December 2024.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Foster City agrees with the importance of an accurate distribution formula, given the relatively small size of the City of Foster City, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The City of Foster City is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

The UC Berkeley study surveyed thousands of homeowners statewide and aggregated the data to reduce the margin of errors. The margin of error would be too large if the City were to survey only a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city based on the UC Berkeley study. The recommendation of a percentage distribution of 30/30/30/10 had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed. Additionally, given the historically low production of ADUs (average of 3 ADUs per year) in Foster City, there isn't significant data to help inform the affordability distribution formula. Thus, the recommendation will not be implemented because it is not warranted or reasonable.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: The recommendation has yet to be implemented but will be implemented in the future. Foster City has included two programs in its Housing Element, including ADU monitoring, and an ADU/JADU financial incentive program as stated above. Timeframe for implementing these programs is by December 2024.



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Foster City actively participates in 21 Elements, a collaboration amongst 21 San Mateo County jurisdictions to develop, adopt, and implement housing policies and programs in the County. The City will continue to work on efforts and solutions that boost the production and affordability of ADUs.

This response was approved by the City Council of Foster City at its regular meeting on August 7, 2023.

Respectfully submitted,

DocuSigned by:
Jon Froomin
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Jon Froomin
Mayor, City of Foster City

Cc: grandjury@sanmateocourt.org



August 23, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of Half Moon Bay to the San Mateo County Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman,

Thank you for the opportunity to respond to the Grand Jury report entitled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" The City of Half Moon Bay's response to the findings and recommendations of the report are listed below.

Response to Findings:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: Agree.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: Wholly disagree. If the finding read "San Mateo County and most of its municipalities *include* ADUs to meet their affordable housing commitments in their RHNA-6 plans," then the City of Half Moon Bay would agree with the finding. The City of Half Moon Bay is required to plan for a housing allocation of 480 units. The City of Half Moon Bay's draft Cycle 6 Housing Element, currently in review with the Department of Housing and Community Development (HCD) plans for 782 units. The portion of the City's housing allocation that consists of ADUs is 112. If circumstances result in no ADUs being built in the planning period, the City could still meet its required housing allocation. Furthermore, if ADUs were not included in the City's effort to meet RHNA, the City's pipeline and housing opportunity sites would meet RHNA in every income category with a 20 percent buffer.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: No comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: Agree. For clarity, HCD requires *all* California jurisdictions to monitor and report on *all* housing production.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: Agree. The City of Half Moon Bay will receive comments from HCD soon and is looking forward to their direction regarding this matter. The City is committed to providing reasonable ADU monitoring and reporting to HCD's satisfaction.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: Wholly disagree. As noted previously, the City of Half Moon Bay includes 112 ADUs as part of a total 782-unit plan that fulfills the required 480-unit allocation. Theoretically, the City of Half Moon Bay can still fully meet its RHNA obligations for every affordability category without a low-income ADU being produced. As noted previously, the City of Half Moon Bay is committed to providing reasonable ADU monitoring and reporting to HCD's satisfaction.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: Agree. For a cost, ADU affordability and occupancy could be monitored. The question facing jurisdictions that do not have a high proportion of ADUs in their housing allocations is how much of the limited public funds available should go toward monitoring of a small number of units, or toward efforts that can have a greater impact for more lower-income households.

Response to Recommendations:



R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Half Moon Bay is committed to improving housing affordability and housing conditions in the City and meeting State law. HCD allows a jurisdiction to include pipeline projects, ADUs, and the site inventory in its housing allocation. The City of Half Moon Bay includes all potential housing types in the Housing Element. The City of Half Moon Bay will monitor ADUs to HCD's satisfaction.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: The recommendation requires further analysis. The City of Half Moon Bay will work with HCD to receive Housing Element certification, including HCD's direction regarding all types of housing production, including ADUs. A monitoring and reporting system that is accepted by HCD will be implemented in the timeframe that is worked out with HCD.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: The recommendation requires further analysis. The City of Half Moon Bay will work with HCD to receive Housing Element certification, including how to monitor and incentivize all types of housing production, including ADUs, to the extent necessary as determined by HCD, on a timeline that satisfies HCD.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: The recommendation requires further analysis. The City of Half Moon Bay is committed to furthering affordable housing. Since ADUs are not required for the City to meet its RHNA, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law. The City of Half Moon Bay will work with HCD to receive certification of the Housing Element, including how to monitor and incentivize all housing types, including but not limited to ADUs, in a manner and timeline that satisfies HCD.



R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Half Moon will work with HCD to ensure compliance with housing laws. If HCD accepts the ABAG affordability assumptions for ADUs, then the City of Half Moon Bay will utilize those assumptions. It is noted that such a modification will not impact the City's ability to meet its RHNA.

The ABAG assumptions are based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing and the data was aggregated to reduce the margin of error. The margin of error would be too large if we are only surveying only a few dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations for an affordability distribution of 30/30/30/10 (very low-/low-/moderate-/above moderate-income) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

Because ADUs are not required for the City to meet its RHNA, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: The recommendation requires further analysis. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement a range of policies and programs in the county, including housing issues. The City of Half Moon Bay will work with HCD to ensure compliance with housing laws and is open to working with 21 Elements on potential collaborative efforts to address housing issues such as those raised by the Grand Jury report. Because ADUs are not needed for the City to meet its RHNA, and because there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

In conclusion, the City wishes to point out that its public draft Cycle 6 Housing Element was available for review in April 2023. Following the required circulation period, it was revised and submitted to HCD on May 31, 2023. The number of ADUs presented in the draft Housing Element and the fact that ADUs are not needed to meet the City's RHNA was information available to the Grand Jury in advance of the issuance of its report. City staff would have gladly directed the Grand Jury to this information had they inquired.



This response was approved by the Half Moon Bay City Council at a public meeting on August 15, 2023.

Sincerely,



Deborah Penrose, Mayor
City of Half Moon Bay





August 29, 2023

The Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Civil Grand Jury Report: “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

Dear Honorable Judge Fineman:

Thank you for the opportunity to review and respond on the above-referenced Grand Jury Report filed on June 12, 2023. The City Council of the City of Menlo Park (City) voted at its public meeting on August 29, 2023 to authorize this response to the findings and recommendations of the report.

Response to Grand Jury Findings

- F1.** Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

City Response: *The City agrees with finding F1.*

- F2.** San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

City Response: *The City of Menlo Park disagrees with finding F2. The use of ADUs is one way to help meet a jurisdiction’s affordable housing requirements. The City of Menlo Park’s Housing Element for the 6th cycle (2023-2031) meets its RHNA requirement plus a 30% buffer through different strategies to provide a variety of housing types at all income levels, primarily focused in high resources areas of the City. The use of ADUs is just one strategy for meeting the City’s RHNA. The Housing Element identifies 85 ADUs, including 51 affordable to lower income households, and accounts for less than three percent of the overall number of units and less than five percent of affordable units to lower income households. If no ADUs are built during this planning period, the City could still meet its required housing allocation.*

- F3.** Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

City Response: *The City of Menlo Park is not the subject of finding F3 and therefore cannot respond to this finding.*

- F4.** HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households occupying the ADUs as planned.

City Response: *The City of Menlo Park disagrees partially with finding F4. As part of the City's Annual Progress Report on housing submitted to HCD, the City documents all housing production, including ADUs, and their affordability level, for the prior calendar year. The City does not believe HCD has instructed the City to monitor and verify future ADU production and affordability every two years. However, the City of Menlo Park is exploring a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration amongst the County of San Mateo and the 20 jurisdictions in the County. The City does not expect HCD to specify how to verify income levels of ADU occupants.*

- F5.** Other than Brisbane and Redwood City, San Mateo County and its jurisdiction have yet to articulate how they will monitor and verify ADU production or affordability.

City Response: *The City of Menlo Park disagrees partially with finding F5. The City of Menlo Park monitors annual ADU production through building permit data and assesses affordability generally using the recommended distribution of 30/30/30/10 (30% very low income/30% low income/30% moderate income/10% above moderate income) based on a UC Berkeley study. The City cannot respond to this finding for San Mateo County and its other jurisdictions.*

San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. The City of Menlo Park is committed to providing reasonable ADU monitoring and reporting, and is exploring a regional ADU monitoring effort through ABAG or 21 Elements. This monitoring effort is expected to begin no later than January 2025.

- F6.** Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very low, and moderate-income housing units.

City Response: *The City of Menlo Park disagrees partially with finding F6. As noted in response to finding F2, the City of Menlo Park does not rely solely on ADUs to meet the City's RHNA obligation for lower income households, and theoretically could still fully meet its RHNA obligation in the absence of any ADU production during the planning period. The City of Menlo Park agrees that effective monitoring and verification can help evaluate compliance in meeting a jurisdiction's RHNA.*

- F7.** ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

City Response: The City of Menlo Park disagrees partially with finding F7. The City of Menlo Park does not have direct experience with HIP Housing providing ADU affordability and occupancy monitoring and therefore, cannot respond to the finding in F7. Theoretically, ADU affordability and occupancy could be monitored by an outside agency, but this has not been verified by the City.

Response to Grand Jury Recommendations

- R1.** San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low- and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADUs will be used.

City Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Menlo Park's Housing Element was adopted by the City Council on January 31, 2023 and developed through a multi-year process. It is unreasonable to revise the City's adopted Housing Element to eliminate the use of ADUs to meet the City's affordable housing goals. Per HCD's Accessory Dwelling Unit Handbook (updated July 2022), ADUs and junior accessory dwelling units (JADUs) may be utilized towards meeting a jurisdiction's RHNA and included in the Annual Progress Report (APR). As mentioned in response to finding F2, however, the City of Menlo Park could still meet its RHNA without ADU production. The City of Menlo Park is committed to following state housing law and to providing a variety of housing types for all income levels in the City.

- R2.** By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADUs are being used.

City Response: The recommendation will not be fully implemented because it is not warranted or reasonable. The City will continue to explore with 21 Elements on its or ABAG's ADU monitoring program. The monitoring program is projected to launch in January 2025 and will likely survey applicants about their ADU plans at the time building permits are issued. Due to homeowner privacy concerns and the cost of engaging with potentially thousands of applicants every year, it would not be practical to have an ongoing system that verifies the income of every ADU resident in the County.

- R3.** By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

City Response: The recommendation has not yet been implemented, but may be implemented in the future. The City of Menlo Park's Housing Element contains programs to support the production and affordability of ADUs. Program H3.1 of the City's Housing Element directs the City to evaluate and adopt incentives to encourage accessible ADUs and rent restricted units. The timeline to implement the program is within two years of Housing Element adoption.

The City is also involved with 21 Elements, who is evaluating on behalf of the jurisdictions in San Mateo County the creation of an ADU nonprofit to serve San Mateo County jurisdictions.

The draft work plan for the nonprofit includes programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreement to rent at affordable levels. The nonprofit is projected to launch in July 2024 and would be financially supported by San Mateo County jurisdictions and private philanthropy, if possible.

- R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

City Response: *The recommendation has not yet been implemented, but may be implemented in the future. As part of Program H4.F of the Housing Element, the City is planning to request information on projected ADU rents as part of the development application by the end of 2024. As part of Program H3.I, the City will be exploring potential incentives for ADUs in exchange for renting the units at affordable levels within two years of Housing Element adoption.*

- R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

City Response: *The recommendation will not be implemented because it is not warranted or is not reasonable. The City of Menlo Park's ADU affordability distribution is based on a UC Berkeley study, which surveyed thousands of homeowners statewide. The collected data was aggregated to reduce the margin of error, which could be large if only surveying a small sample size. There is also no evidence in the data to suggest significant variation from city to city. The recommendation for an affordability distribution of 30/30/30/10 (30% very low income/30% low income/30% moderate income/10% above moderate income) has a significant cushion built in to minimize underproduction of housing. HCD did not question the City's use of this methodology for determining the affordability levels of the anticipated ADU production to meet the City's RHNA for the planning period. Since ADUs are a relative small portion of the City's total units for meeting its RHNA, the development of a new distribution formula is not warranted or reasonable to implement. As more data becomes available for ADUs in San Mateo County through work with ABAG or 21 Elements, the distribution formula could be modified for future use.*

- R6. San Mateo County and each jurisdiction should consider working together to address Recommendations 2 and 3.

City Response: *This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement a range of policies and programs in the County. The City of Menlo Park has partnered with 21 Elements on number of items and will continue to work with 21 Elements to explore collaborative efforts to address issues raised in the Grand Jury's Recommendations 2 and 3.*

If you have further questions, please contact Deanna Chow, Assistant Community Development Director, at dmchow@menlopark.gov or 650-330-6733.

