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REPORT TO COUNCIL

SUBJECT

Action on City's Response to the 2017-2018 Santa Clara County Civil Grand Jury Report: "Affordable Housing Crisis: Density is Our Destiny"

BACKGROUND

On June 21, 2018, the Santa Clara County Civil Grand Jury published a report entitled, "Affordable Housing Crisis: Density is Our Destiny" (see Attachment 1)

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

As stated in Penal Code § 933.05(a) public agencies are required to "Agree" or "Disagree" with each applicable finding. Further, as stated in Penal Code § 933.05(b), the City of Santa Clara is required to respond to each applicable recommendation with one of four possible actions:

1. The recommendation has been implemented, with a summary regarding the implemented action;
2. The recommendation has not yet been 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 timeframe shall not exceed six months from the date of publication of the grand jury report; or,

4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

The City's responses to the Civil Grand Jury's findings are due to the office of the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court, no later than Thursday, September 20, 2018.

DISCUSSION

Below, please find the findings and recommendations from the attached report and staff's recommended responses including references to policies set forth in the City's General Plan Land Use and Housing elements directly responsive to the issues raised in the Report.

Finding 1a:

Lack of housing near employment centers worsens traffic congestion in the County and increases the urgency to add such housing.

Response:

The City of Santa Clara agrees with the finding. The City's General Plan, updated in 2010, provides capacity for over 16,000 new attached residential units in Santa Clara (General Plan Table 5.2-1 Summary of General Plan Development Potential 2010-2035) primarily to be located in nine Focus Areas (Figure 5.4-1) located in proximity to employment areas and transit facilities. In 2016, the City adopted the Lawrence Station Area Specific Plan, located adjacent to the Caltrain Lawrence Station in northern Santa Clara and anticipates adoption later this year of the Tasman East Specific Plan, located adjacent to the VTA Tasman Light Rail station. Both of these Specific Plans convert existing industrial lands to high-density residential use, together adding capacity for 8,000 new residential units in close proximity to existing employment centers. Furthermore, the City has recently initiated new Specific Plan efforts (e.g., Freedom Circle Specific Plan, Patrick Henry Specific Plan) that would add several thousand units of additional residential capacity through conversion of existing employment lands within north Santa Clara.

These efforts are also reflected in General Plan policies specific to each Focus Area:

Policy 5.4.1 P12 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the El Camino Real Focus Area.

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Policy 5.4.2 P14 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Downtown Focus Area.

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Policy 5.4.3 P20 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Santa Clara Station Focus Area.

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Policy 5.4.5 P13 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Lawrence Station Focus Area.

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Policy 5.4.6 P16 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Tasman East Focus Area.

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Finding 1b:

Mass transit stations (Caltrain, VTA, BART) create opportunities for BMR units.

Response:

The City of Santa Clara agrees with the finding. The City's General Plan promotes the development of affordable housing throughout the City, and also promotes higher density residential development and a proportional increase in BMR units in proximity to transit facilities, as stated in the following General Plan goals and policies:

Goal 5.3.2 G3 Affordable housing units dispersed throughout the City to avoid a concentration in any one neighborhood.

General Plan Policy 5.2.3 identifies Priority Development Areas for new housing that are "in a pedestrian friendly environment served by transit."

Policy 5.3.2 P2 Encourage higher density residential development in transit and mixed use areas and in other locations throughout the City where appropriate

Policy 5.3.2 P6 Provide adequate choices for housing tenure, type and location, including higher density, and affordability for low and moderate income and special needs households.

Policy 5.3.2 P7 Construct and preserve affordable housing for low and moderate income households through the use of public subsidies, regulatory incentives and flexible development standards.

Policy 5.3.2 P8 Require new residential development to comply with applicable regulations for the provision of affordable housing.

Policy 5.3.2 P9 Encourage senior and group residential facilities, and affordable housing developments near neighborhood retail, support services and transit facilities.

Finding 1c:

Density bonus programs are not being used aggressively enough to produce the needed BMR units within one-half mile of transit hubs.

