

PLANNING COMMISSION AGENDA STAFF REPORT



Meeting Date: March 2, 2021

Public Hearing:
Discussion Item:
Consent Item:

February 25, 2021

Agenda Item No.: 6b

TO: CHAIR AND PLANNING COMMISSIONERS

FROM: JOANN LOMBARDO, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: 6th CYCLE HOUSING ELEMENT UPDATE – PUBLIC WORKSHOP #3

RECOMMENDATION

That the Planning Commission hold a public workshop to receive public input, discuss and provide staff direction on the Housing Element Update process.

BACKGROUND/ANALYSIS

Housing Element Update Public Workshop #2

At the Housing Element Public Workshop #2 on February 16, staff presented information regarding the following topics:

- Penalties to cities for Housing Element non-compliance
- Housing Element requirements override Measure U provisions
- Zoning tools required to implement Housing Element Update
- Housing Element Update Workshop Schedule
- Accessory Dwelling Unit projections
- Preliminary Review of Potential Sites.

The primary focus of the second Housing Element Update workshop was on city compliance requirements and on potential sites to satisfy the Regional Housing Needs Assessment (RHNA) very low- and low-income unit RHNA requirements.

Housing Element Update Public Workshop Comments

During the first and second Housing Element Workshops, members of the community discussed a variety of issues. Some of these issues were addressed through staff presentations during the meeting. To summarize public comments received during the workshops to date, the comments and staff's responses are listed below:

- Comment: Concern for high density units in the canyon because of fire hazards and increased traffic, especially when trying to evacuate during a fire.
 - Response: Fire safety and traffic concerns will be applied to the RHNA potential site selection criteria and will be an integral part of the subsequent General Plan update process.
- Comment: Can housing be permitted on nonresidential sites, such as commercial or institutionally zoned properties?
 - Response: Staff will be considering a housing overlay zone as a tool to help meet state RHNA requirements. The overlay zone would assign a specified number of RHNA units and density to a portion of a nonresidential site, allowing the remainder of the site to continue to develop under the existing non-residential zone.
- Comment: Concern regarding loss of open space.
 - Response: Under state law, open space properties are held in trust for the public under the “public trust doctrine.” The City cannot use these properties for incompatible purposes. The City Attorney’s office has opined that using open space properties for housing would be an incompatible use. Additionally, many of these properties are subject to deed restrictions from the developer. City-owned open space sites will be removed from consideration.
- Comment: Concern that Western Hills golf course serves as open space for adjacent mobile home park.
 - Response: In reviewing potential sites that include private open space, such as golf courses, staff will research property entitlements to determine any development restrictions.
- Comment: The 1979 Chino Hills Specific Plan allowed clustered developments to protect open space; and concern with balancing state requirements for development of housing with the rural heritage of the community.
 - Response: Clustering and protection of open space will be an integral part of the Housing Element Update site selection process and subsequent General Plan update process.
- Comment: Concern for continued removal of trees associated with more development.
 - Response: Future development will be subject to the City tree preservation ordinance requirements.

- Comment: Concerns regarding regional and local roadway improvements, and transit availability for both trips within Chino Hills and to regional connectors.
 - Response: Local and regional traffic impacts from the additional housing and transit will be an integral part of the Housing Element Update and subsequent General Plan update process. The Planning Commission plans to hold a public workshop on traffic and transit issues later this year.
- Comment: Concern about challenging the RHNA allocation in court.
 - Response: The California Court of Appeal has held that the statutes governing the RHNA allocation procedure reflect the Legislature’s clear intent to prevent the courts from intervening in the RHNA process. Therefore, the courts do not have jurisdiction to review the City’s RHNA allocation. This decision binds the lower courts across the state, so any lawsuit by the City challenging the City’s RHNA allocation would be dismissed.

Further, there is no mechanism for the City or any local agency to challenge the determination by the California Department of Housing and Community Development (HCD) of the RHNA allocated to the southern California region. SCAG appealed its RHNA allocation administratively but lost. SCAG has not filed legal action challenging its RHNA Allocation.