Sincerely,

DocuSigned by:
Jen Wolosin
22B0A0F5827744F...
Jen Wolosin
Mayor



City of Millbrae

621 Magnolia Avenue, Millbrae, CA 94030

ANN SCHNEIDER
Mayor

MAURICE GOODMAN
Vice Mayor

ANDERS FUNG
Councilmember

ANGELINA CAHALAN
Councilmember

GINA PAPAN
Councilmember

September 12, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Re: ADU Civil Grand Jury Report Response: “Accessory Dwelling Units: Affordable Housing’s Pacacea or Prevarication?”

Dear Honorable Nancy L. Fineman,

The City of Millbrae appreciates the opportunity to comment on the Grand Jury report titled, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”. The report was presented to the Millbrae City Council at their regular meeting on Tuesday, September 12, 2023. Following deliberation and direction from our City Council, our response to the findings and recommendations of the report are below.

I. Response to Findings

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

The City of Millbrae agrees with this finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

The City of Millbrae partially agrees with this finding. While Millbrae counts ADUs to meet affordable housing commitments in RHNA, it is one of many strategies. Specifically, Millbrae has a total lower income housing RHNA of 906 units and ADUs make up only approximately 7.5% of these. Additionally, our jurisdiction has developed the following programs:

City Council/City Manager/City Clerk (650) 259-2334	Building Division/Permits (650) 259-2330	Community Development (650) 259-2341	Finance (650) 259-2350
Fire (650) 558-7600	Police (650) 259-2300	Public Works/Engineering (650) 259-2339	Recreation (650) 259-2360

- Revised our zoning codes to allow for increased density, which allow for housing that is naturally more affordable.
- Streamlined permitting processes for affordable housing
- Inclusionary zoning requirements that require a certain percentage of new units be rented affordably
- Commercial impact fees

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

The City of Millbrae is not named in this finding and therefore has no comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low, low- or moderate-income households are occupying the ADUs as planned.

The City of Millbrae partially agrees with this finding. We do not expect HCD to specify how to verify the income levels of ADU occupants. Additionally, HCD is only asking for verification at the initial time of occupancy. Millbrae is planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

The City of Millbrae agrees with this finding. San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. Millbrae is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

The City of Millbrae agrees with this finding. As stated above, our City is planning to support a regional approach to monitoring ADU affordability.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

The City of Millbrae agrees with this finding. HIP is currently a partner agency with the City.

II. Response to Recommendations

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

The recommendation will not be implemented because it is not warranted or is not reasonable. While Millbrae shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process of multiple years of public input and revisions. The City of Millbrae has presented a revised submission to HCD; it simply is not feasible for us to make a major change to our housing policy this late in the process. However, Millbrae is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. Millbrae is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The city will have this monitoring program in place for future Housing Element cycles.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Part of the recommendation has yet to be implemented but will be implemented in the future. However, part of the recommendation is not warranted. The City of Millbrae agrees that it is important to have high quality information about who is living in ADUs. The city will participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

This recommendation has yet to be implemented but will be implemented in the future. The City of Millbrae agrees with the goal of adopting an affordable ADU program. The city is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the city, have been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to R2, Millbrae will track the intended use of ADUs. Our City will develop an incentive program that offers incentives in exchange for affordability requirements such as deed restrictions.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

The recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relative small size of Millbrae, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. Millbrae is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3.

Sincerely,



Ann Schneider
Mayor

Cc: City Council
City Manager
City Attorney



Scenic Pacifica
Incorporated Nov. 22, 1957

CITY OF PACIFICA

540 Crespi Drive • Pacifica, California 94044-3422
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MAYOR
Tygarjas Bigstycck

MAYOR PRO TEM
Sue Vaterlaus

COUNCIL
Sue Beckmeyer
Mary Bier
Christine Boles

August 28, 2023

The Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: City of Pacifica's response to the San Mateo County Civil Grand Jury Report – "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman and Members of the Grand Jury:

Thank you for the opportunity to review and comment on the above-referenced Civil Grand Jury report filed on June 12, 2023. Pursuant to Penal Code § 933(c), the City of Pacifica's response to the several findings and recommendations contained in the report are provided below. The Pacifica City Council, including the Mayor, reviewed and approved the responses at a public meeting on August 28, 2023.

Responses to Civil Grand Jury Findings:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response to F1. The City agrees with the finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response to F2. The City partially disagrees with the finding. The City is required to plan for a regional housing needs allocation (RHNA) of 1,892 units. As proposed in the City's draft Housing Element, the portion of the City's RHNA that consists of ADUs is 187 units (9.9% of the RHNA), a relatively low share of total housing units. Of the 187 ADUs, 112 units or 60% are assumed to be affordable at very-low- and low-income levels. Specifically, the City has a total very-low and low-income housing RHNA of 848 units and ADUs would make up only 13% of that figure. While the City assumes ADUs will meet part of its affordable housing RHNA, they are only one of many strategies that the City will be utilizing.

Additionally, the City is proposing to develop the following strategies/programs as part of the City's Housing Element update:

- Review zoning regulations and map to identify inconsistencies between the general plan densities and uses and the currently adopted zoning regulations and amend accordingly to resolve. Allows for increase density, which allow for housing that is naturally more affordable.
- Streamlined permitting processes for affordable housing.
- Inclusionary zoning requirements that require a certain percentage of new units be rented affordably.
- City Council to evaluate potential of city-owned sites and seek affordable housing developer interest in conformance with any applicable Surplus Land Act requirements.

Furthermore, even without counting ADUs, the City would meet its lower income RHNA obligations. The City's draft Housing Element includes a significant buffer of 30% additional units over the RHNA. At the lower income level, the buffer is 52%, with a plan for 1,289 lower income units. Subtracting the assumed 112 ADUs at lower income levels, the City would still exceed its lower income RHNA by 329 units. Therefore, Pacifica does not intend to rely on ADUs to meet its affordable housing commitments in its RHNA 6 Housing Element.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response to F3. Not applicable: The City of Pacifica is not named in this finding and therefore has no comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response to F4. The City partially disagrees with this finding. Pacifica does not expect the California Department of Housing and Community Development (HCD) to specify how to verify the income levels of ADU occupants. Additionally, HCD only directs income verification at the initial time of occupancy. Nevertheless, the City is planning on supporting a regional ADU monitoring effort through the Association of Bay Area Governments (ABAG) or 21 Elements, a long standing collaboration among the 21 local jurisdictions of San Mateo County.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response to F5. The City agrees with this finding. San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. The City is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin sometime in early 2025.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response to F6. The City disagrees with this finding. As stated above, the City is planning to support a regional approach to monitoring ADU affordability. Furthermore, as demonstrated in

the response to Finding 2, the City will not rely upon ADU construction to meet its RHNA obligation for lower income units. Therefore, the City can still fully meet its RHNA obligations for every affordability category without construction of any ADUs at the lower income levels.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response to F7. The City agrees with this finding. HIP Housing is one potential partner agency for ADU income/affordability monitoring.

Responses to Civil Grand Jury Recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response to R1. The recommendation will not be implemented because it is not warranted or is not reasonable. While the City shares the Civil Grand Jury's goal to increase ADU affordability monitoring, the City intends to consider ADUs towards progress meeting its lower income RHNA allocation in accordance with guidance from HCD. The City's draft Housing Element incorporates ADUs consistent with [HCD's guidelines](#) based on actual ADU production in recent years and allocates income levels according to an allowable HCD methodology. Furthermore, as demonstrated in the response to Finding 2, the City does not rely upon ADU production to meet its lower income housing requirement. Therefore, it is neither warranted nor reasonable for the City to stop using ADUs in their draft Housing Element submissions.

The City is committed to following State housing law and to supporting the future development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. The City is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The City expects to have this monitoring program in place at some point in the future.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response to R2. The recommendation will not be implemented because it is not warranted or is not reasonable. As noted in the response to Finding 2, the City does not rely upon ADU production to meet its lower income housing requirement. Therefore, this recommendation is not warranted. Mandated implementation of ADU affordability monitoring should only be required if ADUs were wholly or primarily being used to comply with Pacifica's lower income RHNA requirement-which in this case they are not. Therefore, such a mandated implementation of an ADU affordability monitoring program would not be warranted.

Additionally, Pacifica does intend to verify ADU affordability at time of initial occupancy consistent with HCD guidance, and will partner with ABAG or 21 Elements to establish a regional monitoring program. As discussed above in Response to R1, the City is committed to supporting

the future development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. The City is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. However, such regional monitoring program cannot reasonably be implemented by February 1, 2024.

The regional monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response to R3. This recommendation has yet to be implemented but will be implemented in the future. The City agrees with the goal of adopting an affordable ADU program. As discussed in the City's Responses to R1 and R2, the City is actively involved in the potential creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the City of Pacifica and other 21 Elements participating jurisdictions, has been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible. However, such regional monitoring program cannot reasonably be implemented by February 1, 2024.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response to R4. The recommendation requires further analysis. The City is committed to furthering the development of affordable housing. As discussed above, ADUs are assumed for a relatively small portion of the City's housing allocation and would not be relied upon to meet the City's lower income RHNA. Additionally, the City has finite resources available to conduct further efforts towards seeking affordable housing production and the City reserves the right to focus resources on efforts that will have the greatest impact within the law. The City will continue to work with HCD to finalize the draft Housing Element and as part of that effort, analyze and study the various options to monitor and incentivize all housing types such as ADUs to ensure consistency with HCD's guidelines and requirements within the next six months.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response to R5. The recommendation will not be implemented because it is not warranted or is not reasonable. While Pacifica agrees with the importance of an accurate distribution formula,

given the relative small size of the City, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The City is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels. In the meantime, the City will continue to work with HCD to ensure compliance with required housing laws and if HCD recommends/accepts the affordability assumptions for ADUs as collected as part of the program, then the City will utilize those assumptions. The assumptions are based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing and the data was aggregate to reduce the margin of errors. The margin of error would be too large if we are only surveying a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations of 30/30/30/10 (very low/low/moderate/above-moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

Therefore, since ADUs consist of a small portion of the City's housing allocation and there are currently limited resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response to R6. This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3.

Sincerely,



KEVIN WOODHOUSE
City Manager

cc: Pacifica City Council

Mayor Jeff Gee
Vice Mayor Lissette Espinoza-Garnica

Council Members
Alicia C. Aguirre
Kaia Eakin
Diane Howard
Elmer Martinez Saballos
Chris Sturken



1017 MIDDLEFIELD ROAD
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Telephone (650) 780-7220
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August 29, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

RE: 2022-2023 Civil Grand Jury

Dear Judge Fineman and Members of the Grand Jury,

On behalf of the City of Redwood City, I would like to thank you for the opportunity to respond to the Grand Jury Report titled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?". The following response was approved by the City Council at its meeting on August 28, 2023.

Analysis of the Report's Findings and Recommendations

The Grand Jury made seven findings and six recommendations in its report. The City's responses follow each finding and each recommendation.

FINDINGS

I. Response to Findings

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: Redwood City agrees with this finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: Redwood City partially agrees with this finding. While Redwood City counts ADUs to meet affordable housing commitments for total housing units and lower income units in the Regional Housing Needs Allocation (RHNA), it is just one of several strategies. Specifically, the

City is projecting the construction of 506 ADUs during the current RHNA cycle, which would account for only 11% of Redwood City's total RHNA requirement of 4,588 units. The projected number of lower-income ADUs (152) would make up only 12% of the city's 643 lower income RHNA requirement. Furthermore, Redwood City's recently adopted Housing Element has set a target of constructing 153% of its RHNA requirement, which means that ADUs would make up an even smaller proportion of projected housing construction—7% of 7,023 units.

Additionally, the City has implemented or plans to implement the following programs to facilitate the construction of market rate and low-income housing:

- Continue to enforce existing inclusionary housing requirements for residential projects and impact fee requirements for commercial projects.
- Revise zoning to allow for increased density, including provisions to facilitate “missing middle housing” in multifamily residential districts, thereby supporting housing that is naturally more affordable. (completed July 2023)
- Increase heights for residential and mixed-use projects in mixed use districts to allow more residential density. (completed in July 2023)
- Rezone commercial areas to mixed use to allow for housing (completed in July 2023)
- Streamline permit processes for affordable housing
- Planned future update of the affordable housing ordinance to facilitate more affordable housing production
- Planned future update of commercial linkage impact fees to support affordable housing

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: Not applicable. Redwood City is not named in this finding and therefore has no comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: Redwood City partially agrees with this finding. HCD requires annual reporting of ADU production and monitoring of affordability every two years. Redwood City is using assumptions for ADU affordability created by the Association of Bay Area Governments (ABAG) for use by cities across the Bay Area to address their RHNA requirements. The City is utilizing a process created and regulated by HCD to meet HCD's issued RHNA requirements. The City plans to comply with any updated guidance on monitoring affordability levels that HCD may provide in the future. Additionally, HCD is currently only asking for verification at the initial time of occupancy.