Response:

The City of Santa Clara agrees with the finding. As referenced above, the City in many cases requires that new residential development within proximity of transit facilities be at higher than traditional densities, with the goal of achieving high yields of new residential units while also addressing neighborhood compatibility. The City's General Plan currently designates lands in proximity of transit with density ranges that vary from a minimum of 37 DU/AC to a maximum of 100 DU/AC, and is considering a range of 85-350 DU/AC for the Tasman East Specific Plan scheduled for adoption later this year. The City has seen some use of density bonuses for affordable housing projects, but has also observed that as development costs increase significantly for housing types (e.g., Type I construction) that would achieve even higher density, there is not sufficient demand to achieve those higher densities or fully utilize density bonus programs. The City's General Plan fully supports the use of density bonus programs:

Policy 5.5.1 P3 For residential development providing more affordable units than required based on the City's Inclusionary Housing Policy, allow a density bonus, consistent with California State density bonus law, provided that the increased density is compatible with planned uses on neighboring properties and consistent with other applicable regulations and General Plan policies.

Recommendation 1a:

To improve jobs-to-housing imbalances, the cities of Palo Alto, Santa Clara, Milpitas, Mountain View and Sunnyvale should identify, by June 30, 2019, parcels where housing densities will be increased. The identification should include when projects are expected to be permitted and the number of BMR units anticipated for each parcel.

Response:

The City has already identified and designated parcels as Focus Areas within the City for higher density residential development. The City has completed the preparation of a Specific Plan for the Lawrence Station Specific Plan area and is currently in the process of preparing Specific Plans for the Tasman East, El Camino Real, Patrick Henry Drive and Freedom Circle Specific Plan areas, with expected completion of the Specific Plan process for each in 2018, 2019 or 2020 depending upon the Plan area. Collectively these Plans will provide for over 20,000 new housing units, of which at least 2,000 would be BMR units as the City transitions to a 15% inclusionary requirement. Some of the market rate and BMR units are already permitted and under construction. A majority of units are expected to be permitted within the next five years, but implementation in some cases could take longer and will depend upon market conditions.

Recommendation 1b:

Cities should identify parcels within one-half mile of a transit hub that will help them meet their low-income and moderate-income BMR objectives in the current RHNA cycle, by the end of 2019. Cities to respond are Campbell, Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale.

Response:

The City agrees with this recommendation. The City is working on a comprehensive strategy to meet its RHNA targets to implement its General Plan Policy 5.3.2 P1 "Encourage the annual construction of the housing units necessary to meet the City's regional housing needs assessment by reducing constraints to housing finance and development". The Lawrence Station, Tasman East, El Camino Real, and Patrick Henry Specific Plan areas, as well as a recently filed application for a 6,000 residential unit mixed-use development adjacent to the VTA Old Ironsides light rail station, are located within one-half mile of transit rail facilities as well as bus service and each will require an inclusionary BMR component that in aggregate will generate at build-out of each approximately 2,000 BMR units within close proximity to transit. The City is also processing 100% affordable housing projects within the Lawrence Station, Tasman East and El Camino Real transit oriented areas. A significant number of BMR units will thus be distributed throughout these transit-oriented areas as part of the City's strategy to meet its RHNA allocations.

Recommendation 1c:

Cities should revise their density bonus ordinances to provide bonuses for LI and moderate income BMR units that exceed the minimum bonuses required by State law for parcels within one-half mile of a transit hub, by the end of 2020. Cities to respond are Campbell, Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale.

Response:

The City is in the process of a comprehensive Zoning Code update expected to be completed by the end of 2019. The City will evaluate how to implement this requirement as part of the update.

Finding 2a:

Employers in the County have created a vibrant economy resulting in an inflated housing market displacing many residents.

Response:

The City of Santa Clara agrees with the finding in that it is evident that there has been sustained job growth in the past few years which further contributes to demand for housing and increased housing costs. Most new development in Santa Clara is being implemented on existing commercial lands and not directly resulting in a displacement of existing residents. The City also provides services through its Housing program, such as financial assistance for residential rehabilitation, to enable low income residents to remain in their properties.

Finding 2b:

Contributions to BMR housing from employers in the County are not mandated nor evenly shared.