Explanation: In the case of *City of Irvine v. Southern California Assn. of Governments* (2009) (“Irvine”) 175 Cal.App.4th 506, the Fourth District Court of Appeal held in a published opinion that the courts lack jurisdiction to review the propriety of a local agency’s RHNA allocation. The case arose during the 2006-2014 planning period when SCAG’s draft RHNA allocation plan allotted over 35,000 residential units to the city of Irvine—a number equal to 43 percent of the entire regional housing need for Orange County. After an unsuccessful appeal to SCAG, Irvine sued seeking to vacate and set aside the draft allocation, the RHNA appeals board’s denial of its appeal, and SCAG’s final allocation plan. The city also sought recalculation of its allocation in accordance with state law. The trial court dismissed the lawsuit. The Court of Appeal affirmed, holding that although the RHNA statutes do not expressly bar a municipality from judicially challenging its RHNA allocation, the statutory procedure and the intricacy of the process created to determine a municipality’s RHNA allocation “reflects a clear intent on the part of the Legislature to render the process immune from judicial intervention.”

Although Irvine insisted it was only seeking to correct its own RHNA allocation and that its lawsuit would not derail other municipalities from timely revising their housing elements, the Court noted that it would be impossible to adjust the RHNA allocation of a single municipality without potentially affecting every other local jurisdiction in the region. Under the

RHNA statutes, once HCD determines the housing need for the region, that number cannot change. Consequently, the reduction in RHNA allocation for one local government would necessarily require the regional council to make upward adjustments to the allocation of other local governments in the region. Because one local agency's challenge to its allocation could potentially affect the allocation of every other agency in the region, every local jurisdiction in the region would necessarily have to be named in any judicial action as an interested party, thereby precluding each affected municipality's completion of its housing element revision and creating gridlock while a particular city's case winds through the courts.

In reaching its decision, the Court also noted that the 2004 amendments to the RHNA statutes eliminated a provision that authorized judicial review of a regional council's determination concerning a city or county's share of the state housing need. This, the Court found, evidenced the Legislature's intent to withdraw that right.

More recently, four cities in San Diego County—Coronado, Imperial Beach, Lemon Grove, and Solana Beach—sued the San Diego Association of Governments on September 24, 2020 seeking to lower their respective RHNA allocations. Citing the *Irvine* case, the San Diego Superior Court dismissed the lawsuit on February 5, 2021.

- Comment: Concern that potential sites could fall upon minority and/or low-income communities.
 - Response: The State Housing and Community Development (HCD) Site Inventory Guidebook (May 2020) outlines the criteria for determining consistency with “Affirmatively Furthering Fair Housing”, which HCD defines as “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics”. The City is required to follow these criteria in its identification of potential RHNA housing sites. The City has invited all members of the community to participate in the Housing Element Update process, including religious facilities, fair housing groups and low-income housing providers.
- Comment: Question regarding how a potential site is rejected as an appropriate high density housing site.
 - Response: As noted above and discussed in this staff report, below, cities are required to follow the criteria outlined in HCD's Site Inventory Guidebook. Local issues also are considered, including neighborhood compatibility, roadway access and capacity, protection of biological resources and native species, and protection of ridgelines, slopes, and

open spaces. Site availability and property owner interest are additional criteria that are considered.

- Comment: Support for moving units from Tres Hermanos.
 - Response: Decisions regarding residential zoning on Tres Hermanos will be considered by the City. These decisions will require compliance with state of California “no net loss requirements”. Pursuant to Assembly Bill (AB) 2041 (DUTRA) and Senate Bill (SB) 330, a jurisdiction must ensure that a decision to downzone or remove residential units from a site results in no net loss in total housing units. The Tres Hermanos Conservation Authority is the landowner and makes decisions for the property pursuant to the procedures in its Joint Powers Agreement.
- Comment: Support for rezoning a portion of the Boys Republic site for residential development.
 - Response: The City has informed Boys Republic of the Housing Element update process and requested that they consider adding housing on their site.
- Comment: Can the Aerojet property be a potential housing site?
 - Response: The property is subject to the state Department of Toxic Substances Control (DTSC) review for required clean up from its past munitions operation. Aerojet’s DTSC review status would not meet the criteria outlined in HCD’s Site Inventory Guidebook.
- Comment: Are sites such as Vellano and Hidden Oaks being considered and concern regarding the Galstian property behind Jade Tree.
 - Response: All potential sites are being considered through the Housing Element Update process and will be recommended based on the criteria outlined in HCD’s Site Inventory Guidebook as well as local issues, such as neighborhood compatibility, roadway access and capacity, protection of biological resources and native species, and protection of ridgelines, slopes and open spaces.
- Comment: Encourage greater use of social media to inform the community regarding the Housing Element Update workshops.
 - Response: Information about the Housing Element Update process is posted on the City’s Facebook, Twitter and Instagram accounts. The City has issued Press Releases and “pushed out” notifications to the public through its e-notify system about the Housing Element Update workshops. The City has dedicated a page on its website to the Housing Element Update process to make it easy for the public to obtain information about these workshops.