Redwood City and other San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. Redwood City is planning to support a regional ADU monitoring effort through the Association of Bay Area Governments (ABAG) or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County. This monitoring effort is expected to begin no later than two years after the Housing Element was due (early 2025).

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: Redwood City agrees with this finding as it relates to Redwood City’s plans for monitoring and verifying ADU production or affordability but has no comment as it relates to other jurisdictions.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: Redwood City partially agrees with this finding. The City recognizes the importance of monitoring and verification of data to track RHNA housing obligations. ADUs comprise a relatively small portion of Redwood City’s RHNA-6 obligations for very low-, low-, and moderate-income housing units and the City will have sufficient data on overall housing construction to determine whether it is on track to meet its RHNA obligations.

As noted above, Redwood City is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. This monitoring effort is expected to begin no later than two years after the Housing Element was due (early 2025).

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: Redwood City agrees with this finding. HIP Housing is one potential partner agency.

RECOMMENDATIONS

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU’s will be used.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. While Redwood City shares the Civil Grand Jury’s goal to increase ADU affordability monitoring, it is not reasonable to revise the City’s Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process that included multiple years of public input and revisions. Furthermore, Redwood City’s Housing Element has already been approved by HCD and it is not reasonable for the City to make a major change to housing policy after adoption and State certification. However, Redwood City is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program developed by 21 Elements or ABAG. Furthermore, Redwood City is exploring the creation of a new ADU nonprofit that may support programs to incentivize the production of affordable ADUs in San Mateo County-

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU’s are being used.

Response: Part of the recommendation has yet to be implemented but will be implemented in the future, expected by January 2025. However, part of the recommendation is not warranted. Redwood City agrees that it is important to have high quality information about who is living in ADUs. The City is planning to participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with hundreds of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: This recommendation has yet to be implemented but will be implemented in the future, expected by July 2024. Redwood City agrees with the goal of adopting an affordable ADU program. The City is actively exploring the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of its member jurisdictions, has been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy, if possible.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: This recommendation has yet to be implemented but will be implemented in the future, expected by January 2025. The monitoring program referenced in response to R2 would track the intended use of ADUs. Redwood City’s Housing Element includes a commitment to explore options for and pursue incentives for ADU affordability requirements, which could include deed restrictions for example.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. While the City agrees with the importance of an accurate distribution formula, given the relatively small size of Redwood City, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. Redwood City is planning to support the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

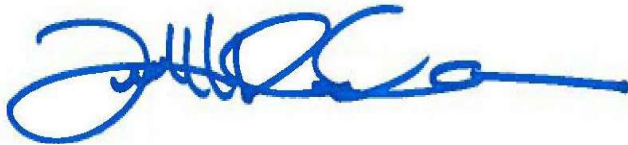
The UC Berkeley study surveyed thousands of homeowners statewide with repeat mailing and the data was aggregated to reduce the margins of errors. Due to small sample sizes, the margin of error would be too large to derive meaningful data on a jurisdiction-by-jurisdiction basis. There is also no evidence in the UC Berkeley data to suggest significant variation from city to city. The recommendations of ADU affordability distribution formula of 30/30/30/10 had a

significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3. Redwood City is planning to participate in the shared ADU nonprofit, however, the structure of the organization is still being finalized by 21 Elements and participating cities.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Jeff Gee', with a long horizontal stroke extending to the right.

Jeff Gee
Mayor, City of Redwood City

CC: Redwood City Council
Melissa Stevenson Diaz, City Manager



City Council Agenda Item Staff Report

CITY OF SAN BRUNO
OFFICE OF THE MAYOR

Rico E. Medina
Mayor

August 23, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of San Bruno to the San Mateo County Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman,

Thank you for the opportunity to respond to the Grand Jury Report entitled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" The City of San Bruno's response to the findings and recommendations of the report are listed below.

Response to Findings:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: Agree.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: Wholly disagree. If the finding read "San Mateo County and most of its municipalities include ADUs to meet their affordable housing commitments in their RHNA-6 plans," then the City of San Bruno would agree with the finding. The City of San Bruno is required to plan for a housing allocation of 3,165 units. The City of San Bruno's adopted Housing Element plans for 3,662 units. The portion of the City's housing allocation that consists of ADUs is 240. If circumstances result in no ADUs being built in the planning period, the City could still meet its required housing allocation at all income levels.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: No comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: Agree. For clarity, HCD requires all California jurisdictions to monitor and report on all housing production.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: Agree. The City of San Bruno received the HCD comment related to ADU reporting, in addition to several other comments. The City of San Bruno has not completed its revisions to respond to HCD's comments, which is tentatively scheduled to be resubmitted to HCD in August or September 2023. The City of San Bruno is committed to provide reasonable ADU monitoring and reporting to HCD's satisfaction.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: Wholly disagree. As noted previously, the City of San Bruno includes 240 ADUs as part a total 3,662 unit plan that fulfills the required 3,165 unit allocation. Theoretically, the City of San Bruno can still fully meet its RHNA obligations for every affordability category without a low-income ADU being provided. As noted previously, the City of San Bruno is committed to provide reasonable ADU monitoring and reporting to HCD's satisfaction.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: Agree. For a cost, ADU affordability and occupancy could be monitored. The question facing jurisdictions that do not have a high proportion of ADUs in their housing allocations is how much of the limited public funds available should go toward monitoring of a small number of units, or toward efforts that can have a greater impact for more lower-income households.

Response to Recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The recommendation will not be implemented because, as written, it is not warranted or is not reasonable. The City of San Bruno will monitor and report on all housing types, including ADUs, in a manner that meets HCD's satisfaction. However, this recommendation is not warranted because HCD will not certify a Housing Element submission until that Housing Element includes monitoring and reporting to HCD's satisfaction. HCD may require less detailed monitoring and reporting of ADUs for City's that have a low percentage of ADUs when compared to City's with high percentage of ADUs. HCD's decision is based on their expertise and understanding of State law, and also their experience reviewing hundreds of Housing Elements for a wide range of California jurisdictions.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: The recommendation has not yet been implemented, but will be implemented in the future. The City of San Bruno will establish a monitoring and reporting system for all housing types, to HCD's satisfaction, in a timeframe that is acceptable to HCD.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: The recommendation requires further analysis, and may not be implemented because annual reporting may show additional incentives are not necessary or warranted to achieve the City's RHNA. The City will monitor and report on all types of new housing production, to HCD's satisfaction. If the City's housing production does not keep pace to meet the RHNA, as evidenced through the City's annual reporting to HCD, the HCD will require the City will have to take additional steps to reduce governmental constraints on housing production. That could include incentives for certain housing types, such as ADUs, if the City has a need for producing more ADUs. However, it is also possible the City can achieve its RHNA without a significant number of lower income ADUs, therefore establishing incentives for ADUs may not be warranted and those resources would be assigned to other areas of housing needs.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: The first part of this recommendation has not yet been implemented, but will be implemented in the future. The City will establish a system for monitoring and reporting on new housing production, including ADUs, to HCD's satisfaction. The timing of this implementation will be subject to the City's continued work with HCD. The second part of this recommendation regarding incentives requires further analysis, as noted in the response to R3, and may not be implemented because it may not be warranted.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. The City of San Bruno will work with HCD to ensure compliance with housing laws. If HCD accepts the ABAG affordability assumptions for ADUs, then the City of San Bruno intends to utilize those assumptions. The ABAG assumptions are based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing and the data was aggregate to reduce the margin of errors. There is also no evidence in the data to suggest significant variation from city to city. The recommendations for an affordability distribution of 30/30/30/10 (very low/low/moderate/above-moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

Since ADUs are a relatively small portion of the City's allocation, and since there are finite resources available to put towards housing, the City reserves the right to focus resources on efforts that will have the greatest impact, within the law.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: The recommendation has been implemented, as San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement a range of policies and programs in the county, including housing issues.

This response was approved by the San Bruno City Council at a public meeting on August 22, 2023.

Sincerely,

Rico E Medina

Rico E. Medina
Mayor

CITY OF SAN CARLOS
OFFICE OF THE CITY MANAGER



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September 5, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of San Carlos to the San Mateo County Civil Grand Jury Report “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”.

Dear Judge Fineman,

Thank you for the opportunity to comment on the report titled, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?” Please find our response to the findings and recommendations of the report below. This response was approved by the San Carlos City Council on August 28, 2023.

I. Response to Findings

Finding 1. *Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.*

Response: The City of San Carlos agrees with this finding.

Finding 2. *San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.*

Response: The City of San Carlos partially agrees with this finding. The RHNA allocation for the City of San Carlos is 2,735 units. The City of San Carlos’s adopted Housing Element plans for 3,525 units which includes a surplus of 790 units. The portion of the City’s BMR housing allocation that consists of ADUs is 173. The City would still meet its housing allocation, even if these BMR ADUs were not built in this planning period due to the provision of surplus sites in other BMR categories.

Additionally, we have the following key programs, actions or strategies in our adopted 2023-2031 Housing Element:

- Revised development standards to allow for increased density (completed) (Action HOU-4.2)

- Streamlined permitting processes for affordable housing through pre-approved ADU plans (Action HOU-3.3)
- Providing homeowners/applicants with tools and promoting State funding resources including the CalHFA ADU grant program and Casita Coalition financing guide on the City's website, and by promoting home sharing programs to connect ADU owners and renters and offering counselling with a City-staff ADU specialist. (Action HOU-6.1, Table 4.2-2)
- Exploring and pursuing funding options to support ADU construction for lower-income homeowners (Action HOU-6.1, Table 4.2-2)
- Updating our ADU ordinance in a timely manner to reflect State's most recent changes to ADU law (Scheduled for adoption in October) (Action HOU-3.3)
- Work with regional/agencies and countywide partnerships to identify potential funding sources for ADU construction (Action HOU 3.3, fourth bullet)
- Utilization of housing trust funds and other assistance programs (Administrative and Financial Resources, pg. 170-171)
- Inclusionary zoning that requires a certain percentage of new units be rented affordably (Housing Specific Policies enacted locally; BMR Housing Ordinance, pg. 185)
- Commercial Impact Fee (Housing Specific Policies enacted locally; Commercial Development Impact Fee, pg. 185)
- City Density Bonus (Housing Specific Policies enacted locally; City Density Bonus, pg. 185)
- Maintaining a Sites Inventory with ADU projections (pg.141)

Finding 3. *Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.*

Response: Not applicable to San Carlos.

Finding 4. *HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.*

Response: San Carlos partially agrees with this finding. At this time, we do not anticipate HCD will provide instructions on how to verify the income levels of ADU occupants. San Carlos will support and participate in forthcoming regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County. The City of San Carlos continues to comply with HCD's monitoring requirement through the Annual Progress Report, where the City must report on all housing production, at all affordability levels, not just ADUs.

Finding 5. *Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.*

Response: San Carlos agrees with this finding. San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. San Carlos is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

Finding 6. *Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.*

Response: The City of San Carlos partially agrees with this finding. We will be able to evaluate the progress of meeting our RHNA obligation through the construction of deed-restricted BMR units required under the City of San Carlos' Affordable Housing Program (inclusionary housing ordinance) for units other than ADUs. For ADUs, San Carlos is planning to support a regional approach to monitoring ADU affordability.

Finding 7. *ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.*

Response: The City of San Carlos agrees with this finding. HIP is one potential partner agency, and the City of San Carlos will support and participate in forthcoming regional ADU monitoring effort through ABAG or 21 Elements.

II. Response to Recommendations

Recommendation 1. *San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.*

Response: The recommendation will not be implemented because it is not warranted and/or is not reasonable. While the City of San Carlos shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals in each category. The Housing Element was developed through a rigorous process of multiple years of public input and revisions. The City of San Carlos is close to a final submission to HCD; it is simply not feasible for us to make a major change to our housing policy this late in the process. Moreover, undertaking this reassessment will impact HCD as it is working with San Carlos for certification; if such a change was made, HCD would have to redo its evaluation. However, the City is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG, which could be in place for future Housing Element cycles. The City of San Carlos will consider participating in the development of

a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County anticipated to launch in Spring, 2024 under the leadership of 21 Elements.

Recommendation 2. *By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.*

Response: Part of the recommendation has yet to be implemented but will be implemented in the future by participating in the forthcoming regional ADU monitoring effort through ABAG or 21 Elements. However, part of the recommendation is not warranted. The City of San Carlos agrees that it is important to have high quality information about who is living in ADUs. The City will participate in the ABAG or 21 Elements ADU monitoring system. This monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. However, due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

Recommendation 3. *By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.*

Response: This recommendation requires further analysis. The City of San Carlos is working with the HCD to receive certification of the Housing Element which includes how to monitor and incentivize all kinds of housing production including ADUs, to the extent necessary as determined by HCD, on a timeline that satisfies HCD. Staff continues to work with 21 Elements to learn how other jurisdictions incentivize ADUs through preapproved plans, loans, and other means.