Response:

The City of Santa Clara agrees with the finding. The City of Santa Clara along with a small number of other cities in the County, has taken a leadership position by adopting an Affordable Housing Impact fee that became effective August 1, 2018, to require commercial developers to financially contribute toward the City's production of BMR units.

Recommendation 2a:

The County should form a task force with the cities to establish housing impact fees for employers to subsidize BMR housing, by June 30, 2019. Agencies to respond are all 15 cities and the County.

Response:

The City of Santa Clara agrees with the recommendation and will defer to the County on a timeframe for implementation. While the City has already adopted impact fees for nonresidential projects, the City is open to working with the County and other cities to discuss impact fees on a County-wide basis.

Recommendation 2b:

Every city in the County should enact housing impact fees for employers to create a fund that subsidizes BMR housing, by June 30, 2020. Agencies to respond are the County and all 15 cities.

Response:

The City agrees with the recommendation. On February 22, 2018 the City of Santa Clara adopted an Affordable Housing Ordinance that includes housing impact fees for nonresidential projects, such as retail, hotel, office, and light industrial projects, beginning on August 1, 2018. The full [Ordinance <http://santaclaraca.gov/home/showdocument?id=56670>](http://santaclaraca.gov/home/showdocument?id=56670), [Resolution and Fee Schedule <http://santaclaraca.gov/home/showdocument?id=56672>](http://santaclaraca.gov/home/showdocument?id=56672) are provided for reference.

Finding 3a:

RHNA sub-regions formed by several San Francisco Bay Area counties enable their cities to develop

promising means to meet their collective BMR requirements. Such sub-regions can serve as instructive examples for cities in the County.

Response:

The City of Santa Clara agrees in part with the finding; however, Finding 3a requires further analysis. This issue would best be considered by the same County task force taking up the issue of employer-based housing impact fees.

Finding 3c:

More BMR units could be developed if cities with lower housing costs form RHNA sub-regions with adjacent cities with higher housing costs.

Response:

The City of Santa Clara agrees in part with the finding; however, Finding 3c requires further analysis. This issue would best be considered by the same County task force taking up the issue of employer-based housing impact fees.

Finding 3e:

High-cost/low-cost city RHNA sub-regions could be attractive to high-cost cities because they could meet their BMR requirements without providing units in their cities.

Response:

The City of Santa Clara agrees in part with the finding; however, Finding 3e requires further analysis. This issue would best be considered by the same County task force taking up the issue of employer-based housing impact fees.

Recommendation 3a:

Every city in the County should identify at least one potential RHNA sub-region they would be willing to help form and join, and report how the sub-region(s) will increase BMR housing, by the end of 2019. Agencies to respond are all 15 cities.

Response:

The City of Santa Clara does not see a need to implement the recommendation at this time as the recommendation warrants further analysis from both the County and State. The cost of land is a significant barrier to affordable housing creation, but there are other significant barriers such as community resistance, availability of infrastructure and services, and neighborhood compatibility concerns. While Santa Clara has been identified as a high-cost City within the Report with the implication that Santa Clara should transfer some or all of its RHNA obligation to a lower cost city, Santa Clara remains committed to the production of BMR units within Santa Clara and considers this desirable given its proximity to employment centers. It is thus unclear for Santa Clara as to how participation in a RHNA sub-region would provide regional benefit. While RHNA sub-regions may also provide an outlet for cities that lack the political will to create affordable housing, Santa Clara is committed to the production of affordable housing through its General Plan and other policies and ordinances. The concentration of BMR units in low cost areas, such as Gilroy, may exacerbate some of the environmental impact of the housing crisis - namely traffic. Housing is especially needed in cities like Santa Clara where the Jobs-Housing ratio is unbalanced.

While the City acknowledges that since losing the Redevelopment Agency in 2012, creating new affordable housing has been challenging for Santa Clara and all cities across the Bay Area, several

initiatives are now coming into effect that will enable the City to resume its BMR production. Over the past year, the issuance of Measure A funds and the implementation of inclusionary housing and impact fees have provided the resources to once again create a healthy affordable housing pipeline. Although it is always cheaper to build affordable housing in lower cost areas, that is not always the appropriate solution.