- Comment: Desire for City to avoid incurring penalties from the state due to Housing Element non-compliance.
 - Response: Information about the potential penalties for Housing Element non-compliance are posted on the City's Housing Element Update webpage: <https://www.chinohills.org/HousingElementUpdate>.
- Comment: Community statistics support the need for more rental units.
 - Response: The Housing Element Update will include current demographic information for Chino Hills, and an analysis of housing need, including the need for additional rental housing. Goals and policies of the Housing Element Update will be established to address identified housing need.
- Comment: Support for placing high-density units on commercial center properties, vacant and underutilized properties.
 - Response: Potentially available commercial center properties, vacant and underutilized properties are being considered in the RHNA potential site selection inventory.
- Comment: Concern for losing commercial business.
 - Response: Focus of the RHNA potential site selection inventory will be on vacant and underutilized properties. Commercial centers considered will be those that have currently underutilized buildings or land.
- Comment: Concern regarding the access to sites and the requirement for a potential residential development to have two points of access.
 - Response: Wherever feasible, development is required to provide two points for vehicular access. Exceptions are considered based on Fire District and City reviews.
- Comment: Lack of support for high density housing all over the City.
 - Response: Community input, including concerns about high density housing, are being considered throughout the Housing Element Update process. The State of California has mandated the City zone for high density housing.
- Comment: Potential that the RHNA requirements would be overturned with a change in the state's government.
 - Response: The City is obligated to follow current legislative requirements including the State's RHNA and Housing Element Update requirements.

- Comment: Suggestions to offer developer incentives such monetary incentives for developers, land donations, fee reductions and in-lieu housing fees.
 - Response: Incentives for encouraging affordable housing development will be considered during the Housing Element process.
- Comment: Recommendation that residential density ranges be 40 dwelling units per acre to a minimum of 25 units per acre.
 - Response: A variety of housing densities and development standards will be considered through the Housing Element Update process.
- Comment: Concern regarding increased height restrictions.
 - Response: Neighborhood compatibility, including building height compatibility, will be considered through the potential RHNA site selection process.
- Comment: Concerns regarding Measure U impact on RHNA.
 - Response: State RHNA allocations override local residential growth control ordinances, including Measure U. In addition, the City of Chino Hills adopted Measure U contains language recognizing the mandate to comply with State RHNA obligations: Measure U states: *Notwithstanding the foregoing, the City Council may increase residential density as necessary to meet the City's minimum mandated Housing Element requirements as set forth in California Government Code §65580, et seq., as amended from time to time, including, without limitation, the City's share of regional housing needs.*
- Comment: Request for a map of all proposed locations for high-density residential building projects.
 - Response: Maps of all the potential sites considered through this Housing Element process are presented in the Housing Element Workshop PowerPoint presentations, available on the City's Housing Element Update webpage: <https://www.chinohills.org/HousingElementUpdate>.

Site Inventory Criteria

HCD's Site Inventory Guidebook outlines a multi-step process through which to identify suitable potential housing sites that will satisfy the State's RHNA requirements. These primary steps are outlined below. Staff will be applying this process in its review of potential RHNA sites. In addition, as mentioned previously, local issues also are considered, including neighborhood compatibility, roadway access and capacity, protection of biological resources and native species, and protection of ridgelines, slopes, and open spaces, site availability and property owner interest.