Recommendation 4. *By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.*

Response: The recommendation requires further analysis. The City of San Carlos is committed to furthering affordable housing. BMR ADUs are a relatively small portion (173) of the City's allocation (not withstanding 790 units of surplus housing units across all income levels). The City of San Carlos will work with HCD to receive certification of the Housing Element, including how to monitor and incentivize all housing types, including but not limited to ADUs, in a manner and timeline that satisfies HCD.

Recommendation 5. *By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.*

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of the City of San Carlos, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The City of San Carlos is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels. The ABAG assumptions are based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing and the data was aggregated to reduce the margins of errors. The margin of error would be too large if we are only surveying a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations of 30/30/30/10 (very low/low/moderate/above-moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

Recommendation 6. *San Mateo County and each City should consider working together to address Recommendations 2 and 3.*

Response: The City of San Carlos will support a collaborative effort to address Recommendations 2 and 3. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. The City of San Carlos will work with HCD to achieve compliance with housing laws and will work with 21 Elements on its effort to address housing issues.

San Carlos intends to participate in the regional ADU Nonprofit Resource Center initiated by 21 Elements. This resource center could provide:

- Educational events and webinars
- ADU assessments for homeowners
- Online pre-reviewed plans
- Cost calculator
- Workbooks and process graphics
- Address look-up tool
- Staff person who will be available to help with questions
- Forgivable loan programs
- Coordination with lender
- Project management support
- ADU affordability survey

Respectfully Submitted,



Jeff Maltbie, City Manager



CITY OF SAN MATEO
City Council

330 W. 20th Avenue
San Mateo, CA 94403
www.cityofsanmateo.org
(650) 522-7040

September 5, 2023

Hon. Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Subject: Response of the City of San Mateo to the San Mateo County Civil Grand Jury Report “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

Dear Honorable Judge Fineman,

Thank you for the opportunity to respond to the June 12, 2023, Grand Jury report entitled, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?” The City of San Mateo’s responses to the findings and recommendations of the report are listed below.

Response to Findings:

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The City of San Mateo agrees with this finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The City of San Mateo partially agrees with this finding. The City of San Mateo anticipates that ADUs will meet some of its RHNA-6 affordable housing commitments; nonetheless ADUs are just one of many strategies being used. Specifically, San Mateo has a total lower income housing RHNA of 2,800 units and ADUs make up only 264 of these units (less than 10% of the lower income RHNA obligations). If circumstances result in fewer ADUs being built during the planning period that meet lower income thresholds, the City could still meet its RHNA utilizing other policies and programs contained in its Housing Element.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: Not applicable: the City of San Mateo is not named in this finding and therefore has no comment.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: The City of San Mateo partially agrees with this finding. HCD's comment to the City was that "[the City] must commit to also monitoring affordability of the ADU units that are permitted..." but did not specify the frequency of the monitoring. San Mateo's July 2023 Housing Element includes an updated policy (H 1.4) that, among other things, commits the City to supporting a regional ADU monitoring effort through 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The City of San Mateo does not agree with this finding. The City of San Mateo's Housing Element includes multiple implementing actions under updated Policy H1.4 (Support Increased ADU Development) to monitor annual ADU production and verify affordability. As part of its Annual Progress Report to HCD, the City will provide a report on ADU permitting data to verify that Housing Element production targets are being achieved. In addition, the most recent version of the City's Housing Element, published in July 2023, commits to monitoring ADU occupancy and rent levels through verification at permit issuance and supporting a regional ADU monitoring effort through 21 Elements, which is anticipated to begin in 2024/2025.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: The City of San Mateo does not agree with this finding. The City's RHNA-6 obligations for low, very low and moderate income units is 3,975 units; however only 396 (approximately 10%) of these units will consist of ADUs. The City has multiple other strategies to achieve its affordable housing requirements for this housing cycle. Theoretically, the City has the ability to fully meet its RHNA obligations for every affordability category without any new ADUs being counted as affordable. However, there is ample evidence to support the finding that some percentage of ADUs are being rented at affordable levels and occupied by individuals and families who meet affordable income thresholds. Beyond the September 2021 ABAG report, which found that ADUs are rented at a variety of rates and often meet lower income affordability requirements based on the incomes of the occupants and/or their rental rates, there is data collected by many jurisdictions in San Mateo and Santa Clara counties over the past decade that shows ADUs are rented and occupied at affordable levels.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: The City of San Mateo agrees with this finding. The City has the ability to establish internal processes to monitor ADU affordability and occupancy, or it could contract with an outside agency, such as HIP Housing. As outlined in the Housing Element, the City is committed to establishing an effective process to monitor ADU affordability and will be collaborating with 21 Elements to establish an ADU monitoring

process that meets HCD requirements. However, it must be noted that the City does not have a high proportion of ADUs in their sites inventory for RHNA-6.

Response to Recommendations:

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. While the City of San Mateo shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not practical or feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process of multiple years of public input and revisions and is close to a final submission to HCD. In addition, state law and HCD allow the City to count ADU production toward its RHNA-6 obligations. However, the City is committed to following state housing law and to supporting the 21 Elements effort to develop an effective regional ADU monitoring program. The City is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. As previously mentioned, the City's Housing Element Policy H1.4 contains multiple implementing actions, including an action to pursue additional actions if ADU production targets are not being met for two consecutive years.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: Part of the recommendation has yet to be implemented, but will be implemented in the future, and part of the recommendation is not warranted. The City of San Mateo agrees that it is important to have high quality information about who is living in ADUs. The city is participating in the 21 Elements effort to establish an ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the County.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: The City of San Mateo agrees with the goal of adopting an affordable ADU program. The City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions. In addition, 21 Elements, working on behalf of the City, have been researching best practices for the creation of the ADU nonprofit. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to R2, the City of San Mateo will track the intended use of ADUs. The City has also included Policy 5.1.3 in its Housing Element to explore the potential for a City ADU loan program. The timeframe for implementation of the program is Summer 2024.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of the City of San Mateo, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The City is supporting the creation of an ADU monitoring program through 21 Elements which will collect data that can be used to revise the distribution formula based on actual observed income levels.

In 2020, the Center for Community Innovation at the University of California at Berkeley (UC Berkeley) undertook a comprehensive, statewide survey of ADUs, resulting in a document entitled, "Implementing the Backyard Revolution: Perspectives of California's ADU Homeowners," which was released on April 22, 2021. The UC Berkeley study, which was referenced in the 2021 ABAG report, surveyed thousands of homeowners statewide with repeat mailing and the data was aggregated to reduce the margins of errors. The margin of error would be too large if we are only surveying a small number of households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations of 30/30/30/10 had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed. Based on the HCD-approved ABAG ADU survey, the City updated its breakdown to the 30/30/30/10 formula to estimate ADU affordability in the most recent draft of the Housing Element In July 2023 to be consistent with the other San Mateo County jurisdictions. The City had previously used the more conservative breakdown on 5/30/50/15 as noted in the Grand Jury Report.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3.

This response was approved by the San Mateo City Council at a public meeting on September 5, 2023.

Sincerely,



Amourence Lee
Mayor



DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT
(650) 829-6620
FAX (650) 829-6657
E-MAIL WEB-ECD@SSF.NET

CITY COUNCIL 2023

FLOR NICOLAS, MAYOR (DIST. 3)
MARK NAGALES, VICE MAYOR (DIST. 2)
MARK ADDIEGO, MEMBER (DIST. 1)
JAMES COLEMAN, MEMBER (DIST. 4)
EDDIE FLORES, MEMBER (DIST. 5)

SHARON RANALS, INTERIM CITY MANAGER

Dear Members of the Grand Jury,

Thank you for the opportunity to comment on the report titled, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”. Please find our response to the findings and recommendations of the report below.

I. Response to Findings

F1. *Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.*

South San Francisco agrees with this finding.

F2. *San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.*

South San Francisco partially agrees with this finding. While South San Francisco has previously counted ADUs to meet affordable housing commitments in RHNA at the MODERATE, NON-DEED RESTRICTED category for Annual Progress Report purposes, it is one of many strategies to meet the City’s RHNA obligation. Specifically, South San Francisco has a total lower income housing RHNA of 2,093 very-low, low- and moderate-income units and using the accepted HCD formula for allocating ADUs, up to 304 of these projected units could be assumed for lower income housing production. This is approximately 15% of overall lower income units in South San Francisco’s RHNA allocation. Additionally, ADUs only make up 1.8% of overall projected RHNA capacity – the vast majority of development opportunities are spread throughout the City and South San Francisco only notionally relies on and applies ADU potential to meet RHNA Cycle 6.

Total RHNA Summary

	Very-Low Units	Low Units	Moderate Units	Above-Moderate Units	Total Units
RHNA	871	502	720	1,863	3,956
RHNA w/20% Buffer	1,045	602	864	2,236	4,747
Type					
Pipeline Projects	225	408	50	2,898	3,581
ADUs (Based on High Projection)	102	101	101	-	304
Opportunity Sites	546	1,319	580	10,663	13,108
Projected Total to Comply with RHNA	873	1,828	731	13,561	16,993

Additionally, South San Francisco has already developed and implemented the following programs as part of the adopted Housing Element Policies:

- Revising our zoning codes to allow for increased density, which allow for housing that is naturally more affordable;
- Commercial impact fees in place to generate affordable housing funds;
- Operation of a two-year pilot program to provide ADU construction management through Hello Housing;
- Streamlined permitting processes for affordable housing using State law; and
- Inclusionary zoning requirements that require 15% of new units be rented or sold affordably.

F3. *Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.*

Not applicable: South San Francisco is not named in this finding and therefore has no comment.

F4. *HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.*

South San Francisco partially agrees with this finding. We do not expect HCD to specify how to verify the income levels of ADU occupants. Additionally, HCD is only asking for verification at the initial time of occupancy. South San Francisco is planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

Additionally, South San Francisco has a draft Program in the adopted Housing Element per HCD input and revisions to address future ADU production and monitoring relative to RHNA expectations:

Program CRT-6.1 – Continue to support the development of secondary dwelling units consistent with State Law and educate the community about these standards. City will continue to allow permissive design standards for ADUs with no parking required in most instances, reduced setbacks, larger units and ADUs allowed on both single- and multi-family zoned parcels. Actively promote participation in the City’s two-year pilot program Hello ADU for comprehensive project management support for ADU construction. City shall track compliance with ADU construction through the Annual Progress Report to reconcile trends with actual ADU permits issued and commit to new ADU promotion programs if ADU construction falls more than 30% off-trend.

Responsibility: Department of Economic and Community Development – Planning Division; Planning Commission

Time Frame: Annual reporting to HCD through the Annual Progress Report; if ADU production and affordability falls 30% below recent trend line assumptions, City shall adopt alternate measures (e.g., incentives, funding, development standard modification, rezoning) to maintain adequate sites to accommodate the regional housing need allocation by income group and promote ADU construction within six months.

Funding Source: Staff time to promote program; City funding for promotion programs, additional construction management.

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

South San Francisco partially agrees with this finding. San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. South San Francisco is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

Additionally, South San Francisco has a draft Program in the adopted Housing Element per HCD input and revisions to address future ADU production and monitoring relative to RHNA expectations:

Program CRT-6.1 – Continue to support the development of secondary dwelling units consistent with State Law and educate the community about these standards. City will continue to allow permissive design standards for ADUs with no parking required in most instances, reduced setbacks, larger units and ADUs allowed on both single- and multi-family zoned parcels. Actively promote participation in the City’s two-year pilot program Hello ADU for comprehensive project management support for ADU construction. City shall track compliance with ADU construction through the Annual Progress Report to reconcile trends with actual ADU permits issued and commit to new ADU promotion programs if ADU construction falls more than 30% off-trend.

Responsibility: Department of Economic and Community Development – Planning Division; Planning Commission

Time Frame: Annual reporting to HCD through the Annual Progress Report; if ADU production and affordability falls 30% below recent trend line assumptions, City shall adopt alternate measures (e.g., incentives, funding, development standard modification, rezoning) to maintain adequate sites to accommodate the regional housing need allocation by income group and promote ADU construction within six months.

Funding Source: Staff time to promote program; City funding for promotion programs, additional construction management.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

South San Francisco partially agrees with this finding. As stated above, South San Francisco is planning to support a regional approach to monitoring ADU affordability. Unless ADUs are specifically deed-restricted for very-low or low-income housing, South San Francisco will likely only consider ADUs under the moderate-income, non-deed restricted category for the Annual Progress Report to be conservative about RHNA compliance. South San Francisco is not actively relying on

ADUs to meet RHNA Cycle 6 – instead, our vast and targeted housing programs and opportunity sites will ensure that the City meets its regional housing obligations.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

South San Francisco agrees with this finding. HIP is one potential partner agency. Many jurisdictions, including South San Francisco, provide funding to HIP Housing to operate their homesharing and other housing programs. As the regional efforts to monitor ADU affordability move forward the City will ensure that nonprofit partners like HIP are engaged in these efforts, including gauging their interest as potential operators of such a program.