Recommendation 3b:

A RHNA sub-region should be formed including one or more low-cost cities with one or more high-cost cities, by the end of 2021. Agencies to respond are all 15 cities.

Response:

The City of Santa Clara does not see a need to implement the recommendation at this time as the recommendation warrants further analysis from both the County and State and it is unclear that it will provide a benefit in terms of BMR production within Santa Clara. The City is however prepared to participate in the formation of a RHNA sub-region should such an effort move forward on a County-wide basis.

Recommendation 3c:

High-cost cities and the County should provide compensation to low-cost cities for increased public services required for taking on more BMR units in any high-rent/low-rent RHNA sub-region, by the end of 2021. Agencies to respond are Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Mountain View, Palo Alto, Santa Clara, Saratoga, Sunnyvale and the County.

Response:

As discussed in Responses 3a and 3b, the City is committed to the production of BMR units within Santa Clara and based on current policies in place, anticipates the ability to perform well going forward in terms of meeting the City's RHNA allocation.

Finding 5a:

Uneven BMR achievements among cities is caused in part by varying inclusionary BMR unit percentage requirements.

Response:

The City of Santa Clara agrees in part with the finding per 933.05(a)(1) of the California Penal Code. Uneven BMR achievements are also caused by varying policies and priorities among cities. The City could be supportive of a consistent approach across the County, but would be concerned about any lessening of the City's current requirements in order to conform with other cities.

Finding 6:

In-lieu fees, when offered as an option, are too low to produce the needed number of BMR units, and delay their creation.

Response:

The City of Santa Clara generally agrees with the finding per 933.05(a)(1) of the California Penal Code. The City's adopted ordinances prioritize inclusionary units for new residential development. The production of BMR units would be further supplemented through commercial linkage fees and access to Measure A funds and other outside funding sources.

Recommendation 6:

Cities with an in-lieu option should raise the fee to at least 30% higher than the inclusionary BMR equivalent where supported by fee studies, by the end of 2019. Cities to respond are Campbell, Cupertino, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale.

Response:

The City of Santa Clara does not see a need to implement the recommendation at this time. The City's Affordable Housing Ordinance was structured with a preference toward mandatory inclusionary housing. The only projects that can voluntarily pay an in-lieu fee are those projects with fewer than ten (10 units). For all other projects, any alternative means of compliance, including payment of in-lieu fees, requires the execution of a Development Agreement, which would be negotiated on a project-by-project basis.

Finding 7 :

NIMBY (Not in My Backyard) opposition adversely affects the supply of BMR housing units.

Response:

The City of Santa Clara agrees with the finding per 933.05(a)(1) of the California Penal Code. The City is committed to robust community engagement in the land use planning process to help address community concerns. This commitment is reflected in the City's General Plan (e.g., Goal 5.3.1 P2 Encourage advance notification and neighborhood meetings to provide an opportunity for early community review of new development proposals) and the City's Land Use Outreach Policy - (attached) adopted in 2017.

Recommendation 7:

A task force to communicate the value and importance of each city meeting its RHNA objectives for BMR housing should be created and funded by the County and all 15 cities, by June 30, 2019.

Response:

The City of Santa Clara agrees with the Recommendation and is ready to participate in such an effort.

Finding 8:

It is unnecessarily difficult to confirm how many BMR units are constructed in a particular year or RHNA cycle because cities and the County only report permitted units.

Response:

The City of Santa Clara agrees with the finding per 933.05(a)(1) of the California Penal Code on a limited basis. The City of Santa Clara has data available on BMR units produced within Santa Clara and includes this information in its annual reporting to the State.

Recommendation 8:

All 15 cities and the County should annually publish the number of constructed BMR units, starting in April 2019.

Response:

The City of Santa Clara has data available on BMR units produced within Santa Clara and includes this information in its annual reporting to the State. The State provides online a summary of data submitted by all jurisdictions.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact to sending the response other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Authorize Mayor Gillmor to submit the City's response to the Civil Grand Jury Report to the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than Thursday, September 20, 2018.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Grand Jury Report
2. Land Use Community Outreach Policy
3. Affordable Housing Ordinance and Resolution