HCD Site Inventory Criteria:

Step 1: Identification of Developable Sites

Generally, a site is a parcel or a group of parcels that can accommodate a portion of a city's RHNA. A city must identify, as part of an inventory, sites within its boundaries that could have the potential for new residential development within the timeframe of the housing element planning period. Types of sites include:

- Vacant sites zoned for residential use.
- Vacant sites zoned for nonresidential use that allow residential development.
- Residentially zoned sites that are capable of being developed at a higher density (nonvacant sites, including underutilized sites).
- Sites owned or leased by a city, county, or city and county.
- Sites zoned for nonresidential use that can be redeveloped for residential use and a program is included to rezone the site to permit residential use.

Projects that have been approved, permitted, or received a certificate of occupancy since the beginning of the RHNA projected period may be credited toward meeting the RHNA allocation based on the affordability and unit count of the development. For these projects, affordability is based on the actual or projected sale prices, rent levels, or other mechanisms establishing affordability. For projects yet to receive their certificate of occupancy or final permit, the element must demonstrate that the project is expected to be built within the planning period, which is June 30, 2021 – October 15, 2029.

Step 2: Inventory of Sites

HCD requires a parcel specific inventory of sites that includes the following information for each site:

- Assessor parcel number(s).
- Size of each parcel (in acres).
- General plan land use designation.
- Zoning designation.
- For nonvacant sites, a description of the existing use of each parcel.
- Whether the site is publicly owned or leased.

- Number of dwelling units that the site can realistically accommodate.
- Whether the parcel has available or planned and accessible.
- The RHNA income category the parcel is anticipated to accommodate.
- If the parcel was identified in a previous planning period site inventory.

Step 3: Infrastructure Availability

HCD requires that parcels included in the inventory have sufficient water, sewer, and dry utilities available. Dry utilities include, at minimum, a reliable energy source that supports full functionality of the home and could also include access to natural gas, telephone and/or cellular service, cable or satellite television systems, and internet or Wi-Fi service.

Step 4: Map of Sites

HCD requires that cities provide a map that shows the location of the sites included in the inventory. While the map may be on a larger scale, such as the land use map of the general plan, the more detailed the map, the easier it will be to demonstrate the sites meet HCD requirements.

Step 5: Determination of Consistency with Affirmatively Furthering Fair Housing

HCD requires that sites be identified throughout the community in a manner that affirmatively furthers fair housing opportunities. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

For purposes of the Housing Element site inventory, this means that sites identified to accommodate the lower-income need are not concentrated in low-resourced areas (lack of access to high performing schools, proximity to jobs, location disproportionately exposed to pollution or other health impacts) or areas of segregation and concentrations of poverty. Instead, sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing. One resource recommended by HCD is the California Tax Credit Allocation/California Department of Housing and Community Development Opportunity Maps, which can be accessed at <https://www.treasurer.ca.gov/ctcac/opportunity.asp>. As required by the State, this analysis will be incorporated into an Environmental Justice element or equivalent environmental justice-related policies as part of the subsequent General Plan Update.

Step 6: Sites by RHNA Income Category

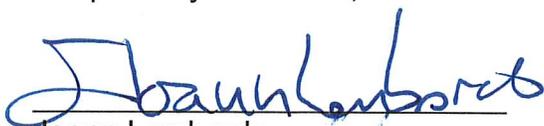
The inventory must identify which RHNA income category each site is anticipated to accommodate. Sites can accommodate units for more than one income category. HCD outlines best practices for selecting to sites to accommodate the lower income RHNA that includes consideration of the following factors:

- Proximity to transit.
- Access to high performing schools and jobs.
- Access to amenities, such as parks and services.
- Access to health care facilities and grocery stores.
- Locational scoring criteria for Low-income Housing Tax Credit (TCAC) Program funding.
- Proximity to available infrastructure and utilities.
- Sites that do not require environmental mitigation.
- Presence of development streamlining processes, environmental exemptions, and other development incentives.

Step 7: Environmental Constraints

HCD requires that the site inventory analysis include a general description of any known environmental or other features (e.g., presence of floodplains, protected wetlands, oak tree preserves, very high fire hazard severity zones) that have the potential to impact the development viability of the identified sites. The Housing Element need only describe those environmental constraints where documentation of such conditions is available to the local government. This analysis must demonstrate that the existence of these features will not preclude development of the sites identified in the planning period at the projected residential densities/capacities.

Respectfully submitted,



Joann Lombardo
Community Development Director