II. Response to Recommendations

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

The recommendation will not be implemented because it is not warranted or is not reasonable. While South San Francisco shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process of multiple years of public input and revisions. South San Francisco is close to a certified submission to HCD; it is not feasible or good policy for us to make a major change to our housing assumptions this late in the process. However, South San Francisco is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. South San Francisco is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Part of the recommendation has yet to be implemented but could be implemented in the future. However, part of the recommendation is not warranted. South San Francisco agrees that it is important to have high quality information about who is living in ADUs. The City may participate in the ABAG or 21 Elements ADU monitoring system. The potential monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in San Mateo County.

R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

This recommendation has yet to be implemented but may be implemented in the future.

South San Francisco agrees with the goal of adopting an affordable ADU program by means of a current program – the City subsidizes project management and design of ADUs for participating South San Francisco homeowners. The City is also learning more about the possible creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the City, have been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit, which may partner with HIP Housing or SMCo HEART, is projected to launch in July 2024 and may be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

R4. *By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.*

This recommendation has yet to be implemented but may be implemented in the future. As part of the monitoring program referenced in response to R2, South San Francisco may track the intended use of ADUs. South San Francisco may develop an incentive program that offers incentives in exchange for affordability requirements such as deed restrictions per the Housing Element program CRT 6.1, as reviewed by HCD, and as recommended by the City Council at a future date.

Additionally, the City will utilize the two-year pilot program with Hello Housing for ADU construction management to provide data on the intended use of ADUs for a more holistic data point that can be shared with San Mateo County’s 21 Elements working collaborative.

R5. *By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.*

The recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relative small size of South San Francisco a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. South San Francisco] is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels. The future non profit may partner with HIP Housing or SMCo HEART.

The UC Berkeley study surveyed thousands of homeowners statewide with repeat mailing... the data was aggregate to reduce the margins of errors. The margin of error would be too large if we are only surveying a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations accepted by HCD of 30/30/30/10 had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

R6. *San Mateo County and each City should consider working together to address Recommendations 2 and 3.*

This recommendation has been implemented.

San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3.



City of South San Francisco

City Council

Resolution: RES 136-2023

P.O. Box 711 (City Hall, 400 Grand Avenue)
South San Francisco, CA

File Number: 23-657

Enactment Number: RES 136-2023

RESOLUTION APPROVING THE DRAFT RESPONSE TO THE SAN MATEO COUNTY GRAND JURY REPORT TITLED, "SECOND UNITS: AFFORDABLE HOUSING'S PANACEA OR PREVARICATION?"

WHEREAS, on June 12, 2023, the San Mateo County Civil Grand Jury released a report titled "Second Units: Affordable Housing's Panacea or Prevarication?" (the "Report") with seven findings regarding second unit affordability and their use to meet the Regional Housing Needs Allocation for Cycle 6 and six recommendations intended to encourage affordability triggers and reporting; and

WHEREAS, the City of South San Francisco is required to respond to the Report within 90 days of its filing, or by September 11, 2023; and

WHEREAS, the City's response must include a statement as to whether or not the City agrees or disagrees with each finding, as well as a response to each recommendation; and

WHEREAS, responses to recommendations must state whether the recommendation has been implemented, will be implemented, requires further study, or will not be implemented These statements must be accompanied by a detailed explanation; and

WHEREAS, City staff has prepared a response to the Report, attached herein as Exhibit A.

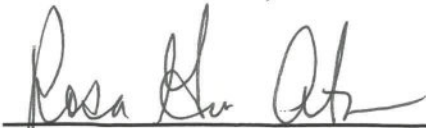
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of South San Francisco does hereby approve the draft response, attached hereto as Exhibit A, to the San Mateo County Grand Jury Report titled "Second Units: Affordable Housing's Panacea or Prevarication?" and authorize the City Manager or designee to submit the response in a manner consistent with the approach described in the Grand Jury Report correspondence.

* * * * *

At a meeting of the City Council on 8/23/2023, a motion was made by Councilmember Flores, seconded by Councilmember Coleman, that this Resolution be approved. The motion passed.

Yes: 5 Mayor Nicolas, Vice Mayor Nagales, Councilmember Addiego, Councilmember Coleman, and Councilmember Flores

Attest by



Rosa Govea Acosta, City Clerk



**Town of Atherton
Office of the City Manager
80 Fair Oaks Lane
Atherton, California 94027
Phone: (650) 752-0500**

September 11, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Review and Approve the Town’s Response to the San Mateo County Civil Grand Jury Report: *“Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”*

At its meeting on September 6, 2023 the City Council heard and approved the below response. A copy of this Response will be held on file in the City Clerk’s Office as well as sent electronically to grandjury@sanmateocourt.org from the Town of Atherton.

Below is the Response.

Recommendation

The Town of Atherton staff recommends the City Council review the proposed draft response to the Civil Grand Jury Report titled *“Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”* and provide direction as needed to finalize the response. Staff will revise and complete the response and submit it by the submission date of September 11, 2023.

San Mateo County Civil Grand Jury & Report – Town of Atherton Response

On June 12, 2023, the San Mateo County Civil Grand Jury (SMCCGJ) released its report *“Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”* (Report). The Report describes items that worsen housing affordability in the County, and provides notable findings from interviews and research, including recommendations to address these findings. Pursuant to Penal Code Section 933.05, the Town of Atherton is required to provide a response to all findings and recommendations of SMCCGJ reports. The Town welcomes the opportunity to address and clarify all items directly and hopes to create a transparent dialogue amongst all jurisdictions within San Mateo County.

For your convenience, the Town of Atherton’s response includes:

- [***Background on the State of Housing in California & San Mateo County***](#)
- [***Atherton Response to Issues***](#)
- [***Atherton Response to Findings***](#)

- [**Atherton Response to Recommendations**](#)

Background on the State of Housing in California & San Mateo County

The State of California through its Department of Housing and Community Development (HCD) seeks to increase the number of available housing options for Californians across all income segments, focusing on affordability and specialized needs. One of HCD's most important enforcement mechanisms for State housing mandates is the Housing Element iterative process.

Through this process, local jurisdictions submit evidence regarding progress made in meeting their assigned Regional Housing Needs Allocation (RHNA), submit proposals regarding the creation of public programs, providing additional background information about extenuating factors that prevent them from meeting certain goals (if applicable), provide projections regarding potential development of sites, and address other critical items relevant to the overall fairness and equity with regard to the availability and production of housing in their local communities.

Each jurisdiction's RHNA is assigned by their Council of Government, which in Atherton's case is the Association of Bay Area Governments (ABAG). Per the Report, ABAG considers each jurisdiction's existing circumstances including "population, employment potential, proximity to transportation centers, open space, inclusivity, and diversification" (see Report page 3) when assigning RHNA numbers. To meet these RHNA housing goals and other commitments to affordable housing, each city and town must use a variety of strategies and/or prove extenuating circumstances that dictate certain aspects of the strategy. This includes but is not limited to the development of ADUs.

Again, as mentioned by the SMCCGJ throughout the Report, the State has made a significant push to streamline and encourage the production of ADUs, likely due to the positive impact that increasing ADU production in historically Single-Family properties would have on the availability of housing stock. The [SMCCGJ cited sources in the Report¹](#) which confirm the positive impact this would have, specifically, allowing infill development of ADU units in Single-Family zones.

Atherton Response: Issues

In addition to addressing the Findings and Recommendations, the Town of Atherton seeks to address three issues mentioned in their Report. The Town seeks to clarify and provide additional information for these items. The Town will also directly address each Finding and Recommendation in subsequent sections. The issues in the Report are provided in *italics* followed by the Town's response.

Issue 1. The San Mateo County Civil Grand Jury states that HCD does not regulate whether housing reported as low-income is used as low-income after it is actually developed. Further, their Report states San Mateo County jurisdictions, including Atherton, do not monitor or verify ADU affordability.

The San Mateo County Civil Grand Jury asserts in the Report that despite good intentions, the State does not include any regulation to ensure units reported as low-income are used as low-income. The Town of Atherton disagrees.

¹[ADU-Equity-August-2022-Final.pdf \(berkeley.edu\)](#), "ADUs for All: Breaking Down Barriers to Racial and Economic Equity in Accessory Dwelling Unit Construction," UC Berkeley Center for Community Innovation - August 2022

The Report acknowledges while HCD mandates all California jurisdictions create programs to monitor and verify ADU affordability every two years, affordable ADU housing is created but not used as low-income. The Report implies this is because HCD does not specify how jurisdictions must prove ADUs are occupied by very low-, low- or moderate-income households. The Report also mentions that jurisdictions have yet to work with local independent agencies such as HIP Housing to track and verify the affordability of ADUs' affordability and occupancy.

Atherton is a jurisdiction that is currently in the process of complying with Housing Element mandates. HCD permits flexibility that allows local government agencies to build programs that can be implemented realistically given the character and circumstances present in each individual community.

Further, as the Report states (see Report page 11), HCD has not certified Atherton's Housing Element Update, in part, because its affordable ADU program did not describe how affordability would be established. HCD requested that the program be revised to clarify actions to establish and track affordability. While HCD has left the finer points of verifying and tracking affordability to the Town of Atherton, the Town has a vested interest in meeting its Housing goals and has chosen to draft and implement a realistic and holistic housing strategy that, subject to HCD approval, focuses on maximizing the existing land uses to create an environment that allows affordable housing to be created throughout the entire community.

Issue 2. ADUs can exacerbate patterns of segregation and exclusion if left unregulated.

The Town agrees that ADUs, if left unregulated, can potentially worsen patterns of segregation and exclusion because homeowners tend to rent to family and friends. This is especially true in jurisdictions with a high level of economic segregation, such as Atherton. To both improve integration and mitigate the risk of ADUs worsening segregation, the Town's 6th Cycle Housing Element Update has proposed strategies to ensure housing is set aside for the very-low, low- and moderate-income segments which historically have predominantly affected people of color.

For example, a program has been proposed that would institute the following:

- An impact fee that would fund a rental assistance subsidy for low-income units;
- Another program implementing the adoption of an inclusionary housing ordinance that will mandate that a certain number of units within new multi-family developments include affordable units;
- Implement a robust program with HIP Housing to assist in matching homeowners with home seekers through identification and screening of prospective tenants.

There would also be zoning code amendments that would rezone certain areas to allow for these small multi-family units. The Town has already planned a program to work with HIP Housing, and other similar agencies and non-profits, such as Stanford and Menlo College, to make it easier for current and potential homeowners to find and screen prospective lower-income tenants to rent their ADUs to. Further, the Town has also developed proposed educational programs to increase residents' awareness of available resources and thus increase the likelihood of ADUs being developed and rented at affordable rates.

Atherton seeks to remove as many barriers as possible to ensure that ADU production not only increases, but also mitigates historic patterns of segregation and exclusion. The Town plans to use a combination of ADUs, rental subsidies, educational programs, extensive community outreach and other strategies to raise awareness and track ADU rental patterns.

Issue 3. *The San Mateo County Civil Grand Jury Report states that counting ADUs as affordable housing will likely result in cities issuing permits for fewer deed-restricted very-low, low-, and moderate-income apartments and homes.*

The Report states that for “every ADU included in a Housing Element – regardless of whether the ADU is built and rented to very low-, low-, or moderate-income tenants – one verifiable, deed-restricted affordable housing unit will not be built in that jurisdiction by a developer.” We disagree with this statement.

The Town believes the barriers to building deed-restricted affordable housing, and affordable housing generally, turns on more than just a single variable, i.e., whether ADUs have been included as part of a jurisdiction’s strategy. Atherton believes that affordable housing must take into consideration the jurisdiction’s current land uses, political climate, current socioeconomic and racial demographics, and other important factors to determine the best path forward towards *actual development* of affordable housing.

The Town believes ADU’s play a critical role in easing the affordable housing crisis as part of a larger, thoughtful strategy, not as a lone panacea. It is widely agreed, [and supported by studies/reports²](#), that “ADUs have many social, economic, and environmental benefits that can positively impact a local community and economy.”

The Town of Atherton sees ADUs as a critical component of a holistic housing approach that, when used in conjunction with other strategies (such as those already mentioned above - government subsidies, educational programs to demystify the permitting process, outreach programs, etc.), can produce actual improvement in the Town’s housing availability and affordability.

It is also worth reaffirming that each jurisdiction must meet its RHNA goals within the confines of its existing circumstances. These extenuating circumstances vary greatly from jurisdiction to jurisdiction and likely are at least in part why State law and HCD allows jurisdictions the flexibility to determine the details of how to meet their goals. The State must regulate every jurisdiction’s compliance with housing law, but wisely realizes it does not possess familiarity with the nuanced details of each jurisdiction (such as the current state of land uses, political climate, community sentiments, and local developer interest in building affordable housing).

In the Town of Atherton’s case, its most significant issues revolve around existing land use. There are no multi-family land uses, retail, commercial or industrial uses in Atherton. There are eight schools, three of which are private. In addition, the Town of Atherton does not own any developable land. Another significant barrier to construction of affordable housing in the jurisdiction is the high cost of land. The current estimated cost of a developed acre is \$7 - 8 million dollars. Given that ADUs are more cost-effective

²*[ADU-Equity-August-2022-Final.pdf \(berkeley.edu\)](#), “ADUs for All: Breaking Down Barriers to Racial and Economic Equity in Accessory Dwelling Unit Construction,” UC Berkeley Center for Community Innovation - August 2022

to construct than new multi-family housing, this provides additional support for ADUs as affordable housing.

Given these circumstances, when planning and drafting housing strategies to meet the assigned RHNA for its sixth cycle Housing Element Update, the most viable, cost-effective, and realistic strategy involves a high percentage of ADUs. The Town of Atherton has not and did not draft its housing strategy with the intent to rely solely on ADUs, rather the existing circumstances of the area dictated that the housing strategy must involve a high number of ADUs.

The Town of Atherton disagrees with comments made by the report that say, “just because the law makes it possible to count ADUs as affordable housing, it does not exempt cities and towns from credibly planning for badly needed affordable housing.” The Town of Atherton and its staff have made significant good faith efforts to host workshops to notify and include community members of the current state of housing and the need to improve and increase housing availability and affordability. The Town has also directed staff to develop the programs mentioned to address housing affordability in a manner that realistically meets the RHNA goals assigned.

The Town agrees that no jurisdiction should be allowed to evade its responsibility to plan and create more opportunities for affordable housing development. However, Atherton also believes in the programs it has proposed and welcomes the opportunity to continue to improve housing affordability and availability in our local community and San Mateo County.

Atherton Response: Findings

Below, conforming with the requirements set forth by Penal Code Section 933.05, the Town of Atherton addresses each finding and recommendation. The findings in the Report are provided in *italics* followed by the Town’s response.

Finding F1. *Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.*

The Town of Atherton partially disagrees with this finding. The Town agrees the State has passed legislation that requires the ministerial review and issuance of a permit for the development of an ADU if certain requirements are met. However, Atherton believes the finding should be presented within the context of legislative intent. It is our understanding that the intent is to streamline the permitting process for homeowners, decrease the costs of developing ADUs, and overall make building an ADU more accessible across all racial and socioeconomic groups.

By improving the costs and simplifying the process, the likelihood of these units being placed on the market as affordable housing units increases. In one of the [sources cited by the Report](#)³, barriers to ADUs being offered as affordable housing options are identified. Namely, the high cost of construction and fees, confusion surrounding the complexity of the permitting process, educational, proactive outreach to educate about ADU development resources and processes, public financing options, among others. These barriers tend to disproportionately affect people of color and low-income households. In addition to this

³ [*ADU-Equity-August-2022-Final.pdf \(berkeley.edu\)](#), “ADUs for All: Breaking Down Barriers to Racial and Economic Equity in Accessory Dwelling Unit Construction,” UC Berkeley Center for Community Innovation - August 2022

clarification, Atherton believes that it would be possible to condition permits for ADUs that exceed prescribed criteria.

Finding F2. *San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.*

The Town of Atherton partially disagrees with this finding. The Town has developed its housing policies and programs to meet its 6th cycle Housing Element Update requirements using a holistic and inclusive approach. The Town agrees that ADUs are a key portion of its affordable housing strategy. However, the Town is also considering multi-family housing and zoning programs, the implementation of a rent subsidy program for low-income households and is implementing a program that involves working with HIP Housing, a local non-profit, to streamline screening and referrals of low-income tenants for ADU homeowners, in addition to the use of ADUs as infill development to maximize the current overwhelming single-family land uses.

While the current proposed 6th cycle Housing Element Update is still in development and pending certification by HCD, the Town welcomes HCD's feedback and will continue to work collaboratively to achieve certification. Finally, the Town of Atherton cannot speak for other San Mateo County jurisdictions regarding their housing strategies or whether their programs and policies have been certified by HCD.

Finding F3. *Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.*

The Town of Atherton partially disagrees with this finding. Atherton believes housing strategies are unique and crafted to each jurisdiction's needs and should be viewed within proper context. The Town's 6th cycle Housing Element Update proposes ADUs, multi-family housing, rent subsidies, educational programs and outreach, and other policies to meet its affordable housing commitments.

The existing limitations of the jurisdiction dictate that Atherton includes a strong commitment to infill development in the form of ADUs. The Town agrees that its housing strategy uses ADUs to meet at least 80% of its affordable housing commitments but seeks to reaffirm that the strategy was and continues to be developed in good faith to maximize the realistic development of new housing, which would likely improve overall housing affordability within Atherton and regionally.

Finding F4. *HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.*

The Town of Atherton partially disagrees with this finding. The Town agrees that HCD has indicated that it must address how ADU production and affordability will be monitored. The Town also agrees the State has not taken an overly prescriptive approach regarding the methods used to track and verify affordability. That said, as cited by the Report, HCD has made it clear in correspondence with Town staff that it must provide details about the actions that will be taken to establish and track affordability.

Atherton believes that the flexibility provided by HCD to local jurisdictions has an overall positive impact on the effectiveness of housing policies and programs. Further, the Town of Atherton is working with HIP Housing, and agencies like it, to help homeowners find and screen low-income tenants. The Town is also

open to discussing and supporting a regional ADU monitoring effort through ABAG or 21Elements, which is a long-standing collaborative effort amongst San Mateo County jurisdictions to develop a robust program to assist homeowners.

Finding F5. *Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.*

The Town of Atherton partially disagrees with this. The Town of Atherton agrees that it has not yet achieved certification and therefore has not yet had the opportunity to solidify additional details about its ADU income verification and tracking programs. The Town, however, has had the opportunity to correspond with HCD who have provided feedback. Atherton and its staff plan on implementing this feedback to strengthen and clarify the details of relevant programs. Again, the Town of Atherton has already been working with the HIP Housing non-profit to assist local homeowners in finding and screening low-income tenants and is open to exploring other options such as the regional ADU monitoring effort.

Finding F6. *Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.*

The Town of Atherton agrees with this finding. The Town supports effective ADU monitoring and verification. As mentioned in previous response, Atherton has already been working with the HIP Housing non-profit to assist local homeowners in finding and screening lower-income tenants, and is open to exploring other options such as the regional ADU monitoring effort.

Finding F7. *ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.*

The Town of Atherton partially disagrees with this finding. Atherton agrees that HIP Housing and other similar non-profits are equipped to verify occupancy of deed-restricted rental properties in San Mateo County. However, the Town cannot verify whether they have the capacity to monitor the affordability of all ADUs in San Mateo County.

Atherton Response: Recommendations

Recommendation R1. *San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.*

The Town of Atherton will not implement this recommendation because it is untenable and would likely have a significant negative impact on the actual development of affordable housing in the jurisdiction. The Town seeks to meet its affordable housing commitments, including but not limited to the verification of all its affordable housing units.

The Town is currently actively working with HCD to develop an effective program to track and verify the affordable housing units within its jurisdiction over the 6th cycle Housing Element period for this reason. Atherton believes prohibiting the use of any ADUs in its current 6th cycle Housing Element, in the middle of its discussions with HCD to strengthen its ADU programs is counterproductive and would require Town staff to re-write a Housing Element from the ground up. Further, the San Mateo County Civil Grand Jury in its Report highlighted its worry that jurisdictions do not have sufficient staff to draft, develop and revise their 6th cycle Housing Element Updates; a prohibition of this magnitude would severely exacerbate staff workload and would not produce the equitable results the Civil Grand Jury seeks. As mentioned prior, this type of recommendation ignores the qualities and characteristics of each jurisdiction.

Recommendation R2. *By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.*

A portion of this recommendation is currently being implemented and while the verification protocol and policy undergoes revision. The Town of Atherton is actively working to strengthen its verification and monitoring systems of ADUs for its 6th cycle Housing Element Update. The Town has not yet solidified these protocols but has already implemented a portion of these programs. The Town has issued surveys to homeowners who are currently building or have built an ADU to track affordability. The Town of Atherton agrees it is important to monitor and verify its affordable housing stock, including ADUs. Atherton also agrees with the Town of Woodside's point that "engaging with and verifying the incomes of an [increasing] number of homeowners and residents every year in perpetuity would neither be practical nor cost-effective."

Recommendation R3. *By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.*

The Town of Atherton has implemented this recommendation and is currently exploring methods to expand on this option. The Town has plans to implement an inclusionary zoning ordinance that will require a minimum of 20% of any new multi-family units to be affordable to lower-income households. Atherton supports the creation of a regional non-profit that would offer resources and other incentives on behalf of the Town and other jurisdictions to increase the production of affordable ADUs in exchange for a formal agreement to rent at rate affordable to lower-income households.

Recommendation R4. *By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.*

Part of this recommendation is already being implemented. The Town of Atherton already has a program in place which tracks the intended use of ADUs via a voluntary survey. The Town will continue to explore additional incentives to increase ADU production and their placement on the rental market, including but not limited to offering incentives in exchange for deed restrictions that, if rented, require ADUs be rented at affordable rates. Atherton also supports the creation of a regional non-profit that would offer resources and other incentives on behalf of the Town and other jurisdictions to increase the production of affordable ADUs in exchange for a formal agreement to rent at rate affordable to lower-income households. The Town

of Atherton continues to work with HCD to revise and strengthen its 6th cycle Housing Element Update to achieve certification, including revising its ADU program.

Recommendation R5. *By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.*

This recommendation requires additional review and research. It will not be implemented unless any new ADU affordability distribution formula accounts for the nuances of each jurisdiction's circumstances.


We also agree with the Town of Woodside's statement that "the recommended affordability distribution of 30-30-30-10 includes a significant cushion on the more affordable end of the distribution to decrease the likelihood that jurisdictions u[sing] [it], might accidentally underproduce the amount of affordable housing projected." The Town's approach is 20-20-20-40, reducing reliance on ADUs in the affordable categories; recognizing the unique nuances of Atherton and that it is likely that more ADUs will be produced at the above moderate rate.

Recommendation R6. *San Mateo County and each City should consider working together to address Recommendations 2 and 3.*

The Town of Atherton plans to implement this recommendation and continues to work collaboratively with San Mateo County.

Please feel free to contact City Manager George Rodericks at 650-752-0504 or grodericks@ci.atherton.ca.us should you have any questions.

Best,


George Rodericks
City Manager, Town of Atherton



TOWN OF COLMA

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August 23, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Re: Grand Jury Report: "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman:

The City Council received the June 12, 2023, San Mateo Civil Grand Jury report titled, Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

The Town of Colma was requested to submit comments regarding the findings and recommendations no later than September 11, 2023.

The City Council of the Town of Colma has reviewed the recommendations in the Grand Jury Report that affect the Town and approved the responses at its public meeting on August 23, 2023.

Town's Response to the Findings:

The Town agrees with findings F1, F5, F6, F7. Finding F3 does not apply to the Town. The Town partially agrees with findings F2 and F4. All responses to the findings are as follows:

Finding 1: Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The Town of Colma agrees with this finding.

Finding 2: San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The Town of Colma partially agrees with this finding. While the Town does not count ADUs to meet affordable housing commitments in RHNA, it is one of many strategies that HCD has authorized reliance on to meet the RHNA requirements.

Joanne F. del Rosario, Mayor
John Irish Goodwin, Vice Mayor
Ken Gonzalez, Council Member • Carrie Slaughter, Council Member • Helen Fisicaro, Council Member
Daniel Barros, City Manager

Finding 3: Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: The Town of Colma neither agrees or disagrees with this finding as it is not named in this finding and therefore has no comment.

Finding 4: HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: The Town of Colma partially agrees with this finding. We do not expect HCD to specify how to verify the income levels of ADU occupants. Additionally, HCD is only asking for verification at the initial time of occupancy. The Town is planning on supporting a regional ADU affordability monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

Finding 5: Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The Town of Colma agrees with this finding. San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. The Town is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

Finding 6: Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: The Town of Colma agrees with this finding. As stated above, the Town is planning to support a regional approach to monitoring ADU affordability.

Finding 7: ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: The Town of Colma agrees with this finding. HIP is one potential partner agency.

Town's Response to the Recommendations:

The Town's responses to the Recommendations are as follows:

Recommendation 1: San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: This recommendation requires further analysis. At this time, the Town of Colma has not included ADUs in the submitted Housing Element to meet the State-mandated housing targets. The Town is close to the final submission to HCD and does not plan to make a major change that would include ADUs to meet future targets. However, the Town is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. The Town is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The Town will have this monitoring program in place for future Housing Element cycles.

Recommendation 2: By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: This recommendation has yet to be implemented but will be implemented in the future. The Town of Colma agrees that it is important to have high quality information about who is living in ADUs. The Town will participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

Recommendation 3: By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: This recommendation requires further analysis. The Town of Colma agrees with the goal of adopting an affordable ADU program. The Town is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the city, have been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

Recommendation 4: By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: This recommendation has yet to be implemented but will be implemented in the future. As part of the monitoring program referenced in response to Recommendation 2, The Town of Colma will track the intended use of ADUs. The Town will develop an incentive program that offers incentives in exchange for affordability requirements such as deed restrictions.

Recommendation 5: By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: This recommendation will not be implemented on a Town-specific basis in Colma, because it is not warranted or reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of the Town of Colma, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The Town is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

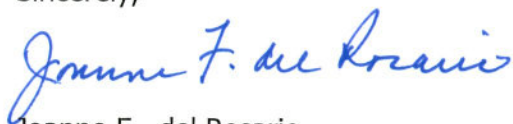
The UC Berkeley study surveyed thousands of homeowners statewide with repeat mailing... the data was aggregate to reduce the margins of errors. The margin of error would be too large if we were only surveying a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations of 30 percent very low income, 30 percent low income, 30 percent moderate income and 10 percent above moderate income had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed.

Recommendation 6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: This recommendation has yet to be fully implemented but will be implemented in the future. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the County. San Mateo County jurisdictions are already working together to address recommendations 2 and 3 by working to launch an ADU-focused nonprofit by July 2024 and an ADU affordability monitoring system by January 2025.

The Town appreciates the efforts of the Grand Jury. Please contact City Manager Daniel Barros should you require any additional information. He can be reached at (650) 997-8318 or by email: dbarros@colma.ca.gov.

Sincerely,



Joanne F. del Rosario
Mayor



TOWN OF HILLSBOROUGH
California

August 15, 2023

Hon. Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Re: Grand Jury Report: “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

Honorable Judge Fineman:

Thank you for the opportunity to comment on the report titled, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

First, we want to note that the report failed to consider the most current information available. The report highlighted comments from the Town’s first HCD (State of California Housing and Community Development Department) review letter issued on January 10, 2023, however, this HCD letter was superseded by a second review letter from HCD issued on May 8, 2023, following submittal of a meaningfully revised Draft Housing Element to the State on March 9, 2023.

Please find our response to the findings and recommendations of the report below.

I. Response to Findings

F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

The Town of Hillsborough agrees with this finding.

F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

The Town of Hillsborough partially disagrees with this finding. While 81.9% of the Town’s very low and low income RHNA allocations are proposed to be addressed through ADUs (Accessory Dwelling Units), there are other strategies included to meet the requirements including specific multi-family residential opportunity sites distributed throughout Town. Additionally, the Housing Element includes an additional 16 very low-income units beyond what was required as part of RHNA 6.

F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

The Town of Hillsborough partially disagrees with this finding. The word choice of this finding implies that Hillsborough uses ADUs for 80% of the affordable housing commitments. In reality, it is 76.9% of the affordable housing commitments, which is appropriate based on the residential characteristics of the community. ADUs are a reliable source of housing to meet the Town's RHNA requirement for very low income, low income, and moderate-income units based on historic trends, positive responses to the 2022 ADU Survey, proposed modifications to ADU standards, and in the availability of land within the Town.

The Town has a strong track record of supporting and facilitating ADU development and this was a strategy enthusiastically supported by the community through public outreach, as part of the development of the housing element. Due to the high cost of land and construction, along with other factors that lead to the high cost of housing in Hillsborough, the construction of ADUs a lower-cost and sustainable way to encourage housing production in a way that is distributed throughout the community, since these are being built on land that is already paid for.

The practicality of ADUs as a solution to creating affordable housing in high-cost areas is one reason why the California state legislature has passed so much legislation encouraging their development.

F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

The Town of Hillsborough partially disagrees with this finding. We do not expect HCD to specify how to verify the income levels of ADU occupants. Additionally, HCD is only asking for verification at the initial time of occupancy. Hillsborough is planning on supporting a regional ADU monitoring effort through 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

The Town's Draft Housing Element includes language committing the Town to "monitor ADU production and utilization and trigger mid-cycle adjustments as needed" (Goal 2.9), including an Action 2.9(a) to "establish an ADU monitoring program that tracks the number of ADUs permitted, the number of ADUs rented/used for housing in the community, and the rental rate ADUs are offered for." The Town has provided detail related to what information will be captured as well as committed to annual monitoring through a progress report for HCD and the City Council (Action 2.9(b)).

F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

The Town of Hillsborough agrees with this finding. San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. As noted above, Hillsborough has included language in its Draft Housing Element committing to establishing a monitoring program, with associated consequences if the benchmarks are not met. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

Additionally, the Town of Hillsborough is planning to support a regional ADU monitoring effort through 21 Elements and the Shared Housing Team program. This program will provide coordinated knowledge-sharing and will also help to provide consistency across jurisdictions and the adoption of best practices countywide.

F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

The Town of Hillsborough agrees with this finding. As stated above, Hillsborough is planning to support a regional approach to monitoring ADU affordability.

F7. *ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.*

The Town of Hillsborough agrees with this finding. HIP is one potential partner agency. The Town has an existing partnership with HIP Housing and successful participation in their Home Sharing program and other housing resources.

II. Response to Recommendations

R1. *San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.*

The recommendation will not be implemented because it is not warranted or is not reasonable. While Hillsborough shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals. The Housing Element was developed through a rigorous process of multiple years of public input and revisions. The Town of Hillsborough is close to a final submission to HCD; it simply is not feasible for us to make a major change to our housing policy this late in the process. However, Hillsborough is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG¹.

The Town of Hillsborough is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The town will have this monitoring program in place for future Housing Element cycles. Any disincentive to ADUs would further aggravate and worsen the housing shortage.

R2. *By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.*

Part of the recommendation has yet to be implemented but will be implemented in the future. However, part of the recommendation will not be implemented as it is not warranted. Hillsborough agrees that it is important to have high quality information about who is living in ADUs. The town will participate in the 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. Due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county. The Town is willing to continue to consider feasible regional solutions to the issue of ongoing affordability surveys, in coordination with ABAG and other local jurisdictions.

R3. *By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.*

This recommendation has yet to be implemented but will be implemented in the future. Hillsborough agrees with the goal of adopting an affordable ADU program that would include incentives for

¹ As just one example of how this may be implemented successfully, the Southern California Association of Governments (a regional analogue to ABAG) conducted a collective ADU affordability analysis on behalf of each member jurisdiction, providing an affordability breakdown by income level based on real-time surveys and using available information to estimate occupation numbers within the confines of state law. See: https://scag.ca.gov/sites/main/files/file-attachments/adu_affordability_analysis_120120v2.pdf?1606868527.

ADU owners, however, in direct conversations with HCD, staff was told that deed restrictions often act as a barrier to ADU development. Any disincentive to ADUs would further aggravate and worsen the housing shortage.

The Town is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions. The draft work plan for the nonprofit includes programs to incentivize the production of affordable ADUs and support for homeowners constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

As part of its Housing Element, the Town of Hillsborough has proposed action steps to promote the construction and affordability of ADUs. These include the continuance of the Town's ADU Specialist position to facilitate the ADU development process, annual review of the ADU application and approval process, analysis of the budget impacts and cost-benefit assessment of reducing or waiving ADU development review fees as well as permit streamlining. One of the proposed actions is to analyze incentives for deed restricted ADUs to encourage rental to very-low-income households (Goal 2.2, Action 2.2(a)).

Additionally, in the event that the Town is under producing ADUs based on the results of the ADU monitoring program, a Tier I mid-cycle adjustment is to increase the amount of Housing Choice Fund dollars available to subsidize the construction of qualifying affordable housing.

R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

This recommendation has yet to be implemented but will be implemented in the future.

As part of the monitoring program referenced in response to R2, the Town of Hillsborough will track the intended use of ADUs. Hillsborough is committed to evaluating the feasibility of the creation of an incentive program that offers incentives in exchange for affordability requirements, such as deed restrictions. However, in conversations directly with HCD, it was indicated to Town staff that deed restrictions can often serve as a barrier to development, rather than serve as an incentive.

R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-and moderate-income housing requirements in their RHNA housing elements.

The recommendation will not be implemented because it is not warranted or is not reasonable. While we agree with the importance of an accurate distribution formula, given the relatively small size of Hillsborough, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions, not limited to a Hillsborough-specific formula. Hillsborough is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

The UC Berkeley study surveyed thousands of homeowners statewide with repeat mailing, so the data was aggregated to reduce the margins of errors. The margin of error would be too large if we are only surveying a dozen or couple of dozen households. There is also no evidence in the data to suggest significant variation from city to city. The recommendations of 30/30/30/10 had a significant cushion built in to ensure cities did not accidentally under-produce the amount of housing needed.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

This recommendation has been implemented.

San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3.

In closing, we encourage you to consider the 2022-2023 Marin County Civil Grand Jury Report released on June 15, 2023 – “Build More ADUs - An Rx to Increase Marin’s Housing Supply.” This report outlines the many benefits of ADUs and notes that because building these units does not require purchasing additional land, can be added to existing structures, and can have fewer construction requirements than traditional single-family houses on a square foot basis, they may be built less expensively. California’s new law recognizes that ADUs can help fulfill the state’s housing mandate and can do so affordably and with a lesser impact on land use and the environment.

The advantages of ADUs are numerous. ADUs are a complementary form of housing that are compatible with the character of the Town and are supported by our community. They allow older residents to age in place; they create options for multi-generational living; and they can provide a source of income for retired homeowners who don’t want to move.²

The Town of Hillsborough continues to work collaboratively with HCD to achieve compliance.

The Town’s Cycle 6 Draft Housing Element is the result of extensive community engagement, numerous public meetings, and revisions to the approach of addressing affordable housing concerns. The Town believes that it has made a good faith effort to address the Regional Housing Needs Allocation with a comprehensive plan that addresses the critical need for housing, while maintaining the Town’s unique and beloved character.

The draft plan creates opportunities for a variety of housing types at a variety of income levels, while protecting the community by recognizing the constraints of access, fire danger, topography, and preserving the Town’s development pattern.

The Town of Hillsborough recognizes the dire need for affordable housing in our area and embraces its responsibility. ADUs are literally a "Yes In My Backyard," practical, common sense solution towards solving this critical problem.

This response to the Grand Jury was approved by the Town of Hillsborough City Council at a public meeting on August 14, 2023. If you have any questions, please feel free to contact City Manager, Doug Davis at (650) 375-7553 ddavis@hillsborough.net or Planning Manager, Liz Ruess lruess@hillsborough.net.

Respectfully,



Christine Krolik
Mayor, Town of Hillsborough

² Washington Post Article, see: https://www.washingtonpost.com/business/got-a-granny-build-her-a-house-in-your-backyard/2023/02/01/5d7d3dde-a227-11ed-8b47-9863fda8e494_story.html



TOWN of PORTOLA VALLEY

Town Hall: 765 Portola Road, Portola Valley, CA 94028 - Tel: (650) 851-1700 Fax: (650) 851-4677

September 12, 2023

Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: The Town of Portola Valley's Response to the San Mateo County Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

Dear Judge Fineman and Members of the Grand Jury,

Thank you for the opportunity to comment on the report titled, "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?". Please find our response to the findings and recommendations of the report below.

I. Response to Findings

F1. *Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.*

The Town of Portola Valley partially agrees with this finding. The Town of Portola Valley agrees that State laws require local jurisdictions to issue permits for ADUs that meet certain statutory criteria and are precluded from conditioning those permits upon compliance with affordability monitoring. However, it may be possible to condition permits for ADUs that do not meet these criteria (e.g. ADUs that exceed size limitations or additional ADUs permitted on the same lot).

F2. *San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.*

The Town of Portola Valley partially agrees with this finding. While the Town counts some ADUs to meet affordable housing commitments in RHNA, it relies on several other strategies to realize many of our required affordable units. Below are examples of some of the Housing Element programs the Town is developing to facilitate the construction of low-income units:

- Creating brand new land-use designation to facilitate the construction of a 50-unit 100% affordable housing project on Town land
- Creating two additional brand-new zoning districts (multi-family and mixed-use) - a significant shift for a Town that is exclusively zoned for single-family
- Amending the zoning ordinance to establish inclusionary housing requirements for new multi-family housing developments

- Establish Objective Design Standards for two new zoning districts to allow for greater certainty in the Town's design review process
- Codifying the Town's Affiliated Housing Program that allows for construction of workforce housing on Town lands with institutional and commercial uses. Codification includes establishing program parameters and processes and includes development and affordability requirements to further incentivize program use
- Through collaboration with local service providers, convene a discussion of populations that are experiencing comparatively high rates of cost burden to discuss solutions for relief
- Ensure the permitting process for modular and manufactured homes is cleared of any disincentives and develop informational materials to assist applicants

F3. *Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.*

The Town of Portola Valley partially disagrees. The word choice of this finding implies that the Town of Portola Valley uses ADUs for 80 percent of the affordable housing commitments. In reality, it is 46%, which is appropriate based on the residential characteristics of the community. Town land is prohibitively expensive, as are construction costs, there is no available public transit infrastructure, and a large percentage of Town land is subject to land use constraints such as steep slopes, unstable soils, flood risks and earthquakes and wildfire hazards. Opportunities to obtain tax credits for affordable housing projects are limited based on the Town's location and available services such as mass transit. Without an appropriate number of ADUs, the Town simply cannot meet its RHNA.

F4. *HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.*

The Town of Portola Valley partially agrees with this finding. We do not expect HCD to specify how to verify the income levels of ADU occupants. Additionally, HCD is only asking for verification at the initial time of occupancy. Portola Valley is planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

F5. *Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.*

The Town of Portola Valley agrees with this finding. San Mateo County jurisdictions met on June 20, 2023 to discuss potential strategies for monitoring ADU affordability levels. The Town of Portola Valley is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the Housing Element was due (early 2025).

F6. *Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.*

The Town of Portola Valley agrees with this finding. As stated above, the Town is planning to support a regional approach to monitoring ADU affordability.

F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

The Town of Portola Valley agrees with this finding. HIP is one potential partner agency.

II. Response to Recommendations

R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

The recommendation will not be implemented because it is not feasible. While the Town of Portola Valley shares the Civil Grand Jury's goal to increase ADU affordability monitoring, it is not feasible to revise the Town's Housing Element to eliminate the use of ADUs and still meet its affordable housing goals. The Housing Element was developed through a rigorous process consisting of multiple years of public input and revisions. To date, Town staff, consultants, the Ad Hoc Housing Element Committee, various Town committees, the Planning Commission, Town Council and residents have spent 145 hours across 42 meetings addressing its Housing Element.

The Town of Portola Valley already made its second submission to HCD on May 25, 2023; it is simply unreasonable to request a major change to the Town's housing policy this late in the process. Incorporating a change of this scale at this stage of the Housing Element update process would cause a significant delay to the adoption of the Housing Element, and be in direct odds with the implementation of programs designed to encourage new affordable housing. However, The Town of Portola Valley is committed to following state housing law and to supporting the development of an effective regional ADU monitoring program which will be operated by 21 Elements or ABAG. The Town of Portola Valley is also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County. The Town will have this monitoring program in place for future Housing Element cycles.

R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Part of the recommendation has yet to be implemented but will be implemented in the future. However, part of the recommendation is not warranted. The Town of Portola Valley agrees that it is important to have high quality information about who is living in ADUs. The Town will participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is

projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. However, it is important to note that due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU in the county.

R3. *By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.*

This recommendation has yet to be implemented but will be implemented to some extent in the future. The Town of Portola Valley agrees with the goal of adopting an affordable ADU program. The Town is also actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the Town, have been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy if possible.

Regarding deed restrictions specifically, the Town will first assess whether incentives offered in exchange for deed restrictions are compelling to homeowners. The Town's goal is to generate as many affordable ADUs as possible and it will focus its efforts on offering incentives that best achieve that goal.

Additionally, either as an add on to the above nonprofit efforts, or as a Town-run initiative, the Town plans to develop an affordable ADU rental program to match low-income tenants who have experienced displacement with ADU owners willing to rent at below market rates. If necessary to drive participation, the Town will consider incentives such as waiving fees or other financial incentives.

R4. *By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.*

This recommendation has yet to be implemented but will be implemented to some extent in the future. As part of the monitoring program referenced in response to R2, The Town of Portola Valley will track the intended use of ADUs. The Town will develop an incentive program that offers incentives in exchange for affordability requirements that most effectively generate affordable units.

R5. *By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.*

The recommendation will not be implemented because it is not warranted or reasonable.

While we agree with the importance of an accurate distribution formula, given the relatively small size of Portola Valley, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions. The Town of Portola Valley is supporting the aforementioned creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels.

Additionally, so long as the recommended 30/30/30/10 ADU affordability distribution established by ABAG is supported by HCD, the Town will continue to employ it as a baseline. The allocation is based on a UC Berkeley study that surveyed thousands of homeowners statewide with repeat mailing and the data was aggregated to reduce the margin of error. There is also no evidence in the data to suggest significant variation from city to city. Additionally, the recommended affordability distribution had a significant built in cushion to ensure cities do not accidentally underproduce the amount of housing needed. Even if the Town were to conduct its own surveying, the margin of error would be too large, rendering unreliable data.

R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

This recommendation has been implemented.

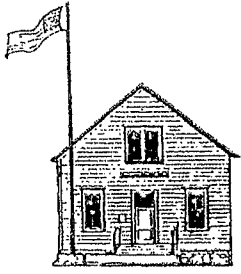
San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs in the county. San Mateo County jurisdictions are already working together to address recommendations 2 and 3 and the Town will ensure its policies and programs are reflective of those efforts.

This response was approved by the Portola Valley Town Council at a public meeting on August 9, 2023.

Sincerely,

DocuSigned by:

5B051E89D2504D0...
Jeff Aalfs, Mayor



The Town of
Woodside

August 1, 2023

The Honorable Nancy L. Fineman
Judge of the Superior Court
c/o Bianca Fasuescu
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Dear Members of the Grand Jury,

Thank you for the opportunity to respond to the report titled, "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?". The Town Council for the Town of Woodside has had the opportunity to review the report and, after reviewing the report and allowing for public comment at its regular meeting of July 25, 2023, the Town Council offers the following responses:

Response to Findings

Finding F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

Response: The Town of Woodside partially disagrees with this finding. The Town agrees that recently enacted State laws require that local governments issue permits for ADUs that meet certain statutorily defined criteria. The Town agrees that when a proposed ADU meets these criteria, a local government is precluded from conditioning the permit on compliance with affordability monitoring. However, it may be possible to condition permits for ADUs that do not meet these criteria (e.g. ADUs that exceed size limitations or additional ADUs permitted on the same lot).

Finding F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

Response: The Town of Woodside partially disagrees with this finding. The Town of Woodside is currently working with the Department of Housing and Community Development (HCD) to complete and obtain certification of its Housing Element, which includes the Town's RHNA-6 plan. At this time, the Town cannot say with certainty what its RHNA-6 plan will include, as it has not yet been completed and adopted. However, the current working draft of the Town's RHNA-6 plan includes several

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townhall@woodsidetown.org

strategies to meet the Town's affordable housing commitments, including the development of new ADUs.

The Town of Woodside does not have independent knowledge of what San Mateo County and the other municipalities within the County have included in their housing elements or whether those jurisdictions have adopted housing elements with final RHNA-6 plans.

Finding F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

Response: The Town of Woodside partially disagrees with this finding. The Town of Woodside is currently working with the Department of Housing and Community Development (HCD) to complete and certify its Housing Element, which includes the Town's RHNA-6 plan. At this time, the Town cannot say with certainty what its RHNA-6 plan will include, as it has not yet been completed and adopted. However, the current working draft of the Town's RHNA-6 plan does not rely on ADUs to meet 80 percent of its affordable housing commitments. ADUs make up only around 41% of the affordable housing projected in the Town's current draft RHNA-6 plan. The remainder of the affordable housing units are projected to be achieved through additional affordable housing to be created at Cañada College and through the rezoning and development of multi-family housing on three specific sites, two of which are owned by the Town. The Town's current draft Housing Element includes a program under which the Town will partner with affordable housing developers to construct and manage developments on these sites as affordable housing. The Town's current draft RHNA-6 plan also projects that the Town will achieve more than 120% of its housing needs allocation in each of the affordability categories.

Finding F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

Response: The Town of Woodside partially disagrees with this finding. The Town agrees that HCD representatives have indicated in both written correspondence and discussions with Town of Woodside staff that they expect the Town's Housing Element, once adopted, to address how ADU production and affordability will be monitored. The Town also agrees that that HCD has not given explicit direction on how to structure the

monitoring program. The Town will continue working with HCD to obtain certification of its draft Housing Element. The Town also tentatively plans to support a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions within San Mateo County.

Finding F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

Response: The Town of Woodside agrees with this finding. However, the Town of Woodside does not have independent knowledge of what San Mateo County and the other municipalities within the County have included in their housing elements or whether each has adopted a housing element with a final RHNA-6 plan.

San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. The Town of Woodside is tentatively planning to support a regional ADU monitoring effort through ABAG or 21 Elements.

Finding F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

Response: The Town of Woodside agrees with this finding.

Finding F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

Response: The Town of Woodside partially disagrees with this finding. The Town agrees that agencies such as HIP Housing have proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County. However, it is uncertain whether those systems and processes can be implemented to monitor the affordability of all ADUs. HIP Housing is one of the agencies that could potentially partner with the local jurisdictions in a regional ADU monitoring effort through ABAG or 21 Elements.

Response to Recommendations

Recommendation R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

Response: The recommendation will not be implemented because it is not reasonable, nor warranted. The Town of Woodside shares the Civil Grand Jury's goal to increase verified affordable housing stock, which is why the Town is currently working to complete its Housing Element that will include a RHNA-6 plan that relies on several housing types and proposes to, for the first time in the Town's history, rezone single-family sites to allow multi-family density. The Town also agrees that a system for monitoring ADU affordability should be developed. However, removing ADUs from the Town's draft RHNA-6 plan would require the Town to effectively reinitiate the process of developing its Housing Element; a process that began over a year and a half ago. It simply is not feasible for the Town to make a fundamental change to its draft RHNA-6 plan this late in the process without causing a significant delay to the adoption of its Housing Element, which would have the detrimental effect of delaying the implementation of programs designed to encourage new affordable housing.

However, the Town of Woodside is committed to following State housing law and plans to support the development of an regional ADU monitoring program which will be operated by 21 Elements or ABAG.

Recommendation R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

Response: Part of the recommendation has yet to be implemented but will be implemented in the future. However, part of the recommendation is not reasonable. The Town of Woodside agrees that it is important that high quality information be gathered about the affordability of ADUs. The Town plans to participate in the ABAG or 21 Elements ADU monitoring system currently being developed and projected to launch in January 2025. However, engaging with and verifying the incomes of an ever-increasing number of homeowners and residents every year in perpetuity would be neither practical nor cost effective.

Recommendation R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

Response: Part of the recommendation has yet to be implemented but will be implemented in the future. The Town of Woodside agrees with the goal of adopting an ADU affordability monitoring program. The Town plans to support the creation of an ADU nonprofit, which would offer programs on behalf of the Town and other local jurisdictions to incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreements to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy, if possible.

Recommendation R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

Response: The recommendation requires further analysis. The Town of Woodside is currently working with HCD to complete and certify its Housing Element, which will likely include an ADU monitoring program. The Town is committed to completing a Housing Element that achieves HCD's certification and timely implementing the actions and programs included in that Housing Element. As discussed above, the Town also plans to support the creation of an ADU nonprofit, which would offer programs on behalf of the Town and other local jurisdictions that would incentivize the production of affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels.

Recommendation R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

Response: The recommendation will not be implemented because it is not warranted, nor reasonable. The Town of Woodside agrees that it is important to have an accurate distribution formula that can be used to

realistically project the affordability of ADUs that will be created over an RHNA cycle. Given the relatively small size of the Town of Woodside, however, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across all San Mateo County jurisdictions, and/or the larger region for which the Housing Needs Assessment was conducted by the State.

The Town's draft Housing Element utilizes the UC Berkeley study that surveyed thousands of homeowners statewide to develop as accurate a snapshot of ADU affordability as possible with a very low margin of error. Due to the Town's size, the margin of error that would result from a study conducted only within the Town would be large and render the study less reliable. Further, there is no evidence in the data collected in the existing study that suggests a significant variation of ADU affordability among the local jurisdictions. The recommended affordability distribution of 30/30/30/10 includes a significant cushion on the more affordable end of the distribution to decrease the likelihood that jurisdictions utilizing the distribution might accidentally underproduce the amount of affordable housing projected.

As discussed above, the Town plans to support the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels for use in future RHNA cycles.

Recommendation R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

Response: The recommendation has been implemented.

Please feel free to contact Town Manager Kevin Bryant at (650) 851-6790 or kbryant@woodsidetown.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Shaw', with a long horizontal flourish extending to the right.

Chris Shaw
Mayor